

Collection of Liechtenstein Laws  
Civil Procedure Law

Bergt, J., Stern, T.



# **COLLECTION OF LIECHTENSTEIN LAWS**

## **CIVIL PROCEDURE LAW**

As of February 2, 2026 | 3rd Edition

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## Imprint

Bibliographic Information from the German National Library: The German National Library lists this publication in the German National Bibliography; detailed bibliographic data is available online at [dnb.dnb.de](http://dnb.dnb.de).

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Liechtenstein legal provisions can be accessed via the following link: <https://www.gesetze.li/>

European legal acts can be accessed via the following link: <https://eur-lex.europa.eu/>

Whether a Union legal act is applicable in Liechtenstein depends on a decision of the EEA Joint Committee (EEA Joint Committee Decision; JCD). Whether such a decision exists can be determined on the EFTA website listed below: <https://www.efta.int/eea-lex>

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Editors: Josef Bergt, Thomas Stern | As of February 2, 2026 | 3rd edition

<https://www.bergt.law/> | <https://bergt.tax/>

Publisher: BoD · Books on Demand GmbH, Überseering 33, 22297 Hamburg, [bod@bod.de](mailto:bod@bod.de)  
Printed by: Libri Plureos GmbH, Friedensallee 273, 22763 Hamburg

ISBN: 978-3-6957-1084-3



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## **I. Rule of Jurisdiction (JN)**

of December 10, 1912

on the Exercise of Jurisdiction and the Competence of Courts in Civil Matters

1. Part

### **On Jurisdiction in General**

1. Section

### **Courts and Judicial Bodies**

Sections 1

through 7

Repealed

### **Deliberation and Voting**

§ 8

- 1) The Chair presides over the vote and any deliberations preceding it.
- 2) The rapporteur, if one has been appointed, casts his or her vote first; the presiding judge, who must participate in the vote on an equal footing with every other member of the Senate, casts his or her vote last. In addition, the judges who are older in age vote before the younger ones.
- 3) The deliberations and voting of the judges are not public.

§ 9

- 1) No judge may refuse to vote on a matter put to a vote; this applies in particular even if he or she was in the minority during the vote on a preliminary issue.
- 2) A vote must always be taken first on the court's jurisdiction, on the necessity of procedural additions, and on other preliminary questions. If the decision on the main issue involves multiple claims, a separate vote must be taken on each individual claim.

§ 10

- 1) Every decision of the court requires an absolute majority of votes, that is, more than half of all votes.
- 2) If difficulties arise in this regard that cannot be resolved by breaking down the issues and repeating the vote, the chairperson shall divide the issue on which a decision is to be made into the individual points relevant to the decision

## Jurisdiction Rule (JN)

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and, by conducting separate votes on these points, to bring about the consolidation of votes into a majority decision on the matter under consideration in an appropriate manner.

3) If, with respect to sums on which a decision is to be made, there are more than two opinions, none of which has a majority, the votes cast for the largest sum shall be added to those cast for the next smallest sum until an absolute majority of votes is achieved.

§ 11

The Senate shall decide on any disagreements arising regarding the accuracy of the results of a vote announced by the Chair.

§ 12

The records of the court's deliberations and voting shall be entered into a special minutes.

### **Secretary**

§ 13

Repealed

### **Court Registry**

§ 14

Repealed

2. Section

### **Recusal of Judges and Other Judicial Bodies**

Sections 15

through 22

Repealed

3. Section

### **Jurisdiction**

Section 22a

The procedure under which a case is to be heard and decided is determined not by the party's designation, but by the substance of the party's claim and arguments. If there is doubt as to which procedure is to be applied, the court must decide the matter; this decision may be challenged independently.

### **Examination of Jurisdiction**

§ 23

- 1) As soon as a case involving contentious or non-contentious jurisdiction becomes pending before the district court, the court must examine its jurisdiction ex officio.
- 2) In civil disputes, this examination is based on the plaintiff's statements, unless the court already knows them to be incorrect.
- 3) In non-contentious civil matters, however, as well as in enforcement proceedings, in the issuance of preliminary injunctions, and in the opening of insolvency proceedings, the court shall, without being bound by the parties' statements, examine ex officio the circumstances relevant to jurisdiction. For this purpose, it may request all necessary information from the parties.

#### § 24

- 1) If the case that has become pending falls outside the jurisdiction of the domestic courts, the regional court to which the action has been brought must, at any stage of the proceedings, immediately declare its lack of jurisdiction and the nullity of the preceding proceedings by order. The same must be done by the courts of higher instance if the defect only becomes apparent there.
- 2) If the defect becomes apparent only after the proceedings have been finally concluded, the Supreme Court shall, upon application by the State Administrator, declare the judicial proceedings conducted to be null and void. This application shall be filed by the State Administrator through the Court of Appeal.
- 3) A ruling within the meaning of paragraphs 1 and 2 may not be issued if, with regard to the grounds for nullity, it is precluded by a decision rendered by the same or another court that is still binding.
- 4) The provisions of paragraphs 1 and 3 shall also apply if a matter that does not fall within the scope of non-contentious proceedings has been brought before a court in non-contentious proceedings.

#### § 25

- 1) If the regional court to which the matter has been referred lacks jurisdiction over a case falling within non-contentious jurisdiction, or in enforcement proceedings, in proceedings for the issuance of preliminary injunctions, or in insolvency proceedings, the court must declare its lack of jurisdiction at any stage of the proceedings, either ex officio or upon application, by means of an order.

2) Until such a ruling becomes final, the Regional Court may issue any orders necessary to protect the public interest or to safeguard the parties or the purpose of the proceedings.

**Disputes over jurisdiction with foreign authorities**

§ 26

1) Disputes over jurisdiction between domestic courts and foreign courts or authorities shall be reported by the State Administrator of the Princely Court Chancellery. Until the Administrator issues a statement regarding the conduct of domestic courts in accordance with relations with other territories, the latter shall limit themselves to issuing, in the matter at hand, those orders that appear urgently necessary to safeguard public interests or to protect the parties or the purpose of the proceedings.

2) The statement from the Court Registry is binding on the domestic court.

**Mutual Legal Assistance at the Request of Foreign Courts**

§ 27

1) The Regional Court shall provide mutual legal assistance to foreign courts upon request, unless specific provisions on this matter (international treaties, government declarations, ministerial ordinances) provide otherwise.

2) Legal assistance shall be refused:

1. if the act requested by the requesting court is, under the provisions applicable in the country, outside the jurisdiction of the courts; should the requested act fall within the jurisdiction of other domestic authorities, the requested Regional Court may forward the request to the competent authority;

2. if the performance of an act is requested which is prohibited by laws binding on the Regional Court; or

3. if there is a lack of reciprocity. If the requested regional court doubts the existence of reciprocity, it must obtain a ruling from the court of appeals, which will then be binding on the regional court.

§ 28

1) The requested legal assistance shall be granted in accordance with the provisions of the laws binding on the requested regional court. To the extent permitted by such laws, the requested regional court shall, ex officio, take all necessary measures and issue all necessary orders to fulfill the request.

2) Deviating from the provisions of the laws applicable in the domestic jurisdiction when granting legal assistance is permitted only if it has been expressly requested that a specific procedure required by foreign law be followed in the actions to be taken, and this procedure does not appear to be prohibited by any provision of domestic legislation.

§ 29

If the requested court refuses to grant legal assistance, or if, in connection with the granting of legal assistance, differences of opinion arise between the requesting and the requested courts regarding its execution or in any other respect, the Court of Appeals shall, at the request of the requesting foreign court or another foreign public authority designated for this purpose, decide on the legality of the refusal or on the other subject of the disagreement without prior oral proceedings.

2. Part

## **On Jurisdiction in Civil Matters**

1. Section

### **General Jurisdiction**

§ 30

The Regional Court has jurisdiction over all actions if the defendant has its general venue in the Principality.

§ 31

A person's general venue is determined by their domicile. A person's domicile is established at the place where they have settled with the demonstrable intention, or an intention evident from the circumstances, of taking up permanent residence there.

§ 32

For persons who have no domicile either in the Principality or elsewhere, the general venue is established by their stay in the Principality. In the absence of such a stay, these persons may be sued before the District Court in Vaduz for all obligations arising during their stay in the Principality or to be fulfilled there.

§ 33

Repealed

§ 34

1) A minor child shares the general jurisdiction of his or her parents or, if the parents do not have the same general jurisdiction, the general jurisdiction of the parent who has custody (§ 144 ABGB).

2) If the minor child is under guardianship, the seat of the guardianship court shall be deemed to be the child's general venue.

§ 35

Repealed

§ 36

Unless otherwise provided for in a generally binding manner, the general venue for general partnerships, limited partnerships, stock corporations, cooperatives, trade unions, public funds and corporations, churches, foundations, institutions established for public purposes, estates, associations, European Economic Interest Groupings, and other legal entities not classified as natural persons shall be determined by their registered office. In case of doubt, the registered office shall be deemed to be the place where the administration is conducted.

2. Section

**Special Jurisdictions: Probate Matters**

§ 37

1) For actions asserting claims arising from bequests or other dispositions upon death, as well as for actions by estate creditors based on claims against the decedent or against the heir as such, the Regional Court has jurisdiction if the probate proceedings are pending before it and the estate has not yet been delivered.

2) The Regional Court has jurisdiction over actions concerning the division of the estate if probate proceedings are pending or were pending before it.

**Disputes concerning real property**

§ 38

1) The Regional Court has jurisdiction over actions asserting a right in rem to real property, freedom from such a right, or the cancellation thereof, as well as over actions for partition and boundary adjustment, if the real property is located within the country.



2) If the action concerns an easement or a real encumbrance, the location of the servient or encumbered property is decisive. **Disputes over trespass**

§ 39

The Regional Court has jurisdiction over disputes concerning disturbance of possession if the disturbance occurred within the country.

### **Disputes over ownership**

§ 40

1) The Regional Court has jurisdiction over lease disputes if the leased property is located within the country.

2) The jurisdiction of this court also includes orders for the judicial termination of lease agreements and the issuance of orders for the surrender or takeover of the leased property.

### **Place of jurisdiction: the place of employment**

§ 41

1) Persons who are staying in the country under circumstances that, by their nature, indicate a stay of longer duration—in particular as domestic servants, manual or factory workers, trade assistants, or apprentices, as students or pupils—and who have legal capacity may be sued in the Regional Court for claims relating to property rights.

2) The Regional Court has jurisdiction over disputes concerning working and employment conditions in connection with the posting of workers to Liechtenstein.

### **Place of jurisdiction for the branch office**

§ 42

1) If owners of mines, factories, or commercial or industrial enterprises have permanent establishments within the country outside the company's registered office, legal action may be brought against them in the district courts in disputes relating to such establishments.

2) Persons who manage an estate comprising residential and commercial buildings as owners, usufructuaries, or tenants, or who have such an estate managed by persons they have appointed, may be sued in the district court for all legal matters relating to the management of the estate if the estate is located within the country.

**Place of jurisdiction at the place of performance**

§ 43

Actions for a declaration of the existence or non-existence of a contract, for its performance or rescission, and for damages due to non-performance or improper performance may be brought before the district court if, pursuant to a written agreement between the parties, the contract is to be performed by the defendant within the country; such agreement must state that the establishment of the place of performance also establishes the jurisdiction of the court in the country.

§ 44

Persons liable under a bill of exchange may be sued by the holder of the bill of exchange in the district court if the place of payment is located within the country.

**Jurisdiction over the subject matter of the claim**

§ 45

1) In district court, an action to enforce a lien may be joined with an action for payment of the claim secured by the lien, and an action for cancellation (cancellation) of the lien may be combined with an action to declare the non-existence of the claim secured by the lien, provided that both actions are directed against the same defendant and the immovable property is located within the country.

2) Actions for payments in arrears arising from a real encumbrance may be brought against the owner of the encumbered property in the district court if the encumbered property is located within the country.

**Jurisdiction in cases of joint litigation**

§ 46

1) Unless a special joint venue has been established for the legal dispute, multiple persons may be sued as co-defendants in the regional court if one of the co-defendants—or, if there are principal and secondary obligors among them, one of the principal obligors—has his general venue within the country.

2) Persons bound by a bill of exchange may be sued as co-defendants in the regional court if the place of payment is located within the country. **Venue for the main proceedings**

§ 47

1) Actions asserting a claim to a thing or a right regarding which a legal dispute between other parties is pending before the Regional Court (main intervention) may be brought before the same court until a final decision is rendered in that proceeding.

2) Actions brought by attorneys-at-law and agents for service regarding fees and expenses may be brought before the Regional Court if the main proceedings were pending before the same court.

### **Venue for the Counterclaim**

§ 48

1) A counterclaim may be filed with the Regional Court if the claim asserted therein is related to the claim in the action brought before the Regional Court or would otherwise be suitable for set-off, furthermore, if the counterclaim seeks a determination of a legal relationship or right that has become disputed in the course of the proceedings, upon the existence or non-existence of which the decision on the claim depends in whole or in part.

2) Jurisdiction over the counterclaim does not arise if, at the time the counterclaim is filed, the oral proceedings on the original claim in the first instance have already been concluded.

### **Jurisdiction of the former place of residence**

§ 49

1) Artisans, small merchants, innkeepers, boatmen, carters, and other tradespeople, as well as journeymen, assistants, servants, and other workers seeking wages may bring a claim before the district court within ninety days of the date of the last delivery or service rendered for their claims regarding delivered goods and merchandise, as well as services and work performed, if the customer or employer has in the meantime moved his residence from within the country to abroad.

2) The same applies to private tutors with regard to their claims for remuneration.

### **Jurisdiction over Property**

§ 50

1) Actions for claims relating to property may be brought before the district court against persons who do not have a domicile in the country if the property of such persons or the subject matter of the claim itself is located in the country.

2) In the case of claims, the domicile of the third-party debtor shall be deemed the location where the property is situated. If the third-party debtor has no domicile in the country, but an item serving as security for this claim is located in the country, the claim shall be regarded as property situated in the country.

3) Foreign institutions, estates, companies, cooperatives, and other associations of persons may also be sued in the regional court if their permanent representative or a body entrusted with the management of the affairs of such institutions and companies is located within the country. **The regional court also has subsidiary jurisdiction over proceedings arising from marriage, parenthood, and registered partnerships**

§ 51

1) Proceedings for the prohibition of marriage, divorce, legal separation, or annulment of a marriage, as well as other proceedings concerning disputes not purely of a property nature arising from marital or parental relationships, as well as from non-marital parental relationships, may be brought before the District Court if at least one of the spouses is a Liechtenstein citizen, regardless of where they reside.

2) Domestic jurisdiction over the disputes referred to in paragraph 1 also exists if

1. in the case of an action to prohibit the marriage or to annul a marriage brought against both spouses, at least one of them, the defendant has his or her domicile or residence in Liechtenstein, or

2. the plaintiff has his domicile or residence in Liechtenstein and either both spouses had their last common residence in Liechtenstein, or the plaintiff is stateless, or was a Liechtenstein citizen at the time of the marriage.

3) The Regional Court has jurisdiction over paternity proceedings under Section A of Part II of the Non-Contentious Proceedings Act, including any related legal claims, if the child, the established or to-be-established father, or the mother of the child is a Liechtenstein citizen, or if the child or the established or to-be-established father has his or her habitual residence in Liechtenstein.

4) Paragraphs 1 and 2 apply mutatis mutandis to registered partnerships.

5) Domestic jurisdiction in matters of dissolution or annulment, as well as the determination of the existence or non-existence of a registered partnership, applies in any case to partnerships registered in Liechtenstein.

**Reciprocal jurisdiction for actions against foreigners**

§ 52

If, in another territory, lawsuits may be brought before courts against Liechtenstein nationals in civil matters, and if, under current law, such courts would have no jurisdiction at all or only limited jurisdiction over such matters, then the same jurisdiction shall also be established at the Regional Court against nationals of that territory. **Agreement on the Jurisdiction of the Courts**

§ 53

1) The parties may submit to the jurisdiction of the Regional Court, which would otherwise lack jurisdiction, by means of an express agreement. The agreement must be documented and submitted to the court in the complaint.

2) The agreement shall have legal effect only if it relates to a specific legal dispute or to legal disputes arising from a specific legal relationship. However, matters that are generally excluded from the jurisdiction of the courts cannot be brought before a court by such an agreement.

3) The regional court that would otherwise lack jurisdiction becomes competent to the extent that it can be made competent by agreement of the parties, and also by virtue of the defendant's participation in oral proceedings on the merits without having raised an objection to lack of jurisdiction in a timely manner.

§ 53a

1) Repealed

2) Repealed

3) In legal matters arising from insurance contracts, if the policyholder resides in the country or if the insured interest is located in the country, any agreement to submit to a foreign court is void. The place of jurisdiction for legal matters arising from the aforementioned contracts is Vaduz.

4) The court shall, ex officio and even in enforcement or insolvency proceedings, ensure compliance with this provision.

§ 53b

1) The Regional Court has jurisdiction over claims arising from a retention of title to property located in the Principality, as well as from installment sales of any kind relating to property located within the country, even if this venue has been expressly excluded by agreement between the parties.

2) The lack of jurisdiction of the foreign court may still be asserted in enforcement proceedings.

3. Part

**From the jurisdiction in non-contentious matters  
Probate proceedings**

§ 54

1) Domestic jurisdiction for the administration of an estate and for substitute proceedings (Art. 153 et seq. AussStrG) exists

1. with respect to immovable property located in the country;

2. in respect of movable property situated in Liechtenstein, if

a) the deceased was last a Liechtenstein citizen, or

b) the deceased had his last habitual residence in Liechtenstein; or

c) enforcement of rights derived from inheritance law, the right to a compulsory share, or a testamentary disposition is impossible abroad;

3. regarding movable assets located abroad under the conditions set forth in Article 143(2) of the Succession Act if the decedent was last a Liechtenstein citizen and

a) had his last habitual residence in Liechtenstein, or

b) it is impossible to enforce rights derived from inheritance law, the right to a compulsory share, or a testamentary disposition abroad;

4. over the movable assets of a foreign national located abroad under the conditions set forth in Art. 143(2) of the Succession Act (AussStrG), if the deceased had his last domicile in Liechtenstein and, by will, subjected his succession to Liechtenstein law.

2) Domestic jurisdiction under paragraph 1 also extends to proceedings for the appointment of a substitute.

§ 55

Domestic jurisdiction over the probate proceedings and any related protective measures is always established.

## § 56

If the proceedings are conducted before a foreign court, the jurisdiction of the Regional Court is limited to safeguarding the estate, the claims of heirs, legatees, and creditors residing in Liechtenstein, and the estate administration fees.

## § 56a

If the Regional Court has jurisdiction, it shall administer the entire estate to which it has access, subject to immovable property located abroad.

## § 56b

Repealed

### **Guardianship, Trusteeship, and Curatorship**

## § 57

1) The Regional Court has jurisdiction to appoint a guardian, conservator, or curator and to handle matters that fall under the court's authority pursuant to the provisions governing the rights between parents and minor children, as well as guardianship, conservatorship, and curatorship, if the minor or other person under care has their general venue for disputes within the country. If a guardian, property guardian, or curator is to be appointed for a foreign national who does not have a general venue in the country, the Regional Court has jurisdiction if the foreign national has his or her domicile or residence in the country.

2) If a minor or other person under guardianship who is a Liechtenstein national has their general venue for disputes abroad, but the foreign state refuses to provide guardianship protection, the Regional Court has jurisdiction in such cases.

## § 58

1) If this appears to be in the interest of a ward or other person under guardianship, particularly if it is likely to promote the effective administration of guardianship protection, the Regional Court may, on its own initiative or upon application, transfer its jurisdiction in whole or in part to another court.

2) Such a decision requires the prior approval of the Court of Appeals.

## **Adoption**

### **§ 59**

1) If the court is required to participate in an adoption, the Regional Court has jurisdiction in such cases if

- a) the adoptive father or adoptive mother has their general place of jurisdiction in domestic disputes within the country, or
- b) the adoptive parent, or in the case of adoption by spouses, one of them, or the adopted child is a Liechtenstein citizen, or
- c) even if only one of these persons is stateless and has their habitual residence, or, in the absence thereof, their residence, in Liechtenstein.

2) Repealed

## **Maintenance and other claims arising from the relationship between children and parents**

### **§ 59a**

1) The District Court appointed to exercise guardianship over the minor child is also competent to decide on statutory maintenance claims and other claims to which the minor child is legally entitled arising from the relationship between children and parents.

2) The Regional Court has jurisdiction over statutory maintenance claims of other lineal relatives if the person entitled to maintenance has their general venue for disputes in Liechtenstein; in the absence of such a venue, the Regional Court has jurisdiction if the person against whom the claim is made has their general venue for disputes in Liechtenstein.

3) The Regional Court has jurisdiction to rule on other claims arising from the relationship between children and parents if the child has general jurisdiction in civil matters in Liechtenstein; in the absence of such jurisdiction, the Regional Court has jurisdiction if the defendant has general jurisdiction in civil matters in Liechtenstein.

## **Non-contentious matters concerning marriage and partnerships**

### **§ 60**

The Regional Court has jurisdiction over proceedings regarding compensation for a spouse's contribution to the other spouse's profession or business (Art. 46a et seq. Marriage Act), over non-contentious matters of matrimonial protection (Art. 49h Marriage Act), and over divorce by mutual consent (Art. 50



Marriage Act), the Regional Court has jurisdiction if only one of the spouses has their general place of jurisdiction within the country or holds Liechtenstein citizenship. The same applies *mutatis mutandis* to registered partnerships.

§ 61

The Regional Court has jurisdiction over the recognition of a foreign decision regarding the validity of a marriage, provided that the applicant has his or her habitual residence in Liechtenstein or the marriage has been registered in a Liechtenstein registry.

Vienna, December 10, 1912

## **II. Introductory Act to the Code of Civil Procedure (EGZPO)**

of December 10, 1912

concerning the introduction of the Code of Civil Procedure and the Jurisdiction Act, Art. I

1) The Act on Judicial Proceedings in Civil Disputes (Code of Civil Procedure) and the Act on the Exercise of Jurisdiction and the Competence of Courts in Civil Matters (Jurisdiction Act) shall enter into force on June 1, 1913.

2) On the same date, unless this Act, the Code of Civil Procedure, or the Jurisdiction Act provides for an exception, all provisions contained in other statutory regulations concerning matters governed by the Code of Civil Procedure or the Jurisdiction Act shall cease to be effective. Art. II

Where laws and ordinances not affected by the entry into force of the Code of Civil Procedure, or the bylaws of individual corporations, institutions, and associations, reference is made to the legal procedure in civil disputes, or if—even with restrictions and modifications—the application of the provisions of the court regulations, ordinary written or oral proceedings, or the provisions of the law on summary proceedings or on small claims proceedings is prescribed, the provisions of the Code of Civil Procedure shall replace the referenced provisions.

### **Art. III**

Pursuant to the provision of Art. 1, the following in particular shall cease to be effective:

1. The provisions of the General Code of Civil Procedure of May 1, 1781, insofar as they govern proceedings in civil disputes (Chapters I–XXVII and XXXIV–XXXIX).

2. The Regulation on Summary Proceedings in Civil Disputes, introduced by Princely Decree of November 5, 1857.

3. The provisions of the Act of August 15, 1879, LGBI. 1879 No. 2, concerning the adoption of the Austrian Act of May 16, 1874, which amends certain provisions regarding oral, written, and summary proceedings in civil disputes.

4. The provisions of the Act of December 26, 1906, LGBI. 1907 No. 1, enacting supplementary provisions to the General Rules of Court Procedure.

Introductory Act to the Code of Civil Procedure  
(EGZPO)

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5. The provisions introduced by princely decree of October 16, 1819, regarding proceedings in contentious matrimonial matters.
6. The provisions of the Act of September 28, 1883, LGBL. 1883 No. 4, concerning the introduction of summary proceedings in legal disputes.
7. The provision introduced by princely ordinance of December 10, 1858, regarding proceedings in disputes over disturbance of possession.
8. The provision on proceedings in bill of exchange matters enacted by princely ordinance of November 20, 1858.
9. The provisions of Sections 1 through 5 of the Act of October 9, 1865, LGBL. 1865 No. 5/1, concerning the management of public debt in the Principality of Liechtenstein.

Art. IV

Repealed Art.

V Repealed

Art. VI

The provisions of §§ 99, 157, and 158 of the ABGB remain unaffected. The cited impediment to marriage (§ 99 ABGB) cannot be proven by examination of the spouses pursuant to

§§ 371 et seq. of the Code of Civil Procedure. Art. VII

The provisions of civil law remain unaffected:

1. by which certain documents are declared public or are treated as equivalent to domestic public documents;
2. by which the probative value of a private document is made dependent on certain requirements;
3. which require proof of the date of a document other than the issuer's declaration;
4. which determine the manner of production of commercial books and the legal consequences of their non-production.

Art. VIII

To the extent that the Code of Civil Procedure refers to the provisions of civil law, this includes not only the provisions of the General Civil Code, but also those of commercial law and the Bill of Exchange Act, as well as the provisions of private law contained in other statutes.

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### Art. IX

The obligation under civil law incumbent upon a party seeking to invoke a warranty to demand performance of the obligation is to be regarded as an obligation to join the third party to the proceedings. Failure to join the third party to the proceedings entails the legal consequences attached under civil law to the failure to demand performance of the obligation.

### Art. X

The provisions of the Bankruptcy Code of January 1, 1809, and of the Act of April 15, 1884, LGBI. 1884 No. 2, remain unaffected.

### Art. XI

The provisions of the Act of August 23, 1887, LGBI. 1887 No. 4, concerning proceedings in cases of expropriation, remain unaffected.

### Art. XII

The determination of maintenance or subsistence allowances and service fees, as well as the regulation of the procedure for the assessment and collection thereof, shall be effected by ordinance; until new regulations are issued, the provisions currently in force on this matter shall remain in effect.

### Art. XIII

The detailed provisions contained in existing regulations and those to be issued in the future shall govern the courts' dealings with authorities and parties located abroad.

### Art. XIV

Repealed Art.

### XV

1) Any person who is required under the provisions of civil law to disclose assets or debts, or who is presumed to have knowledge of the concealment or hiding of assets, may be ordered by a court judgment where applicable, upon submission of a list of assets or debts, to disclose what is known to them regarding such assets, debts, or the concealment or hiding of assets, and to take an oath that their statements are true and complete.

2) Any person who has a private-law interest in determining the assets or the extent of the debts is entitled to bring an action.

3) If the action for sworn disclosure of assets is combined with an action for the surrender of what the defendant owes under the underlying

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legal relationship, the specific specification of the benefits claimed by the plaintiff may be reserved until the sworn statement regarding the assets has been made.

Art. XVI

The production of a joint document (Section 303 of the Code of Civil Procedure) may also be demanded by way of a lawsuit outside of a pending legal dispute.

Art. XVII

With regard to the statute of limitations under the Law of Bills of Exchange (Art. 80 of the Law of Bills of Exchange), the assertion of the claim in the oral hearing (§ 240(2) ZPO) is equivalent to the filing of the action.

Art. XVIII

The extinction or limitation of a right occurring during the proceedings or only after their conclusion may not be invoked to the detriment of the party who is subsequently granted permission to reopen the proceedings concerning that right.

Art. XIX

1) The Civil Procedure Code shall not apply to the disposition of disputes in which, on the date of entry into force of the Civil Procedure Code, a defense has already been filed or the hearing on the merits has already commenced, unless otherwise provided below; such disputes shall be heard and decided in accordance with the procedural rules previously in force.

2) To all other disputes that have already been brought before the court prior to the date of entry into force of the Code of Civil Procedure, the provisions of the Code of Civil Procedure shall apply from that date, provided that:

1. any proceedings concerning preclusive defenses that are in progress at the time the Civil Procedure Code takes effect must be concluded in accordance with the previously applicable procedural rules, and the effect of the decision rendered thereon must also be determined in accordance with those procedural rules, and

2. the withdrawal of the complaint pursuant to § 245 of the Code of Civil Procedure may still take place in the case specified in paragraph 1 until the start of the first court session scheduled for the hearing of the main proceedings.

3) In the disputes referred to in paragraph 2, on the day the Code of Civil Procedure enters into force, the orders issued prior to that day

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by which the defendant was ordered to file a defense, cease to be effective, and at the same time, the period granted for filing the defense shall expire. The trial court shall, ex officio, schedule a hearing for the oral proceedings regarding the action.

4) These provisions shall apply in particular also to the extent that the provisions of the Code of Civil Procedure, pursuant to Article 2 of this Act, are to replace other previously prescribed types of proceedings.

### Art. XX

In mandate, bill of exchange, or tenancy proceedings, if the action, the notice of termination, or the request for the surrender or takeover of the leased property was filed before the Civil Procedure Code took effect, but objections to the payment or security order, to the termination, or to the order for the surrender or assumption of the subject matter of the proceedings are raised in a timely manner only after the Civil Procedure Code has entered into force, or if the hearing on objections previously raised in a timely manner has not yet begun on the date the Civil Procedure Code enters into force, then the provisions of the Code of Civil Procedure shall apply in the proceedings initiated by such objections.

### Art. XXI

1) In cases in which, on the date of entry into force of the Code of Civil Procedure, a defense has already been filed or the hearing on the merits has already begun, the parties shall be free, by mutual agreement and waiving the previous procedural rules, to request that the case be heard and decided in accordance with the provisions of the Code of Civil Procedure.

2) The suspension of the statute of limitations resulting from the filing of the action is not affected by such an agreement.

### Art. XXII

Repealed Art.

### XXIII

Statutory or judicially determined time limits for filing a lawsuit, such as, in particular, for actions for disturbance of possession and for actions to justify a land registry annotation or a provisional security measure, or for raising objections against a payment or security

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, against the termination of a lease agreement, or against an order to surrender or take possession of the leased property, shall not be affected in their course or duration by the entry into force of the Code of Civil Procedure.

Art. XXIV

The admissibility of challenges to arbitral awards rendered prior to the effective date of the Civil Procedure Code shall be governed by the previous statutory provisions.

Art. XXV

The Governor-General is hereby charged with the enforcement of this  
Act. Vienna, December 10, 1912

### III. Code of Civil Procedure (ZPO)

of December 10, 1912

on judicial proceedings in civil disputes

1. Part

#### **General Provisions**

1. Section

#### **Parties**

1. Title

#### **Legal Capacity**

§ 1

A person is capable of acting independently as a party in court (legal capacity) to the extent that they can independently enter into valid obligations. The existence of this capacity to enter into obligations, the necessity of representation for parties lacking legal capacity, and the requirement of special authorization to conduct litigation or to perform specific procedural acts shall be assessed in accordance with existing statutory provisions, unless this Act provides otherwise.

§ 2

In particular, a minor does not require the participation of his or her legal representative in legal disputes that concern only matters over which he or she may freely dispose pursuant to §§ 151, 246, and 247 of the Austrian Civil Code (ABGB).

§ 3

A foreign national who lacks legal capacity under the laws of his or her country shall be treated as having legal capacity before domestic courts if he or she possesses legal capacity under the statutory provisions applicable in this country.

§ 4

1) The legal representatives of such parties who lack legal capacity must provide documentary proof of their power of representation and any special authorization for conducting the proceedings that may be necessary in the specific case—unless both are already evident to the court—at the time of the first procedural act they perform before the court.



2) The specific authorization required for a particular procedural act must be demonstrated in the same manner when that procedural act is performed.

§ 5

Unless this Act provides otherwise, its provisions regarding parties shall also apply to their legal representatives.

§ 6

1) The lack of legal capacity, legal representation, or any special authorization required for litigation must be taken into account ex officio at every stage of the legal dispute.

2) If such a defect can be remedied, the court shall issue the necessary orders and, ex officio, set a reasonable time limit for their fulfillment; until the expiration of this time limit without result, the ruling on the legal consequences of the defect shall be postponed. However, if the delay poses a risk to the party lacking capacity to sue, that party or the person acting as its representative may be permitted to perform the necessary procedural acts even before the expiration of this period, subject to the remedy of the defect.

3) The court orders referred to in paragraph 2 may not be challenged by a separate appeal. An extension of the period granted for remedying the defect is permissible only if the remedy of the defect is hindered by circumstances over which the party or its representative has no influence.

§ 7

1) If the defect in legal capacity, legal representation, or authorization to conduct the proceedings cannot be remedied, or if the time limit granted for this purpose has expired without result, the court of first or higher instance before which the case is pending shall, by order, declare the proceedings affected by the defect to be null and void.

2) Such a declaration may not be made if, with respect to the grounds for nullity, it is precluded by a binding decision rendered by the same court or by another domestic court.

§ 8

1) If a procedural act is to be taken against a party lacking legal capacity who has no legal representative, and if delay would entail a risk for the opponent of the party lacking legal capacity, the court shall, upon the opponent's request, appoint a curator for the party lacking legal capacity.

2) The curator shall participate in the court proceedings on behalf of that party until the legal representative appears and, if necessary, shall initiate the appointment of the legal representative by filing appropriate motions.

§ 9

1) A decision on a motion filed pursuant to § 8(1) shall be made by order and, if the motion was not filed during an oral hearing, without a prior oral hearing. However, all investigations necessary for clarification may be initiated prior to the decision.

2) The same applies in all other cases in which, pursuant to the provisions of civil law or this Act, the trial court is required to appoint a guardian ad litem for a party in civil proceedings.

3) The High Court shall have final jurisdiction over appeals against decisions of the District Court pursuant to the preceding paragraphs, to the exclusion of any further appeal.

§ 10

1) The costs associated with the appointment of a guardian ad litem, as well as the costs incurred by the guardian ad litem's activities, shall be borne by the party whose procedural act prompted the appointment, without prejudice to any claim for reimbursement to which that party may be entitled.

2) The Higher Court shall decide definitively and without further appeal on appeals against decisions of the Regional Court pursuant to paragraph 1.

2. Title

**Joint Litigation and Intervention as a Principal Party**

§ 11

Except in cases specifically designated in other laws, several persons may jointly sue or be sued (joint litigants):

1. if they are in a legal community with respect to the subject matter of the dispute or are entitled or obligated on the same factual and legal grounds;

2. if claims or obligations of a similar nature, based on essentially similar factual and legal grounds, form the subject matter of the dispute and, at the same time, the court has jurisdiction with respect to each individual defendant.

§ 12

Unless the nature of the guarantee precludes it, the principal debtor and the guarantor may be sued jointly.

§ 13

Each of the intervenors is independent of the opposing party in the proceedings to such an extent that the acts or omissions of one intervenor do not benefit or prejudice the other.

§ 14

1) If the effect of the judgment to be rendered extends to all co-litigants by virtue of the nature of the legal relationship in dispute or by virtue of a statutory provision, they shall constitute a single party to the litigation. If individual co-litigants are in default, the effect of the procedural acts of the active co-litigants shall also extend to them.

2) Any conflict between the procedural acts of the active parties to the dispute shall be resolved through the conduct of the proceedings and the taking of evidence.

§ 15

1) The right to conduct the proceedings may be exercised by any individual co-litigant.

2) Under the conditions specified in § 14, all co-litigants must always be summoned to every hearing scheduled at the request of the co-litigants or the opposing party, in addition to the other parties involved, even if they failed to appear at a previous hearing held in the same case.

§ 16

Any person who claims, in whole or in part, the subject matter or right that is the subject of a pending legal dispute between other parties may join the action against both parties jointly until a final decision is rendered in that dispute (main intervention).

3. Title

### **Participation of Third Parties in the Dispute**

Intervention as a third party

§ 17

1) Any person who has a legal interest in one party prevailing in a legal dispute pending between other persons may join that party in the dispute (incidental intervention).

2) Furthermore, any person who is granted the right to intervene as a third party by statutory provisions is authorized to do so.

§ 18

1) A third-party intervention may be filed at any stage of the proceedings until a final decision is rendered, by serving a written submission on both parties. The intervenor must specifically state the interest he has in the victory of one of the parties to the proceedings.

2) A motion by a party to the proceedings to dismiss the intervenor shall be decided by order following a prior oral hearing between the litigant and the intervenor. This shall not impede the progress of the main proceedings.

3) As long as the motion to dismiss has not been granted with final and binding effect, the intervenor must be joined in the main proceedings and may not be excluded from participating in them.

4) The decision declaring the intervention admissible may not be challenged by a separate appeal.

§ 19

1) The intervenor must accept the case as it stands at the time of intervention. The intervenor is entitled to assert claims and defenses, present evidence, and perform all other procedural acts in support of the party in whose victory the intervenor has a legal interest (the principal party). His procedural acts are legally effective for the principal party to the extent that they do not conflict with the principal party's own procedural acts.

2) With the consent of both parties to the proceedings, the intervener may also enter the legal dispute as a party in place of the party on whose behalf he intervened.

3) Through his procedural acts, the intervener may avert the legal consequences of default from the party who did not appear at the hearing and may argue in support of the principal party in its stead. If the case has become ready for decision through the proceedings conducted with the intervener in the absence of the principal party

, the final judgment shall be rendered as if the proceedings had been conducted with the principal party itself.

4) The intervener is authorized to take all legally permissible legal remedies without the consent or authorization of the principal party, even if the principal party itself does not avail itself of them.

5) Intervenors who do not have the status of a co-litigant may be heard in the proceedings only as witnesses.

#### § 20

If the judgment rendered in a proceeding is legally effective, by virtue of the nature of the legal relationship at issue or by virtue of a statutory provision, also with respect to the legal relationship between the intervenor and the opponent of the principal party, the intervenor is deemed a co-party (§ 14).

#### Joinder of Parties

#### § 21

1) Any party required to notify a third party of a legal dispute for the purpose of establishing civil law effects (notification of third-party joinder) may do so by serving a written pleading, which must also state the reason for the notification and briefly describe the status of the legal dispute, if it has already commenced.

2) Such notification may be combined with a request, based on the provisions of civil law, to provide representation in a legal dispute that is already pending or is yet to be initiated (joinder).

3) The notice of the dispute does not entitle the notifying party to request the suspension of the pending legal dispute, the extension of deadlines, or the postponement of a scheduled hearing. Designation of the Author

#### § 22

1) Any person who is sued as the owner of a thing or a right in rem but does not wish to become a party to the litigation because he claims to hold the thing on behalf of a third party must (author) immediately upon service of the complaint to declare his position regarding the subject matter of the dispute or the claim asserted in the complaint at the first hearing scheduled before the trial court.

(ZPO)

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2) The request to the author and the summons thereof shall be effected by service of a written pleading, which must contain the information regarding the initiated legal dispute necessary to substantiate this request. A copy of this pleading shall be provided to the plaintiff prior to the first hearing.

§ 23

1) If, at the hearing, the principal acknowledges the relationship asserted by the defendant, he may, with the defendant's consent, step into the litigation in the defendant's place as a party. The plaintiff's consent is required for this only to the extent that the plaintiff asserts claims that are not affected by the agency relationship existing between the principal and the defendant.

2) As a result of the author's assumption of the case, the defendant shall, upon his request, be released from the proceedings by order of the trial court. If, however, no agreement is reached at the first hearing regarding the author's assumption of the case, the defendant may no longer refuse to enter the proceedings.

3) The Higher Court shall decide definitively on appeals against orders of the court of first instance pursuant to paragraph 2, with no further appeal available.

§ 24

1) If the author fails to appear at the scheduled first hearing despite having been duly summoned, if he disputes the defendant's claim, or if he makes no statement whatsoever at the hearing, the defendant is entitled to discharge himself from the action by satisfying the plaintiff's claim.

2) The extent to which the author is entitled to damages as a result must be determined in accordance with civil law.

4. Title

### **Authorized Representative**

§ 25

Unless otherwise provided in this Act, the parties may conduct proceedings either in person or through authorized representatives.

§ 26

Any person with legal capacity may be appointed as an agent.

§ 27

If the statements of a party appearing in court accompanied by their representative conflict with the statements of the representative, the statements of the party shall be given primary consideration.

§ 28

- 1) When performing their first procedural act in a dispute, authorized representatives must prove their authority by means of a document (power of attorney), which must be submitted in the original or as a certified copy and may be retained by the court.
- 2) If a lawyer intervenes, a reference to the power of attorney granted to him or her shall replace the documentary proof thereof.

§ 29

If the power of attorney was granted by means of a private document and doubts arise as to its authenticity, the court may, upon application or on its own initiative, order a judicial or notarial certification of the signature. This provision does not apply if a lawyer or notary known to the court acts as the authorized representative and confirms the authenticity of the signature by invoking his or her oath. The order for certification cannot be challenged by an appeal.

§ 30

The declaration regarding the granted power of attorney may also be entered into the court record if the party appears in person before the court with the authorized representative at a hearing scheduled in the matter.

§ 31

- 1) The power of attorney granted to an attorney to conduct litigation (power of attorney for litigation) authorizes, by operation of law:
  1. to file and receive the complaint and to perform all procedural acts relating to the legal dispute, including those arising from a counterclaim, a reopening of proceedings, an application for a preliminary injunction, or litigation conducted pursuant to § 16;
  2. to conclude settlements regarding the subject matter of the legal dispute, to acknowledge claims asserted by the opposing party, and to waive claims asserted by the party granting the power of attorney;
  3. to initiate enforcement proceedings against the opposing party, to perform all acts required of the enforcement officer in the enforcement proceedings, and to initiate security proceedings;
  4. to receive the litigation costs to be reimbursed by the opposing party.

2) The attorney may delegate the power of attorney granted to him for individual files or stages of the proceedings to another attorney or to another representative.

§ 32

A restriction on the statutory scope of the power of attorney, even if expressed in the document, has legal effect against the opposing party only to the extent that the restriction concerns the powers specified in § 31, items 2 and 3, and has been specifically notified to the opposing party.

§ 33

1) A party may grant power of attorney to persons who are not attorneys, or may authorize them only for specific individual procedural acts.

2) The scope, effect, and duration of the power of attorney for litigation shall be determined in accordance with the provisions of this Act; however, the scope, effect, and duration of a power of attorney for specific procedural acts shall, unless otherwise provided below, be determined in accordance with the content of such power of attorney and the provisions of civil law.

§ 34

Litigation acts performed by the agent on the basis of a power of attorney shall have the same effect vis-à-vis the opposing party as if they had been performed by the party itself. However, this applies to admissions and other factual statements only to the extent that they are not immediately revoked or corrected by the party appearing in the proceedings.

§ 35

1) The power of attorney for litigation is not revoked by the death of the principal, nor by a change in the principal's capacity to litigate or in the principal's legal representation.

2) However, the legal successors of the principal, the legal representatives appointed for a party who has become incapable of participating in the proceedings, and the new legal representative of a party who replaces the previous legal representative may revoke the power of attorney at any time.

§ 36

1) The revocation or termination of the power of attorney to conduct litigation or to perform individual procedural acts



opposing party only when the party notifies the opposing party of the termination of the power of attorney. This notification must be made by service of a pleading.

2) After termination of the power of attorney, the attorney-in-fact remains authorized and obligated to act on behalf of the principal for a period of 14 days, to the extent necessary to protect the principal from legal disadvantages.

§ 37

The court must take the lack of power of attorney into account ex officio at any stage of the proceedings.

§ 38

1) Any person who wishes to intervene on behalf of a party, without being able to provide proof of the power of attorney, for the purpose of performing individual urgent procedural acts may, at the court's discretion, be provisionally admitted as an agent either upon prior provision of security for costs and damages, or without such security.

2) The court must simultaneously order the subsequent submission of a power of attorney authorizing such procedural acts or the production of the party's consent, and must suspend the decision or order to be issued until the expiration of the period set for this purpose. Upon the fruitless expiration of the deadline, proceedings shall continue regardless of such intervention; the opposing party is entitled to reimbursement for the costs and damages caused by the provisional admission.

3) With the exception of orders regarding the reimbursement of costs and damages, court orders issued pursuant to the preceding paragraphs may not be challenged by a separate appeal. The Higher Regional Court shall rule definitively on any appeal against an order of the Regional Court regarding the reimbursement of costs and damages, and such a ruling shall preclude any further appeal.

§ 39

Unless this Act provides otherwise, its provisions regarding the parties shall also apply to their authorized representatives.

5. Title

**Litigation Costs**

§ 40

1) Each party shall initially bear the costs incurred by its own procedural actions. The costs of such judicial acts which are jointly initiated by both parties or undertaken by the court in the interest of both parties upon application or ex officio shall be borne jointly by both parties.

2) To the extent that the parties are entitled to reimbursement of the costs they have borne, this shall be determined in accordance with the provisions of this Title, unless this Act contains specific provisions to the contrary.

§ 41

1) The party that has been entirely unsuccessful in the litigation must reimburse its opponent, as well as any intervening party who has joined the proceedings on the opponent's side, for all costs incurred in the conduct of the proceedings that were necessary for the proper pursuit or defense of the legal claim. In determining the amount of costs, the court shall decide which costs are to be regarded as necessary, without allowing for an evidentiary proceeding, based on its discretion guided by a careful assessment of all circumstances.

2) To the extent that the amount of the attorney's fees or other costs is governed by fee schedules, the amount of costs shall be determined in accordance with those schedules.

3) The provisions of the first paragraph apply in particular to costs incurred as a result of retaining a lawyer who does not reside at the seat of the trial court or of the requested judge. Costs incurred because several lawyers were engaged for the same party shall, in any event, be reimbursed only to the extent that they do not exceed the costs of engaging a single lawyer, or to the extent that a change of lawyer was necessary.

§ 42

1) Neither the party nor the intervenor may claim compensation for their personal efforts when the litigation costs are determined. If their personal appearance in court was necessary, and in particular if the party appears in the first instance without an authorized representative, compensation must be provided for any damages incurred due to lost time as well as for travel expenses.

2) If a party is represented by agents who are not professional legal representatives, the losing opponent is only

required to reimburse stamp duties and other state fees, as well as necessary out-of-pocket expenses incurred in the conduct of the proceedings.

§ 43

1) If each party is partially successful and partially unsuccessful, the costs shall be set off against each other or apportioned proportionally. The portion to be reimbursed may be determined on a per-item basis or in proportion to the total. The court fees and other statutory government fees borne by the party, costs of official acts performed outside the court, fees for witnesses, experts, interpreters, and translators, costs of necessary announcements, and costs of a curator, which the party was required to bear pursuant to § 10, shall be awarded to it in proportion to the extent of its success.

2) However, even in the event of such an outcome of the legal dispute, the court may order one party to reimburse the opposing party and its intervenors for the total costs incurred by them if the opposing party has been unsuccessful only with respect to a relatively minor part of its claim, the assertion of which, moreover, did not give rise to special costs, or if the amount of the claim asserted by it depended on a determination by judicial discretion, on an assessment by experts, or on a mutual settlement.

§ 44

1) If factual allegations or evidence are presented under circumstances that lead the court to conclude that the party was able to raise them earlier, and if the admission of such a submission delays the resolution of the legal dispute, the court may, upon motion or on its own initiative, order the party that made such a submission to bear all or part of the litigation costs, even if that party prevails.

2) This applies in particular to arguments and offers of evidence that should have been included in a preparatory brief submitted by the prevailing party and whose subsequent introduction has caused a delay in the proceedings or in the resolution of the dispute.

§ 45

If the defendant's conduct did not give rise to the filing of the complaint and the defendant acknowledged the claim asserted in the complaint immediately at the first hearing, the costs of the proceedings shall be borne by the plaintiff. The plaintiff shall also reimburse the defendant for the costs incurred as a result of the initiated court proceedings.

§ 46

1) If the party obligated to reimburse costs consists of several persons who are not jointly and severally liable in the main action, the reimbursement of costs shall be apportioned equally among them. However, if there is a significant difference in their involvement in the legal dispute, the court shall determine the shares of reimbursement in proportion to that involvement.

2) If the persons liable for reimbursement of costs are jointly and severally liable in the main action under the provisions of civil law, this liability also extends to the litigation costs awarded to the opposing party. The other parties shall not be liable for costs incurred as a result of specific procedural acts undertaken by individual parties.

§ 47

1) Unless otherwise agreed, the costs of a concluded settlement shall be deemed to be mutually waived. The same applies to the costs of the legal dispute settled by the settlement, insofar as reimbursement thereof has not already been legally imposed on one of the parties.

2) If settlement negotiations are unsuccessful, the obligation to reimburse the costs associated with them shall depend on the decision in the main action.

§ 48

1) If, in the course of the proceedings, incidents occur that cause costs to a party solely due to the fault of the opposing party or an accident befalling the latter, the court may, upon application or on its own motion, award reimbursement of these costs regardless of the outcome of the legal dispute.

2) A party that has already been awarded reimbursement of such costs during the proceedings is not obligated to reimburse them even if it is ordered to pay the court costs in the main action.

§ 49

- 1) Legal representatives, attorneys, and other authorized agents may be ordered by the court, upon application or ex officio, to bear or reimburse those costs which they have caused through their gross negligence.
- 2) This applies in particular to additional costs caused by gross negligence, either through the inclusion of irrelevant arguments in the pleadings or through superfluous verbosity in the pleadings.
- 3) Unless the decision is incorporated into the judgment on the merits, it must be issued by way of an order. The representative or authorized agent involved must be heard prior to the decision. Once the order becomes final, it is enforceable against the assets of these persons.

§ 50

- 1) The provisions of Sections 40 through 49 also apply to appellate proceedings and to decisions to be rendered by courts of second and third instance regarding the costs of the appellate proceedings, as well as, in the event of a reversal of a lower court's decision, regarding the costs of the entire preceding proceedings. The fact that a party has obtained favorable rulings from the lower courts is not decisive for the question of reimbursement of costs.
- 2) If, in the course of an appeal, the interest in legal protection subsequently ceases to exist, this shall not be taken into account in the decision on the costs of the appeal proceedings; if the clarification of facts would require a disproportionate procedural burden, the decision on the reimbursement of costs shall be made at the court's discretion (§ 273).

§ 51

- 1) If the proceedings are set aside as a result of an appeal or ex officio, or if they are declared null and void, and if, at the same time, one of the parties can be held responsible for the fact that the proceedings were initiated or continued despite the existence of grounds for annulment or nullity, or if the grounds for annulment lie in the fault of a party itself, that party may, upon application or ex officio, be ordered to bear the costs of the annulled proceedings as well as any appeal proceedings.
- 2) Set aside
- 3) Except in these cases, the costs shall be mutually set aside.

§ 52

1) In every judgment and in every order that fully resolves a dispute before the court, a decision must also be made regarding the obligation to reimburse costs, unless the court reserves the decision on costs until the dispute has been finally resolved. Such a reservation cannot be challenged. In other orders, a decision on the reimbursement of costs may be made only to the extent that the obligation to reimburse costs is independent of the outcome of the main proceedings.

2) A reservation regarding the decision on costs pursuant to paragraph 1 is permissible only if the decision may be challenged by an appeal and if this is appropriate for reasons of procedural economy due to the complexity of the decision on costs to be rendered. In any event, a reservation of the decision on costs is not permissible upon the issuance of a payment order, a bill of exchange payment order, or a default, waiver, or acknowledgment judgment.

3) If a court has reserved the decision on costs, no decision on costs shall be made in further proceedings. The court of first instance shall decide on the obligation to reimburse costs for the entire proceedings after the case has been finally resolved.

4) If, upon rendering a partial judgment, the court is unable to decide on the costs simultaneously with respect to the adjudicated claim or partial claim, the judgment must state to what extent such a decision is reserved for a further judgment.

5) A decision on the obligation to reimburse costs shall be made ex officio if a statement of costs has been filed in a timely manner.

§ 53

1) At the same time as deciding on the obligation to reimburse costs, the court shall determine the amount of the costs to be reimbursed, unless the costs are set off against each other.

2) However, when a judgment or an order imposing an obligation to pay costs is pronounced orally, the determination of the amount of costs for the written copy may be reserved in all cases where the judgment or order is still to be issued in writing.

§ 54

1) The party claiming reimbursement of costs must, on pain of forfeiting the claim, submit the statement of costs, together with any supporting documents necessary to verify the amounts and details in said statement, before the conclusion of the

hearing immediately preceding the decision on the claim for reimbursement of costs (§ 52); if, however, the decision is to be rendered without a prior hearing, the list must be submitted to the court at the time of the party's examination or simultaneously with the motion to be decided upon.

2) If, after the deadline for submitting the statement of costs under paragraph 1, a party incurs further costs for which it may seek reimbursement from the other party, it may request a supplementary decision regarding the amount of the costs to be reimbursed. If the costs consist of a payment obligation, they are deemed to have been incurred upon the establishment of such obligation; however, if the party entitled to reimbursement of costs is jointly and severally liable with its opponent, the costs are deemed to have been incurred only upon payment. The application for a supplement to the decision on costs must be filed within a strict four-week period from the time the costs were incurred; however, if the costs consist of a payment obligation and the creditor is not the party's authorized representative, the period shall not begin to run until the party has been notified of the amount of its liability and the liability becomes due or is paid in advance. The court shall decide by order without an oral hearing.

#### § 54a

1) If the awarded amount of costs is not paid before the decision on the obligation to reimburse becomes enforceable, the party liable for reimbursement shall be obligated to pay statutory default interest on the amount of costs from the date of the decision on costs. This does not require a specific ruling in the decision on costs.

2) At the request of the party entitled to reimbursement, the order granting enforcement based on the decision on costs shall also grant enforcement for the collection of the interest.

#### § 55

1) The decision on costs contained in a judgment of the Regional Court may be challenged only by means of an appeal, without simultaneously challenging the decision rendered in the main proceedings.

2) The Higher Regional Court shall decide definitively on appeals against decisions of the Regional Court regarding costs, to the exclusion of any further legal recourse. Except in this case, an appeal against decisions made by the Higher Regional Court regarding costs is not admissible.

**Security**

Type of Security

§ 56

1) Unless the parties agree otherwise, security to be provided pursuant to the provisions of this Act shall be provided by judicial deposit of cash or securities which, in the court's discretion, offer sufficient coverage. The securities may not be delisted and must be accompanied by the current interest or dividend coupons and stubs. They shall be valued at the market price on the date of deposit.

2) At the court's discretion, open-ended, irrevocable, unconditional bank guarantees payable on first demand may, in particular, be accepted for the purpose of providing security. The judge may admit security in the form of a mortgage on real property that provides statutory security if a court decision requiring the plaintiff or appellant to reimburse the defendant or respondent for litigation costs can be enforced in the state where the property is located. The judge may admit security in the form of solvent sureties if a court decision requiring the plaintiff or appellant to reimburse the defendant or respondent for litigation costs is enforceable in the state where the surety resides. The latter two options are available only if another form of security cannot be obtained, or can be obtained only with difficulty, by the party obligated to provide security.

3) Upon the court's order, a lien is established on the subject matter thereof for the claim in respect of which the security is provided. Security for litigation costs

§ 57

1) If persons who are not resident in Liechtenstein act as plaintiffs or appellants, they must, upon the defendant's or respondent's request, provide security for the costs of the proceedings, unless otherwise provided by international treaties.

2) However, such an obligation to provide security does not arise:

1. if a court decision requiring the plaintiff or appellant to reimburse the defendant or respondent for litigation costs



can be enforced in the state of residence of the plaintiff or appellant;

2. if the plaintiff or appellant possesses sufficient assets in the form of real property or claims secured by such property to cover the litigation costs, and a court decision ordering the plaintiff or appellant to reimburse the defendant or respondent for litigation costs can be enforced in the state where the real property is located;

3. in actions concerning matrimonial disputes or disputes regarding registered partnerships, for the entire proceedings;

4. in actions concerning disturbance of possession, agency, and bills of exchange, in counterclaims, and in actions brought pursuant to a public judicial summons, for the entire proceedings.

3) If there is any doubt regarding the application of an international treaty or the enforceability of a decision on litigation costs, the government's opinion must be sought on the matter.

§ 57a

If a legal entity acts as plaintiff or appellant, the defendant or respondent may demand security for litigation costs if that legal entity cannot demonstrate assets in the amount of the estimated litigation costs that are subject to enforcement by a court decision ordering the plaintiff or appellant to reimburse the defendant or respondent for litigation costs.

§ 58

The defendant or respondent may also demand security if, during the course of the proceedings, the plaintiff or appellant loses domicile in the country or the condition under which he was exempt from providing security ceases to exist, and a portion of the claim asserted sufficient to cover the costs is not undisputed.

§ 59

1) The plaintiff's motion for security must be filed at the first hearing before the case is admitted for trial; in appellate proceedings, it must be filed before or at the same time as the notice of appeal or the response to the appeal. In the case of § 58

, the motion may be filed at any stage of the proceedings. The amount of the security must always be specified in the motion.

2) The Regional Court shall rule on the motion by order. The Higher Regional Court shall decide definitively on any appeal against this order of the Regional Court, with no further appeal available. In appellate proceedings, the presiding judge shall likewise rule by order, against which an appeal may be filed with the panel of the appellate court. The panel's decision is final.

§ 60

1) If the motion is granted, the amount of the security to be provided and the deadline by which this amount must be paid to the court shall be determined at the same time.

2) In determining the amount of the security deposit, the costs that the defendant or respondent is likely to incur in his defense must be estimated according to the court's discretion (§ 273), but the costs arising from any counterclaim must not be taken into account.

3) In the written copy of the order to be served on the plaintiff or appellant, the plaintiff or appellant must be informed that, if the period mentioned in paragraph 1 expires without result, the action will be declared withdrawn by the court at the defendant's request, or the appeal filed by the appellant will be declared withdrawn at the respondent's request. Both are done by order.

§ 61

1) If a motion for security for costs is filed in a timely manner, the defendant or respondent is not obligated to continue the proceedings on the merits until a decision has been rendered on the motion.

2) If the application is dismissed, the court may order the continuation of these proceedings without having to await the finality of the dismissing order. No appeal may be filed against this order.

§ 62

1) Upon timely payment of the security deposit, the proceedings on the merits shall be continued at the request of a party or ex officio. Upon timely payment of the security deposit, the court may order the defendant to file a statement of defense or the respondent to file a notice of appeal or a response to the appeal.

2) If the obligation to provide security for litigation costs is disputed only as to the amount but not as to the merits, the trial judge or the presiding judge may, upon motion or on their own initiative, order the proceedings to continue, without having to await the finality of the order granting the application for security for litigation costs in whole or in part, provided that the plaintiff or appellant simultaneously deposits the undisputed amount and this amount is expected to cover the litigation costs incurred by the opposing party until a final decision on the obligation to provide security is rendered. No appeal may be filed against such an order.

3) If, in the course of the legal dispute, it becomes apparent that the security provided is insufficient, the defendant or respondent may request that it be supplemented, unless a portion of the claim asserted sufficient to cover the costs is undisputed. § 60 and para. 2 apply *mutatis mutandis*.

4) With regard to the appealability of the order issued upon a motion under paragraph 3, § 59(2) applies *mutatis mutandis*.

7. Title

### **Legal Aid**

§ 63

1) Legal aid shall be granted to a party, in whole or in part, to the extent that the party is unable to cover the costs of conducting the proceedings without compromising necessary living expenses, and the intended legal action or defense does not appear to be manifestly frivolous or futile. Necessary living expenses are those required for the party to maintain a modest standard of living for themselves and their family, for whose support they are responsible. Legal action shall be regarded as frivolous in particular if a party not claiming legal aid, upon a reasonable assessment of all circumstances of the case, particularly the prospects of recovering their claim, would refrain from pursuing the proceedings or would assert only a portion of the claim.

2) Legal aid shall be granted to a legal entity or other entity with legal capacity if the funds necessary to conduct the proceedings cannot be provided either by the entity itself or by those with a financial interest in the proceedings, and the intended legal action or defense does not appear to be manifestly frivolous or without merit

and the failure to pursue or defend legal claims would be contrary to the public interest; the same applies to an officially appointed body or a legal representative acting on behalf of an estate if the funds necessary to conduct the proceedings cannot be raised either from the estate or by the parties with a financial interest in the proceedings.

3) The provisions on legal aid also apply to the intervenor.

4) The grant of legal aid may be subject to a condition regarding the scope of the proceedings.

§ 64

1) Legal aid may be granted only for a specific legal dispute and for enforcement proceedings initiated no later than one year after the conclusion of the legal dispute and may include the following benefits:

1. temporary exemption from payment of:

- a) court fees and other fees prescribed by law;
- b) the costs of official acts performed outside the court;
- c) the fees of witnesses, experts, interpreters, translators, and assessors;
- d) the costs of necessary announcements;
- e) the costs of a guardian ad litem that the party would be required to bear under § 10;
- f) the necessary out-of-pocket expenses of the appointed legal assistant;

2. exemption from posting security for litigation costs;

3. the appointment of a legal assistant to represent the party before the court in cases involving complex factual or legal issues. As a legal assistant, the trial court of first instance must appoint a lawyer or, if the specific circumstances permit, a law clerk. The legal assistant does not require a power of attorney. By virtue of his appointment, he is authorized to perform the legal and procedural acts listed in § 31, provided that he requires the consent of his own party to conclude settlements regarding the subject matter of the dispute, to acknowledge claims asserted by the opposing party, and to waive claims made by his own party.

2) When granting legal aid, the court must specify which of the benefits listed in paragraph 1 are to be granted and to what extent. The benefit under paragraph 1, item 3 may only be granted in full and only in conjunction with a full benefit under paragraph 1, item 1, letter a.

3) To the extent that legal aid is granted, the exemptions and rights under the preceding paragraphs take effect on the date on which they were applied for.

4) Legal aid does not exempt the recipient from reimbursing the opposing party for litigation costs.

§ 65

1) An application for legal aid must be filed in writing or entered into the record with the trial court of first instance. The application for legal aid may be filed or entered into the record with the trial court of first instance at the earliest in connection with the pleading initiating the proceedings; in cases of a mandatory summons, it may also be filed or entered into the record in connection with the summons. In the case of a defense, the party may apply for legal aid at the earliest with the first procedural act.

2) The trial court of first instance must always decide on the application for legal aid, even if the need for it arises only during proceedings before a higher court. If a collegial court is to decide on the application in this manner, the decision rests with the presiding judge of the panel as the designated judge of the collegium.

3) The order on the application may be served on the opposing party no earlier than with the first pleading following the issuance of the order.

§ 66

1) The application must specify the case for which legal aid is sought. At the same time, a statement from the party or their legal representative regarding the party's financial, income, and family circumstances (financial statement), dated no more than four weeks prior, and, where necessary, supporting documentation must be submitted. The statement of financial circumstances must specifically include any financial obligations, maintenance obligations and their extent, as well as any maintenance obligations of other persons. A form to be prescribed by the government by ordinance and whose content is specified in more detail must be used for the statement of financial circumstances.

2) If no such statement of financial circumstances is attached to the application, the court shall, by setting a deadline and providing appropriate instructions, attempt to remedy the deficiency in accordance with §§ 84 and 85.

3) A decision on the application shall be made based on the status of the proceedings and the statement of assets. If the court has doubts regarding the accuracy or completeness of the statement of assets, it shall review the documents. In doing so, it may also request the party, within a reasonable time limit, to supplement the statement of assets and, if necessary, to provide further supporting documents. Section 381 shall apply *mutatis mutandis*.

4) If a party's financial or income situation improves significantly—including as a result of changes in family circumstances—the party must immediately notify the trial court of first instance by submitting a statement of financial circumstances.

§ 66bis

If a party requires an official certificate regarding its income and financial circumstances in order to obtain legal aid or a corresponding benefit abroad, the mayor of the locality where the party has its habitual residence—or, in the absence thereof, its place of residence—shall confirm the accuracy of the facts set forth in § 66(1).

§ 67

If the court has decided to appoint a lawyer, it shall notify the Executive Board of the Liechtenstein Bar Association so that the latter may appoint a lawyer as representative.

§ 68

1) Legal aid shall cease upon the death of the party. The trial court of first instance shall, *ex officio* or upon application—including that of the appointed legal aid attorney—

- to declare legal aid terminated in whole or in part to the extent that changes in the party's financial, income, or family circumstances so require, or to the extent that the continued pursuit or defense of the legal claim appears to be manifestly frivolous or futile. Likewise, the appointment of a legal aid attorney shall be declared terminated if the requirements of § 64(1)(3) no longer apply.

2) The trial court of first instance shall, at any time, either *ex officio* or upon application

- of the appointed legal aid attorney—terminate legal aid in whole or

to be partially revoked if it turns out that the assumptions made at the time were not valid. In such a case, the party must pay or reimburse the amounts specified in § 64(1), from which it was temporarily exempted, and, upon application, pay the remaining fees of the attorney assigned to it for legal aid in accordance with the fee schedule. The court shall rule on this claim for fees by order.

3) In the course of proceedings provided for in paragraphs 1 and 2, the court may require the parties, setting a reasonable deadline, to submit a new statement of assets and, to the extent reasonable, supporting documents. § 381 applies *mutatis mutandis*.

4) If the court declares legal aid to have lapsed or revokes it, the appointed legal aid attorney remains authorized and obligated to act on behalf of the party until the order becomes final, to the extent necessary to protect the party from legal prejudice. Service of the order by which the court declares legal aid to have lapsed or withdraws it upon the legal aid attorney suspends the running of the time limit for responding to the complaint or filing an appeal against the relevant decision of the court until the said order becomes final. Upon the order becoming final, the full time limit begins to run anew.

#### § 69

The trial court of first instance may impose a penalty for willful misconduct of up to five times the amount specified in

§ 220(1). Furthermore, a party against whom such a penalty for willful misconduct has been finally imposed shall be liable to pay court fees in double the amount, subject to the party's obligation to make additional payments (§ 68(2)).

#### § 70

The amounts specified in § 64(1)(1), from which the party is temporarily exempted, are to be collected directly from the opposing party to the extent that the latter has been ordered to bear the costs of the litigation or has assumed them under a settlement agreement. Even if the party prevails but does not claim reimbursement of costs, the court must decide whether and to what extent the opposing party is

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reimburse the amounts specified in § 64 (1) (1). If the opposing party is obligated to reimburse the party's costs, the costs shall be assessed as if the party's legal representative had not been temporarily assigned free of charge.

§ 70a

1) The party receiving legal aid is obligated to make installment payments to cover the amounts specified in § 71 during the proceedings, provided that such payments do not interfere with necessary living expenses (§ 63). Upon granting legal aid, the trial court of first instance shall determine the installments to be paid during the proceedings.

2) The trial court of first instance shall, ex officio, revoke legal aid in its entirety if the party is more than three months in arrears with the payment of an installment.

3) The trial court of first instance shall adjust the installments to be paid if the party's financial, income, or family circumstances relevant to legal aid have changed significantly. Installment payments may be waived if they are no longer necessary to cover the amounts under § 71 or for other reasons.

§ 70b

Upon conclusion of the proceedings, the party receiving legal aid must be notified of the amounts—including the legal aid attorney's fees—from which the party was temporarily exempted from reimbursement, but which have not been reimbursed. Upon receipt of this notice, the party receiving legal aid is obligated to submit an annual statement of assets to the trial court of first instance for a period of ten years without being requested to do so, in accordance with § 66(1); otherwise it shall be irrefutably presumed that the party receiving legal aid is capable of making the back payments (§ 71) without impairing necessary subsistence. The party receiving legal aid must be informed of this consequence of default.

§ 71

1) The party receiving legal aid may be ordered, by a court ruling, to make full or partial retroactive payment of the amounts from which it was temporarily exempted and which have not yet been paid, and, upon request, to pay the remaining fees of the attorney assigned to it for legal aid in accordance with the fee schedule, to the extent and as soon as it is able to do so without compromising



necessary maintenance. Ten years after the conclusion of the proceedings, the obligation to make such additional payments may no longer be imposed.

2) In the order regarding the retroactive payment, the party must first be ordered to reimburse those amounts from which she was provisionally exempted, and then to pay the remaining fees of the attorney assigned to her for legal aid, with the amount of such fees being determined at the same time. This order is enforceable only after it becomes final.

3) The president of the regional court may declare the amounts to be paid retroactively pursuant to paragraph 1 to be uncollectible if the effort required for such payment is disproportionate to the amounts involved or if other disproportionate obstacles stand in the way.

4) The party receiving legal aid must notify the trial court of first instance of the outcome of the proceedings within four weeks of their conclusion, in particular whether and to what extent its claims were upheld and whether reimbursement of litigation costs was granted.

#### § 72

1) Decisions issued under this Title shall be rendered without an oral hearing, unless the trial court deems such a hearing necessary to discuss facts it considers relevant.

1a) Decisions issued under this Title shall be rendered by the presiding judge in the case of a collegial court.

2) The opposing party and the appointed legal representative are also entitled to appeal against orders issued under this Title.

3) The Higher Court shall decide on such appeals, even if they are directed against decisions of the presiding judge of a panel, with finality and to the exclusion of any further appeal. This applies to all proceedings to which this Act applies.

#### § 73

1) Neither an application for legal aid nor any other application admissible under this Title entitles the parties to refuse to enter into the legal dispute or to continue the proceedings, or to request an extension of deadlines or the postponement of court sessions.

2) If the party has applied for legal aid, including the appointment of a legal representative, before the expiration of the deadline within which it would have been required to file an appeal against a decision eligible as an enforcement order under Article 1 of the Enforcement Regulations or to file a response to the complaint, the time limit for filing the appeal or the answer to the complaint shall begin to run, at the earliest, upon service of the order appointing the legal representative or upon the entry into force of the order denying the appointment of a legal representative. The order appointing the legal representative shall be served by the court.

8. Title

### **Legal Assistance**

§ 73a

1) If a victim has been granted legal representation in criminal proceedings, such representation shall, upon the victim's request, also apply to any civil proceedings between the victim and the defendant in the criminal proceedings, provided that the subject matter of the civil proceedings is factually related to the subject matter of the criminal proceedings and to the extent necessary to safeguard the victim's procedural rights while taking the greatest possible account of the victim's personal involvement. This shall be assessed by the victim assistance office. The same applies if the victim is to be examined as a witness regarding the subject matter of the criminal proceedings.

2) The legal support person acts as a trusted representative during the proceedings. At the victim's request, he or she may accompany the victim to all hearings and interviews. The court must be notified of these appointments. Once a final decision has been rendered in the case, the court shall order the opposing party to reimburse the state for the costs incurred for the legal support, provided that the opposing party has been ordered to bear the costs of the litigation or has agreed to assume them in a settlement.

## **Section 2**

### **Proceedings**

1. Title

### **Pleadings**

§ 74

Motions, requests, or communications pertaining to a case that are to be submitted outside of the oral hearing shall be made by means of written pleadings or by having them entered into the record.

§ 75

Every written submission must contain:

1. the name of the court, followed by the parties' names (first and last names), occupation, place of residence, and legal status; the names of the representatives acting on behalf of the parties; and a description of the subject matter of the dispute;
2. the description of the attachments and their number, as well as an indication of whether the attachments are originals or copies;
3. the signature of the party itself or of its legal representative or authorized agent.

§ 75a

- 1) A party may omit the indication of their place of residence in pleadings if they demonstrate a legitimate interest in confidentiality and designate an agent for service; the place of residence must be disclosed to the court in a separate pleading.
- 2) The court must keep the party's information regarding their place of residence under lock and key and store it securely. Documents containing information regarding the party's place of residence must also be submitted by the party in anonymized form. The court must prepare an anonymized copy of all other documents containing such information. The originals must also be kept under lock and key and stored securely. These parts of the file are excluded from inspection.
- 3) Upon request by the opposing party, the court shall disclose the sealed information regarding the party's place of residence if the opposing party's legitimate interest in the information outweighs the interest in confidentiality.
- 4) The court shall decide on the requests under paragraphs 1 and 3 by means of a final and binding decision.

§ 76

- 1) Furthermore, each pleading must concisely and clearly set forth the factual circumstances on which the motions made in the pleading are based and, if proof or prima facie evidence of these allegations is required, must also specify in detail the evidence to be used to provide such proof or prima facie evidence.

2) The party presenting the evidence may refrain from disclosing a witness's place of residence if it demonstrates that the witness has a legitimate interest in confidentiality; the place of residence must be disclosed to the court in a separate brief. Section 75a, paragraphs 2 through 4, applies mutatis mutandis.

§ 77

1) If the motion set forth in the pleading is to be heard orally, only copies of the documents referred to in the pleading shall be attached to the pleading; if only individual parts of a document are relevant, it is sufficient to attach an excerpt containing the introduction, the relevant passage, the conclusion, the date, and the signatures.

2) If the documents are already known to the opposing party or are of significant length, it is sufficient for the pleading to identify the documents precisely and to offer to allow the opposing party to inspect them or to submit them to the court upon request.

3) If the documents are not in the party's possession, the party must indicate how these documents are to be obtained.

§ 78

1) Pleadings intended for the preparation of an oral hearing (preparatory pleadings) must, in addition to the other requirements of a pleading, contain:

1. the motions that the party intends to file at the oral hearing;
2. a statement of the facts in accordance with the provisions of § 76on which the party intends to rely during the oral hearing to substantiate its motions or to contest the opposing party's motions, as well as a statement of the evidence the party intends to use during this hearing to support its own submissions or to refute the opposing party's factual assertions;
3. where applicable, statements regarding the truth, accuracy, and completeness of the factual submissions contained in a previous pleading by the opposing party, and regarding the admissibility of the evidence designated by the opposing party.

2) Legal arguments and statements regarding the probability or credibility of individual factual assertions or regarding the presumed probative value of offered evidence shall not be included in a preparatory brief.

§ 79

A protocol entry indicating the location of the pleading must be formatted in accordance with the provisions governing pleadings.

§ 80

1) If a motion is filed in writing or if a notice to the court—which must also be brought to the attention of the opposing party—is submitted in writing, as well as all preparatory pleadings, unless otherwise provided by this Act, a sufficient number of identical copies of the pleading must be submitted so that a copy may be served on each opposing party and one may be retained for the court records. The pleadings must also be accompanied by the necessary headings for the information of other parties involved.

2) The headings must contain the name of the court, the parties, and the subject matter of the dispute in the manner specified in § 75.

§ 81

1) If, pursuant to the provisions of this Act, a copy of the submitted pleading is to be served on the opposing party, copies of the attachments to the pleading shall also be enclosed therewith.

2) The original copies of exhibits retained by the court must be made available to the opposing party for inspection at any time upon request.

§ 82

1) If a party has referred in a pleading to documents in its possession, it is obligated, upon the opposing party's request, to file the originals of these documents with the court within three days and to notify the opposing party thereof. The opposing party may then inspect the documents and make copies of them within three days of receiving notification. The Higher Regional Court shall decide definitively and without further appeal on any appeal against an order by which the Regional Court requires a party to produce documents.

2) If the party can demonstrate an urgent need for the document, the court may, upon request, shorten the inspection period accordingly. No appeal may be filed against the order issued on such a request.

§ 83

1) Attorneys are free to exchange original documents in person against a receipt.

2) If a lawyer fails to return the document handed to him within the agreed period or, in the absence of an agreement, within three days of receipt, he shall, upon application and following prior oral or written consultation, be ordered by decision to return it immediately. With regard to this decision, the provisions of § 82(2) shall apply. The decision is immediately enforceable.

§ 84

1) Unless otherwise provided in this Act, the court shall, ex officio, order the correction of formal defects that are likely to prevent the proper processing of a submitted pleading. Such an order may not be challenged by a separate appeal.

2) In particular, a procedural defect shall be deemed to exist if the provisions of §§ 75 and 77 have not been observed, or if the required number of copies of the pleading or headings is lacking. The incorrect designation of an appeal, a legal remedy, or grounds is irrelevant if the request is clearly recognizable.

3) If a deadline had to be met when the pleading was filed, as well as in the case of pleadings initiating proceedings that are not subject to a deadline, the procedure set forth in paragraph 1 shall also apply if the pleading lacks statements or other submissions that are required for the procedural act performed by the pleading. However, such corrections and other additions to the pleading to be corrected must not alter the arguments contained therein in such a way as to affect the finality of a decision that has already taken effect; if it was not clearly apparent from the returned pleading that the decision is being challenged only in part or to what extent, it shall be deemed to be challenged in its entirety.

§ 85

1) For the purpose of remedying formal defects, the party shall be summoned if the party or its representative resides within the territory covered by this Act. The court shall issue the necessary orders and instructions to the party appearing. The court may also make the necessary corrections in the presence of the party itself. If the formal defects have not been remedied in this manner within eight days of the submission of the pleading, it shall be returned to the party with the necessary instructions.

2) If a deadline was to be observed upon service of the pleading, a new deadline shall be set in the latter case for its resubmission; if this deadline is met, the pleading shall be deemed to have been served on the day of its initial receipt. An extension of this deadline is not permitted.

3) No separate appeal is permitted against decisions rendered pursuant to the foregoing provisions; the extent to which the supervisory authority of the higher courts may therefore be invoked shall be determined in accordance with the regulations governing the internal organization and rules of procedure of the courts.

#### § 86

1) A party who, in a pleading, violates the respect due to the court by making insulting remarks, or who, in a pleading, insults the opposing party, a representative, an attorney, a witness, or an expert, may be subject to a disciplinary fine imposed by the court, without prejudice to any criminal prosecution that may arise as a result.

2) For the same reasons, a fine may be imposed on the attorney who signed the pleading.

#### 2. Title

#### **Service of Documents**

#### § 87

1) Unless otherwise provided by this Act, service shall be effected ex officio in accordance with the Service of Process Act (ZustG).

2) No separate appeal is admissible against orders issued under this Title.

3) In proceedings before a panel, such orders shall be issued by the presiding judge.

#### 1. Within Germany

If the conduct of a person entrusted with effecting service (service agents) gives rise to a complaint, the judge shall, as soon as he becomes aware of this, take appropriate measures to remedy the situation. The grounds for the complaint may be stated orally.

If a party has granted power of attorney for a legal dispute, all service of process relating to that dispute must be made to the designated representative until such power of attorney is revoked (§ 36).

1) If a procedural act is to be performed by or against several persons who do not have a common representative or agent for service, the court may, upon the request of the opposing party or on its own motion, order them to designate a common agent for service (Art. 9 ZustG).

2) If this order is not complied with, the court shall, upon the request of the opposing party or on its own initiative, appoint a joint agent for service (Art. 9 ZustG) at their risk and expense.

3) The court must issue such an order if it is expected to simplify or expedite the proceedings. It must refrain from issuing, modify, or revoke the order if it is apparent or if these persons demonstrate that they have a legal interest in not being jointly represented.

4) Art. 10(3) ZustG does not apply.



Lawsuits and documents to be served in the same manner as lawsuits may only be served in person (Art. 23 ZustG).

§§ 107 to 111

Repealed

Service between attorneys

§ 112

1) If both parties are represented by attorneys, any attorney filing a pleading may transmit the copy intended for the opposing party directly to that party's attorney via courier, a delivery service, fax, or email; this transmission must be noted on the copy of the pleading submitted to the court. This does not apply to pleadings that must be served on the recipient personally or whose service triggers the commencement of a time limit.

2) A written acknowledgment of receipt from the recipient, bearing the date and signature, or other proof of service shall suffice as evidence of successful service.

3) All notifications and communications to the court otherwise incumbent upon the service agencies in matters of service shall be carried out by the serving attorney in the case of service between attorneys. Art. 6, 7, and 16(4) of the Service of Process Act (ZustG) apply *mutatis mutandis*.

§ 113

Repealed

§ 114

Repealed

Service by Public Notice

§ 115

Service shall be effected by public notice (Art. 28 ZustG) if the existence of the necessary prerequisites is credibly established.

Service on the Curator

§ 116

For persons to whom service can be effected only by public notice because their whereabouts are unknown, the court must appoint a guardian ad litem upon request or on its own initiative (Section 9) if such persons, in order to

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the service to be effected upon them, they would have to take procedural steps to protect their rights, and in particular if the document to be served contains a summons to appear.

§ 117

1) The appointment of the curator, his or her name and place of residence, and a brief description of the content of the document to be served shall be published by edict, together with the name of the court and the subject matter of the dispute. The edict shall contain a statement that the person for whom the curator has been appointed shall be represented by the curator at their own risk and expense until they appear in person or designate an authorized representative.

2) The edict shall be published in the official gazette. The publication of the edict shall be effected ex officio.

3) Repealed

§ 118

1) Service shall be deemed effected upon publication in the Official Gazette and the subsequent delivery of the document to be served to the curator.

2) The costs of the notice and the appointment of a curator shall be borne by the party whose procedural act gave rise to both, without prejudice to any claim for reimbursement.

2. Abroad

Sections 119

through 122

Repealed

3. Title

### **Time Limits and Schedules of Hearings**

Time limits

§ 123

To the extent that the duration of time limits for performing procedural acts is not directly determined by law (statutory time limits), the judge shall set it with due regard to the requirements and nature of the individual case (judicial time limits).

§ 124

Unless otherwise specified when the time limit is set, a judicial time limit begins to run upon service of the order setting the time limit on the party in whose favor the time limit is granted; however, if service of the order is not required, it begins to run upon the pronouncement of the order.

§ 125

- 1) When calculating a period determined by days, the day on which the time or event occurs that determines the start of the period is not included.
- 2) Time limits determined by weeks, months, or years end at the close of the day of the last week or the last month that, by its name or number, corresponds to the day on which the time limit began. If this day does not exist in the last month, the time limit ends at the close of the last day of that month.
- 3) The end of a period may also be designated by specifying a particular calendar day.

§ 126

- 1) The commencement and running of statutory and judicial time limits are not interrupted by Sundays or days treated as equivalent to Sundays (Art. 1 FAHG).
- 2) If the end of a period falls on a Sunday or a day treated as equivalent to a Sunday (Art. 1 FAHG), the next business day shall be considered the last day of the period.
- 3) Days required for postal delivery are not included in the period.

§ 127

If the statutory or judicial time limits available to the individual parties for performing the same procedural act expire at different times, the procedural act in question may be performed by all parties as long as a time limit for that procedural act remains open for at least one of the parties.

§ 128

- 1) Statutory time limits, with the exception of those whose extension is expressly prohibited by law (urgent time limits), as well as judicial time limits for which nothing else is provided in this Act, may be extended by the court. An extension of time limits by agreement of the parties is not permitted.
- 2) The court may grant such an extension upon application if the party benefiting from the time limit is prevented, for unavoidable or at least very significant reasons, from performing the time-limited procedural act in a timely manner and, in particular, would suffer irreparable harm without the extension of the time limit.

3) The request must be filed with the court before the expiration of the time limit to be extended. A decision on the request may be made without a prior oral hearing; however, before granting a further extension of a time limit, the opposing party must be heard if the request is not made by mutual agreement of both parties.

4) The circumstances cited in support of the motion must be substantiated to the court upon request. In the absence of sufficient grounds, the motion shall be dismissed.

5) When extending the deadline, the date on which the extended deadline expires must always be specified at the same time.

#### § 129

1) All time limits may be shortened by agreement of the parties. To be effective before the court, the agreement must be evidenced by a written document.

2) The court may shorten judicial and statutory deadlines at the request of only one of the parties if circumstances are substantiated that make such a shortening appear necessary to avert imminent significant disadvantages and if, at the same time, the party for whose action the deadline is set is able to perform the relevant procedural act without difficulty within the shortened deadline. Before granting the shortening, the opposing party must be heard.

#### Hearings

#### § 130

1) Unless otherwise provided by law, hearings shall be scheduled upon the request of a party. Subject to specific provisions contained in this Act, the scheduling of the hearing, including the determination of the place, date, and time of the hearing, is the responsibility of the court.

2) The scheduling of a hearing, as well as any summons to a hearing, may not be challenged by a separate appeal.

#### § 131

1) Notice of the scheduling of the hearing and a summons to appear at the hearing (summons) shall be served on the party that requested the hearing by means of a notice, and on the opposing party by service of a copy of the pleading containing the summons

of the pleading or the transcript of the minutes. If the hearing is scheduled ex officio, both parties must be summoned by service of notices.

2) For hearings scheduled in judicial decisions announced orally, the parties need only be specifically summoned to the extent that neither they nor their representatives or authorized agents were present at the time of the announcement.

§ 132

1) Unless otherwise provided by law, court sessions shall be held in the courthouse.

2) Hearings for oral proceedings may be scheduled at a location outside the courthouse if the proceedings can be conducted more easily at that location or if this would avoid greater expenses.

§ 133

1) The session begins with the calling of the case.

2) A party is deemed to have defaulted on a hearing if the party fails to appear at the time scheduled for the hearing, or, if present, refuses to participate in the proceedings despite a judicial order to do so, or leaves the courtroom after the case has been called.

§ 134

1) Hearings may be postponed only by judicial decision (extension). Such an extension may be granted upon application or ex officio:

1. if an insurmountable or at least very significant obstacle prevents the timely appearance of one or both parties or the commencement or continuation of the proceedings between them, and in particular if, without the extension, a party would suffer irreparable harm;

2. if the court is prevented from commencing or continuing the proceedings due to other urgent official duties or for other important reasons;

3. if the taking of evidence is ordered that cannot be immediately carried out before the trial court but is essential for the continuation of the proceedings, or if the procurement

documents, information, or objects for inspection;

4. if the proceedings cannot be concluded at the hearing scheduled by the court for this purpose, even in the absence of the aforementioned obstacles.

2) The hearing must be postponed if a party or their representative is unable to appear due to temporary official duties in the service of the state or as a municipal official.

§ 135

1) In the case of § 134(1), a motion to extend a hearing must be justified by stating the circumstances preventing the party's appearance or the commencement or continuation of the proceedings, even if the motion is filed by mutual agreement of both parties. The circumstances cited to justify the motion must be substantiated to the court upon request.

2) In the absence of sufficient justification, the motion shall be dismissed.

§ 136

1) A motion to adjourn a hearing may be filed during the hearing itself or before it begins.

2) In the former case, a decision on the motion shall be made by order without delay after hearing the opposing party present, and, if the extension is denied, the hearing shall be commenced or continued without further interruption. The legal consequences of failure to appear at the hearing shall apply to the party who has left before the decision is rendered or who, after the motion has been denied, refuses to proceed with the case.

3) The provisions of § 128(3) shall apply mutatis mutandis to motions for extension received prior to the plenary session.

§ 137

1) If a hearing is extended, the court shall, if practicable, immediately notify the parties orally of the date and time of the new hearing. Otherwise, notification shall be made by means of a notice.

2) This provision shall apply in particular where the adjournment of the hearing is made for the purpose of taking evidence.

§ 138

Unless a new hearing must take place due to a change in the composition of the court, in the event of the adjournment of a hearing

the judge before whom the hearing took place shall, at the subsequent hearing, orally present the essential findings of the earlier oral hearing based on the minutes of the hearing and the other case files to be considered, and shall continue the interrupted hearing from that point.

§ 139

If the service of a preparatory pleading or a transcript of the record, in connection with which a summons has been issued, is delayed to such an extent that the period between the service of the summons and the scheduled hearing no longer allows the opposing party sufficient time to prepare for the oral proceedings, and if, at the same time, the opposing party is not at fault for this delay in service, the court shall, upon motion or on its own motion, postpone the scheduled hearing before it is held. All persons summoned to the hearing shall be notified of this without delay.

Common Provisions

§ 140

1) If the setting of deadlines or the scheduling of hearings is not done in a court decision or during an oral hearing, this responsibility in proceedings at the second and third instances lies with the presiding judge of the panel to which the case is assigned.

2) The same applies to the decision on a motion to extend or shorten a deadline or to extend a hearing, unless the motion is filed during an oral hearing.

§ 141

1) The first extension of a time limit and the first extension of a court session may not be challenged by an appeal, provided that the granted extension of the time limit does not exceed the duration of the original time limit and the granted extension of the court session does not exceed four weeks. An appeal is barred against the refusal to shorten a time limit.

2) The Higher Regional Court shall decide definitively and without further appeal on appeals against decisions of the Regional Court regarding matters for which an appeal is not precluded under paragraph 1.

§ 142

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1) The party that gave rise to the extension of a time limit or the extension of a hearing date shall, upon the opponent's request, be ordered to reimburse the costs incurred by the opponent as a result thereof, in an amount to be determined by the court. Reimbursement of these costs may not be sought even if the opponent is ordered to pay the court costs in the main action.

2) If such a motion for reimbursement of costs is filed during a hearing, a decision on the motion must be made without delay, after hearing the opposing party present.

§ 143

If a hearing is thwarted by the failure of both parties to appear, each party shall bear half of the costs thereby incurred.

4. Title

### **Consequences of Default, Reinstatement of the Previous Status**

Consequences of Default

§ 144

Failure to perform a procedural act shall, without prejudice to any further consequences specified in this Act for individual cases, result in the party being excluded from the procedural act to be performed.

§ 145

1) A warning of the statutory consequences of default is required only in the cases specifically designated by law. These consequences arise automatically, unless the provisions of this Act make their occurrence dependent on a motion seeking to enforce the legal disadvantages of the default.

2) In the latter case, the omitted procedural act may be made up—if a time limit had been set for it—until the day on which the motion was filed with the court; if, however, the omitted procedural act was to be performed at a court session, it may be made up until the conclusion of the hearing on the motion to enforce the consequences of default.

Restoration of the Previous Status

§ 146

1) If a party was prevented from appearing in a timely manner at a court session or from performing a time-sensitive procedural act in a timely manner due to an unforeseen or unavoidable event, and if the resulting



resulted in a legal disadvantage for the party in the form of exclusion from the procedural act to be performed, then, unless the law provides otherwise, that party shall be granted reinstatement to the previous status upon application. The fact that the party is at fault for the failure does not preclude the granting of reinstatement if the degree of negligence is only minor.

2) The application for reinstatement may not be based on circumstances which the court has already found insufficient to grant the same party an extension of the deadline subsequently missed or a postponement of the hearing missed.

§ 147

1) The application for reinstatement shall be dismissed without further proceedings as long as the party can immediately make up for the missed procedural act within the meaning of § 145(2). The Higher Court shall decide definitively and without further appeal on any appeal against the Regional Court's decision to dismiss the application for reinstatement.

2) If the same party files an application for reinstatement against a judgment rendered as a result of default and an application for reinstatement against the expiration of the deadline for appealing that judgment, the proceedings regarding the latter application for reinstatement shall be postponed until a final decision has been rendered on the former application for reinstatement.

3) The motion for reinstatement shall be denied if the party could have sought an extension of the deadline or a postponement of the hearing due to the impediment cited to justify the motion for reinstatement, or if such impediments had already ceased to exist at a time when the party could still have performed the procedural act itself pursuant to § 145(2).

§ 148

1) The application for reinstatement must be filed with the court before which the missed procedural act was to be performed.

2) Unless otherwise provided by law, the application must be filed within 14 days. This period begins on the day on which the impediment causing the failure ceased to exist; it cannot be extended.

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3) Applications that are clearly filed late shall be dismissed without further proceedings. With regard to the appealability of such a decision, § 147(1), second sentence, applies.

§ 149

1) The party applying for reinstatement must, in the relevant pleading or in the statement of facts entered into the record in lieu of a pleading, set forth all the circumstances justifying the application for reinstatement and indicate the means of substantiating them. At the same time as the application is filed, the omitted procedural act itself must be performed, or, in the case of a missed hearing, the party in default must submit whatever was required for the preparation of the oral hearing.

2) The court shall decide on the application for reinstatement by order, following an oral hearing if it deems such a hearing necessary. If the court does not deem an oral hearing necessary, the application for reinstatement shall be served on the opposing party for comment within a reasonable time.

§ 150

1) Upon granting reinstatement, the legal dispute reverts to the state in which it was prior to the occurrence of the default. A judgment already rendered as a result of the default shall be set aside upon granting reinstatement.

2) If a hearing was missed, the proceedings regarding the application for reinstatement may be combined with the hearing for which the missed hearing was scheduled at the hearing convened to hear the application for reinstatement, or, if the application for reinstatement is granted, that hearing may be held immediately.

§ 151

Repealed

§ 152

1) The application for reinstatement to the previous status does not stay the proceedings. The court may, however, order a provisional stay of proceedings upon application if this appears absolutely necessary to ensure the full success of the reinstatement, which is likely to be granted,

and if, at the same time, the suspension of the proceedings does not cause significant prejudice to the opponent of the applicant for reinstatement.

2) If the legal dispute is being heard by a higher court at that time, the latter must be notified immediately of the ordered temporary suspension of the appeal proceedings.

3) Once the application for reinstatement has been resolved, the suspended proceedings shall be resumed upon application or ex officio.

§ 153

No appeal may be filed against a decision granting reinstatement to the previous status.

§ 154

The party that applied for reinstatement shall be ordered to pay, regardless of whether the application was granted or not, all costs incurred by the opposing party as a result of the default and the proceedings on the application for reinstatement, as well as the costs of the proceedings that have become ineffective as a result of the reinstatement.

5. Title

### **Interruption and Suspension of Proceedings**

Death of a Party

§ 155

1) Proceedings are interrupted by the death of a party only if the deceased party was not represented by an attorney or by any other person authorized by the party to conduct the proceedings.

2) The interruption shall continue until the proceedings are resumed by the legal successors of the deceased party, or, if the opposing party previously applied for the appointment of a curator (§ 811 ABGB) in order to continue the proceedings against the deceased party, until the proceedings are resumed by the curator.

3) In order to ensure that the legal successors of the deceased party assume the proceedings, the opposing party may also request that the court before which the case was pending at the time of the deceased party's death issue a summons to those legal successors. Upon such a request, the legal successors shall be summoned to assume the proceedings and, at the same time, to appear at the hearing on the merits or to continue such hearing.

4) Service of this summons must be effected in accordance with the provisions of §§ 106 and 107.

§ 156

1) If none of the summoned successors in title appear, the court shall, upon the opponent's motion and upon sufficient proof of the alleged succession, issue an order declaring that the proceedings have been commenced by the successors in title of the deceased party.

2) At the hearing at which the order regarding the resumption of the proceedings is announced, the proceedings on the merits may be resumed immediately.

§ 157

If the summoned legal successors, or some of them, appear at the hearing and contest the obligation to join the proceedings, the court shall rule on this matter following an oral hearing. If the court rules that there is an obligation to commence proceedings, the main proceedings may be commenced or continued at the same hearing following the announcement of this decision, depending on the circumstances of the case. This shall apply in particular if an appeal against the announced decision is likely to be unsuccessful.

Loss of legal capacity, change in the person of the legal representative

§ 158

1) If a party loses capacity to sue or if the legal representative of a party dies or ceases to have the authority to represent the party without the party having acquired capacity to sue, the proceedings shall be suspended only if the party affected by these changes is not represented by an attorney or by another person authorized to conduct the proceedings.

2) In such cases, the interruption shall continue until the legal representative or the new legal representative notifies the opposing party of his appointment and resumes the proceedings.

3) To effect such resumption, the opposing party may also request that the legal representative of the party that has become incapable of standing in court, or the new legal representative, be summoned.

Commencement of Insolvency Proceedings

§ 159

The extent to which proceedings are suspended upon the opening of insolvency proceedings concerning a party's assets is determined by the Insolvency Code.

#### Change of Attorney

##### § 160

If a party's attorney dies or becomes unable to continue representing the party, the proceedings shall not be interrupted.

#### Suspension of the Court's Official Duties

##### § 161

1) If, as a result of war or another event, the operations of a court cease, the proceedings in all cases pending before that court shall be suspended for the duration of such circumstances.

2) Once the obstacle has ceased to exist, either party may request the resumption of the proceedings.

#### Accidental Absence of a Party

##### § 162

1) If, in times of war, a party is on active military duty or is located in a place that is cut off from communication with the court where the case is pending by order of the authorities, by war, or by other events, and if there is also concern that these circumstances could influence the conduct of the proceedings to the detriment of the absent party, then, even if the absent party is represented by a person authorized to act on its behalf, the proceedings may be stayed, upon application or ex officio, until the obstacle has been removed.

2) A motion to that effect must be filed with the court before which the case is pending; it may also be entered into the record. The decision shall be rendered without a prior oral hearing; however, the court may, prior to rendering its decision, conduct any investigations necessary to clarify the facts.

3) The resumption of the suspended proceedings may be requested by either party.

#### Effect of the Stay

##### § 163

1) The suspension of proceedings has the effect that, during the period of suspension, summonses to appear for the hearing of the case may not be issued; any summonses that may have been issued earlier for the period following the commencement of the suspension lose their effect; and, finally, the running of any time limit for the performance of a procedural act ceases. Upon resumption of the proceedings, the full time limit begins to run anew.

2) Any procedural acts performed by one party during the suspension with respect to the pending dispute have no legal effect on the other party.

3) The interruption that occurs after the conclusion of an oral hearing does not prevent the announcement of the decision to be rendered on the basis of that hearing.

#### Resumption of the interrupted proceedings

##### § 164

The resumption of an interrupted proceeding shall, unless otherwise provided in the preceding provisions, be initiated by a motion to schedule a hearing or to continue the hearing; however, if the interruption occurred during the course of a period set for the performance of a procedural act, it shall be initiated by a motion to set a new period for that procedural act. The cessation of the grounds for the interruption must be substantiated. These provisions apply in particular also where, due to the death of a party within the meaning of § 811 ABGB, or for other reasons, a curator has been appointed for the estate; the resumption may be requested not only by the curator but also by the opposing party of the deceased party.

##### § 165

1) The application required under § 164 for the resumption of proceedings must be filed with the court before which the case was pending at the time the grounds for interruption arose.

2) Decisions on the motions referred to in § 164 shall be made without a prior oral hearing; however, the court may hear the opposing party before rendering such a decision if there is doubt as to whether the grounds for the stay have ceased to exist.

3) When a hearing is scheduled to consider the motion to join the proceedings (§ 155), as well as in the orders granting a motion to join filed pursuant to §§ 158, 159, 161, 162

and 164, or where proceedings are initiated ex officio, the parties must be notified of the consequences of failure to appear.

§ 166

1) In the cases provided for in §§ 156, 157, and 158(3), the date on which the proceedings are deemed to have commenced must be specified in the decision ordering the commencement of proceedings, unless the proceedings on the merits were commenced immediately at the hearing scheduled to hear the motion to join the proceedings.

2) In all other cases, this date shall be determined by the court in the decision on the motion to commence proceedings or in the order by which the proceedings are commenced ex officio.

§ 167

The foregoing provisions shall apply mutatis mutandis if, under current law, proceedings are to be suspended for reasons other than those specified in this Title and no provision to the contrary has been made.

Suspension of Proceedings

§ 168

The parties may agree that the proceedings shall be stayed; such an agreement shall take effect only from the time it has been notified to the court by both parties. The stay of proceedings shall have the same legal effects as an interruption of proceedings, with the exception that the running of time limits shall not be suspended. The stay of proceedings also has the consequence that the proceedings cannot be resumed before the expiration of three months from the notification of the agreement reached.

§ 169

The proceedings remain suspended until one of the parties requests the scheduling of a hearing or, if the proceedings were suspended during the course of a deadline for the performance of a procedural act, requests the setting of a new deadline for that procedural act. If this occurs before the expiration of the three-month period (Section 168) or the period agreed upon by the parties for the suspension of proceedings, the court shall

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reject the relevant motion ex officio or at the request of the opposing party without a hearing, or declare the invalidity of any hearing date or time limit that may have been set.

§ 170

If neither party appears at a hearing scheduled for oral proceedings, this shall result in the suspension of the proceedings, unless such failure to appear has no effect on the progress of the proceedings under the provisions of this Act.

Appeals

§ 170a

If an appeal is admissible against the court's decisions made pursuant to this Title (§§ 155 et seq.) (§ 483(1)), the Higher Regional Court shall rule definitively on appeals against decisions of the Regional Court, with no further appeal available.

3. Section

**Oral Proceedings**

1. Title

**Publicity**

§ 171

1) The hearing before the trial court, including the pronouncement of the judicial decision, shall be public.

2) Only unarmed adults may attend as members of the public. Persons who are required to carry a weapon by virtue of their public service shall not be denied admission.

3) Minors who have not yet reached the age of 14 may be denied admission as members of the public if their presence would pose a risk to their personal development.

§ 172

1) The public shall be excluded if their presence appears to endanger public morals or public order, or if there is reasonable concern that the public nature of the proceedings would be abused for the purpose of disrupting the proceedings or hindering the determination of the facts.

1a) Public access to the proceedings may be excluded ex officio or upon request if it would result in the disclosure of a trade secret within the meaning of Art. 1a



Section 1(n) of the Unfair Competition Act would be jeopardized. In this case, notwithstanding Section 173(2), first sentence, the statement of reasons for excluding the public may be disclosed only to the persons specified in Section 174.

2) Furthermore, the court may, upon the motion of even one of the parties, exclude the public if facts of family life must be discussed and proven for the purpose of deciding the legal dispute.

3) Exclusion of the public may apply to the entire hearing or to individual parts thereof; under no circumstances may it extend to the pronouncement of the judgment. To the extent that the public is excluded from a hearing, public disclosure of the content of the hearing is prohibited.

§ 173

1) The hearing on a motion to exclude the public shall take place in a closed session.

2) The decision on the exclusion of the public must be announced publicly. The Higher Court shall decide definitively on any appeal against such a decision of the District Court, with no further legal recourse available. If a motion to exclude the public is manifestly unfounded, the District Court may order the proceedings to continue without having to await the finality of its decision on that motion. No appeal may be filed against this order.

§ 174

1) If the public is excluded, each party may request that, in addition to its authorized representative, three persons of its choosing be permitted to attend the hearing.

2) Repealed

§ 175

1) The requirement that the hearing be held in public does not apply to the examination or hearing of one or both parties that precedes the decision on a motion in accordance with the provisions of this Act.

2) The examination of parties, witnesses, experts, and other persons taking place outside of a hearing before the adjudicating court shall likewise be conducted in camera.

### **Arguments of the Parties and Conduct of the Proceedings**

#### Submissions by the Parties

##### § 176

The parties shall argue the case orally before the trial court. The submission of preparatory briefs is required only in the cases specifically designated in this Act.

##### § 177

1) After the case is called, the parties shall be heard regarding their claims, the factual arguments intended to support those claims or to refute the opposing party's claims, as well as their evidence and offers of evidence, and their legal arguments concerning the dispute (submissions by the parties). The reading of written submissions in lieu of oral arguments is not permitted. § 76(2) applies *mutatis mutandis*.

2) Documents referred to in the submissions shall be read aloud only to the extent that the documents are not yet known to the court or the opposing party, or where the literal content is relevant.

##### § 178

1) In their pleadings, each party must state completely and precisely, in accordance with the truth, all factual circumstances necessary in the specific case to substantiate their claims, offer the evidence necessary to establish their statements,, to comment definitively on the factual statements and evidence offered by the opposing party, to present the findings of the evidence presented, and to comment definitively on the relevant arguments of the opposing party.

2) Each party must submit its pleadings in a timely and complete manner so that the proceedings can be conducted as expeditiously as possible (duty to facilitate the proceedings).

##### § 179

1) The parties may, until the conclusion of the oral proceedings, present new factual allegations and evidence relating to the subject matter of those proceedings. However, such submissions may be rejected by the court upon motion or on its own motion if the new facts and evidence—particularly with regard to the discussion of the factual and legal arguments (§ 182a)—were not submitted earlier through gross negligence and their admission would significantly delay the conclusion of the proceedings.

2) If the party's attorney is also found to be grossly negligent in this regard, a disciplinary fine may also be imposed on the attorney. The Higher Regional Court shall decide definitively on any appeal against such a decision of the Regional Court, with no further appeal available. Conduct of the Proceedings

§ 180

1) The judge opens, conducts, and closes the oral proceedings; he grants the floor and may withdraw it from anyone who fails to comply with his instructions; he examines the persons who are to testify for the purpose of presenting evidence, and pronounces the court's decisions.

2) The judge shall ensure that the matter is thoroughly discussed, but that the proceedings are not unduly prolonged by digressions or irrelevant side issues and, as far as practicable, are concluded without interruption.

§ 181

1) If the continuation of a hearing that has already begun must be postponed to a later session, the judge must not only, to the extent possible, immediately set the new session date, but also, ex officio, issue all orders necessary to enable the case to be resolved at the next session.

2) In particular, the parties may be instructed to submit their arguments within a time limit to be set for them at the same time, to produce the documents and exhibits to be used as evidence for inspection by the opposing party at the court, and to disclose the names and addresses of witnesses to be examined. If a party grossly negligently fails to comply with such an order and submits the required evidence only during the continued oral proceedings, the court may, upon motion or on its own motion, reject such submission if it would delay the continuation of the proceedings; such failure may also be assessed within the meaning of § 381.

§ 182

1) During the oral hearing, the judge must, by asking questions or by other means, ensure that the facts relevant to the decision

or that insufficient information regarding the circumstances asserted to support or contest the claim is supplemented, that the evidence for such information is identified, or that the evidence offered is supplemented, and, in general, that all information is provided which appears necessary for the truthful determination of the facts underlying the rights and claims asserted by the parties.

2) If a party deviates in its pleadings from the content of a preparatory brief submitted by it, or if the parties' pleadings are inconsistent with other case files to be considered ex officio, the judge must draw attention to this. Likewise, the judge must highlight any concerns that exist with regard to the points to be considered ex officio.

§ 182a

The court must discuss the parties' factual and legal arguments with them. Except in the case of ancillary claims, the court may base its decision on legal considerations that a party has clearly overlooked or deemed irrelevant only if it has discussed these with the parties (§ 182) and given them an opportunity to comment.

§ 183

1) For the purpose of fulfilling the obligations incumbent upon the judge under § 182, the judge may, in particular:

1. require the parties to appear in person at the oral hearing;
2. order the parties to produce documents in their possession that one or the other has relied upon, as well as files, information materials, or exhibits, and furthermore family trees, plans, sketches, and other drawings and compilations, and to leave them with the court for a specified period;
3. order the production of documents held by a public authority or a notary to which one of the parties has referred, and arrange for the provision of information and the inspection of objects;
4. order an on-site inspection with the parties present and an expert examination, as well as summon persons as witnesses from whom, based on the complaint or the course of the proceedings, clarification regarding relevant facts may be expected.

2) However, the judge may not issue such orders regarding documents or witnesses if both parties object.

3) Such investigations may be ordered even before the commencement of the oral proceedings if there is reason to fear that, otherwise, circumstances important for the decision could no longer be established or that evidence could no longer be used later, or only under significantly more difficult conditions.

§ 184

Each party may, for the purpose of clarifying the facts of the case, request information from the opposing party or its representative regarding all circumstances relevant to the conduct of the proceedings that pertain to the subject matter of the dispute or the oral hearing, and in particular regarding the existence and nature of documents, information, and objects subject to inspection, to the opposing party present or their representative, either through the judge or, with the judge's consent, directly themselves.

§ 185

1) If a party appearing at the oral hearing without a representative is unable to make a comprehensible statement regarding the subject matter of the legal dispute or the oral hearing, the hearing shall be adjourned by the judge for as short a time as possible, and the party in question shall be instructed to appear at the subsequent hearing with a suitable representative, otherwise they shall be deemed to have failed to appear. A further extension of the hearing may not be granted on this ground.

2) The foregoing provisions shall apply *mutatis mutandis* even if a party's representative is unable to make a coherent statement regarding the subject matter of the dispute or the oral proceedings and the party itself is not present. If such an impediment arises with respect to a party's legal representative, the judge shall simultaneously issue the necessary orders for the appointment of a suitable representative.

§ 186

A separate appeal is not permitted against the court's decisions issued pursuant to §§ 179(1) and 181(2).

§ 187

1) If several legal disputes are pending before a court that are between the same persons or in which the same person faces different plaintiffs or different defendants as opposing parties, these proceedings may, if this is likely to simplify or expedite their resolution or reduce the costs of litigation, be consolidated for joint hearing by order of the court.

2) However, a joint judgment may only be rendered in disputes between the same parties.

§ 188

The court may order that multiple claims raised in the same action be heard separately. Likewise, a separate hearing may be ordered for counterclaims asserted by the defendant.

§ 189

1) If, in the substantiation or defense of a single claim, several independent points of dispute arise, or if, with respect to the same claim, several independent grounds for attack or defense are asserted, the court may order that the hearing be limited initially to one or some of these points of dispute.

2) In particular, if a plea of lack of jurisdiction, *lis pendens*, or *res judicata* is raised, the court may order that these pleas be heard separately first.

§ 190

1) If the resolution of a legal dispute depends, in whole or in part, on the existence or non-existence of a legal relationship that is the subject of another pending legal dispute, or that is to be determined in pending administrative proceedings, the court may order that the proceedings be stayed until a final and binding decision has been rendered regarding that legal relationship.

2) The court may also order such a stay upon application in the case of a dispute over the admissibility of a third-party intervention, as well as when both parties are jointly sued due to a claim raised by a third party regarding the subject matter of the dispute (§ 16).

3) Once the relevant civil or administrative proceedings have been finally resolved, the proceedings on the merits shall be resumed upon application or ex officio.

§ 191

1) If, in the course of a civil proceeding, suspicion arises of a criminal offense whose investigation and adjudication are likely to have a decisive influence on the outcome of the civil proceeding, the court may order that the civil proceeding be stayed until the criminal proceedings have been concluded.

2) Such a stay may occur in particular if there are grounds for suspecting that a document important for the decision in the case has been forged or falsified, or that a party, witness, or expert examined regarding essential facts—whose testimony the court would otherwise likely consider in its decision—has made a false statement.

3) Once the criminal proceedings have been finally concluded, the suspended proceedings on the merits shall be resumed upon application or ex officio.

§ 192

1) The court may revoke, upon motion or on its own motion, any orders it has issued concerning the separation, joinder, or interruption of the hearing or proceedings. Revocation may no longer be ordered if the court is bound by a judgment it has rendered, or if the order has become the subject of a decision by a higher court.

2) Orders issued pursuant to §§ 187 to 191 may not be challenged by an appeal, unless they order an interruption of the proceedings.

Closure of the Hearing

§ 193

1) The judge shall declare the hearing closed when he considers the matter in dispute or the separate motion on which the hearing is being held to have been fully discussed and, based on the evidence presented, ready for a decision.

2) The hearing shall be regarded as a single proceeding until its conclusion is announced.

3) The hearing may also be declared closed before all admissible evidence has been taken if only the taking of individual evidence to be conducted by a requested judge remains pending and either both parties waive the hearing on the results of such evidence-taking or the court deems such a hearing unnecessary. In this case, the court shall render its decision upon receipt of the records of the taking of evidence without ordering a new oral hearing.

§ 194

The court may order the reopening of a hearing that has already been closed if, for the purpose of rendering a decision, it becomes necessary to clarify or supplement the arguments presented or to discuss the proof of a fact that the court recognized as requiring proof only after the hearing had concluded, furthermore, if, in the case of § 193(3), after the arrival of the records of the taking of evidence, the court deems further proceedings necessary in light of the results of the taking of evidence or the statements made by the parties during the taking of evidence.

§ 195

The powers conferred on the judge in §§ 180 to 194 shall, in proceedings at the second and third instances, be vested in the presiding judge of the panel before which the hearing takes place.

Objections to Defects

§ 196

1) A violation of a provision governing the proceedings, and in particular the form of a procedural act, may no longer be asserted by the party entitled to file a complaint on that ground if the latter has proceeded with the further hearing of the case without objecting to this violation, even though the party was aware of it or should have been aware of it.

2) This provision does not apply if a rule has been violated that a party cannot validly waive.

3) If the objection is raised during an oral hearing and is not immediately addressed during the hearing by remedying the alleged violation, it shall be noted in the minutes.

3. Title

**Courtroom Conduct**

§ 197



1) The judge shall ensure that order is maintained during the oral hearing. The judge is authorized to admonish persons who disrupt the hearing through inappropriate conduct and to issue the orders necessary to maintain order.

2) § 195 applies *mutatis mutandis*.

§ 198

1) Expressions of approval or disapproval are prohibited.

2) Anyone who, despite a warning, is guilty of disrupting the proceedings may be removed from the proceedings. The removal of a person participating in the proceedings may only be ordered after a prior warning and reminder of the legal consequences of such a measure.

3) The party must be specifically informed of the possibility that, as a result of their removal, a default judgment may be entered against them or the judgment may be rendered in accordance with § 399.

4) If a person participating in the proceedings has been removed, proceedings may be conducted against them upon request in the same manner as if they had left voluntarily.

§ 199

1) Any person who, during the hearing, is guilty of gross misconduct, in particular an insult to the court, a party, a representative, a witness, or an expert, may, subject to criminal or disciplinary prosecution, be imposed a fine of up to 50 francs.

2) Any person who defies the court's orders issued to maintain order and peace may be sentenced to imprisonment for up to three days.

§ 200

1) If a legal representative is guilty of disrupting the proceedings (§ 198) or of misconduct or insult (§ 199), the court may impose a reprimand or a fine of up to 100 francs.

2) If the representative continues his improper conduct or defies the court's orders issued to maintain order and tranquility, the court may, by order, deprive him of the right to speak and, if necessary, require the party to appoint another representative; if this

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cannot be done immediately, the hearing shall be adjourned ex officio. The costs of the thwarted hearing and the adjournment shall be borne by the representative at fault.

3) In aggravating circumstances, if the representative is an attorney or a candidate for the bar, the court may also refer the matter to the competent disciplinary authority for that individual.

§ 201

Decisions made in accordance with the preceding provisions are immediately enforceable.

4. Title

### **Settlement**

§ 202

At the oral hearing, the court may, at any stage of the proceedings, upon motion or on its own initiative, attempt to reach an amicable settlement of the dispute or to bring about a compromise on individual points of contention. In doing so, the court shall, where appropriate, also refer the parties to institutions suitable for the amicable resolution of conflicts.

§ 203

If a settlement is reached, its terms shall be entered into the minutes of the hearing upon request.

§ 204

The extent to which the commencement or continuation of the hearing may be postponed due to settlement proposals or pending settlement negotiations shall be determined in accordance with the provisions of §§ 128 and 134.

§ 205

1) In a judicial settlement, the recognition of a legal relationship or the assumption of an obligation to perform, tolerate, or refrain from performing may be made contingent upon the taking of an agreed-upon oath. The oath may relate only to disputed facts.

2) In this context, the court session at which the oath is to be taken must be determined, or at least the deadline by which the party required to take the oath must apply for the scheduling of such a session. The oath is taken before the judge.

§ 206

Upon request and at their own expense, the parties shall be provided with copies of the settlement agreement or of the minutes of the hearing containing the settlement. Likewise, if an oath agreed upon by settlement has been taken, the party requesting it shall be provided with a copy of the minutes recording the taking of the oath.

#### 5. Title

### **Minutes**

#### Minutes of Proceedings

##### § 207

Minutes (hearing minutes) shall be taken of every oral hearing before the court. In addition to the records and information specifically required by law, these minutes shall contain:

1. the name of the court, the names of the judges, the court clerk, and, if an interpreter is called upon, the interpreter's name; the time and place of the hearing and whether the hearing was held in public or in camera;
2. the names of the parties and their representatives, as well as a brief description of the subject matter of the dispute;
3. the names of the persons who appeared at the hearing as parties or as their representatives or agents.

##### § 208

1) The following shall be recorded in the minutes of the proceedings:

1. the statements of the parties that contain a limitation or amendment of the claim, an express acknowledgment of a debt or part thereof, or a waiver of the asserted claim or part thereof, or of a right of appeal, as well as statements regarding the requested examination of a party under oath;
2. the motions filed by the parties during the hearing that were not granted by the court or that were not withdrawn by the parties by the end of the session, insofar as they concern the main issue or are relevant to the course or decision of the proceedings;

3. the judicial decisions rendered and announced during the hearing, as well as those orders and rulings of the judge against which an appeal is admissible.

2) The statements and motions mentioned in items 1 and 2 may also be attached to the minutes as appendices in separate documents. In this case, they need not be recorded in the minutes of the hearing.

3) The same applies to the court decisions pronounced, provided they are attached to the minutes in written form at the time of their pronouncement.

§ 209

1) In addition to the details that generally reflect the course of the proceedings, the minutes of every oral hearing shall include the content of the mutual submissions relating to the facts of the case in a concise summary.

2) Furthermore, the minutes must specify the evidence offered by the parties in support of the points at issue.

3) The court may, upon motion or on its own initiative, order that specific parts of the factual submissions or the evidence offered be recorded in greater detail in the minutes.

4) If a hearing cannot be concluded in a single day, the statements made during each individual session must be specifically recorded in the minutes.

§ 210

1) When recording the content of the factual submissions and the offers of evidence, reference shall be made, as far as practicable, to the preparatory pleadings and to the statement of facts in a copy of the order for evidence; where preparatory pleadings are available, it is sufficient if all significant deviations from the oral submissions are recorded.

2) Recording the individual statements of the parties is not permitted. Drafts of the trial minutes may not be accepted.

3) The parties' refusal to participate in the recording of the proceedings does not prevent the recording from being made.

§ 211

- 1) The recording of the proceedings required by § 209 may also be carried out in such a way that, immediately after the conclusion of the hearing of the parties and in their presence (§ 210(3)), the judge presents a clear summary of the facts arising from their submissions, and this summary is entered into the record, as far as practicable, with reference to the contents of the case file (summary minutes).
- 2) If the scope of the proceedings or other circumstances make earlier recording necessary or appropriate, such recording may also take place during the oral proceedings by summarizing the content of individual sections of the proceedings (§§ 188, 189) and entering it into the record.

§ 212

- 1) The recorded minutes shall be submitted to the parties for review or read aloud to them and shall be signed by them. The parties are permitted, after reviewing or hearing the minutes, to draw attention to those points in which the account of the proceedings contained in the minutes does not correspond to the actual course of the proceedings. Any correction to the content of the minutes deemed necessary by the court shall be made by means of an appendix to the minutes. If, however, the parties' statements are disregarded, an objection may be filed against the relevant entries in the minutes of the proceedings.
- 2) If, for this or any other reason, a party objects to specific entries in the minutes, an appendix to the minutes shall note that objections were raised and specify the nature of those objections.
- 3) If a party is represented by an attorney, the court may order that the objection be recorded by submitting a brief written statement to be attached to the minutes.

§ 213

- 1) If a party is unable to sign at all or can only sign by means of a hand gesture, the clerk shall enter the party's name in the minutes.
- 2) If a party leaves before the minutes are recorded or refuses to sign the minutes, these events, as well as the

reasons given by the party for doing so shall be recorded in an appendix to the minutes.

3) The minutes shall be signed by the judge, the court clerk, and any interpreter who may have been called upon during the proceedings.

4) Section 195 applies mutatis mutandis.

§ 214

No separate appeal is permitted against the judge's decisions and orders concerning the recording of proceedings.

§ 215

1) Unless a party expressly objects, the minutes of the proceedings, drawn up in accordance with the foregoing provisions, shall constitute full proof of the course and content of the hearing.

2) Compliance with the formalities prescribed for the oral hearing may be proven only by the minutes.

3) The probative value of the record is not affected by a change in the person of the judge.

Minutes taken outside of a hearing

§ 216

1) Minutes taken outside of an oral hearing shall, in addition to the information mentioned in § 207 and any findings to be made pursuant to § 208, contain a brief description of the official act and a concise statement of the content of the factual submissions of the disputing parties or third parties involved.

2) The provisions of §§ 209 through 215 also apply to these minutes. Content of the Minutes

§ 217

1) The contents of the trial transcript and its attachments, as well as the transcripts and their attachments prepared by a requested judge during the course of a legal proceeding and submitted to the adjudicating court, must be taken into account ex officio.

2) If the parties were not present during the official act performed by a requested judge, they shall, unless the provisions of § 193(3) apply, be given the opportunity prior to the decision to comment in an oral hearing on the results of the relevant official act and the information contained in the submitted files.

6. Title

**Files**

§ 218

Each party may also refer to documents served upon it at the request of the opposing party in support of its motions. If these documents have been lost and no copy of them is on file with the court, the party may request that the opposing party permit it, at its own expense, to make copies of the relevant documents in the opposing party's possession.

§ 219

1) The parties may inspect all files pertaining to their case that are held by the court (case files), with the exception of drafts of judgments and orders, minutes of the court's deliberations and votes, and documents containing disciplinary orders, and may obtain copies and extracts thereof at their own expense. For the purpose of preparing their arguments, they shall also be granted access, in particular, to the minutes and files of any preliminary proceedings.

2) With the consent of both parties, third parties may also inspect the documents in the same manner and obtain copies and extracts at their own expense, provided that this is not precluded by the overriding legitimate interests of another party or by overriding public interests. In the absence of such consent, a third party may be permitted to inspect and obtain copies provided that the third party can demonstrate a legal interest. The Higher Regional Court shall have final jurisdiction over appeals against decisions made by the Regional Court regarding the inspection and copying permitted to a third party, to the exclusion of any further appeal.

3) Documents submitted to the court by a party shall be returned to that party upon request if the purpose of their retention no longer applies.

7. Title

**Penalties**

§ 220

1) An administrative fine may not exceed the amount of 1,000 francs; a fine for wilful misconduct may not exceed the amount of 5,000 francs.

2) If a fine or penalty for wilful misconduct imposed under this Act proves to be wholly or partially uncollectible, the court shall reassess it in cases where such action is warranted.

3) All fines and penalties for wilful misconduct shall accrue to the state.

4) The High Court shall have final jurisdiction over appeals against decisions of the District Court imposing a fine or penalty for wilful misconduct, to the exclusion of any further appeal.

8. Title

### **Sunday Rest and Court Recesses**

#### **§ 221**

1) Court sessions may not be held on Sundays or on Christmas Day. Scheduling a court session on another public holiday is permitted only in cases of imminent danger.

2) The days to be considered public holidays for the purposes of this Act shall be determined by ordinance.

#### **§ 222**

The court recess lasts eight weeks. Its beginning and end shall be determined by regulation, with six weeks to be scheduled for the summer and two weeks for the Christmas and New Year holidays.

#### **§ 223**

1) During the court recess, hearings are held and decisions rendered only in non-contentious matters.

2) The court recess has no effect on debt collection proceedings, legal summons proceedings, or enforcement proceedings, including hearings on the distribution of the highest bid.

#### **§ 224**

1) Non-judicial matters are:

1. disputes concerning bills of exchange;

2. Proceedings in which the continuation of a construction project that has already begun is in dispute;

3. Disputes concerning the disturbance of the status quo with respect to property and rights, where the claim is directed solely at the protection and restoration of the last status quo;

4. Disputes concerning the termination, handover, and takeover of leased or rented property, apartments, or other premises;



5. Disputes arising from employment and wage contracts between employers and domestic servants or other persons bound by an employment contract, between farmers and foresters and their agricultural and forestry laborers and day laborers, between mine owners and all other employers and the foremen, assistants, workers, or apprentices, as well as disputes arising from the employment relationships of ship's crews;
  6. Disputes between innkeepers, boatmen, raftsmen, or carriers, on the one hand, and their guests, travelers, or clients, on the other hand, regarding the obligations arising from their mutual relationships;
  7. all other disputes concerning pecuniary claims where the amount in dispute, in cash or cash equivalent, does not exceed 5,000 francs;
  8. Proceedings concerning applications for the granting, restriction, or revocation of preliminary injunctions;
  9. Proceedings for the lifting of the stay of execution pursuant to Art. 49 et seq. of the Enforcement and Security of Claims Ordinance;
  10. disputes specified in Articles 18 through 20 of the Enforcement Ordinance;
  11. Proceedings in matters of legal aid;
  12. Proceedings to secure evidence;
  13. Proceedings concerning reinstatement of previous status;
  14. Proceedings concerning the recusal of judges and other judicial bodies;
  15. Proceedings concerning motions to impose or supplement a security deposit for litigation costs;
  16. Proceedings in matrimonial and partnership matters (Sections 516 et seq.);
  17. Proceedings concerning actions under §§ 628 and 629.
- 2) The court may also, on a case-by-case basis, declare other matters to be urgent matters, provided they require prompt resolution. Such an order, as well as the rejection of a motion to declare a matter an urgent matter, cannot be challenged by an appeal.

§ 225

- 1) Court recesses suspend the running of a time limit; the remaining portion of the time limit begins to run upon the end of the court recess.
- 2) If the start of a time limit falls during the court recess, the time limit begins to run at the end of the court recess. The commencement of the court recess has no effect on the start and expiration of urgent time limits in cases heard during the recess.

## **Proceedings before the Court of First Instance**

### **Section 1**

## **Proceedings Leading Up to the Judgment**

### **Title 1**

## **Attempt at Settlement, Complaint, Initial Hearing, and Trial**

Legal instructions from the judge

### **§ 226**

1) The judge shall, if necessary, provide parties who are unfamiliar with the law and are not represented by attorneys with the guidance necessary to carry out their procedural acts and shall inform them of the legal consequences associated with their acts or omissions.

2) In particular, when announcing his or her decisions, the judge shall draw such parties' attention to the time limit within which a decision may be challenged by an appeal and to the possibility that appeals may be entered into the court record.

3) § 195 applies mutatis mutandis.

### **Attempt at Settlement**

### **§ 227**

1) Any person intending to file a lawsuit is entitled, prior to filing it with the district court, to request that the opposing party be summoned to a hearing for the purpose of attempting a settlement, provided the opposing party is domiciled in the country.

2) No appeal is permitted against a decision on such a request.

### **§ 228**

Service of the summons for settlement negotiations need not be made personally.

### **§ 229**

A party who fails to appear for the settlement hearing shall not be subject to any consequences of default; such party may not be compelled to appear by means of administrative fines.

### **§ 230**

1) If a settlement is reached, only the settlement itself shall be recorded in the minutes, not the arguments that served as the basis for the applicant's original claim.

2) If a settlement is not reached at the preliminary hearing, the case may proceed to trial only with the consent of the opposing party. If the opposing party refuses to give consent, a formal complaint must be filed.

§ 231

If settlement negotiations prove fruitless, the opposing party summoned to attempt a settlement has no claim to immediate reimbursement of the costs incurred by the summons. However, these costs must be taken into account when deciding on the costs of the subsequent proceedings.

Action

§ 232

1) The complaint, which must be filed by means of a preparatory pleading, must contain a specific claim, briefly and fully state the facts on which the plaintiff's claim in the main and ancillary matters is based, and also specify in detail the evidence the plaintiff intends to use at the hearing to prove his factual assertions.

2) In all other respects, the general provisions governing pleadings shall apply to the complaint.

§ 233

Multiple claims by the plaintiff against the same defendant may be asserted in the same action, even if they are not factually or legally related, provided that the court has jurisdiction over all claims and the same type of proceeding is admissible.

§ 234

1) An action may be brought to determine the existence or non-existence of a legal relationship or right, to recognize the authenticity of a document, or to determine its inauthenticity, if the plaintiff has a legal interest in having that legal relationship, right, or the authenticity of the document determined by a court decision without delay.

2) Anyone who has a right to demand that another person cease unlawful conduct or refrain from future unlawful conduct—as is particularly the case with contracts and torts—may, unless otherwise provided, demand this by means of a lawsuit.

§ 235

1) The request may be made in the complaint itself:

1. that the defendant be ordered, in the summons to the first hearing or in the summons to the oral hearing, to bring to the hearing certain documents, information, or items to be inspected—which are to be precisely identified, appear necessary to the plaintiff for the presentation of evidence, and are in the defendant’s possession;

2. that the necessary measures be ordered to ensure that the documents, information, or objects to be inspected—which are likely to be necessary for the presentation of evidence, are held by a public authority or a notary, and must likewise be precisely identified—are produced in a timely manner for the first hearing or the oral hearing;

3. that the witnesses named in the complaint to substantiate factual claims be summoned to the first hearing or to the oral hearing.

2) The motion referred to in paragraph 2 shall be granted only if the party is unable to obtain the relevant documents, information, or exhibits in accordance with existing legal provisions without the court’s assistance, or if the authority or notary has unjustifiably refused to release them.

3) With regard to evidence relating to matters other than those reserved for the first hearing, no order may be issued when the first hearing is scheduled.

§ 236

If the parties are not represented by attorneys, they may have the complaint, as well as all motions, requests, and statements to be made outside the oral hearing, entered into the record (§ 79).

§ 237

1) If, in the judge’s opinion, the complaint submitted in writing requires supplementation or clarification in any respect, or if there are concerns regarding the initiation of proceedings, the judge shall, if the plaintiff is not represented by an attorney, provide the necessary guidance regarding the relevant supplements or corrections before the complaint is disposed of.

2) If the complaint entered into the record orally appears inadmissible due to lack of legal standing, lack of jurisdiction of the court, lack of personal capacity to sue, or lack of legal capacity of the defendant, the plaintiff shall be informed of this orally or, upon request, in writing. Likewise, if the complaint appears manifestly unfounded, the plaintiff shall be given appropriate oral instruction. However, the recording of the complaint may not be refused if the plaintiff insists on its recording despite the instruction.

§ 238

If the court lacks jurisdiction or the legal action is inadmissible, the judge shall, ex officio, dismiss the action as unsuitable for determination at the hearing.

§ 239

1) On certain court days, which must be set in advance and announced by publication in the Official Gazette, the plaintiff may appear in court with the opposing party, even without a summons, to initiate a legal dispute and have it heard.

2) In this case, the claim must be recorded in the minutes of the hearing.

Pending Litigation

§ 240

1) The pendency of the case (litigation) is established by the service of the complaint on the defendant. Unless otherwise prescribed, the filing of the complaint with the court is sufficient to meet a deadline or to interrupt the running of a deadline.

2) If a claim is asserted by a party only during the course of the proceedings, the pending litigation with respect to that claim commences at the time it was asserted during the oral hearing.

§ 241

1) The effect of the pending litigation is that, during its duration, no new legal action may be brought regarding the asserted claim. A complaint filed during the pending litigation regarding the same claim shall be dismissed upon motion or ex officio.

2) Once the case has been filed, the defendant may, provided the other statutory requirements for the venue of the counterclaim are met, file a counterclaim with the regional court as long as the oral proceedings in the first instance have not been concluded.

§ 242

The sale of a property or claim that is the subject of a dispute has no effect on the proceedings. The purchaser is not entitled to join the proceedings as a principal party without the consent of the opposing party.

Amendment of the Complaint

§ 243

1) The plaintiff is always entitled to amend the complaint filed with the court, and in particular to expand the relief sought, before the case becomes pending.

2) Once the case is pending, the plaintiff requires the consent of the opposing party to do so; such consent shall be deemed to have been given if the defendant proceeds with the hearing of the amended complaint without raising any objection to the amendment.

3) The court may, however, permit such an amendment even after the case has become pending and notwithstanding the opponent's objection, provided that the amendment is not likely to cause a significant complication or delay in the proceedings. Appeals against decisions rendered by the Regional Court regarding the admission of an amendment to the complaint shall be decided by the Higher Regional Court with finality and without the possibility of further appeal.

4) It shall not be regarded as an amendment to the complaint if, without changing the grounds of the complaint, the factual details of the complaint and the evidence offered therein are amended, supplemented, explained, or corrected, or if, likewise without altering the grounds of the complaint, the relief sought is limited in the main claim or in relation to ancillary claims, or if, instead of the originally claimed subject matter, another subject matter or interest is claimed.

5) It is neither an amendment to the complaint nor a change of party if the designation of the party is corrected to the person by or against whom, according to the content of the complaint in a manner leaving no room for doubt—for example, by citing the name of their business—the claim has been brought. Such a correction shall be made at any stage of the proceedings upon application or ex officio, where appropriate by applying §§ 84 and 85.

Interlocutory motion for a declaratory judgment

§ 244

1) The plaintiff may, without the defendant's consent, until the conclusion of the oral proceedings on which the judgment is to be rendered, request that a legal relationship or right that has become disputed in the course of the proceedings—the existence or non-existence of which determines the decision on the claim in whole or in part—be determined in the judgment rendered on the claim or in a judgment preceding it.

2) This provision does not apply if the subject matter of the new motion can be heard only in a special proceeding exclusively prescribed for matters of this kind.

Withdrawal of the Action

§ 245

1) The action may be withdrawn without the defendant's consent only until the start of the first hearing; however, if the defendant does not appear at that hearing, it may also be withdrawn during the first hearing. If the claim is waived at the same time, the action may be withdrawn without the defendant's consent until the conclusion of the oral proceedings.

2) The withdrawal of the action shall be effected by a written submission to be served on the defendant or by a statement made during the oral hearing.

3) The withdrawal of the action has the effect that the action is to be regarded as unfounded and, unless the parties agree otherwise, the plaintiff must reimburse the defendant for all litigation costs for which the defendant has not already been legally and finally ordered to pay. The motion for reimbursement of costs must be filed during the oral hearing—failing which it is barred—if the complaint is withdrawn during the oral hearing and the defendant is present; otherwise, it must be filed within a mandatory period of four weeks after the defendant has been notified by the court of the withdrawal of the complaint. The motion for an award of costs must be served on the plaintiff for comment within a mandatory period of 14 days. The court shall decide on the motion for an award of costs by order.

4) A withdrawn complaint may be refiled unless the claimant waived the asserted claim at the time of withdrawal.

5) The legal consequences described above also apply if a lawsuit is deemed to have been withdrawn in accordance with the provisions of this Act.

#### First Hearing

##### § 246

1) As a general rule, in all legal matters, the first hearing shall be combined with the oral hearing; however, the court may order a separate first hearing.

2) If the court combines the first hearing with the oral hearing, the parties and their representatives must ensure, at the first hearing scheduled for the oral hearing, that the facts of the case and any possibilities for settlement can be fully discussed. For this purpose, the party or, if the party is unable to contribute to the clarification of the facts, an informed person must be made available to assist the representative.

##### § 247

1) The first hearing shall be scheduled, taking into account the time likely required for service of the complaint, so that there is a period of approximately 14 days between service and the hearing.

2) If the defendant's whereabouts are unknown, the first hearing may, depending on the circumstances, be scheduled for a later date; however, in urgent cases where the defendant is present at the court's location or can easily reach that location within a short time, it may, upon request, be scheduled for an earlier date and, if necessary, even set so that only a period of 24 hours elapses between service and the hearing.

##### § 248

The plaintiff shall be summoned by service of a copy of the order issued regarding the complaint. The summons shall inform the plaintiff of the legal consequences of failing to appear at the hearing.

##### § 249

The defendant is summoned by serving a written copy of the order issued regarding the complaint, together with a copy of the written complaint or a transcript of the minutes taken regarding the complaint. If the minutes are supplemented or corrected



the written complaint, a copy of these minutes must also be served on the defendant. The summons must inform the defendant of the legal consequences of failing to appear at the hearing.

§ 250

1) The first hearing is intended for an attempt at settlement, for the raising of defenses regarding the inadmissibility of legal action, the lack of jurisdiction of the court, the pendency of the dispute, and the final and binding decision on the matter, as well as for the receipt of the statement from the designated auctioneer. At the first hearing, an application for security for the costs of the proceedings must also be filed; furthermore, at the first hearing, the case may be settled by judgment on the basis of an admission or waiver or as a result of default, or the plaintiff may file an application for permission to amend the complaint.

2) The motion for security for costs or for permission to amend the complaint, as well as any motion filed by a party at the first hearing to dismiss the complaint on the grounds of the lack of legal capacity of one of the parties or the lack of authority of the person acting as representative, shall be heard and decided immediately at the first hearing. The court may also, on its own motion, initiate a discussion at the first hearing regarding the latter points or regarding a lack of jurisdiction on the part of the court that cannot be remedied by an express agreement of the parties, and may, on that basis, issue an order to dismiss the proceedings.

3) All other submissions are excluded from the first hearing.

§ 251

1) A plea of lack of jurisdiction must be raised at the first hearing.

2) The inadmissibility of legal action, the pending nature of the dispute, and the res judicata effect of a judgment concerning the matter in dispute must be taken into account ex officio at any time.

§ 252

If, at the first hearing, an agreement is reached between the parties regarding the assumption of the case by the appointed representative as a result of a statement made by said representative, the court shall, upon a corresponding motion,

, immediately at the hearing, exempt the defendant from the proceedings by order.

§ 253

If the first hearing is extended due to a circumstance that prevents the defendant from appearing in a timely manner or from raising defenses and filing motions at the first hearing—which is the purpose of the first hearing—the provisions regarding the first hearing shall also apply to the extended hearing. Oral Hearing

§ 254

If the case is not resolved at the first hearing, the court shall schedule a hearing for oral proceedings.

§ 255

1) The hearing for oral proceedings shall be scheduled in such a way that the parties have at least 14 days from the service of the summons to prepare for the proceedings.

2) In urgent cases, the court may order the hearing to be held earlier.

§ 256

Repealed

§ 257

1) The parties may, in the period between the scheduling of the hearing and its commencement, notify the court by means of a special preparatory brief of the motions, arguments, assertions, and evidence they intend to present at the hearing.

2) During this period, the parties may also file motions within the meaning of § 235 by written submission or for the record.

3) The court shall issue the orders it deems necessary in this regard without delay.

4) In legal disputes concerning the accuracy of an invoice, a division of assets, or similar matters in which a significant number of disputed claims and counterclaims are to be heard, the court may, if both parties are represented by attorneys, or the court may conduct an examination of the parties for the record in preparation for the oral hearing.

5) No appeal is permitted against this order.

6) If the parties fail to comply with the court's order to exchange preparatory pleadings or fail to appear at the scheduled court hearing, the judge shall immediately set a date for the oral hearing.

7) The preparatory pleadings permitted under the preceding paragraphs must be received by the court and the opposing party no later than one week before the next hearing scheduled for the oral hearing.

§ 258

1) The hearing shall be conducted in accordance with the general provisions governing oral proceedings; it shall also include the taking of evidence and the discussion of the findings thereof.

2) During the oral hearing, the defendant may, without requiring the plaintiff's consent, file a motion for a declaratory judgment within the meaning of § 244.

§ 259

The defendant must raise the objection of lack of jurisdiction of the court and the request for security for litigation costs at the oral hearing, even if the first hearing date has already been set for the oral hearing, before entering into the proceedings on the merits.

§ 260

1) A party raising any of the defenses specified in § 250(1) is not entitled to refuse to participate in the hearing on the merits on that ground. The court may order a separate hearing on such defenses even before the oral hearing begins.

2) The provisions of § 192 apply to these orders.

3) If a party raises the inadmissibility of the action, the fact that the matter is already pending, or the existence of a final judgment on the claim only during the oral hearing, the court may order a separate hearing on such defenses. The party may not therefore refuse to continue participating in the hearing on the merits.

§ 261

1) Decisions on defenses and motions raised on the grounds of lack of standing, lack of jurisdiction, *lis pendens*, or *res judicata* shall be made following a prior oral hearing. The decision shall be rendered by order; however, if these defenses and motions were heard in conjunction with the main action, the decision dismissing them shall not be issued separately but shall be incorporated into the decision rendered on the main action.

2) If the defense or motion is raised during the oral hearing but is dismissed following a separate proceeding, the court may, after announcing the order, order—either upon motion or on its own initiative—that the hearing on the merits be commenced immediately. In this case, the decision rendered regarding the admissibility of legal action, jurisdiction, *lis pendens*, or *res judicata* need not be issued separately but shall likewise be incorporated into the decision rendered on the merits. No appeal is permitted against the order to proceed with the hearing on the merits.

3) If the ruling on the admissibility of the legal action, jurisdiction, *lis pendens*, or *res judicata* is included in the decision on the merits, it may be challenged only by means of the appeal available against the decision on the merits.

4) If any of the aforementioned defenses or motions is dismissed by a separate decision without proceeding immediately to the hearing on the merits, either party may, after the decision has become final, request the scheduling of a hearing for oral argument on the merits.

5) The foregoing provisions shall also apply if the court raises, on its own motion, the question of the admissibility of the action, the pending nature of the dispute, or the *res judicata* effect of a decision rendered on the claim, and makes such matters the subject of the oral hearing.

§ 262

The oral hearing shall be concluded without extension, if possible. Findings to be recorded in the minutes

§ 263

- 1) The judge may, upon motion or on his own motion, order that motions and statements which, pursuant to §§ 208 and 209, are to be included in the minutes of the hearing, be written down by the party who filed the motion or made the statement and handed over to the judge, if the party is represented by an attorney at the hearing.
- 2) The written record must be made immediately during the oral hearing. The documents handed over to the judge shall be attached to the trial transcript as appendices.
- 3) The ordered written findings shall be read aloud; the court shall decide on their correctness.
- 4) The order by which such a written statement is ordered, as well as the decision regarding the accuracy of a written statement, cannot be challenged by an appeal.

§ 264

- 1) If, during a hearing, it becomes necessary to issue an order for evidence pursuant to § 277(3) and the hearing is not declared closed at that same session, the court may refrain from recording the parties' submissions regarding the facts of the case and reserve their presentation for the drafting of the order for evidence.
- 2) Copies of the order for evidence shall be served on the parties. Any objections to incorrect statements contained therein regarding the parties' factual and evidentiary submissions may be raised at the next oral hearing. The objection shall be recorded in the minutes of the hearing or by means of brief notes (Section 212(2) and (3)).

§ 265

- 1) If the oral hearing is conducted and concluded in a single session, the parties' submissions relating to the facts of the case need not be recorded in the minutes, and their presentation may be reserved for the statement of facts in the judgment. In the minutes of the hearing, only the circumstances and statements described in §§ 207 and 208.
- 2) In this case, the draft of the facts of the judgment must be filed with the court clerk's office within three days after the conclusion of the hearing for inspection by the parties. The parties may, within three days of being notified of the

filing, object to any incorrect statements in the judgment regarding the actual facts or the evidence presented. The objection may be entered into the court record or recorded in a brief written statement (§ 212, paras. 2 and 3).

3) If an objection is raised, the facts of the judgment may be amended accordingly by the judge.

## Title 2

### **General Provisions on Evidence and the Taking of Evidence**

#### Evidence

##### § 266

1) Facts asserted by a party require no proof to the extent that they are expressly admitted by the opposing party in a preparatory pleading, during the course of the legal proceedings at an oral hearing, or in the minutes of a judge to whom a request has been made. The acceptance of such an admission of facts by the opposing party is not required for its validity.

2) The extent to which such an admission is nullified or its validity impaired by additions or reservations attached thereto by the party, and the effect of a revocation on the validity of the admission, shall be assessed by the court at its discretion, guided by a careful consideration of all circumstances.

3) In the same manner, the court must assess to what extent the necessity of proof is eliminated as a result of an extrajudicial admission.

##### § 267

1) Whether factual assertions made by a party are to be regarded as admitted in the absence of an express admission by the opposing party must be assessed by the court with careful consideration of the entire content of the opposing party's submissions.

2) Similarly, the court must also assess, in particular, whether a statement of ignorance or lack of recollection should be regarded as a statement that precludes the assumption of an admission or, conversely, as a statement that constitutes an admission in itself.

##### § 268

If the decision depends on the proof and attribution of a criminal act, the judge is bound by the content of a final and binding conviction issued by the criminal court in this regard.

§ 269

Facts that are obvious to the court require no proof.

§ 270

Facts for which the law establishes a presumption of existence require no proof. Proof to the contrary is admissible unless the law excludes it. Such rebuttal may also be presented through the examination of the parties pursuant to §§ 371 et seq.

§ 271

- 1) The law applicable in another jurisdiction, customary laws, privileges, and statutes require proof only to the extent that they are unknown to the court.
- 2) In determining these legal norms, the court is not limited to the evidence offered by the parties; it may, on its own initiative, undertake any investigations it deems necessary for this purpose.

§ 272

- 1) Unless otherwise provided in this Act, the court shall, taking careful account of the results of the entire proceedings and the presentation of evidence, assess according to its free conviction whether a factual statement is to be regarded as true or not.
- 2) In particular, the court must determine in the same manner what impact a party's refusal to answer questions posed by the court or with the court's consent has on the assessment of the case.
- 3) The circumstances and considerations that were decisive for the court's conviction must be stated in the reasoning for the decision.

§ 273

- 1) If it is established that a party is entitled to compensation for damage or loss of profit or that it has a claim of some other kind, but proof of the disputed amount of the damage or loss of profit to be compensated or of the claim cannot be provided at all or only with disproportionate difficulty, the court may, upon application or on its own motion, determine this amount according to its free conviction, even if it disregards evidence offered by the party. The determination of the amount may also be preceded by the examination under oath of one of the parties regarding the circumstances relevant to the determination of the amount.

2) If, among the claims asserted in the same action, certain claims are of insignificant value in relation to the total amount and if the full clarification of all relevant circumstances involves difficulties that are disproportionate to the significance of the disputed claims, the court may decide on them in the same manner (para. 1) according to its free conviction. The same applies to individual claims where the amount sought does not exceed 5,000 francs in each case.

Preliminary Evidence (Certification)

§ 274

1) A party required to substantiate a factual assertion (certification) may use any means of evidence for this purpose, with the exception of the examination of the parties under oath. The taking of evidence that cannot be carried out immediately is not suitable for the purpose of substantiation.

2) The taking of evidence for the purpose of substantiating a fact is not bound by the special rules governing the taking of evidence.

Taking of Evidence

§ 275

1) Evidence offered by the parties but deemed irrelevant by the court must be expressly rejected.

2) The court may refuse to admit offered evidence upon motion or on its own motion if it is convinced that the evidence was not offered earlier through gross negligence and that the admission of the evidence would significantly delay the conclusion of the proceedings.

§ 276

1) Evidence deemed relevant by the court shall be taken during the proceedings before the trial court, unless the court orders the taking of evidence outside the scheduled court session in accordance with the provisions of this Act.

2) If a judge to whom a request has been made deems it necessary to take evidence outside the court session, the trial court shall issue the necessary order.

§ 277



- 1) The taking of evidence shall be ordered by a ruling (ruling on evidence). Such rulings shall specify the disputed facts on which evidence is to be taken and the means of proof.
- 2) The court is not bound by the view underlying an order for the taking of evidence in the further course of the legal proceedings.
- 3) Such orders require a written copy only if the taking of evidence is to take place before a requested judge. In this case, the facts resulting from the hearing must also be included in the copy to the extent that knowledge of these facts is necessary for the judge to conduct and fully carry out the taking of evidence.
- 4) No separate appeal is admissible against orders on the taking of evidence.

§ 278

- 1) All examinations of evidence that cannot be conducted immediately during the hearing itself, and in particular those to be conducted by a requested judge outside the hearing session, shall, unless circumstances necessitate a different procedure or the court deems it appropriate, be ordered only after the facts of the case have been fully discussed and by means of a single order on the taking of evidence.
- 2) For the purpose of discussing the results of such evidentiary proceedings, the trial before the trial court must be resumed ex officio upon their completion, unless the conditions of § 193(3) are met. New factual submissions and offers of evidence presented at this hearing may be declared inadmissible by order, either upon motion or ex officio, if the new submission is not prompted by the results of the taking of evidence that has taken place in the meantime, was not presented earlier through gross negligence, and would significantly delay the conclusion of the proceedings.

§ 279

- 1) If an obstacle of uncertain duration prevents the taking of evidence, if the feasibility of taking evidence is doubtful, or if the taking of evidence is to take place outside the scope of application of this Act, the court shall, upon motion, set a time limit in the order for the taking of evidence; upon the fruitless expiration of this time limit, the proceedings shall be continued at the request of one of the parties, regardless of the pending taking of evidence.

2) In the resumed oral proceedings, this evidence may then be used only if doing so does not delay the proceedings.

§ 280

1) The trial court may, upon request, permit the taking of evidence to be recorded by one or more sworn stenographers. A stenographer who is not generally sworn for this task must take an oath that he will faithfully record what is stated orally and that the recording will be accurately transcribed. The oath is not required if a court official is appointed as stenographer.

2) The stenographers shall be appointed by the judge upon the applicant's recommendation.

3) The transcription of the stenographic record into standard text must be submitted to the judge within 48 hours of the recording and attached to the case file.

4) Unless both parties jointly request a stenographic record, the party making the request shall bear all costs incurred thereby, without being entitled to reimbursement of such costs even in the event of a victory.

§ 281

If a hearing must be extended for the purpose of taking evidence before the trial court, the hearing at which the evidence is to be taken shall also be designated for the continuation of the oral proceedings.

§ 281a

If evidence regarding disputed facts has already been taken in a judicial proceeding, the transcript thereof or a written expert opinion may be used as evidence, and a new taking of evidence may be dispensed with if:

1. the parties were involved in those court proceedings and
  - a) one of the parties does not expressly request otherwise, or
  - b) the evidence is no longer available;
2. the parties not involved in those court proceedings expressly consent to this.

§ 282

If the taking of evidence must be conducted by a requested judge and the time of its completion cannot be determined with certainty, the judge shall, ex officio, set a date for the continuation of the oral proceedings before the adjudicating court upon receipt of the evidence files and transcripts and shall notify the parties thereof.

Taking of evidence by a requested judge

§ 283

1) Letters rogatory issued for the taking of evidence to be conducted outside the territorial scope of this Act may, upon the party's request, be handed over to that party for transmission to the requested authority.

2) Upon the party presenting the evidence's request, the court may further permit that a letter of request not be issued and that the party presenting the evidence be authorized to produce a public document regarding the taking of evidence that complies with the laws of the territory in which the taking of evidence is to take place. The party presenting the evidence shall, if possible, notify the opposing party of the place and time of the taking of evidence in sufficient time to enable the latter to exercise his or her rights during the taking of evidence in an appropriate manner. If such notification has not been provided, the adjudicating court shall, after careful consideration of all circumstances, decide whether and to what extent the party presenting the evidence is entitled to use the evidence taken during the oral proceedings.

3) In both cases, the order on evidence shall specify a deadline for the submission of the records of the taking of evidence; failure to meet this deadline shall result in the legal consequences set forth in § 279.

4) Instead of examining a witness, a party, or an expert through a requested judge, the court may, subject to technical feasibility, conduct a taking of evidence using technical equipment for voice and video transmission.

§ 284

When a judge conducts a hearing of evidence pursuant to a request, he or she shall have the same powers as those exercised by a judge in a hearing of evidence conducted before the trial court.

§ 285

If, during the taking of evidence before the requested judge, a dispute arises whose resolution is necessary for the continuation of the taking of evidence, but which the judge entrusted with the taking of evidence is not authorized to decide, he shall report to the trial court.

§ 286

1) The court shall examine the minutes and other records of the taking of evidence submitted by a requested judge and, if it finds any deficiencies, shall order the necessary corrections or supplements. The records of the taking of evidence shall then be kept open for inspection by the parties, with simultaneous notification of the parties, until the next court session scheduled for oral proceedings.

2) In the meantime, a party may file a motion to remedy individual deficiencies in the taking of evidence or to supplement such taking of evidence. Any orders that may become necessary as a result shall be issued by the court without delay.

3) If the need to supplement or repeat the taking of evidence arises only during the oral hearing, the court shall issue the appropriate orders in light of the circumstances. The court may also order that the supplementation or repetition of the taking of evidence take place during the oral hearing itself.

§ 287

1) The judge shall present the results of a taking of evidence that did not take place before the adjudicating court at an appropriate time during the oral hearing, based on the minutes and other records pertaining to that taking of evidence.

2) If, in the opinion of one of the parties, this presentation deviates in significant respects from the content of the files, the minutes of the taking of evidence and the other files relating to the taking of evidence shall be read aloud in their entirety upon the party's request.

3) The parties are free to refer to the contents of the records of the taking of evidence in their pleadings even before this presentation by the judge. Procedure for the Taking of Evidence

§ 288

1) If the taking of evidence takes place before the trial court, the judge responsible for the taking of evidence shall, ex officio, issue the summonses required for the taking of evidence and make all other necessary arrangements. The judge shall also, ex officio, set the date for the hearing on the taking of evidence.

2) The parties may bring the witnesses they have named, or the persons whom they intend to identify as witnesses or propose as experts to the court during the hearing, to the hearing before the trial court even without a prior court summons.

§ 289

1) The parties may be present during the taking of evidence; they may have the judge ask the witnesses and experts those questions, or, with the judge's consent, ask them themselves, which they deem useful for clarifying or supplementing the testimony, as well as for clarifying the dispute or the circumstances essential to the probative value of the testimony. The judge shall reject any questions that appear inappropriate to him.

2) The taking of evidence shall proceed, insofar as this is possible under the circumstances, even if none of the notified parties has appeared. However, the trial court may permit a supplement to the taking of evidence if the party credibly demonstrates that its failure to appear, caused by an unforeseen event, resulted in a material incompleteness of the taking of evidence and if, at the same time, the supplement to the taking of evidence can take place without causing a significant delay in the proceedings.

§ 289a

*Separate Examination*

1) If the subject matter of the civil proceedings is factually related to criminal proceedings, the court shall, when examining a person who is a victim within the meaning of Article 1 of the Victims Assistance Act in those criminal proceedings, is a victim within the meaning of Art. 1 of the Victim Assistance Act, the participation of the parties to the proceedings and their representatives in the examination shall, at the victim's request, be limited in such a way that they may follow the examination using technical equipment for audio and video transmission and exercise their right to ask questions without being present during the questioning. If the victim is a minor, a suitable expert shall be appointed to conduct the questioning regarding the subject matter of the criminal proceedings.

2) The court may, upon request, examine a person in the manner described in paragraph 1 if, in view of the subject matter of the evidence and the personal impact on the person to be examined, it is unreasonable to expect that person to testify in the presence of the parties to the proceedings and their representatives.

3) No appeal is permitted against decisions made pursuant to paragraphs 1 and 2.

§ 289b

*Examination of Minors*

1) If the person to be examined is a minor, the court may, upon motion or on its own motion, refrain from examining the minor in whole or in part regarding specific topics if the examination would jeopardize the minor's welfare, taking into account the minor's mental maturity, the subject matter of the examination, and the minor's close relationship to the parties to the proceedings.

2) The court may, upon motion or on its own motion, have the examination conducted in the manner described in § 289a(1), if necessary also by a suitable expert, if the well-being of the minor would not be endangered by the examination itself, but, taking into account the minor's mental maturity, the subject matter of the examination, and the minor's close relationship to the parties to the proceedings, would be endangered by the examination in the presence of the parties or their representatives.

3) When questioning a minor, a person in whom the minor has confidence shall be present, provided this is in the minor's best interest.

4) No separate appeal is admissible against the decision under paragraph 1. No appeal is admissible against the decision under paragraph 2.

§ 290

The fact that the taking of evidence by a foreign authority is defective under foreign law does not constitute grounds for objection to such evidence if the taking of evidence complies with the laws applicable to the trial court.

§ 291

1) Decisions by which offered evidence or, pursuant to § 278(2), new factual submissions and offers of evidence are rejected, the taking of evidence is ordered, or letters rogatory are issued for the purpose of taking evidence, furthermore, against orders rejecting questions from the parties during the taking of evidence, and finally against orders authorizing or excluding the use of evidence pursuant to § 279(2) or

If a motion to supplement the taking of evidence filed pursuant to § 286(2) is denied, a separate appeal is not permitted.

2) Orders permitting the stenographic recording of the taking of evidence, authorizing the party presenting the evidence to issue a letter of request pursuant to § 283 (1), or setting a deadline for the taking of evidence or for the submission of files regarding the taking of evidence occurring outside the scope of this Act, and orders directing the supplementation or repetition of a hearing of evidence, may not be challenged by any appeal whatsoever.

3. Title

### **Evidence by Documents**

Evidentiary Value of Documents

§ 292

1) Documents drawn up within the scope of this Act by a public authority within the limits of its official powers, or by a person vested with public authority within the scope of their assigned duties, in the prescribed form (public documents), constitute full proof of what is officially decreed or declared therein by the authority or attested to by the authority or the certifying officer. The same applies to documents which, although drawn up outside the scope of this Act, were drawn up within the limits of their official powers by such public bodies as exercise official powers within the country.

2) Evidence of the inaccuracy of the attested event or fact, or of the incorrect certification, is admissible.

§ 293

1) Other documents declared to be public documents by specific statutory provisions shall have the same evidentiary value.

2) Documents drawn up outside the scope of this Act which are considered public documents at the place of their execution shall, subject to the principle of reciprocity, also have the evidentiary force of public documents within the scope of this Act, provided they bear the required certifications.

3) Repealed

§ 294

Private documents, provided they are signed by the issuers or bear their handwritten signatures certified by a court or notary, constitute full proof that the statements contained therein originate from the issuers.

§ 295

1) The requirements, duration, and extent of the probative value of commercial ledgers, journals, and closing notes of commercial brokers shall be assessed in accordance with existing laws. Any necessary supplementation of the evidence may only be provided by means of evidence admissible under this Act.

2) Commercial ledgers kept outside the scope of this Act in accordance with the regulations in force at the place of bookkeeping shall not be accorded greater evidentiary value or for a longer duration than is granted in that place to commercial ledgers kept within the scope of this Act.

3) The court shall determine, pursuant to § 272, the extent to which a book kept in connection with the operation of a business, trade, or other commercial enterprise constitutes evidence with respect to its contents and the documents and transactions underlying the entries.

Section 296

Whether and to what extent crossings-out, erasures, and other deletions, insertions, or other external defects in a document diminish its probative value or entirely nullify it shall be determined by the court pursuant to § 272.

Substitution of Evidence

§ 297

A party must submit to the court any documents it relies upon to prove its claims, unless the court itself is required to arrange for the procurement and submission of the documents pursuant to the provisions of this Act.

Presentation of the document by the party presenting the evidence

§ 298

1) Documents must be submitted in such a way that the court and the opposing party may inspect the entire contents of the documents.

2) If only individual parts of a document relating to various legal relationships are relevant, the court may, after having reviewed the entire contents



of the document, order, upon request, that the opposing party be shown, apart from the introduction, conclusion, date, and signature, only those passages that are relevant to the legal relationship forming the subject matter of the dispute.

3) The opposing party must be requested to provide an explanation regarding the submitted document.

§ 299

If a party has submitted only a copy of the document, the court may, upon motion by the opposing party or on its own initiative, order the party to produce the original.

§ 300

The court shall decide at its discretion whether and to what extent, notwithstanding the failure to comply with this request, the submitted copy is to be given credence due to its certification, age, origin, or other reasons. In doing so, the reasons asserted for the failure to produce the original document and the other circumstances of the individual case must be carefully assessed.

§ 301

1) A motion to order the production of a document to be used as evidence, which is held by a public authority or in the custody of a notary and which the party is unable to obtain through direct intervention, may also be filed during the oral proceedings.

2) If this motion is granted, the court shall issue the appropriate orders to obtain the document.

§ 302

Once a document has been produced, the party presenting the evidence may waive this evidence only with the consent of the opposing party.

Production of the document by the opposing party

§ 303

1) If a party asserts that a document relevant to its case is in the possession of the opposing party, the court may, upon the party's motion, order the opposing party to produce the document by way of a ruling.

2) The requesting party must provide a copy of the document to be produced by the opposing party or, if unable to do so, must describe the content of the document

as accurately and completely as possible and state the facts to be proven by the document to be produced. Likewise, the circumstances making it probable that the opposing party is in possession of the document must be explained.

3) If the motion is filed outside of the oral hearing, the decision on the motion must be preceded by an oral or written hearing of the opposing party.

§ 304

1) The production of the document may not be refused:

1. if the opposing party has itself referred to the document for the purpose of presenting evidence in the proceedings;
2. if the opposing party is obligated under civil law to produce or present the document;
3. if the document, by its content, is common to both parties.

2) A document is considered joint, in particular, for the persons in whose interest it was drawn up or whose mutual legal relationships are expressed therein. Written negotiations conducted regarding a legal transaction between the parties or between one of them and the common intermediary of the transaction are also considered joint.

§ 305

The production of other documents may be refused:

1. if the content concerns matters of family life;
2. if the production of the document would cause the opposing party to violate a duty of honor;
3. if disclosure of the document would bring shame upon the party or third parties or entail the risk of criminal prosecution;
4. if the party would, by producing the document, violate a state-recognized duty of confidentiality from which it has not been validly released, or a trade or business secret;
5. if there are other equally important reasons justifying the refusal to produce the document.

§ 306

If any of the grounds listed in § 305 apply only to individual parts of a document's content, a certified extract of the document must be submitted.

§ 307

1) If the opposing party denies possession of the document and the court considers the facts to be proven by the document to be material and, at the same time, deems the obligation to produce the document to exist, the examination and sworn questioning of the opposing party may be ordered by court order for the purpose of determining whether the opposing party possesses the document or knows where it can be found, or whether the document has been removed or rendered unusable by the opposing party or at their instigation in order to deprive the party presenting the evidence of it.

2) What influence does it have on the assessment of the case if the opposing party fails to comply with the order to produce the document whose possession he has admitted, or if, with respect to a document whose possession he denies, refuses to be examined or to make an affidavit, or if his statement indicates that the document was intentionally destroyed or rendered unusable, and whether, in particular in these cases, the information provided by the party presenting the evidence regarding the content of the document is to be regarded as proven, is left to the judicial discretion guided by a careful assessment of all circumstances.

Production of the document by a third party

§ 308

1) If a document required for the presentation of evidence is in the possession of a third party who is obligated under the provisions of civil law to surrender and produce the document, or who is obligated to do so because the document, by virtue of its content, is common to both the party presenting the evidence and the third party (§ 304), the court may, upon the party's motion, order the third party to deposit the document with the court within a period to be determined by the court, at the party's expense, for use during the oral proceedings.

2) The trial court shall decide on such a request after hearing the opposing party and the alleged third-party possessor of the document; if the latter denies possession of the document, the request may be granted only if the requesting party establishes a prima facie case that the document is in the third party's possession. For the purpose of examining the parties, the trial court may order a special hearing. The Higher Regional Court shall decide definitively on an appeal against the decision of the Regional Court

and with no further appeal. The decision is enforceable once it becomes final and after the expiration of the prescribed submission period.

3) If the application is dismissed, the alleged possessor of the document shall, upon request, be reimbursed for the necessary costs incurred by the proceedings.

§ 309

1) If the alleged possessor of the document must be compelled by means of a lawsuit to surrender and produce the document because it cannot be credibly established that the document is in his possession, or because the decision regarding the existence of an obligation to surrender and produce the document requires the prior investigation and determination of disputed facts, the trial court may, if it considers the facts to be proven by the document to be material, order upon motion that the oral proceedings be stayed until the expiration of a deadline to be set concurrently for the party presenting the evidence to produce the document (§ 279).

2) However, the party opposing the party presenting the evidence may request the continuation of the proceedings even before the expiration of this period if the action brought by the party presenting the evidence against the third party has been settled earlier or if the party presenting the evidence delays the filing of the action or the conduct of the proceedings or enforcement.

3) The production of the document shall be at the expense of the party presenting the evidence. Proof of authenticity

§ 310

1) Documents that, in form and content, appear to be public documents are presumed to be authentic.

2) If the court considers the authenticity of a document to be in doubt, it may, upon application or on its own initiative, require the authority or person who is said to have issued the document to provide a statement regarding its authenticity. If the doubt as to the authenticity of the document cannot be dispelled in this manner, the burden of proving its authenticity rests with the party who wishes to use the document as evidence.

§ 311

Whether a document purporting to have been drawn up by a foreign authority or by a person abroad vested with public authority is to be regarded as authentic without further proof is a matter for the court to determine based on the circumstances of the case.

§ 312

1) The authenticity of a private document shall be deemed undisputed if the opponent of the party presenting the evidence has failed to make a statement regarding the authenticity of the document, unless the intention to dispute the authenticity is apparent from the opponent's other statements. If the document bears a handwritten signature, the opponent of the party presenting the evidence must also make a statement regarding the authenticity of the signature, subject to the same legal consequences.

2) The disputed authenticity of a private document or of a signature appearing thereon must be proven by the party who intends to use the document as evidence.

§ 313

A party who has maliciously contested the authenticity of a document shall be liable to a penalty for malice.

Handwriting Comparison

§ 314

1) The authenticity or inauthenticity of a document may also be established through a comparison of handwriting.

2) Only documents whose authenticity is undisputed or can be established without significant delay may be used as comparison samples.

3) The provisions of this Act regarding the production of documentary evidence shall also apply to the production of comparison documents.

4) If there is a lack of sufficient comparison documents, the party whose handwriting is to be used to establish authenticity may be instructed to write down a number of words to be specified by the court or a judge to whom the matter has been referred.

5) The written record shall be attached to the trial transcript. The effect on the establishment of proof if the party fails to comply with such a judicial order or writes in a clearly altered handwriting is left to the judge's discretion.

§ 315

1) The court may compare the handwriting itself or, if it has doubts, may seek the opinion of experts.

2) The court shall decide on the result of the handwriting comparison according to its free conviction.

§ 316

Documents whose authenticity is disputed or whose content is alleged to have been altered may be retained by the court until the final resolution of the proceedings, unless their transfer to another authority is necessary in the interest of public order.

Renewal of documents

§ 317

1) If a private document becomes illegible or damaged, its holder or any other interested party may request that the issuer of the document have it judicially renewed at the applicant's expense. To this end, all persons against whom the document is intended to serve as evidence, as the circumstances require, must be summoned.

2) In the event of refusal, the issuer may be compelled to carry out such renewal only through legal action.

Matters of Information

§ 318

1) The extent to which monuments, boundary markers, boundary stones, calibration and home posts, and similar signs, or notched or tensioned timbers, which the parties have demonstrably used in their dealings, constitute evidence shall be assessed by the court after careful consideration of all circumstances.

2) The provisions of §§ 303 to 309 shall also apply mutatis mutandis to the submission of evidence of prior use.

§ 319

1) No appeal is admissible against court orders, directives, and instructions issued pursuant to §§ 298, 299, 301, 309(1) and (2), 310, 314, and 315.

2) Decisions rendered pursuant to §§ 303, 307, and 316 may not be challenged by a separate appeal.

4. Title

**Evidence by Witnesses**

Inadmissibility and Refusal to Testify

§ 320

The following persons may not be examined as witnesses:

1. Persons who are unable to report their observations or who, at the time to which their testimony relates, were unable to perceive the fact to be proven;
2. Clergy, with respect to what has been confided to them in confession or otherwise under the seal of clerical confidentiality;
3. Government officials, if their testimony would violate the official secrecy to which they are bound, insofar as they have not been released from their duty of confidentiality by their superiors;
4. Mediators under the Civil Law Mediation Act with regard to what was entrusted to them in the course of mediation or otherwise came to their knowledge.

§ 321

- 1) A witness may refuse to testify:

1. regarding questions whose answers would bring shame upon the witness, his or her spouse, registered partner, de facto partner, or any person with whom the witness is related by blood or marriage in a direct line or in the collateral line up to the second degree, or with whom he or she is related by adoption, or would bring disgrace upon his or her foster parents and foster children, as well as his or her guardian or ward, or would entail the risk of criminal prosecution;
2. regarding questions whose answers would cause direct financial harm to the witness or to any of the persons referred to in paragraph 1;
3. regarding facts about which the witness would not be able to testify without violating a state-recognized duty of confidentiality incumbent upon him, insofar as he has not been validly released from such duty;
4. with regard to information entrusted to the witness by his client in his capacity as an attorney or notary;
5. regarding matters which the witness would not be able to answer without disclosing a trade or business secret.

- 2) In the cases specified in paragraphs 1 and 2, testimony may be refused with respect to the relatives designated therein even if the marital relationship establishing the kinship no longer exists.

§ 322

Regarding the execution and content of legal transactions in which the witness was involved as a notary, regarding facts pertaining to property matters arising from marital,

partnership, or family relationship, regarding births, marriages, the establishment of registered partnerships, or deaths of the relatives specified in § 321(1), and finally regarding acts that the witness has performed in connection with the disputed legal relationship as a legal predecessor or representative of one of the parties, testimony may not be refused on the grounds of a fear of financial disadvantage.

§ 323

1) A witness who wishes to refuse to testify in whole or in part must state the reasons for the refusal orally or in writing prior to the hearing scheduled for his or her examination or at that hearing itself and, if an objection is raised, must substantiate them.

2) In the former case, the parties must be notified of such a statement by the witness, if possible, before the hearing scheduled for the examination.

§ 324

1) The court shall rule on the legality of the refusal by means of an order. Prior to the decision, the court may hear the parties.

2) If the witness has stated his refusal in writing or on the court record, his statement must be taken into account in the decision even if he does not appear at the hearing scheduled for his examination.

§ 325

1) If testimony is refused without stating reasons, or if the witness persists in his refusal even after it has been found to be unjustified, or if the witness refuses to take the required oath, the witness may be compelled to testify by means of enforcement measures permissible for the purpose of compelling an act, ex officio, through fines or imprisonment. Imprisonment may not be extended beyond the conclusion of the proceedings in the court of first instance and may in no case exceed a period of six weeks.

2) The decision to proceed with enforcement against the witness, as well as the ordering of the individual coercive measures, rests with the adjudicating court; however, if the examination is to be conducted by a requested judge, it rests with that judge. The witness must be heard before the decision is made.

§ 326



- 1) It is for the trial court to determine whether and to what extent the progress of the proceedings on the merits is affected by an unjustified refusal to testify, to take the oath, or by coercive measures taken against the witness as a result. The requested judge must therefore inform the trial court of these incidents at any time without delay. The trial court may render its decision without a prior oral hearing.
- 2) In all cases of unjustified refusal, the witness is liable to both parties for the damage caused to them by the obstruction or delay of the presentation of evidence; in particular, the witness is also obligated to reimburse all costs incurred as a result of the refusal.
- 3) If the witness's refusal was willful, a penalty for willful misconduct must also be imposed on the witness. The decision regarding the obligation to reimburse costs rests with the trial court; the requested judge is also authorized to impose penalties for willful misconduct.

#### Assessment of Witness Testimony

##### § 327

The court must carefully evaluate, according to its free conviction, all circumstances that influence the impartiality of the witness and the credibility of his testimony.

#### Taking of evidence by the requested judge

##### § 328

- 1) The taking of witness testimony may be conducted by a requested judge:
  1. if the examination of the witness appears conducive to the discovery of the truth;
  2. if the taking of evidence before the trial court would be subject to considerable difficulties;
  3. if the examination of the witness before the trial court would entail disproportionately high costs, taking into account the compensation to be granted to the witness for lost time and the reimbursement of travel and accommodation expenses at the place of examination;
  4. if the witness is prevented from appearing before the trial court.
- 2) A witness who, due to illness, infirmity, or other reasons, is unable to leave his or her residence for the purpose of the examination, or

Any person who, pursuant to existing orders, is not required to appear in court to testify in civil matters shall be examined at his or her residence.

3) Members of the Princely House may not be summoned as witnesses in court. If their examination is necessary, the court shall require a written statement from them.

4) Notwithstanding the circumstances described in paragraph 1, item 3, witnesses shall be summoned to appear before the adjudicating court for examination upon request if a party agrees to bear the associated expenses—to the extent that they exceed the costs of taking evidence by the requested judge—without claiming reimbursement. The judge may order the requesting party to pay, within a specified period, an advance payment in an amount to be determined by the judge to cover these expenses (Section 332(2)).

#### Summons

##### § 329

1) The summons of a witness shall be issued by the court.

2) In addition to identifying the parties and briefly describing the subject matter of the examination, the summons must contain a request to appear at the hearing, the date and time of which are specified, to give testimony. The summons must include information regarding the statutory provisions on witness fees as well as the legal consequences of failure to appear.

##### § 330

Summonses to independent commanders of the gendarmerie and the security guard shall be served directly on the commanders. To serve the summons on other members of these bodies, their superiors shall be requested.

##### § 331

1) If the person to be summoned as a witness holds a public office or position and it is likely that, in order to safeguard security or other public interests, a substitute must be appointed during the absence of that person, their immediate superior must be notified of the summons at the same time.

2) This provision shall also apply when an employee or servant of a transport enterprise powered by mechanical engines, a mining

, smelter, or rolling mill worker, or a person employed in private forestry services is to be summoned.

§ 332

1) If it is likely that a witness will be entitled to compensation, the judge may order the party presenting the evidence to pay, within a specified period, an advance to cover the costs incurred by the examination of the witness.

2) If the advance payment is not made in a timely manner, the summons may not be issued, and the hearing may continue at the request of the opposing party without regard to the pending taking of evidence (Section 279).

Consequences of Failure to Appear

§ 333

1) If a witness who has been duly summoned fails to appear at the hearing scheduled for his examination without a sufficient excuse, the judge shall issue an order requiring him to reimburse all costs incurred as a result of his failure to appear; furthermore, the witness shall be summoned again, with a fine imposed at the same time. In the event of repeated failure to appear, the administrative fine shall be doubled within the limits prescribed by law, and the compulsory appearance of the witness shall be ordered.

2) If a sufficient excuse for the failure to appear is subsequently provided, the administrative fines imposed on the witness shall be rescinded; furthermore, the costs imposed on the witness for reimbursement may be waived in whole or in part.

3) If any of the persons referred to in § 330 fails to comply with the summons, the judge presiding over the taking of evidence shall apply to the witness's superior for an order imposing the penalty and for the witness's appearance.

4) The disobedient witness shall also be liable for all damages caused to the parties by the obstruction or delay of the taking of evidence attributable to him.

§ 333a

A witness shall be deemed to have a lawful excuse if he or she is temporarily prevented from appearing due to official duties in the service of the state or as a municipal official.

§ 334

A request for the determination of the costs to be reimbursed by the witness in the cases provided for in §§ 326 and 333 must be filed, together with a statement of costs, within eight days after the decision obligating the witness to reimburse costs becomes final, failing which the request shall be barred.

§ 335

1) If an attempt to examine a witness has been unsuccessful and there is reason to believe that repeated attempts would lead to further delay of the proceedings, the trial court shall, upon application, set a deadline for taking this evidence; upon the fruitless expiration of this deadline, the proceedings shall be continued at the request of one of the parties, regardless of the evidence offered by this witness. The court hearing the case is also authorized to set the time limit if the examination of the witness is to be conducted by a requested judge. Before deciding on the motion, the opposing party must be heard.

2) With regard to the subsequent examination of the witness, the provision of § 279(2) shall apply.

Examination

§ 336

1) Witnesses who have been convicted of perjury or false testimony, or who have not yet reached the age of fourteen at the time of their examination, and finally persons who, due to lack of mental maturity or mental disability, do not have a sufficient understanding of the nature and significance of the oath, may not be sworn in.

2) Likewise, the court may refrain from administering the oath to a witness if both parties waive the requirement to take the oath.

3) Unlawful refusal to take the oath shall entail the same consequences as unjustified refusal to testify.

4) The judge shall, in an appropriate manner, remind the witness required to take an oath of the sanctity of the oath, of its importance to the legal system, and of the penalties for perjury, and shall instruct the witness that the oath must be taken without reservation or ambiguity.

5) Witnesses must swear a solemn oath before Almighty and Omniscient God that they will state the pure and full truth and nothing but the truth regarding everything they are asked by the court, so help them God.

6) Christians must raise their thumb and the first two fingers of their right hand while taking the oath and take the oath before a crucifix and two burning candles. Members of the Helvetic Confession take the oath without a crucifix or candles.

7) When taking the oath, Jews must cover their heads and place their right hand on the Torah, Exodus 20:7.

§ 337

1) The witness must be sworn in before being examined. However, in order to ascertain the witness's personal circumstances, the admissibility of his examination or swearing-in, and whether he is capable of making a statement relevant to the determination of the facts, the witness may be questioned prior to being sworn in.

2) Based on this questioning, the court may, after hearing the parties, decide that the witness should not be examined, or it may reserve the right to decide on the swearing-in of the witness only after the witness has been examined. The requested judge must in any case examine the witness; however, he may postpone the decision regarding the witness's swearing-in until after the examination has taken place or reserve that decision for the trial court.

3) If a witness does not decline to answer questions regarding which he or she would be entitled to refuse to testify under § 321(1) and (2), the adjudicating court or the requested judge conducting the examination may likewise reserve the right to decide on the administration of the oath only after the witness has been heard.

§ 338

1) In all cases where a decision on the administration of the oath is to be made only after the witness has been heard, the witness must be reminded prior to the hearing of the duty to tell the truth, of the sanctity and significance of the oath to be administered, and of the criminal consequences of making a false statement.

2) After the testimony has been given, the trial court or the requested judge conducting the examination may decide that the witness need not be sworn in, taking into account the irrelevance of the testimony or the low degree of credibility it possesses.

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3) If the examination was conducted by a requested judge, the trial court may, upon receipt of an unsworn witness statement, order that the statement be sworn to subsequently.

§ 339

1) Before their examination, witnesses must be informed of the questions regarding which a witness may refuse to testify (§ 321).

2) Witnesses shall be examined individually in the absence of witnesses to be examined later. The judge shall determine the order in which the examination is to take place.

3) No witness who has been summoned may leave the proceedings before the examination of all summoned witnesses has been completed, unless authorized by the court.

4) Witnesses whose statements differ from one another may be confronted with one another.

§ 340

1) The examination begins with the witness being asked about his name, age, occupation, and place of residence. If the conditions of § 76(2) are met, questioning regarding the place of residence shall be omitted. If necessary, the witness shall also be asked questions regarding circumstances affecting his credibility in the present case, in particular regarding his relationships with the parties.

2) During the examination, the judge shall ask the witness appropriate questions regarding the facts to be proven by his testimony, as well as to ascertain the basis on which the witness's knowledge rests.

§ 341

1) The provisions of § 289 apply to the parties' participation in the examination of witnesses.

2) With respect to persons who, pursuant to existing orders, are not required to appear in court to give testimony in civil matters, the parties' right to question the witness shall be exercised by submitting written questions to the court in a timely manner.

§ 342

If the adjudicating court finds that a question posed during questioning before a requested judge was inadmissible, it may rule that the

shall not be taken into account in the further course of the proceedings.

§ 343

- 1) The witness's testimony shall be recorded in the minutes of the hearing according to its essential content; however, if it appears necessary, it shall be recorded verbatim. If the witness was examined during a hearing, this record shall be made in the minutes of the hearing.
- 2) The record shall be presented to the witness and the parties present at the examination for inspection or read aloud upon request.
- 3) The minutes shall note whether the witness was sworn in before or after the examination, whether the swearing-in was omitted or reserved for the decision of the adjudicating court, whether the parties and which of them were present during the examination, and finally whether and what objections were raised by the parties or by the witness against the minutes.

§ 344

- 1) The trial court may, upon motion or on its own initiative, order the re-examination of witnesses, in particular if it considers the refusal to testify or to answer specific questions—which the requested court deemed justified—to be impermissible; if witnesses were not examined properly or completely; if the testimony is unclear, vagueness, or ambiguity, or if the witnesses themselves deem it necessary to supplement or correct their testimony.
- 2) In the case of repeated or subsequent examination, it may be ordered that, instead of being sworn again, the witness must affirm the accuracy of his testimony by invoking the oath previously taken.

§ 345

A party may waive a witness whom it has proposed. The opposing party may, however, demand that the witness, if he has already appeared for examination, be examined notwithstanding such waiver, or that the examination, if it has already begun, be continued.

Witness Fees

§ 346

1) Every witness is entitled to reimbursement of necessary expenses incurred by travel to the place of examination, by staying there, and by the return journey.

2) A witness may claim compensation for lost time only if such loss of time causes a significant interruption to his or her daily earnings.

3) The witness must assert the claim for compensation immediately after his or her examination, failing which the claim is forfeited.

4) At the witness's request, the judge may order that the witness be paid an advance sufficient to cover the cost of travel to the court.

#### § 347

The court shall decide on the compensation to be paid to the witness. The decision may not be challenged by an appeal.

#### Form of Submission

#### § 348

A witness's complaints, motions, and appeals may be submitted in writing outside of the court session or stated orally for the court record.

#### Appeals

#### § 349

1) No separate appeal may be filed against a decision regarding the lawfulness of a refusal to testify, to take an oath, or to answer specific questions; against a ruling that a witness shall not be examined pursuant to § 337; or against rulings and orders issued pursuant to §§ 339 through 342.

2) The decision of the trial court regarding the continuation of the proceedings in the event of a witness's refusal to testify or take an oath, as well as regarding the continuation of the hearing in the cases provided for in §§ 332 and 335; the orders by which the summons of a witness or his or her appearance is ordered, or by which a deadline is set for the payment of an advance on the compensation to be granted to the witness (§ 332), the orders requiring the payment of an advance to the witness (§ 346), and the orders regarding the swearing-in of a witness may not be challenged by an appeal.



3) If an appeal is admissible under the preceding paragraphs against a decision rendered pursuant to this Title (§§ 320 et seq.), the Higher Regional Court shall rule definitively on appeals against orders of the Regional Court, with no further appeal available.

#### Expert Witnesses

##### § 350

The provisions governing witness testimony also apply insofar as expert witnesses must be examined to prove past facts or circumstances whose perception required special expertise.

#### 5. Title

### **Evidence by Experts**

#### Appointment of Experts

##### § 351

1) If the taking of evidence by experts becomes necessary, the trial court shall appoint one or more experts immediately after consulting the parties regarding their selection. In doing so, unless special circumstances require otherwise, particular consideration shall be given to publicly appointed experts qualified to provide the necessary type of expert opinion.

2) The court may appoint other experts in place of the expert or experts initially appointed.

##### § 352

1) If an item to be inspected by experts cannot be brought before the trial court, or if the expert evidence must be taken abroad for other reasons, it shall be taken by a requested judge.

2) In such cases, the determination of the number of experts and the selection of the experts may be left to the judge responsible for taking the evidence; furthermore, if it appears appropriate to avoid delays or disproportionate expense, the selection may be made without prior hearing of the parties.

##### § 353

1) The appointment as an expert must be accepted by a person who is publicly appointed to render expert opinions of the required type or who

science, art, or trade whose knowledge is a prerequisite for the required expert opinion, or who is publicly employed or authorized to practice such science, art, or trade.

2) For the same reasons that entitle a witness to refuse to testify, a request may be made to be excused from appointment as an expert.

3) Public officials must also be excused if their superiors prohibit their service as experts for official reasons or if they are exempted from the duty to serve as experts by special orders.

#### Consequences of Failure to Appear and Refusal

##### § 354

1) If an expert appointed to submit an expert opinion refuses to do so without sufficient cause, fails to submit the opinion within the prescribed time limit without a sufficient excuse, or fails to appear at the hearing scheduled for the taking of evidence despite having been duly summoned and without providing a, he shall be ordered by decree to reimburse the costs incurred by his refusal or failure to appear; furthermore, the expert shall be liable to a disciplinary fine or, in the case of wilful refusal to submit the expert opinion, to a penalty for wilful misconduct. With regard to these rulings, the provisions of §§ 326, 333, and 334 shall apply *mutatis mutandis*.

2) Another expert may be appointed in place of the non-compliant expert.

3) In addition to reimbursement of costs, the non-compliant expert shall be liable for all further damages incurred by the parties as a result of the obstruction or delay of the taking of evidence attributable to him.

#### Recusal

##### § 355

1) Experts may be challenged on the same grounds that justify the challenge of a judge; however, the challenge may not be based on the fact that the expert was previously heard as a witness in the same case. The challenge may also be based on the existence of sufficient grounds to cast doubt on the expert's impartiality.

- 2) The challenge must be filed with the trial court; however, if the selection of the expert has been left to the presiding judge, it must be filed with that judge.
- 3) If the taking of evidence to be conducted by a requested judge has already been completed, the challenge may be raised only before the trial court.

§ 356

- 1) The grounds for the objection must be stated at the same time as the objection is raised. The decision on the objection rests with the trial court or the requested judge, depending on whether the objection was raised before the former or the latter pursuant to § 355.
  - 2) If the challenge is not raised during a court session, the decision shall be made without a prior oral hearing. Upon the court's request, the challenging party must substantiate the grounds for the challenge before the decision is rendered. If the challenge is upheld, the appointment of another expert shall be arranged without delay.
- Taking of Evidence

§ 357

- 1) The adjudicating court may also order a written expert opinion. In doing so, the court must set a reasonable deadline for the expert to submit the written expert opinion. If the expert is unable to meet the deadline set by the court, he must notify the court within 14 days of receiving the assignment and indicate whether he is able to submit the report at all and, if so, within what timeframe. The court may extend the deadline for the expert.
- 2) If a written expert opinion is ordered, the experts are obligated, upon request, to provide oral clarification regarding the written expert opinion or to explain it during the oral hearing.

§ 358

- 1) Before the hearing of evidence begins, each expert witness must take an oath that he or she will present the findings and expert opinion to the best of his or her knowledge and belief. The expert witness may be exempted from taking the oath if both parties waive the requirement.

2) If the expert is generally sworn to provide expert opinions of the required type, a reference to and invocation of the oath already taken shall suffice.

3) When administering the oath, the provisions of § 336 shall apply *mutatis mutandis*.

§ 359

1) The expert shall be provided with those objects, documents, and aids located at the court that are necessary for answering the questions submitted to him.

2) If the expert requires the cooperation of the parties or third parties and such cooperation is not provided immediately upon his request, the expert shall notify the court of this, providing a detailed list of the necessary cooperative actions and the obstacles preventing them. The court shall then order the parties to take the necessary steps and set a reasonable deadline for them to do so; this order is not subject to appeal. This period shall not be included in the time limit set for the expert to prepare the report. If the parties do not comply with the court's order within the deadline, the expert shall render his report without taking the missing information into account. If the missing information is provided before the expert opinion is prepared, the expert must take it into account immediately; otherwise, he must submit a supplementary expert opinion. The costs of this expert opinion shall be borne jointly and severally by the defaulting parties, regardless of the outcome of the proceedings.

§ 360

1) If a thorough and exhaustive expert assessment cannot be conducted immediately, the judge presiding over the taking of evidence shall set a deadline or a special hearing date for the submission of the expert opinion.

2) The parties must be notified upon receipt of the written expert opinion (Section 286).

§ 361

If several experts have been appointed to render an expert opinion, they may render it jointly if their views are in agreement. If their views differ, each expert must set forth his or her own view and the reasons supporting it separately.

§ 362

1) The expert opinion must always be substantiated. Before presenting his opinion, the expert must, in cases where the submission of his expert opinion was preceded by an inspection of persons, objects, locations, and the like, and where knowledge of their nature is relevant to the understanding and assessment of the expert opinion, provide a description of the inspected items (findings).

2) If the expert opinion submitted appears insufficient or if the experts have expressed differing views, the court may, upon motion or on its own initiative, order that a new expert opinion be prepared by the same or by other experts, or with the assistance of other experts. Such an order is permissible in particular if an expert was successfully recused after submitting the expert opinion. The Regional Court is also authorized to issue such orders as the requested court.

§ 363

The party that has offered evidence through experts may waive such evidence. The opposing party may, however, demand that the ordered taking of evidence be carried out regardless, if either the taking of evidence has already begun or at least the experts have already appeared in court for the purpose of taking evidence.

§ 364

The court's authority to order an expert examination ex officio is not affected by a waiver by the parties. Fees

§ 365

1) The expert is entitled to reimbursement of the costs and expenses incurred, to compensation for lost time, and to remuneration for his services; he may request a reasonable advance payment.

2) The judge before whom the taking of evidence takes place may order the party presenting the evidence to pay an advance to cover the expenses associated with the taking of evidence by experts (Section 332(2)).

2a) If the expert's work remains incomplete due to his own fault, he has no claim to a fee; otherwise, he is entitled only to a fee corresponding to the portion of his work that has been completed. If the expert, through his own fault,

failed to perform his work within the time limit set by the court or drafted his expert opinion in such a deficient manner that it requires discussion solely for that reason, the fee for the expert's services shall be reduced by one-quarter.

3) The judge before whom the taking of evidence takes place shall determine the fees of the experts. An appeal may be filed against the decision regarding the amount of these fees.

#### Appeals

##### § 366

1) No separate appeal may be filed against a ruling that dismisses a challenge to an expert, appoints an expert, or orders a written expert opinion.

2) The decision regarding the number of experts to be appointed, the decision dismissing an expert due to recusal, the decisions regarding the swearing-in of an expert, and finally the decisions setting a date or a deadline for the submission of the expert opinion pursuant to § 360 cannot be challenged by an appeal.

3) To the extent that an appeal is admissible under the preceding paragraphs against a decision issued pursuant to this Title (§§ 351 ff.), the Higher Regional Court shall decide definitively on appeals against decisions of the Regional Court, with no further appeal available.

##### § 367

Unless otherwise provided in the foregoing, the provisions governing evidence by witnesses shall apply *mutatis mutandis* to evidence by experts, and in particular to their examination and the recording of the findings and expert opinions presented at a hearing.

#### 6. Title

#### **Evidence by Inspection**

##### § 368

1) To clarify the matter, the court may, upon motion or on its own initiative, order an on-site inspection, if necessary with the assistance of one or more experts.

2) If the object to be inspected cannot be brought before the adjudicating court or if the inspection must be conducted abroad for other reasons,

must be conducted abroad, it shall be carried out by a requested judge. In this case, the decision regarding the involvement of experts and their appointment may be left to the judge entrusted with conducting the on-site inspection. No appeal is permitted against these decisions.

3) If the on-site inspection is likely to incur costs, the judge may order the party presenting the evidence to pay an appropriate amount in advance to cover such costs (Section 332(2)). Appeals against such a decision by the Regional Court shall be decided definitively by the Higher Regional Court, with no further appeal available.

§ 369

If an item is to be inspected which, according to the party presenting the evidence, is in the possession of the opposing party or in the custody of a public authority or a notary, the provisions of §§ 301 and 303 through 307 shall apply, provided that the assessment of the impact that the opposing party's refusal to produce and surrender the item, the intentional or at least by the opposing party caused removal or damage to the item, or the refusal to make a statement regarding it, is left to the judicial discretion guided by a careful assessment of all circumstances.

§ 370

1) No separate appeal may be filed against orders and rulings issued during the on-site inspection. This also applies to the order rejecting a motion to call in experts.

2) The results of the on-site inspection shall be recorded in the trial minutes; however, if the inspection is conducted outside the trial session, they shall be recorded in a separate report, generally immediately following the inspection.

3) The record shall note whether the parties were present during the inspection and, if so, which ones, as well as whether and what objections they raised during the inspection or against the record.

7. Title

**Evidence through Examination of the Parties**

§ 371

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1) Evidence regarding disputed facts relevant to the decision may also be presented through the examination of the parties; such examination may be ordered upon motion or ex officio.

2) If a party is represented by an attorney, the summons for examination may be served on the representative.

§ 372

Parties in respect of whose examination or swearing under oath one of the grounds for exclusion under § 320 exists may not be heard for the purpose of taking evidence.

§ 373

1) If the legal dispute is conducted by the legal representative of a person under guardianship, it is left to the discretion of the court to order the examination of the legal representative or, if this appears permissible under § 372, of the person under guardianship or both.

2) If insolvency proceedings have been opened with respect to a party's assets and the legal dispute concerns a claim falling within the insolvency estate, the debtor or the insolvency administrator, or both, may be examined as a party.

3) In legal disputes involving a general partnership, all partners; in legal disputes involving a limited partnership, all personally liable partners; and, if the legal dispute is brought by another corporation, a cooperative, a municipality, an association, or any other legal entity not classified as a natural person, its legal representatives shall be treated as parties for the purposes of examination.

4) If, pursuant to the foregoing or because intervenors appear on the side of a party, several persons may be examined, the court shall determine whether all or which of these persons are to be heard.

§ 374

The court shall, after careful consideration of all circumstances, determine whether the presentation of evidence through the examination of the parties is to be entirely omitted if it has reached the conclusion that the party on whom the burden of proof regarding the disputed fact rests has no knowledge of said fact, or if the examination of that party is inadmissible under the provisions of § 372.

§ 375

1) The taking of evidence through the examination of a party is ordered by a ruling. No separate appeal may be filed against this ruling.



Evidence is taken by the court asking the party to be examined appropriate questions regarding the facts to be established through the examination. The provisions of §§ 340 to 343 shall apply mutatis mutandis to this examination of the party.

2) This questioning must take place before the trial court. The taking of evidence by a requested judge is permissible only if insurmountable obstacles prevent the party from appearing in person, or if such appearance would entail disproportionate costs.

§ 376

1) The parties shall first be examined without taking an oath; the examination without an oath may be followed by an examination under oath.

2) In the case of an unsworn examination, if both parties are present, both shall generally be questioned regarding the facts to be proven. Prior to the unsworn examination, the court shall inform the parties that they may, under certain circumstances, be required to take an oath regarding their statements.

3) When administering the oath, the provisions of § 336 shall apply mutatis mutandis.

§ 377

1) If the results of the unsworn examination are insufficient to convince the court of the truth or falsity of the facts to be proven, the court may order an examination under oath. Parties to whom the grounds for exclusion under § 336(1) apply may not be sworn in.

2) In this context, the court may single out specific assertions from the party's unsworn statement, which the party must then repeat under oath; similarly, when ordering an examination under oath, the court may specify the form in which the sworn statement regarding specific circumstances is to be made. No separate appeal is permitted against these orders.

3) If a statement made under oath by a party is false, it is subject to the same criminal penalties as a false oath taken in court. Before being heard under oath, the party must be reminded of the duty to tell the truth, the solemnity and significance of the oath, and the criminal consequences of a false oath. The fact that the party was reminded of the oath must be recorded in the minutes.

§ 378

§ 379

The court may adjourn the hearing for the purpose of taking an oath from a party if it appears appropriate to grant the party to be examined a period of reflection.

§ 380

1) The provisions governing evidence by witnesses shall also apply to the examination of the parties for the purpose of presenting evidence, unless otherwise provided in this section. However, the ground specified in § 321(2) does not justify a refusal to testify on the part of a party to be examined.

2) The failure of one of the parties to appear at the hearing scheduled pursuant to § 375, or the refusal to testify by one of the parties who has appeared, shall not prevent the examination of the opposing party who is present.

3) The use of coercive measures to compel a party who is to be questioned for the purpose of taking evidence, whether under oath or without oath, to appear in court or to testify is impermissible.

§ 381

The court must assess, after careful consideration of all circumstances, what effect it has on the establishment of the evidence if a party refuses to testify or to answer individual questions without sufficient cause, if a party summoned for examination under oath or without oath fails to appear, or if a party's sworn testimony deviates significantly from the statements made during their previous examination without oath., the court must assess this by carefully weighing all circumstances.

§ 382

1) Parties who are examined, either under oath or without oath, for the purpose of presenting evidence may not assert a claim for compensation within the meaning of § 346, without prejudice to their right to reimbursement of litigation costs.

2) The provisions of §§ 372 through 381 apply mutatis mutandis to the examination and sworn hearing of a party ordered for the purpose of presenting a documentary evidence, a matter of information, or an object of inspection.

§ 383

If a party has made a statement in which it offers to confirm the facts to be proven in the proceedings under oath, but the examination under oath of that party cannot take place due to its prior death, the court shall assess the statement in accordance with § 272.

#### 8. Title

##### **Preservation of Evidence**

###### § 384

1) A request for an on-site inspection or the examination of witnesses and experts may be made to preserve evidence at any stage of the legal dispute, and even before the dispute begins, if there is reason to fear that the evidence might otherwise be lost or its use impeded.

2) Such evidentiary proceedings may also be requested, even without the aforementioned conditions being met, if defects in an item or a work are to be ascertained for which the opposing party is liable. If the purchaser of an item has notified the seller of a defect or refused to accept the item due to its defectiveness, the seller may also request such evidentiary proceedings. Similarly, the contractor of a work is entitled to make such a request if the client has notified him of a defect or refused to accept the work due to its defectiveness.

###### § 385

1) The party filing the motion must specify the facts on which the taking of evidence is to be based, as well as the evidence to be presented, including the names of the witnesses to be examined and any proposed experts. The party filing the motion must set forth the reasons justifying the concern that the evidence might be lost or its use impeded.

2) The party making the request must also identify the opposing party. This requirement may be waived only if the circumstances presented by the party indicate that, given the circumstances of the case, it is unable to identify the opposing party.

###### § 386

1) The motion shall be decided by order without a prior oral hearing. Before the decision is rendered, however, unless there is imminent danger, the opposing party must be heard if the opposing party is known and has not

has not already been established. The party filing the motion may be required, prior to the decision, to substantiate the circumstances that make the preservation of evidence necessary.

2) In the order granting the motion, the court shall specify the facts regarding which the taking of evidence is to be conducted, as well as the means of proof, naming the witnesses to be examined and appointing the experts. At the same time, the orders necessary for the execution of the taking of evidence shall be issued. For an unknown opposing party, the court may appoint a guardian ad litem to safeguard their rights during the taking of evidence.

3) A decision granting the motion may not be challenged by an appeal.

§ 387

1) The opposing party shall be summoned to the hearing scheduled for the taking of evidence, with service of the order and, if the opposing party has not previously been heard on the motion, also a copy of the pleading submitted by the moving party or a transcript of the minutes taken regarding the motion.

2) In urgent cases, however, the taking of evidence may commence even before the order is served on the known opposing party. Permission for this may be granted upon application at the same time as the decision on the motion to admit the evidence. No appeal is admissible against the granting or denial of this permission.

§ 388

1) The taking of evidence shall be conducted in accordance with the provisions of Titles II, IV, V, and VI of this section.

2) The record of the taking of evidence shall be kept by the court that ordered the taking of evidence.

3) The costs of the taking of evidence shall be borne by the party making the application, without prejudice to any claim for reimbursement to which that party is entitled. The opposing party shall be reimbursed for the necessary costs of its participation in the taking of evidence, without prejudice to the decision on the merits of the case.

§ 389

1) During the course of the proceedings, either party may rely on evidence taken to preserve a piece of evidence.

2) The court hearing the case must assess, pursuant to § 272, what weight should be given to the objection that the taking of evidence did not take place in accordance with the provisions applicable to the taking of evidence during the course of the proceedings, or that the opposing party was not notified of the taking of evidence or was not notified in a timely manner.

3) During the course of the legal proceedings, a supplement or repetition of the taking of evidence may be ordered.

## 2. Section

### **Judgments and Orders**

#### 1. Title:

### **Judgments**

#### **Final**

#### Judgment

#### § 390

1) If, based on the results of the hearing and the taking of evidence, the legal dispute is ready for a final decision, the court shall render this decision by judgment (final judgment).

2) The same applies if, of several cases joined for the purpose of simultaneous hearing, only one is ready for a decision.

#### Interim Judgment

#### § 391

1) If individual claims among several asserted in the same action, or if a part of a claim, have been settled by the defendant's express acknowledgment or are ready for a final decision, the court may, with respect to that claim or part thereof, proceed immediately to the conclusion of the hearing and to the rendering of a judgment (partial judgment).

2) A partial judgment may also be rendered if, in the case of a counterclaim, only the claim or the counterclaim is ready for final decision.

3) If the defendant has asserted a counterclaim by way of a defense that is not legally related to the claim asserted in the complaint, a partial judgment may be rendered on the claim in the complaint if the legal dispute is ready for a final decision only with respect to that claim. The proceedings regarding the counterclaim shall continue without interruption.

#### § 392

1) Each partial judgment shall be regarded as an independent judgment for the purposes of appeals and enforcement.

2) The provisions of § 52(2) also apply with respect to incidental costs of the claim or partial claim decided by a partial judgment.

#### Interim Judgment

##### § 393

1) If, in a legal dispute, a claim is contested as to both its basis and amount, and the matter is initially ready for decision only with respect to the basis, the court may first decide on the basis of the claim by means of a judgment (interim judgment), even if it is still disputed whether the claim is valid at all for any amount.

2) Furthermore, in the cases provided for in §§ 244 and 258, an interim judgment preceding the decision on the main issue may rule on the existence or non-existence of a legal relationship or right as soon as the matter concerning the motion for a declaratory judgment is ready for decision.

3) Judgments rendered pursuant to the first two paragraphs shall be deemed final judgments for the purposes of appeals. The filing of an appeal or a petition for review against an interim judgment rendered pursuant to paragraph 1 shall stay further proceedings on the action until the interim judgment becomes final. In all other cases, proceedings on the merits shall continue regardless of any appeal or petition for review against the interim judgment. However, if the court finds that a legal relationship or right essential to the decision on the main action is unfounded, it may order that further proceedings on the action be suspended until the interim judgment becomes final. This order may not be challenged by an appeal.

4) With regard to costs, the provision of § 52(4) shall apply *mutatis mutandis*.

#### Judgment Based on Waiver

##### § 394

1) If the plaintiff waives the asserted claim at the first hearing or during the oral proceedings, the action shall be dismissed by judgment upon the defendant's motion on the basis of the waiver.

2) If the waiver relates only to one of several claims asserted in the action or to a part of a claim, a partial judgment may be rendered upon motion based on the waiver.

#### Judgment Based on Admission

##### § 395

If the defendant admits the claim brought against him in whole or in part at the first hearing or during the oral proceedings, a judgment shall be rendered in accordance with the admission upon the plaintiff's motion.

#### Judgment in Cases of Default

##### § 396

If the plaintiff or the defendant fails to appear at the first hearing, the factual submissions of the appearing party regarding the subject matter of the dispute shall be deemed true, unless they are refuted by the evidence on the record, and, upon the appearing party's motion, a default judgment shall be rendered on the claim.

##### § 397

A default judgment shall be rendered against the party who fails to appear at the first hearing scheduled on the basis of the complaint, upon application pursuant to § 396, even if the first hearing was already scheduled for the hearing of the case.

##### § 398

No consideration shall be given to any written submissions that the absent party may have submitted.

##### § 399

1) If a hearing has been scheduled for oral argument and one of the parties fails to appear at that hearing or at a subsequent hearing scheduled for oral argument, the party that did appear may request that a judgment be rendered at that hearing. When rendering the judgment, new factual submissions by the appearing party that contradict the content of the pleadings submitted by that party or its earlier statements and factual information shall be taken into account only to the extent that they were communicated to the opposing party prior to the hearing through a preparatory pleading. Conversely, when rendering the judgment, not only the results of prior evidentiary hearings but also the earlier statements and factual information of the now

to take into account the defaulting party's submissions, insofar as these are recorded in the preparatory briefs submitted, in the trial transcript and its attachments, or in the minutes of the hearing before the presiding judge, or form the subject matter of a taking of evidence ordered by the court at a previous hearing.

2) If the motion to render judgment in the main action due to a party's default is filed at a time when a separate proceeding is pending regarding the objections raised at the first hearing concerning the inadmissibility of legal action, the court's lack of jurisdiction, *lis pendens*, or *res judicata*, judgment may be rendered only after these objections have been dismissed.

§ 400

The provisions of §§ 396 through 399 shall also apply if one of the parties is removed from the courtroom due to inappropriate conduct.

§ 401

1) The fact that a party fails to appear at the hearing does not affect the application of the provisions establishing what the court must consider *ex officio*, nor does it relieve the opposing party of the obligation to provide the evidence necessary regarding the circumstances to be considered *ex officio*.

2) Likewise, a party's failure to appear does not preclude the taking of evidence before the trial court or the presentation of the results of a hearing of evidence not conducted before the trial court.

§ 402

1) The motion to render a judgment due to a party's failure to appear (§§ 396, 397, 399) must be denied:

1. if there is no evidence that the party who failed to appear was duly summoned to the hearing. However, upon motion by the party who appeared, the judge may reserve the right to render judgment until a date to be determined by him and close the proceedings. If it appears from the proof of service received within the prescribed period or from the findings regarding service that the summons was served on the defaulting party in sufficient time for it to appear at the hearing, the default judgment shall be rendered within eight days of receipt of the proof of service or upon completion of the findings regarding service;

2. if it is evident to the court that the party who failed to appear was prevented from doing so by natural disasters or other unavoidable contingencies;



3. if the appearing party is unable to produce the evidence required by the court at the hearing due to a circumstance that the court must take into account ex officio.

2) A motion to render a default judgment against co-defendants shall be dismissed if a joint liability exists as assessed under § 14, even if proof of service is lacking for only one of the co-defendants or if one of the impediments listed in paragraph 2 prevails.

3) If the motion to render a judgment due to a party's failure to appear is not granted, the hearing shall be extended ex officio for a reasonable period of time, and the party in default shall also be summoned to the new hearing.

§ 403

If the motion to render a judgment due to a party's failure to appear is dismissed by order, but this order is subsequently overturned on appeal, the judgment may be rendered without scheduling a new hearing.

Content of the Judgment

§ 404

1) The judgment rendered on the merits must adjudicate all claims relating to the main issue, unless individual claims have already been decided or are reserved for separate adjudication.

2) Multiple legal disputes between the same parties that have been joined for joint hearing pursuant to § 187 shall be decided by the same judgment, unless the joinder of the proceedings has already been dissolved prior to the rendering of the judgment or a decision has been rendered on one of the joined cases by a separate judgment pursuant to § 390.

§ 405

The court is not authorized to award a party anything that has not been requested. This applies in particular to fruits, interest, and other ancillary claims.

§ 406

An order to perform a duty is permissible only if the obligation has already become due at the time the judgment is rendered. In the case of claims for alimony, an order may also be issued for payments that do not become due until after the judgment is rendered.

§ 407

1) If a defendant is sentenced to pay periodic monetary compensation for homicide, bodily injury, or unlawful deprivation of liberty, the court may, upon request, order the provision of security in the judgment if it appears necessary to ensure future payments. Even if no such request was made during the proceedings, the entitled party may subsequently seek a security order by filing a lawsuit if the financial circumstances of the obligated party have significantly deteriorated in the meantime.

2) Under the same conditions, the entitled party may seek an increase in the security specified in the judgment by filing a lawsuit.

§ 408

1) If the court finds that the losing party has manifestly conducted the proceedings in bad faith, it may, upon the winning party's motion, order the losing party to pay an appropriate amount of compensation.

2) The hearing on this motion shall not delay the decision on the merits of the case.

3) In determining the amount of compensation, the provision of § 273 shall be taken into account.

§ 409

1) If a judgment imposes an obligation to perform, the deadline for such performance must also be specified. Unless otherwise provided in this Act, this deadline shall be four weeks.

2) However, if the obligation to perform a specific act or transaction is imposed, the court must set a reasonable deadline for fulfilling the obligation, taking into account the personal circumstances of the obligated party. In doing so, particular care must be taken to ensure that the act to be performed does not prevent the obligated party from carrying out sowing, mowing, or grape harvesting in a timely manner.

3) If no appeal is filed against the judgment, the time limit for fulfilling the obligation imposed by the judgment shall be calculated from the day following service of the judgment on the obligated party; in small claims proceedings, however, provided that the judgment becomes effective for the parties upon its pronouncement, the time limit shall be calculated from the day following the pronouncement of the judgment.

4) If an appeal is filed against the judgment, the time limit begins on the day after the judgment becomes final.

5) If the period for fulfilling the obligation imposed by the judgment is shorter than the appeal period, the period for fulfillment shall expire at the same time as the appeal period.

§ 410

If a judgment awards an object that does not consist of a sum of money, it must simultaneously be stated that the defendant may be released from the obligation to deliver this object by paying the sum of money which the plaintiff has agreed to accept in lieu of this object in the complaint or during the proceedings.

Res judicata

§ 411

1) Judgments that can no longer be challenged by an appeal have partial res judicata effect to the extent that the judgment decides on a claim asserted by an action or counterclaim, or on a legal relationship or right that became disputed in the course of the proceedings, with respect to which a determination of its existence or non-existence was sought pursuant to Sections 244 or 258. The decision regarding the existence or non-existence of a counterclaim asserted by the defendant for compensation has the force of res judicata only up to the amount to be set off.

2) The res judicata effect of the judgment shall be taken into account ex officio. Rendering of the Judgment, Pronouncement of the Judgment, and Service of the Judgment

§ 412

1) The judgment may be rendered only by those judges who participated in the oral proceedings underlying the judgment.

2) If a change in the composition of the bench occurs before the judgment is rendered, the oral hearing must be conducted anew, using the complaint, the evidence on file, and the minutes of the hearing.

§ 413

The judgment shall be rendered and pronounced in the name of the Prince and the people on the basis of the oral hearing, if possible immediately after its conclusion. The grounds for the decision shall be pronounced together with the judgment. The pronouncement of the judgment is independent of the presence of both parties.

§ 414

1) When pronouncing the judgment, the judge may limit himself to reading the text of the judgment and stating the most essential grounds for the decision. The determination of the amount of costs may be reserved until the judgment is issued.

2) A written copy of the pronounced judgment, together with the complete grounds for the decision, shall be served on each party.

§ 415

If the judgment cannot be rendered immediately after the conclusion of the oral proceedings, it must be rendered within four weeks after the conclusion of the oral proceedings; however, in the case of § 193(3), it must be rendered within four weeks after the receipt of the files regarding the pending taking of evidence, and the judge must submit a written draft of the judgment, together with the complete grounds for the decision, for issuance (§ 416(2)). In such cases, there is no separate pronouncement of the judgment.

§ 416

1) The judgment becomes effective for the parties only upon service of the written copy of the judgment.

2) However, the court is bound by its decision as soon as it is pronounced or, in the case of § 415, submitted in written form for execution.

§ 416a

1) In its judgments, the Regional Court must expressly state whether they are subject to further appeal and, if so, must indicate, in addition to the time limit for filing an appeal, where the appeals or remedies are to be filed.

2) The instructions must indicate that the appeal must be filed orally for the court record or by written submission.

3) If an incorrect appeal period is specified and it is longer than the statutory period, the appeal period is deemed to have been observed during this longer period; if a shorter period is specified, the statutory period applies, and if the notice of appeal is missing entirely, the appeal period does not run.

4) If the notice incorrectly designates an authority other than the Regional Court as the recipient of the appeal, the appeal period is still deemed to have been observed even if the appeal was submitted to the incorrect authority; the latter authority must forward the appeal to the court ex officio.

Written copy

§ 417

1) The judgment must contain in its written copy:

1. the name of the court and the names of the judges who participated in the decision;
2. the identification of the parties by name (first and last names), occupation, place of residence, and legal status, as well as the identification of their representatives; in civil status matters, also the date and place of birth of the parties; in cases under § 75a, the indication of the place of residence shall be omitted;
3. the judgment;
4. the facts of the case;
5. the grounds for the decision.

2) The statement of facts and the grounds for the decision must be presented separately and must not be combined with the judgment. The statement of facts must contain a concise presentation of the facts arising from the oral proceedings, highlighting the main claims made by the parties. Instead of presenting the results of the evidentiary proceedings, however, reference may be made to the case file.

3) Any submissions declared inadmissible by the court pursuant to §§ 179, 181(2), 275(2), and 278(2), as well as any evidence whose use was not permitted due to the fruitless expiration of a time limit set for the taking of evidence, must be cited in the facts of the judgment.

§ 418

1) The written version of the judgment intended for the court records shall be signed by the judge and the court clerk.

2) Repealed

3) An extract of a judgment must contain not only the judgment itself but also the information specified in § 417(1) and (2).

4) Excerpts and copies of the judgment may not be issued before the written copy of the judgment has been served on the parties.

Correction of the Judgment

§ 419

1) The court that rendered the judgment may at any time correct clerical or calculation errors or other obvious inaccuracies in the judgment or in its copies. A correction ex officio

must take place in particular if the copy of the judgment does not correspond to the decision rendered by the court.

2) The court may decide on the correction without a prior oral hearing. No separate appeal may be filed against the order rejecting the motion for correction. The Higher Regional Court shall decide definitively on appeals against correction orders of the Regional Court, with no further appeal available.

3) A correction may also be ordered by a higher court.

§ 420

If the request to supplement the statement of facts is made solely because the statement omits statements and evidence that must be included in the statement of facts pursuant to § 417, last paragraph, the trial court shall proceed in accordance with

§ 419.

§ 421

Any correction that the court deems necessary to make pursuant to §§ 419 or 420 shall be appended to the original of the judgment and made visible in all copies of the judgment already issued, which shall be requested for this purpose.

§ 422

If the motion for correction of the judgment is dismissed, the petitioner shall be ordered to pay all costs incurred; otherwise, the costs shall be apportioned equally between the parties.

Supplement to the Judgment

§ 423

1) If a claim that was to be decided upon based on the facts of the case was omitted from the judgment, or if a judgment did not rule, or ruled only incompletely, on a party's request for reimbursement of litigation costs, the judgment must be supplemented by a subsequent decision (supplementary judgment).

2) The motion for supplementation must be filed with the trial court within eight days of service of the judgment; reinstatement of the previous status due to failure to meet this deadline is not permitted.

3) The court shall decide after a prior oral hearing, if it deems such a hearing necessary. This hearing shall be limited to the unresolved part

of the legal dispute. The dismissal of the motion for supplementation shall be effected by order.

§ 424

The hearing on the amendment of the judgment shall have no effect on the running of the time limit for filing an appeal against the judgment for which amendment is sought.

2. Title

**Orders**

§ 425

- 1) Unless a judgment is to be rendered pursuant to the provisions of this Act, decisions, orders, and rulings shall be made by order.
- 2) The court is bound by its orders to the extent that they are not merely procedural in nature.
- 3) The provisions of § 412 shall apply mutatis mutandis to orders of the court.

§ 426

- 1) All decisions rendered by the court during the hearing or the taking of evidence must be pronounced. A written copy of these decisions must be served on the parties present at the pronouncement if the party is entitled to a separate appeal against the decision or to immediate enforcement based on the decision.
- 2) In such cases, and in addition to all cases where the conduct of the proceedings so requires, a written copy must be served on parties who were not present at the time of the announcement.
- 3) Written copies of orally pronounced orders against which a party has no right to a separate appeal and which do not give rise to the right to immediate enforcement shall be served on the parties present at the pronouncement only upon request. If a written copy is not to be served, the oral pronouncement shall have the same effect as service.

§ 427

- 1) Decisions made outside of court sessions shall be communicated to the parties by service of a written copy (notice).

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2) A decision rejecting a party's motion without prior hearing of the opposing party shall be served on the opposing party only upon request of the petitioner.

§ 428

1) Decisions on conflicting motions and decisions dismissing a motion must be reasoned.

2) In this regard, the motions on which the decision is based and the facts of the case—unless both can be inferred from the written submission provided at the same time or from the transcript of the proceedings—must be included in the reasoning to the extent necessary for understanding the ruling or order.

§ 429

1) The original of the decision shall be signed by the judge who rendered the decision. If the decision is rendered by the full bench, the presiding judge shall sign the original.

2) The written copy of a resolution must also contain the information specified in § 417, paragraphs 1 and 2.

§ 430

With regard to the issuance of copies and extracts, as well as the notification of decisions and the supplementation thereof, if a party's motion has been partially denied or if the requested ruling on the reimbursement of litigation costs is missing or incomplete, the provisions of §§ 418, 419, 423, and 424 shall apply.

§ 430a

The provisions of § 416a regarding information on legal remedies shall apply *mutatis mutandis*.

3. Part

## **Appeals**

1. Section

### **Appeal**

Admissibilit

y

§ 431

1) Judgments rendered in the first instance may be appealed.

2) An erroneous or incorrect designation of a legal remedy is irrelevant if the request is clearly identifiable.



3) An appeal may be filed because:

1. the judgment of the Regional Court is void due to one of the defects specified in § 446;
2. the proceedings before the Regional Court are vitiated by a defect within the meaning of § 465(1);
3. the judgment of the Regional Court appears to be based on a factual premise in a material respect that is inconsistent with the case file;
4. the judgment of the Regional Court appears to be based on a factual premise in a material respect that is founded on an incorrect assessment of the evidence; or
5. the judgment of the Regional Court is based on an incorrect legal assessment of the case.

§ 432

1) The appellate court reviews the judgment and the proceedings of the court of first instance within the limits of the grounds and arguments for appeal. Unless the appeal is already resolved in the preliminary proceedings, a public appellate hearing is held in the cases specified in § 449.

2) Within the scope of the grounds for appeal, the parties may present new arguments for attack and defense that were not raised in the first instance, in particular new facts and evidence.

3) However, the appellate court's review shall also extend to those orders issued in the proceedings preceding the judgment, unless their challenge is precluded by law or they have become final due to a failure to raise an objection in a timely manner (§ 196), an appeal, or a decision rendered on the appeal that was filed.

General Provisions on the Appeal Proceedings

§ 433

The provisions governing proceedings before the court of first instance shall apply to the appellate proceedings to the extent that no deviations arise from the following provisions.

Appeal Period

§ 434

- 1) The deadline for filing an appeal is four weeks; it cannot be extended.
- 2) For each party, it begins upon service of the written copy of the judgment; in minor cases, however, it begins upon the pronouncement of the judgment if both parties were present.

#### Filing of the Appeal

##### § 435

- 1) An appeal is filed with the district court by submitting a preparatory brief (appeal brief) or by making a statement entered into the court record.
- 2) The judge recording the minutes shall specifically request the party to state the grounds for the appeal in detail, to file a specific appeal petition, and to indicate the new circumstances and evidence to be presented in support of the grounds for the appeal, and shall instruct the party regarding the legal consequences of failing to provide this information.
- 3) The provisions of the law regarding the written appeal shall also apply to the statements in the court record that replace the written appeal.

##### § 436

The timely filing of an appeal suspends the finality and enforceability of the contested judgment to the extent of the grounds for appeal until the appeal is resolved.

##### § 437

- 1) In addition to the general requirements of a preparatory brief, the notice of appeal must contain:
  1. the identification of the judgment against which the appeal is filed;
  2. a specific statement of the extent to which the judgment is being challenged, a similarly specific brief statement of the grounds for the challenge (grounds for appeal), and a statement as to whether the judgment is being sought to be set aside or modified, and if so, how (appeal request);
  3. the factual arguments and the evidence by which the truth of the grounds for appeal can be proven.
- 2) The appeal brief may contain a brief legal argument and statements regarding the facts and evidence.
- 3) An appeal may also be based on the assertion that certain, specifically identified aspects of the facts established by the trial court are incorrect; in particular, to support these grounds for appeal,

new facts and evidence that were not available to the trial court may be presented.

§ 438

1) If the appeal is filed in a timely manner, the notice of appeal or a copy of the minutes replacing it shall be served on the appellant's opponent. Appeals filed late shall be dismissed by the court of first instance.

2) If the opposing party (respondent) wishes to use new facts and evidence not previously presented in the proceedings to refute the grounds for appeal stated in the notice of appeal, he must, on pain of exclusion, notify the court of first instance of the relevant factual and evidentiary submissions within the mandatory period of four weeks after receipt of the notice of appeal by means of a preparatory brief or by a statement entered into the court record.

§ 439

1) Upon timely receipt of the notice referred to in § 438(2) or upon the fruitless expiration of the applicable deadline, the Regional Court shall submit to the Court of Appeals the notice of appeal and any notice received from the respondent, or the relevant transcripts, together with all case files pertaining to the legal dispute and, in particular, with the records of service of the judgment and the notice of appeal.

2) If the legal dispute was not fully resolved by the contested judgment and the hearing on the remaining unresolved issues is to continue during the appeal proceedings, official copies of those parts of the case files pertaining to the subject matter of the appeal proceedings—which are also required for the proceedings at first instance—shall be submitted to the Court of Appeal.

Proceedings before the Court of

Appeals Preliminary Proceedings

§ 440

Upon receipt of the appeal records by the appellate court, the judge designated to report on the case pursuant to the allocation of duties shall review the appeal records.

§ 441

Based on this review, the appeal shall be brought before the appellate panel without first scheduling a hearing:

1. if the appeal appears to be legally inadmissible or not filed within the statutory time limit;
2. if the notice of appeal does not specify the judgment against which the appeal is filed, if the notice of appeal contains no or no specific request for relief, or if the grounds for appeal are not set forth individually, either expressly or by clear reference;
3. if the appeal against a judgment rendered due to a party's default is based on the ground that no default occurred;
4. if the judgment or the proceedings preceding the judgment are challenged as null and void;
5. if the ruling included in the judgment regarding a plea of lack of jurisdiction, lis pendens, or res judicata is challenged;
6. if the judge entrusted with reviewing the appeal records is of the opinion that the judgment or the proceedings preceding it are vitiated by a nullity not asserted by the appellant.

§ 442

- 1) In particular, an appeal is inadmissible if it is filed by a person who is not entitled to the remedy of appeal or who has validly waived the right to appeal.
- 2) The validity of a waiver of the right to appeal declared after the judgment of the court of first instance has been pronounced or served does not depend on the opposing party's acceptance of the waiver.

§ 443

- 1) In the cases provided for in § 441, the appellate panel shall decide on the appeal in a closed session and without a prior oral hearing by means of a ruling.
- 2) If the appellate panel deems it necessary to obtain factual information from the parties or the district court, or to conduct other preliminary investigations, in order to determine the grounds for the appeal or the nullity of the judgment, such measures shall be ordered and, using the relevant information provided by the parties in the appeal briefs, shall be carried out either by the appellate panel itself or by the court of first instance.

§ 444

1) In the cases covered by § 441(1) and (2), the appeal must be dismissed. In the cases covered by § 441(2), however, this applies only if an order to remedy the defect (§§ 84, 85) has been unsuccessful.

2) If the appeal is found to be well-founded in the case of § 441(3), the judgment shall be set aside and the case shall be remanded to the Regional Court, depending on the stage of the proceedings before the court of first instance, either for a new judgment to be rendered or for the proceedings to be continued and a judgment to be rendered.

§ 445

1) If, in the case of § 441(5), the Regional Court wrongly ruled that it lacked jurisdiction, wrongly assumed that the matter was pending, or wrongly refused to rule on the claim on the grounds that a final decision had already been rendered on the same matter, the Court of Appeals shall instruct the Regional Court to render a judgment on the merits or to conduct a hearing and render a judgment, depending on whether the first-instance decision was rendered after a hearing on the merits or following a separate hearing on lack of jurisdiction, *lis pendens*, or *res judicata* and prior to the conclusion of the hearing on the merits.

2) However, if the court of first instance wrongly assumed jurisdiction, failed to take *lis pendens* into account, or incorrectly dismissed the motion to dismiss the action without a hearing on the merits because a final and binding decision had already been rendered on the claim, the action must be dismissed by the appellate court, setting aside the judgment rendered by the court of first instance.

§ 446

1) The contested judgment is null and void (Section 441, subsections 4 and 6), and, to the extent that the grounds for nullity affect the preceding proceedings, those proceedings must also be set aside:

1. if a judge who was excluded by law from serving as a judge in this case participated in the decision;
2. if the adjudicating court was not properly constituted;
3. if the court could not be made competent to hear this case even by express agreement of the parties;
4. if a party was deprived of the opportunity to appear in court due to an unlawful act, in particular due to failure to serve process;

5. if a party was not represented in the proceedings at all or, if it required a legal representative, was not represented by such a representative, unless the conduct of the proceedings was subsequently duly approved;

6. if a decision was rendered on a matter not subject to judicial review;

7. if the public was unjustifiably excluded;

8. if, contrary to the provision of § 210(2), the parties or their authorized representatives have included drafts of the minutes of the proceedings prepared by them in the case file;

9. if the wording of the judgment is so deficient that its review cannot be carried out with certainty, if the judgment is self-contradictory, or if no grounds for the decision are stated, and these defects cannot be remedied by a correction of the judgment ordered by the appellate court (Section 419).

2) Retrospective authorization to conduct the proceedings (Section 5) is deemed to exist, in particular, where the legal representative, without raising the issue of defective representation, has entered the appeal proceedings by filing the notice of appeal or a preparatory brief (Section 438).

§ 447

1) If the judgment of the court of first instance is set aside on grounds of nullity without this necessitating a further hearing to resolve the matter (Section 446, subsections 5 and 6), the action shall be dismissed to the extent of the nullity.

2) If the complete or partial reversal of the first-instance judgment due to nullity necessitates further proceedings, the case shall be remanded to the Regional Court.

§ 448

If the case is referred to the Regional Court, the latter must set a date for the oral hearing on its own initiative. However, the scheduling of the hearing must be postponed until the decision of the appellate court has become final, if the latter has ruled that the proceedings in the first instance are to be commenced or continued only after the appellate decision has become final. Such a ruling may be issued ex officio or upon application; no separate appeal is admissible against it.

§ 449

- 1) Proceedings before the appellate court shall be conducted orally.
- 2) The parties may waive the scheduling of a hearing for the oral proceedings on the appeal. If neither the appellant in the notice of appeal nor the respondent within the time limit for filing a notice of appeal (Section 438(2)) has expressly requested the scheduling of an oral appeal hearing, it shall be presumed that the parties have waived the scheduling of a hearing for the oral appeal.
- 3) The decision on the appeal is then rendered in a closed session, without a prior oral hearing. However, the court may, if it deems it necessary in a particular case, order an oral hearing nonetheless.

#### Scheduling of the Appeal Hearing

##### § 450

- 1) The date for the oral appeal hearing shall be set so that there is a period of approximately 14 days between the service of the summons on the parties and the hearing. In urgent cases, this period may be shortened.
- 2) A date for the oral appeal hearing must also be set if the appeal, which was filed due to an erroneous assumption of default, due to lack of jurisdiction of the court, due to a decision on the *lis pendens* or *res judicata*, or due to nullity, has been dismissed by the appellate court in a closed session, but the appeal brief also asserts other grounds for appeal reserved for oral argument and the conditions set forth in § 449(2) are met.
- 3) If the parties have already named the attorneys representing them in the appeal proceedings, the summons to the oral hearing shall be addressed to the latter.

##### § 451

If, at the time the hearing is scheduled, it becomes apparent that it is necessary during the appellate proceedings to establish the truth of specific facts cited in the notice of appeal or in a preparatory brief—facts upon which the appeal is based—

, to repeat or supplement evidence already presented in the first instance, or to admit evidence that has so far merely been offered, the presiding judge of the appellate panel shall summon the named witnesses or the experts examined in the first instance to the appellate hearing, shall summon the parties to appear for their examination under oath, and shall arrange for the production of all other evidence.

#### Oral Appeal Hearing

##### § 452

1) During the hearing before the appellate court, new claims and defenses may be raised within the scope of the grounds for appeal and the arguments presented in the appeal.

2) The parties may, without restriction, present new grounds for attack and defense—and in particular new facts and evidence—in the appeal proceedings to support or refute the grounds for appeal, provided that such submissions have been previously communicated to the opposing party by way of the notice of appeal or the notice of appeal (Section 438).

3) However, such submission of new claims or defenses, new facts, and evidence may be rejected by the court upon motion or on its own motion if it was culpably not already raised in the proceedings at first instance.

##### § 453

1) During the oral hearing, the claims in the appeal may not be expanded or replaced by others without the consent of the opposing party. The same applies to the grounds for appeal stated in the notice of appeal.

2) Such consent shall be deemed to exist if the opposing party, who is present, proceeds with the hearing on the amended claims or the newly asserted grounds for appeal without objecting to the change.

3) An amendment to the complaint underlying the contested judgment is not permissible even with the consent of the opposing party.

4) Until the conclusion of the oral appeal hearing or, in cases of

§ 449: Until the appellate court renders its decision (§ 416(2)), the parties may agree to stay the proceedings (§§ 168–170). Until that same time, the complaint may also be withdrawn, to the extent that it is the subject of the appeal proceedings, if the defendant consents or if the claim is waived at the same time; to the extent of the withdrawal of the complaint, the



contested judgment becomes ineffective; the appellate court must confirm this by order.

§ 454

1) An appeal may be withdrawn until the conclusion of the oral appeal hearing. It may be declared during the oral hearing or by filing a written submission with the appellate court. If the written submission is filed before the oral appeal hearing begins, the presiding judge of the appellate panel may, acting as a single judge, order that the scheduled hearing be canceled.

2) Withdrawal results not only in the loss of the right of appeal but also in the obligation to bear the costs incurred by the appeal and, in particular, all costs thereby caused to the opposing party.

3) The appellate panel shall decide on the obligation to reimburse costs by order. The motion must be filed at the oral appellate hearing, failing which it shall be barred; however, if the hearing scheduled for the appellate proceedings was not held in accordance with paragraph 1, the motion must be filed within a strict deadline of four weeks after the opposing party has been notified of the withdrawal of the appeal.

§ 455

The hearing on an appeal against a judgment for which a supplementary judgment has been requested pursuant to § 423 may, upon motion, be suspended until either the supplementary judgment becomes final without an appeal or the appeal against the supplementary judgment has been filed with the appellate court. In the latter case, the hearings on both appeals shall be consolidated.

§ 456

1) The oral appeal hearing begins, after the case has been called, with a presentation by a member of the appellate panel acting as rapporteur.

2) With the aid of the case files, the rapporteur shall then set forth the facts and the course of the litigation to date, to the extent necessary for understanding the appeals and for reviewing the correctness of the contested judgment and the grounds for appeal, and shall identify the essential points of the briefs filed by the parties in the appeal proceedings and the resulting points of contention. The rapporteur shall not express his or her opinion regarding the decision to be rendered.

3) The clerk shall then read aloud the parties' pleadings and the portion of the first-instance judgment affected by the appeal, together with the grounds for the decision and, if the presiding judge or the appellate panel deems it appropriate, the relevant portions of the first-instance trial transcript.

4) Thereupon, the parties shall be heard regarding their arguments. If the argument of a party does not correspond to the contents of the case file, the presiding judge shall draw attention to this.

§ 457

1) The appellate panel may not only admit evidence serving to support or refute the grounds for appeal, but, if this appears necessary for a decision on the appeals, may also repeat or supplement evidence already taken in the first instance and subsequently admit evidence unsuccessfully offered by the parties in the first-instance proceedings.

2) The appellate panel may have the evidence taken by the judge who rendered the judgment in the first instance or by another judge.

3) The appellate panel may have expert evidence presented in the first instance re-examined by other experts.

4) If the appellate court considers deviating from the findings of the trial court, it may refrain from re-admitting evidence that was directly admitted at the trial court level and instead rely solely on the reading of the transcript thereof only if it has previously notified the parties that it has reservations regarding the trial court's assessment of that evidence, and has given them the opportunity to request that the appellate court re-admit this evidence.

§ 458

The evidentiary proceedings shall be conducted in accordance with the rules applicable in the first instance.

§ 459

1) Repealed

2) If the appellate court orders the re-examination under oath of a party who has already been examined under oath in the first instance, that party shall be examined with a reminder of the oath taken in the first instance.

3) The appellate court may order the examination under oath of a party who refused to be examined or to testify under oath in the first instance only if it is convinced that the party had sufficient grounds to refuse the examination and that those grounds have since ceased to exist.

§ 460

Upon request, the appellate court shall, prior to ruling on the appeal, issue an order determining the extent to which the judgment of the lower court, insofar as it is uncontested, is enforceable. No separate appeal may be filed against this order.

§ 461

In the event of a party's failure to appear, the appeal shall nevertheless be heard and decided upon, taking into account the arguments set forth in the notice of appeal and any preparatory briefs submitted (§ 438). The appellate court shall decide whether a new submission (§ 452(2)) is to be regarded as admitted or contested, taking into account the facts of the contested judgment and all other case files from the first and second instances.

§ 462

1) The minutes of the oral appeal hearing shall include the content of the factual arguments and the offers of evidence by the parties only to the extent that such content deviates from the information in the trial court's case files regarding the proceedings.

2) If the oral appeal hearing is conducted and concluded in a single session, the presentation of the parties' arguments regarding the facts of the case may be reserved for the statement of facts in the judgment (Section 417(4)). In that case, only the circumstances and statements specified in Sections 207 and 208 shall be recorded in the minutes of the hearing.

Appeal Decision

§ 463

If, during an appeal hearing, the court becomes convinced that the contested judgment or the proceedings at first instance are vitiated by a defect of nullity that had previously gone unnoticed, it shall, unless a defect in representation (§ 446(5)) has been remedied by express or implied authorization

, proceedings shall be conducted in accordance with §§ 446 and 447, even if the nullity was not asserted by either party.

§ 464

If the defects specified in § 441(1) and (2) are not noticed until the oral hearing, the appeal shall be dismissed by order; in the case of § 441(2), however, only if the appellant present fails to amend the appeal brief despite being requested to do so.

§ 465

1) The case shall be remanded by the appellate court to the regional court for hearing and judgment if, without this constituting grounds for nullity:

1. the substantive claims were not fully resolved by the contested final judgment;
2. the proceedings at first instance suffer from substantial defects that prevented an exhaustive examination and thorough assessment of the case;
3. facts that appear significant to the appellate court based on the contents of the case file were not discussed at all in the first instance.

2) In the case of point 1, the proceedings before the Regional Court shall be limited to the claims and motions that remained unresolved; in the case of point 2, they shall be limited to those parts of the first-instance proceedings and judgment affected by the defect.

3) Instead of dismissing the case, the appellate court may, if necessary after supplementing the proceedings conducted in the first instance, rule on the merits of the case itself by judgment if either both parties jointly request it or if, in the court's discretion, this appears appropriate to expedite the resolution or to avoid significant costs.

§ 466

1) Unless the provisions of §§ 463, 464, and 465 apply, the appellate court shall rule on the merits of the case.

2) Its decision must cover all points of contention concerning a claim that has been granted or denied which, in accordance with the grounds for appeal, require discussion and assessment in the second instance.

3) The judgment of the court of first instance may be modified only to the extent that a modification is requested.

§ 467

1) The appellate court shall base its decision on the findings of the trial proceedings and the judgment of the court of first instance that are not affected by the grounds for appeal asserted, insofar as these have not been corrected by the appellate proceedings themselves.

2) If an objection is raised in a timely manner against individual findings in the minutes of the trial court or against the statements regarding factual and evidentiary submissions contained in the written version of an order on evidence or in the factual basis of the judgment (§§ 264, 265) must be assessed by the appellate court, if necessary after an oral hearing on the findings and information affected by the objection (§ 457), with careful consideration of the results of the appellate proceedings and all other circumstances.

§ 468

1) The remand of the case to the trial court of first instance shall be effected by order in the cases provided for in §§ 463 and 465.

2) The Regional Court to which a case is referred pursuant to an order of the Court of Appeals for a complete or partial retrial or decision is thereby bound by the legal assessment on which the Court of Appeals based its order.

3) With regard to the initiation of the new trial, the provision of § 448 shall apply.

4) The same applies if the appellate court modifies the judgment that held an action for retrial to be inadmissible and the trial in the court of first instance was limited to the question of the admissibility of the retrial.

5) The appellate court may also order that the new trial and decision in the first instance be conducted by a judge other than the judge who rendered the contested judgment.

§ 469

1) The judgment or order of the appellate court disposing of the appeal must always be served on the parties in writing.

2) When setting forth the facts in the judgment of the appellate court, a reference to the judgment of the court of first instance is not precluded.

In the written decision, the appellate court may limit the restatement of the parties' arguments and the factual basis for the decision to what is necessary for understanding its legal reasoning. To the extent that the appellate court considers the arguments in the appeal to be unfounded, but deems the grounds for the contested judgment to be correct, it may, by referring to their correctness, confine itself to a brief statement of reasons for its assessment.

§ 470

In cases of minor importance, the judgment of the court of first instance may be challenged only on the grounds specified in § 431(3)(1), (2), (3), and (5).

2. Section:

**Appeal—**

Admissibilit

y

§ 471

1) In minor cases (§ 535(1)), a petition for review against judgments of the appellate court is inadmissible in any event.

2) Except for the cases mentioned in paragraph 1, a petition for review against judgments of the appellate court is admissible unless:

1. the subject matter of the dispute, as determined by analogy with Art. 3 et seq. of the Act on Fees for Attorneys and Legal Agents, on which the Court of Appeal has ruled (subject matter of the decision), does not exceed a total of 50,000 Swiss francs in monetary or monetary value in the main proceedings in property-related disputes; and

2. the contested judgment of the District Court is upheld in its entirety by the Court of Appeals on the merits.

3) In the cases referred to in paragraph 2, however, a review is admissible:

1. against judgments of the appellate court in which it rules as the court of first instance on appeals against decisions of the AHV-IV-FAK institutions;

2. if, in the cases referred to in paragraph 2, subparagraph 2, the judgment of the Regional Court in the first instance was rendered in accordance with a legal opinion previously expressed by the Court of Appeals (Section 465(1) in conjunction with Section 468(2)), unless the appellate court had attached a reservation of finality to its order of reversal issued in the first instance (Section 487(1)(3));

3. against judgments of the appellate court in proceedings concerning matrimonial and partnership matters (Sections 516 et seq.).

§ 472

An appeal to the Supreme Court may be sought only on one of the following grounds:

1. because the judgment of the appellate court is void due to one of the defects specified in § 446;
2. because the appellate proceedings suffer from a defect which, without rendering the judgment void, was likely to prevent an exhaustive discussion and thorough assessment of the matter in dispute;
3. because the judgment of the appellate court appears to be based on a factual premise in a material respect that is inconsistent with the case files of the first or second instance;
4. because the appellate court's decision is based on an incorrect legal assessment of the case.

§ 473

- 1) The court of review shall review the judgment of the appellate court within the limits of the motions filed in the review proceedings.
- 2) New factual allegations or evidence may be presented in the court of cassation only to support or refute the claim that the judgment of the appellate court is void due to one of the defects specified in § 446, or that the appellate proceedings suffered from a defect that could have prevented an exhaustive discussion and thorough assessment of the matter in dispute.

Filing of an Appeal

§ 474

- 1) A petition for review is filed by submitting a written petition (petition for review) or by making a statement for the court record with the trial court of first instance.
- 2) The time limit for filing a petition for review is four weeks from the date of service of the appellate decision; it cannot be extended.
- 3) The timely filing of a petition for review suspends the entry into force and enforceability of the contested judgment to the extent of the grounds for review until the appeal is resolved.

§ 475

1) In addition to the general requirements for a written submission, the appeal brief must include:

1. the identification of the judgment against which the appeal is directed;
  2. a specific statement of the extent to which the judgment is being challenged, a similarly specific brief description of the grounds for the challenge (grounds for appeal), and a statement as to whether the judgment is being sought to be set aside or modified, and if so, how (motion for appeal);
  3. the factual arguments and the evidence intended to prove the truth of the grounds for appeal specified in § 472(1) and (2).
- 2) To the extent that the appeal is based on the ground for appeal specified in § 472(4), the appeal brief must set forth, without verbosity, the reasons why the legal assessment of the case appears to be incorrect.

§ 476

- 1) If the appeal is filed in a timely manner, the Regional Court shall order the service of a copy of the appeal brief on the opposing party (respondent). Appeals filed late shall be dismissed by the Regional Court.
- 2) The respondent is free to file a response to the appeal with the Regional Court within the mandatory four-week period following service of the appeal brief, either by submitting a written statement or by making a statement of record.
- 3) The provisions of § 475 apply mutatis mutandis to the response to the appeal, with the exception of the requirements specified in paragraphs 1 and 2. New facts and evidence that the respondent intends to use to refute the grounds for appeal stated in the petition for review shall be considered in the review proceedings only to the extent that they have already been cited in the response to the petition for review.
- 4) The appellant must be notified of the filing of the response to the appeal by being provided with a copy of the response.

§ 477

After the response to the appeal has been filed or after the applicable deadline has expired without result, the Regional Court shall submit the designated documents, together with all case files relating to the legal dispute, to the appellate court. Proceedings before the Appellate Court

§ 478



1) The court of appeal shall decide on the appeal in a closed session without a prior oral hearing.

2) However, if it appears necessary in a particular case for the court of appeal to decide on the appeal, an oral hearing before the court of appeal may also be ordered upon application or ex officio. With regard to this hearing, the provisions issued for oral hearings before the court of appeals shall apply.

3) Investigations or the taking of evidence necessary to establish the grounds for appeal listed in § 472, paragraphs 1 and 2, shall be conducted at the discretion of the appellate court.

§ 479

1) As a rule, the court of review shall decide on the merits of the case itself. However, if it finds that the judgment of the appellate court must be declared null and void pursuant to § 446, paras. 4 and 5, or must be set aside for the reason specified in § 472, para. 2, and consequently deems a new hearing necessary to resolve the matter, it shall remand the case to the appellate court for that purpose.

2) If the court of cassation finds that the judgment or proceedings must be set aside due to a nullity that occurred in the first instance and that must be addressed ex officio, the case must be remanded to the court of first instance (Section 447(2)).

§ 480

1) The court to which the case has been remanded is bound, in its further consideration and decision, by the legal assessment on which the court of cassation based its judgment setting aside the judgment.

2) Proceedings before the appellate court or the regional court shall be initiated ex officio.

§ 481

If the appellate court finds that the appeal was filed frivolously or solely to delay the proceedings, it shall impose a penalty for frivolous litigation on the appellant or, depending on the circumstances, on the appellant's attorneys.

§ 482

Unless otherwise provided in this section, the provisions governing appeals shall also apply to appeals to the Supreme Court.

3. Section:

**Appeal—**

Admissibilit

y

§ 483

1) An appeal is admissible against decisions (orders), provided that the present law does not preclude such an appeal.

2) Decisions may be challenged by means of an appeal, in particular for the reasons specified in § 446.

3) Repealed

§ 484

In cases where, under the provisions of this Act, a separate appeal against a decision is not permitted, the parties may assert their objections to that decision through the appeal filed against the next contestable decision.

§ 485

1) In minor cases, an appeal may be filed only against the following first-instance decisions:

1. if the initiation or continuation of the statutory proceedings regarding the action has been refused;

2. if a decision has been made on a motion to provide security for the costs of the proceedings or to supplement such security;

3. if a request to extend a hearing date was granted in violation of the provisions of § 134 and the decision is simultaneously appealable under § 141;

4. if a motion for reinstatement of the previous status due to failure to appear at a hearing or due to the expiration of the deadline for filing an appeal has been dismissed;

5. if a decision has been rendered regarding costs to be reimbursed.

2) In minor cases, no further appeal may be filed against decisions of the Court of Appeals.

§ 486

Repealed

§ 487

1) An appeal is admissible against decisions of the appellate court rendered in appellate proceedings only:

1. if the decision dismissed the appeal;
  2. if the appellate court has issued a decision declaring the judgment of the court of first instance null and void and dismissing the action;
  3. if the case has been referred by order to the Regional Court for decision or for trial and decision, and if, at the same time, the order of the Court of Appeals has declared that the proceedings in the first instance are to be commenced or continued only after this order has become final. No separate appeal is available against this declaration.
- 2) The Supreme Court shall rule on the merits of an appeal declared admissible pursuant to paragraph 1, item 3, if the matter is ready for decision.

#### Filing of the Appeal

##### § 488

- 1) An appeal shall be filed by submitting a written statement (appeal brief) or by making a declaration for the court record at the Regional Court.
- 2) If a decision is challenged by appeal on the grounds of an erroneous legal assessment underlying it, the appeal must clearly and concisely set forth the reasons why the legal assessment of the matter appears to be erroneous.

##### § 489

- 1) The time limit for filing an appeal is 14 days; it cannot be extended.
- 2) The period begins on the day the written copy of the decision to be challenged or the appeal decision is served, and in minor cases, if both parties were present when the decision was announced, on the day following the announcement.

##### § 489a

Once the case is pending, unless the urgency of the matter precludes it or the purpose of the appeal would thereby be thwarted, the Regional Court shall, if it does not dismiss the appeal, serve the appeal petition on the opposing party. The respondent may file a response to the appeal with the Regional Court within the mandatory period of 14 days from service of the appeal petition.

##### § 490

1) If the appeal is directed against the denial, declaration of expiration, or withdrawal of legal aid, against penal orders, or against a ruling that is merely procedural in nature, the court whose decision or order is being challenged may grant the appeal itself.

2) The same applies to all orders by which a motion was dismissed as inadmissible or untimely without hearing the opposing party, or was dismissed for any other reason.

3) If the court is not authorized to do so, or if orders other than those specified in paragraphs 1 and 2 are challenged by appeal, the appeal must be submitted to the appellate court without delay, together with an explanatory report and all documents necessary for the adjudication of the appeal.

§ 491

Appeals against decisions against which no appeal may be filed under the provisions of this Act, or against which a separate remedy is prescribed, as well as appeals filed after the expiration of the appeal period, shall be dismissed ex officio by the court to which they are submitted.

§ 492

1) The appeal shall have no suspensive effect with respect to the execution of the contested decision or the commencement of its enforceability. Unless otherwise provided by law, an exception applies to penal orders that are subject to appeal in the courts of instance.

2) However, if the suspension of the proceedings, the execution of the contested decision, or the enforcement proceedings to be initiated on the basis thereof does not result in a disproportionate disadvantage to the opposing party, and if the purpose of the appeal would be thwarted without such suspension, the court of first instance shall, upon application, order a provisional stay of proceedings while simultaneously ordering any necessary protective measures. No separate appeal may be filed against this decision.

§ 493

Repealed

Proceedings before the appellate court

§ 494

1) The appeal shall be decided by order in a closed session without a prior oral hearing. Prior to the decision, the appellate court may order any investigations it deems necessary.

2) An inadmissible or late appeal shall be dismissed immediately.

3) The decision of the appellate court shall be served on the parties in writing. Section 469a applies *mutatis mutandis* to the decisions of the appellate court.

§ 495

1) If the appeal is granted, the appellate court may delegate any further orders required as a result of its ruling to the court or judge that issued the contested decision.

2) If the contested decision is set aside on appeal and the court of first instance is directed to render a new decision following the supplementation of the proceedings, the decision of the appellate court may be challenged only if it specifies that the order issued to the court of first instance is to be executed only after the appellate court's decision has become final. No appeal is admissible against this ruling.

3) In cases where the law provides that the decision of the appellate court is not subject to further appeal, a ruling pursuant to paragraph 2 is not admissible.

4) The Supreme Court shall rule on the merits of an appeal admissible under paragraph 2 by way of a decision if the case is ready for decision.

§ 496

1) Appeals against decisions of the court of second instance that affirm the contested decision of the court of first instance shall be dismissed *ex officio* by the court of first instance.

2) If the appellate court finds that an appeal filed against a decision of a court of second instance was frivolous or brought solely to delay the proceedings, it shall impose a penalty for frivolous litigation on the appellant or, depending on the circumstances, on the appellant's attorneys.

4. Part

**Action for Annulment and Reopening**

§ 497

1) A final decision that has settled a matter may be challenged by an action for annulment:

1. if a adjudicating judge was excluded by law from exercising judicial authority in the legal dispute;
2. if a party was not represented in the proceedings at all or, if the party required a legal representative, was not represented by such a representative, unless the conduct of the proceedings was subsequently duly approved.

2) However, an action for annulment is not admissible if, in the case described in paragraph 1, the ground for exclusion, or, in the case of paragraph 2, the lack of legal capacity or legal representation was already unsuccessfully raised prior to the final decision by means of a challenge, a motion to declare the proceedings void, or an appeal.

3) Furthermore, an action for annulment is inadmissible if the party was able to assert the ground for exclusion (item 1) in the earlier proceedings or through an appeal.

§ 498

1) Proceedings concluded by a judgment may be reopened at the request of a party:

1. if a document on which the judgment is based has been falsely created or falsified;
2. if a witness or expert has made a false statement, or the opposing party has taken a false oath during questioning, and the judgment is based on such a statement;
3. if the judgment was obtained through an act of fraud by a representative of the party, its opponent, or the opponent's representative, which is subject to prosecution in criminal proceedings;
4. if, in rendering the judgment or an earlier decision underlying the judgment, the judge committed a breach of official duty punishable under criminal law to the detriment of a party in relation to the legal dispute;
5. if a criminal court ruling on which the judgment is based has been overturned by another judgment that has become final;
6. if the party discovers or is made aware of a judgment (§ 411) previously rendered and already having become final regarding the same claim or legal relationship

is enabled to use a judgment previously rendered regarding the same claim or legal relationship, which has already become final and binding, and which establishes the law between the parties to the proceedings to be resumed;

7. if the party becomes aware of new facts or discovers or is enabled to use evidence, the presentation and use of which in the earlier proceedings would have led to a decision on the merits more favorable to the party.

2) Due to the circumstances specified in paragraphs 6 and 7, a retrial is admissible only if the party, through no fault of its own, was unable to assert the finality of the judgment or the new facts or evidence before the conclusion of the oral proceedings on which the judgment of first instance was based.

§ 499

A retrial may also be granted for the purpose of admitting evidence excluded from the proceedings pursuant to § 279(2) if the use of such evidence in the earlier proceedings would clearly have resulted in a decision on the merits more favorable to the party.

§ 500

1) For an action for annulment and for an action for retrial brought under § 498(4), the court that rendered the judgment challenged by the action shall have exclusive jurisdiction; however, if the action challenges multiple judgments rendered in the same legal dispute by courts of different instances, the highest of these courts shall have exclusive jurisdiction.

2) In all other cases (Sections 498(1) through (3), (5), (6), and (7), and 499), the action for reinstatement must be filed with the regional court; however, if only a judgment rendered by a higher court is affected by the ground for appeal asserted, the action must be filed with the relevant higher court.

Procedure

§ 501

Unless otherwise provided in the following provisions, the provisions contained in Parts I through III of this Act shall apply *mutatis mutandis* to the filing of actions for annulment and for retrial and to the subsequent proceedings.

§ 502

1) The action must be filed within a mandatory period of one month.

2) This period shall be calculated:

1. in the case of § 497(1), from the day on which the party became aware of the ground for exclusion, or, if this occurred before the contested decision became final, from the latter date;
2. in the case of § 497(2), from the date on which the decision was served on the party, or, if the party lacks legal capacity, on its legal representative; however, this shall not occur before the contested decision has become final;
3. in the cases of § 498(1) to (5), from the date on which the criminal court judgment or the order dismissing the criminal proceedings became final;
4. in the case of § 498(6) and (7), from the date on which the party was able to rely on the final judgment or to present the facts and evidence of which it had become aware before the court;
5. in the case of § 499, from the service of the judgment of the court of first instance.

3) Ten years after the judgment becomes final, the action may no longer be brought, with the exception of the case mentioned in paragraph 2.

#### § 503

If the action is not brought before the district court but before a higher court which, in accordance with the provisions applicable to proceedings before it, is able to render a decision on the merits of the case, the provisions governing the oral hearing, the presentation of evidence, and the notification of the judgment rendered on the action to the court of first instance, as well as with regard to the appealability of the judgment, those provisions shall apply which would apply to the higher court as a court of appeal.

#### § 504

The complaint must contain, in particular:

1. the title of the contested decision;
2. the legal grounds for the challenge (grounds for annulment or reinstatement);
3. a statement of the circumstances demonstrating compliance with the statutory time limit for filing the action and a description of the evidence available to that effect;
4. a statement of the circumstances relevant to the determination of jurisdiction;



5. a statement of the extent to which the contested decision is sought to be set aside and what other decision is sought on the merits.

§ 505

A judge against whom an action for annulment (§ 497(1)) is brought due to his or her participation in the decision, or against whom an action for retrial under § 498(4) is brought due to his or her conduct, shall be excluded from presiding over the proceedings and from deciding on the action for annulment or retrial.

§ 506

1) Before scheduling a hearing for oral proceedings—in the case of courts of appeal, in a closed session—the court must examine whether the action is based on one of the statutory grounds for challenge (§§ 497–499) and was filed within the statutory time limit. If any of these requirements is not met, the action shall be dismissed by order as unsuitable for the scheduling of a hearing.

2) The circumstances demonstrating compliance with the statutory time limit must be substantiated by the plaintiff at the court’s request.

§ 507

1) If a retrial is sought on the grounds of one of the criminal offenses listed in § 498(1) through (4), and no final conviction has yet been entered in respect thereof, the trial court shall, without a prior oral hearing, order the initiation of criminal proceedings for the purpose of investigating and determining the alleged criminal offense. No appeal is permitted against this order; prior to rendering the order, the court may hear the parties or one of them and conduct any other investigations it deems necessary.

2) The hearing on the motion for retrial may be scheduled only after the criminal proceedings have been finally concluded, and only if those proceedings have either resulted in a final conviction for the criminal offense asserted as the basis for the motion for retrial, or if the criminal proceedings did not result in a conviction for reasons other than lack of facts constituting an offense or lack of evidence. Otherwise, the action must be dismissed as inadmissible upon notification of the results of the criminal proceedings. This dismissal shall likewise take place without a prior

oral hearing and, in the Court of Justice, by a decision rendered in a closed session. When announcing decisions regarding the non-initiation or discontinuation of criminal proceedings, the criminal court or the public prosecutor's office must always expressly state the reason for the failure to initiate or for the discontinuation of the proceedings.

§ 508

1) If, in the cases provided for in § 498, the grounds for retrial are established by documents attached to the complaint in the form of the original or a certified copy, or if the retrial is requested within the meaning of § 499, then the hearing and decision on the grounds and admissibility of the retrial shall, subject to the authority granted to the court under § 189, be combined with the hearing of the main action.

2) The main action shall be reheard to the extent that it is affected by the grounds for appeal.

3) However, if the higher court competent to decide on the granting of a retrial is unable, under the provisions governing proceedings before it, to bring the main issue to a decision, it must limit itself to deciding on the admissibility of the reopening and, once the judgment granting the reopening has become final, refer the legal dispute back to the Regional Court for a hearing on the merits. The Regional Court must then, ex officio, set a date for the oral hearing of the main proceedings and conduct it in accordance with the rules applicable to proceedings before that court.

§ 509

1) In all other cases, the court shall hear and decide by judgment only on the merits and admissibility of the reopening of the proceedings or on the annulment thereof.

2) If the reopening is granted, the proceedings on the merits, to the extent that they are affected by the grounds for challenge, shall be conducted before the court where the action for reopening was filed, or, if that court is not in a position to bring the main proceedings to a decision under the provisions applicable to the proceedings, before the Regional Court.

3) With regard to the referral, the scheduling of the hearing, and the conduct of the hearing, the provisions of § 508(3) shall apply.

§ 510

- 1) If the trial on the merits is to be conducted before the court competent to rule on the admissibility of the motion for retrial, the court may, after rendering a decision granting the motion for retrial, issue an order directing that the trial on the merits be held before the decision is finalized. No appeal is permitted against this order.
- 2) In this case, the decision on the admissibility of the retrial shall be included in the decision on the merits.

§ 511

If it becomes apparent only during the oral hearing that the action for retrial or annulment is based on a ground for challenge that is legally inadmissible or has been filed late, the action shall be dismissed by order.

§ 512

- 1) In the case of an action for retrial filed simultaneously with the filing of an appeal or a petition for review against the same judgment, or during pending appeal or review proceedings, the suspension of the appeal or review proceedings shall be ordered ex officio or upon request without delay if one of the grounds for retrial listed in § 498, items 1 through 5 and the final criminal judgment is attached to the petition in the original or as a certified copy.
- 2) The court before which the action for retrial has been filed shall, in the event of such a decision, immediately notify the court before which the appeal is currently being heard of the ordered suspension of the appeal proceedings.

§ 513

- 1) Whether, in other cases, the appeal or review proceedings initiated or pending with respect to the same judgment shall be suspended due to the filing of an action for retrial, shall be decided by the court called upon to hear the action, either ex officio or upon application, taking into account the particular circumstances of the case and the evidence presented regarding the existence of grounds for retrial.

2) Such a stay may also be ordered during the oral hearing on the motion for retrial. If a stay is ordered, the provisions of § 512(2) shall apply.

§ 514

1) No appeal may be filed against the order deciding on a motion filed pursuant to §§ 512 and 513.

2) If the motion to resume proceedings has been dismissed with final and binding effect, the suspended appeal proceedings shall be resumed ex officio or upon application. The motion must be filed with the court before which the appeal or review proceedings were pending at the time of the ordered suspension. This court shall, ex officio, ensure the timely resubmission of the files necessary for the continuation of the proceedings.

§ 515

1) Unless an interruption of pending appellate proceedings is ordered pursuant to the preceding provisions as a result of the filing of an action for retrial, the filing of an action for retrial shall have no suspensive effect with respect to the entry into force and enforceability of the contested judgment.

2) The filing of an action for annulment or an action for retrial has no effect on the enforceability of a contested final judgment.

Part 5

**Special Types of Proceedings**

1. Section

**Proceedings in Matrimonial and Partnership Matters**

General Provisions

§ 516

1) Minor spouses and spouses for whom a guardian has been appointed may consent to divorce or separation on their own behalf. In all proceedings under the Marriage Act, they do not require the participation of their legal representative if they are of sound mind (Art. 15 PGR). This applies mutatis mutandis to the spouses in proceedings concerning an objection (§ 517).

2) The court must also summon the legal representative in matrimonial proceedings. The legal representative is authorized to perform procedural acts. Such acts are legally effective to the extent that they do not conflict with the procedural acts of the minor spouse or the spouse under guardianship.

§ 516a

The provisions governing proceedings in matrimonial matters apply mutatis mutandis to registered partnerships.

Action by the Opponent

§ 517

The action brought by the objector to prohibit the marriage must be directed against both parties to the marriage. It must be based on the lack of capacity to marry on the part of one of the parties or on a statutory impediment to marriage (Art. 18 of the Marriage Act) and, once the case has been filed, cannot be amended even with the consent of the defendant (§ 243).

Proceedings in the Case of Divorce by Mutual Consent

§ 518 to 519a

Repealed

Procedure for divorce by petition

§ 520

1) A divorce following a period of separation and a divorce on the grounds of intolerability must be sought by filing a petition.

2) The petition for divorce must be filed with the district court in writing or by entering a statement of claim into the court record. It must include information regarding:

- a) the place and date of the marriage;
- b) the office where the marriage was registered and, if possible, the registry number;
- c) the last common and current habitual residence;
- d) nationality;
- e) occupation;
- f) dates of birth;
- g) membership in a religious community;
- h) the names and dates of birth of the children;
- i) the spouses' previous marriages;
- k) the establishment of prenuptial agreements.

§ 521

1) At the outset of the proceedings, the court must undertake the attempt at reconciliation required by Article 57 of the Marriage Act in cases of divorce on grounds of irreconcilable differences; this attempt must be repeated once if there is a prospect of reconciliation

. The spouses must appear in person and without representatives for the reconciliation attempts. With the consent of the parties, the court may call upon experts from marriage and family counseling centers for this purpose.

2) The court may suspend the proceedings for a reasonable period if, following the conclusion of the reconciliation proceedings as part of the divorce proceedings, it concludes that there is a possibility of reconciliation.

§ 522

The hearing and the pronouncement of the judgment are not public.

§ 523

1) The court must examine ex officio whether the requirement of three years of separation (Art. 55 of the Marriage Act) or a ground for unreasonableness (Art. 56 of the Marriage Act) has been met, whether the petition for divorce can be granted, and whether the ground for unreasonableness can be attributed predominantly or entirely to the defendant.

2) The court may also consider facts not asserted by the parties and admit evidence not offered by either party.

3) Facts asserted by a party require proof even if they are admitted by the opposing party (Section 266).

4) If a party refuses, without sufficient cause, to undergo an examination by an expert appointed by the court, or fails to comply with a request to appear in person or a summons for examination of the parties without sufficient cause, a fine may be imposed on that party or its compulsory appearance may be ordered.

§ 524

1) There is no separate initial hearing (§§ 246, 250).

2) The defendant may file a counterclaim (Section 48 JN) until the conclusion of the oral proceedings in the first instance.

§ 525

1) Claims and counterclaims must always be joined for joint hearing and decision (Sections 187, 404).

2) In the event of a counterclaim or the defendant's express consent to the divorce, the provisions governing proceedings for divorce by mutual consent shall apply mutatis mutandis (Art. 59 Marriage Act).

3) In the case of paragraph 2, the pending legal dispute regarding the divorce shall be stayed. If the petition for divorce is granted, the divorce action shall be deemed withdrawn

the divorce decree becomes final; the litigation costs are to be set off against each other. If the petition for divorce is withdrawn or dismissed with final effect, the suspended divorce proceedings are to be resumed upon application.

Proceedings for the Annulment of a Marriage and Divorce upon Petition

§ 526

1) The plaintiff is entitled to amend the grounds of the action (§ 243) until the conclusion of the oral proceedings in the first instance, even without the defendant's consent.

2) The action may be withdrawn until the judgment becomes final, even without the defendant's consent. A judgment that has already been rendered shall be deemed set aside.

§ 527

1) In matters of divorce, the conclusion of a settlement, a judgment by admission, a default judgment, or a judgment pursuant to § 399 is not permissible.

2) The court must first limit the proceedings to the issue of the dissolution of the marriage and render a partial judgment on the dissolution of the marriage; however, this judgment shall not take effect until a decision has been rendered in non-contentious proceedings before the same court regarding the ancillary consequences of the divorce.

§ 528

In the case of an action for divorce on the grounds of intolerability, the court must attempt to reconcile the parties at every stage of the proceedings. To this end, it may require the parties to appear in person at the oral hearing.

§ 529

If the plaintiff fails to appear at the first scheduled hearing, the court shall, upon the defendant's motion, declare the action withdrawn without waiver of the claim.

§ 530

If one of the spouses dies before the judgment becomes final, the proceedings shall be discontinued. The judgment shall be deemed set aside. The costs of the proceedings shall be set aside against each other.

§ 531

1) If, based on the investigations and the evidence presented, the court has established to its satisfaction that grounds for divorce exist, it shall grant the divorce by judgment.

2) If the marriage is dissolved pursuant to Art. 55 of the Marriage Act (separation), the judgment shall merely record the objective fact of three years of separation.

3) In the case of divorce on the grounds of irreconcilability, the court shall determine the allocation of litigation costs in accordance with the principles of the Civil Procedure Code. In the case of divorce due to separation, the costs shall be offset against each other.

4) The divorce decree must state that the marriage is dissolved upon the decree becoming final.

5) Unless the spouses have reached an agreement regarding the consequences of the divorce, the court must, ex officio, include provisions in the divorce decree addressing all consequences of the divorce.

#### Procedure in the Event of Separation

##### § 532

1) The provisions governing divorce proceedings apply mutatis mutandis to proceedings concerning legal separation.

2) In the separation judgment, the court shall declare that, upon becoming final, the obligation to maintain marital cohabitation and marital fidelity is dissolved, but the bond of marriage remains in force, and that the separation judgment loses its effect if the separated spouses resume marital cohabitation and notify the court thereof by means of a joint written declaration.

##### § 532a

#### *Requirements for Divorce Proceedings by Foreign Nationals*

1) If a petition for divorce is to be adjudicated under foreign law, the court shall examine exclusively whether the conditions for divorce required by that foreign law are met.

2) The provisions of this Act governing divorce proceedings shall apply to the extent that they do not conflict with foreign law.

3) The provisions of §§ 518, 520, 521, 522, 524 through 530 shall in any case be applied mutatis mutandis.

#### Annulment of Marriage:

##### Standing to Sue



§ 533

- 1) In cases where, pursuant to the provisions of the Marriage Act, proceedings for the annulment of a marriage must be initiated ex officio, the public prosecutor's office is obligated to file the action. The action must be brought against both spouses. If there is a public interest, the action may still be brought even if the marital bond has been dissolved by the death of one spouse or by a divorce decree.
- 2) In the cases covered by Articles 31, 35, 36, 37, and 38 of the Marriage Act, the action may be brought only by the spouse whose rights have been violated, and in the case of Article 34 of the Marriage Act, only by the legal representative.
- 3) The public prosecutor's action for annulment of the marriage must be brought against both spouses; if one of them has died, it must be brought against the surviving spouse.
- 4) In the case of bigamy, the action shall be directed against both spouses of the later marriage.
- 5) If the public prosecutor's office filed the action while both spouses were alive, the proceedings shall continue against the surviving spouse upon the death of one spouse.
- 6) The provisions of Sections 522, 523, 524, 525, 526, 527, 530, and 531(1) and (5) apply mutatis mutandis.
- 7) The provisions regarding the suspension of proceedings (Sections 168 through 170) shall not apply.
- 8) Costs shall be apportioned according to whether and to what extent a spouse is to be held responsible for the annulment of the marriage, insofar as the spouse was aware of or should have been aware of the grounds leading to the annulment of the marriage. If the public prosecutor's office is liable for costs, such costs shall be borne by the state.

Disputes between spouses regarding property claims

§ 534

The provisions of §§ 522, 524, 525, 526, and 530 shall apply to disputes between the spouses concerning property claims that are connected with proceedings for divorce, legal separation, or annulment of the marriage.

2. Section

**Small Claims Proceedings**

§ 535

1) Where, in property-related disputes, the sum of money claimed in the complaint or the value of the subject matter of the dispute does not exceed 5,000 francs, or where the plaintiff declares that, in lieu of the subject matter claimed in the complaint, he or she is willing to accept a sum of money not exceeding 5,000 francs (small claims), the following provisions shall apply.

2) Paragraph 1 does not apply to the disputes specified in Article 20 of the Court Fees Act and in Article 11, paragraphs 4 and 6, of the Act on the Fees of Attorneys and Legal Agents.

§ 536

Repealed

§ 537

If a separate hearing is held on one of the defenses specified in § 250 and that defense is dismissed as a result of such hearing, the judge shall, upon rendering this decision, order that the hearing on the main issue commence immediately. In such a case, the decision on the defense shall not be issued separately, but shall be included in the decision rendered on the main issue.

§ 538

1) In small claims cases, the trial transcript shall contain only:

1. the information prescribed in § 207 and § 208(1);
  2. Records of a power of attorney entered into the record when the party appears in person with the authorized representative; of the statement of claim, if it was filed on a court day within the meaning of § 239; the essential content of the taking of evidence and, in particular, whether a witness or expert was sworn in before or after being heard, or whether such swearing-in was omitted; furthermore, the fact that the party was given the statutory reminders prior to the unsworn examination and prior to the sworn examination (Sections 376 and 377);
  3. the judgments rendered and pronounced during the hearing, as well as those orders and rulings of the judge against which an appeal is admissible;
  4. a note as to whether the parties were present when the judgment was pronounced.
- 2) Furthermore, if the hearing that has begun cannot be concluded in a single day, upon motion or at the judge's discretion,

an explicit objection by the defendant to the allegations underlying the complaint must be recorded in the minutes of the hearing in a brief form to be determined by the judge.

§ 539

1) The judgment must be pronounced orally. A judgment pronounced in the presence of both parties takes effect upon its pronouncement. If both parties were present at the pronouncement of the judgment, a written copy of the judgment shall be served only at the request of a party. In all other cases, a written copy must be served on both parties ex officio.

2) Upon pronouncement of the judgment, the judge shall inform the parties that an appeal against this judgment may be filed only on the grounds listed in § 472. A similar statement shall be included in the written copy of the judgment.

§ 540

If a change to the complaint made during the proceedings causes the value limit specified in § 535 to be exceeded, the hearing and decision of the case shall take place in accordance with the provisions otherwise applicable to the proceedings.

3. Section

### **Proceedings for the Protection of Possession**

1. Applicable Law

§ 541

1) Proceedings in actions for the protection of possession of property and rights shall be conducted in accordance with the provisions of the new law and in accordance with the following provisions and the rules of ordinary civil procedure.

2) Claims submitted in writing shall be titled “Actions for Protection of Possession.”

2. Expedited Proceedings

§ 542

1) When setting the dates for the hearing of the facts and the deadlines, special consideration must be given to the urgency of the matter.

2) The Regional Court may issue ex officio orders pursuant to the Rules on the Preservation of Rights even before the commencement of the proceedings or during the proceedings. Pre-trial evidentiary proceedings may be conducted prior to the filing of the complaint.

### 3. Presentation of Evidence

#### § 543

1) In proceedings for the protection of possession, all arguments in accordance with the articles on the protection of possession under property law, as well as all means of evidence, are admissible.

2) The taking of evidence through the examination of the parties under oath is admissible only in the appeal proceedings.

### 4. Judgment

#### § 544

The decision shall be rendered by judgment following the conclusion of the hearing.

### 5. Appeals

#### § 545

Appeals against the judgment and against orders issued during the proceedings are admissible in the same manner as appeals against judgments and orders in ordinary proceedings.

#### § 546

Repealed

#### § 547

Repealed

### 4. Section

### **Mandate Procedure**

#### § 548

In an action brought to assert a claim for money or other fungible goods (§ 587(2)), the plaintiff may request that a payment order (mandate) be issued against the defendant if all facts on which the plaintiff's claim in the main action and the ancillary claims are based are proven by original documents of the types described below, submitted in a form that is unobjectionable in appearance:

1. by public documents drawn up within the territory covered by this Act;
2. by private documents on which the signatures of the issuers have been certified by a domestic court or notary;

3. by other documents on the basis of which a right in rem regarding the claim in suit has been registered in a domestic public register, provided that no appeal is pending against the court order pursuant to which such registration took place, nor is there any notation in the register indicating that such registration is disputed.

§ 549

1) If the action is not brought by the person who appears to be the entitled party according to the documents on which the action is based, or if it is brought against a person other than the obligor named in those documents, the application for a payment order may be granted only if and to the extent that it is proven by documents of the nature described in § 548 that the claim or obligation has been transferred in whole or in part from the original obligee or obligor to those personsto whom or against whom the action is brought.

2) For the collection of claims against which the statute of limitations could be invoked, a payment order may be issued only if the interruption or suspension of the statute of limitations is already proven in the complaint by documents of the nature described in § 548.

§ 550

1) Pursuant to a motion filed under §§ 548 and 549, the payment order shall be issued without a prior oral hearing and without the defendant being heard. The plaintiff may, to the extent that the original documents required under §§ 548 and 549 to substantiate his claims are on file with the district court, substitute the submission of the documents by referring to the relevant court records.

2) The payment order must state that the defendant must, within 14 days of service of the payment order, satisfy the claims asserted against him, together with the costs determined by the court, or else face enforcement proceedings, or must file objections to the payment order. This period cannot be extended.

3) The payment order must be served on the defendant in accordance with the provisions applicable to lawsuits.

§ 551

If a written complaint seeks the issuance of a payment order against multiple defendants, this request may be granted only with respect to those defendants for whom copies of the complaint, accompanied by copies of all attachments, are submitted. In this regard, the order in which the defendants are named in the complaint shall be decisive.

§ 552

- 1) No appeal is permitted against the issuance of the payment order; however, the decision on costs contained in the payment order may be challenged by means of an appeal.
- 2) Objections to the payment order must be filed with the district court within the time limit specified in the payment order.
- 3) Objections filed late shall be dismissed without a hearing.
- 4) For objections filed in a timely manner, a hearing for oral proceedings shall be scheduled as soon as possible without a new application by the plaintiff.

§ 553

The judgment concluding the proceedings must determine whether the payment order issued against the defendant is to be upheld or whether and to what extent it is to be set aside.

§ 554

If the request for a payment order set forth in the complaint cannot be granted, and if the complaint is suitable for setting a date for an oral hearing, the proceedings shall be conducted in accordance with the provisions of the law; otherwise, the complaint shall be dismissed as unsuitable for initiating proceedings.

5. Section

**Proceedings in Bill of Exchange Disputes**

§ 555

In proceedings concerning actions to assert claims arising from bills of exchange:

1. the judgment shall set the deadline for the defendant to fulfill the obligation imposed upon him at 14 days;
2. the time limit for filing a motion for reinstatement of the previous status, for filing an appeal or a petition for review, and for filing an administrative appeal is 14 days. These time limits may not be extended.

§ 556

In legal disputes arising from bills of exchange, reinstatement to the previous status and the resumption of proceedings shall not take place to the detriment of a party who acted in good faith in the main proceedings if, in the meantime, that party has lost its claims under the bill of exchange against third parties in whole or in part due to the lapse of time or can no longer assert them due to the shortness of the time remaining.

§ 557

1) If the claim asserted in the complaint is based on a bill of exchange that meets all the requirements for validity and whose authenticity is not in question, and if, together with the complaint, the bill of exchange, the protest, and the receipted invoice—insofar as these documents are necessary in the specific case to substantiate the plaintiff's claims—submitted in original form, the plaintiff may request that the defendant be ordered to pay the bill of exchange debt, together with the stated ancillary claims and the costs specified and determined by the judge, within a non-extendable period of 14 days, subject to enforcement, or to raise objections thereto (order to pay).

2) If a bill of exchange declaration is signed by an agent, an order to pay may only be issued if, in addition to the documents specified in the first paragraph, the principal's power of attorney is produced.

§ 558

The provisions of § 557 also apply to the assertion of recourse claims prior to the maturity of the bill of exchange, provided that the additional requirements specified in Articles 43 and 44 of the Bills of Exchange Act are proven by credible documents attached to the complaint in original form. To prove the opening of insolvency proceedings, it is sufficient to submit one of the notices listed in Article 44(6) of the Bills of Exchange Act.

§ 559

If the complaint includes a request for the issuance of a payment order or a security order, the provisions of Section 4 (§§ 550–554) shall apply mutatis mutandis to the further proceedings.

6. Section

**Proceedings in Lease Disputes**

Extrajudicial Termination

§ 560

If a party wishes to challenge the extrajudicial termination of a lease agreement concerning immovable property or property declared immovable by law, it must file the complaint with the court within four weeks of receiving the notice of termination; otherwise, its claim is forfeited.

Judicial Termination

§ 561

- 1) Lease agreements concerning immovable property or property deemed immovable by law may be terminated judicially by either the lessor or the lessee.
- 2) A judicial termination validly effected by one party may be enforced against that party by the other party.

§ 562

- 1) A judicial termination may be filed in writing or made orally. The written statement or the minutes recording the termination must, in particular, include the description of the leased property, the date on which the lease agreement is to terminate, and, finally, a request that the opposing party be ordered either to surrender or take possession of the leased property at the specified time, subject to enforcement, or to file objections to the termination with the court. A period of four weeks shall be set for raising objections.
- 2) Judicial notices of termination that do not comply with these provisions shall be dismissed ex officio by order, unless the existing defect can be remedied in accordance with § 84.

§ 563

- 1) A judicial termination must be filed with the court prior to the commencement of the notice period specified therein, in the case of ordinary termination pursuant to § 1090, Art. 38 through 41 or 100 of the ABGB, and in the case of extraordinary termination pursuant to § 1090, Art. 43 to 45 or 101 to 103 ABGB. Terminations filed after the commencement of the notice period shall be dismissed ex officio by order. Conversely, terminations filed before the commencement of the notice period must be served on the opposing party even if service can no longer be effected before the commencement of the notice period.



2) A judicial termination is effective as of the termination date specified therein if it is served on the opposing party before the start of the notice period applicable to that termination date pursuant to § 1090 Art. 38 to 41 or 100 ABGB, and in the case of extraordinary termination pursuant to § 1090 Art. 43 to 45 or 101 to 103 ABGB, or if, in the event of late service, the other party raises no objections to it or does not object to the delay. However, if the opposing party objects to the delay, the notice of termination is effective as of the first subsequent termination date for which the notice period was still open at the time of service.

#### § 564

The order issued by the court to the opposing party of the terminating party pursuant to § 562 regarding judicial termination must be served on the opposing party without delay, together with a copy of the pleading or a transcript of the minutes, in accordance with the provisions governing the service of complaints.

Order for the Delivery or Acceptance of Inventory Items

#### § 565

1) In the case of lease agreements that expire after a specified period without prior notice of termination, either party may, even before the expiration of the lease term, apply to the court for an order directing the other party to transfer or take possession of the leased property at a specified time, subject to enforcement, or to file objections to such an order with the court within four weeks.

2) If the lease has been entered into for more than six months, this application may only be filed during the last six months.

3) The provision of § 564 also applies to the service of such orders.

Extension

#### § 566

1) If the tenant wishes to request an extension of the tenancy, he must file a lawsuit with the court:

a) in the case of an indefinite lease, within four weeks of receiving notice of termination;

b) in the case of a fixed-term tenancy, no later than eight weeks before the expiration of the contract term.

2) Paragraph 1 does not apply if the termination is being contested in court (Section 560), objections are raised (Section 562(1)), or an action for eviction from the leased property is filed.

3) The tenant must file the action for a second extension with the court no later than eight weeks before the expiration of the first extension.

#### Relationship with the Sublessee

##### § 567

All terminations, orders, decisions, and rulings obtained against the lessee that concern the existence or termination of a lease agreement for immovable property or property declared immovable by law are also effective and enforceable against the sublessee, unless a legal relationship existing between the sublessee and the lessor precludes this.

#### Time Limits in Lease Matters

##### § 568

The time limits set forth in §§ 560 through 567 cannot be extended. Procedure

##### § 569

1) A hearing must be scheduled for oral proceedings regarding objections raised in a timely manner.

2) The party that issued the notice of termination or the demand for the return or withdrawal of the leased property shall be deemed the plaintiff.

3) Objections filed late against the termination of a lease agreement or against a court order for the surrender or takeover of a leased property shall be dismissed ex officio without a hearing.

4) If, after timely objections have been raised, one of the parties fails to appear at a hearing before entering into the dispute on the merits through oral arguments, a default judgment shall be rendered pursuant to § 396 at the request of the appearing party.

##### § 570

The judgment concluding the proceedings on objections shall determine whether and to what extent—and, in the event of an allegation of late service, as of what date—the notice of termination or the order issued pursuant to § 565 is recognized as effective

or revoked, as well as whether and when the defendant is obligated to surrender or take possession of the subject matter of the dispute.

§ 571

1) If the defendant is found liable to surrender or take possession of the leased property, but the lease term has already expired at the time the judgment is rendered, the judgment shall state that the surrender or taking of possession of the leased property, cleared of items not included in the lease, must take place within 14 days. § 409(3) and (4) shall apply to this period.

2) If the lease term has not yet expired, it shall be ordered that the leased property be vacated of the items not included in the lease and handed over or taken over within 14 days at the latest after the expiration of the lease term. The same vacating period shall also apply if no objections were raised in a timely manner against the judicial termination or against the order to hand over or take over the leased property.

3) Enforcement may be authorized on the basis of judgments that have become final, terminations, and court orders for the surrender or takeover of the leased property as soon as the period within which the leased property was to be surrendered pursuant to the preceding paragraphs has expired.

§ 572

The provisions of § 571 shall also apply if a lease agreement is declared null and void or terminated by a court judgment following a lawsuit, without prior judicial or extrajudicial termination.

§ 573

1) No appeal is permitted against court orders for the surrender or takeover of the leased property issued on the basis of terminations or as a result of an application filed pursuant to § 565, subject to any objections to be raised against them.

2) A judicial termination or an order for the surrender or takeover of the leased property, against which no objections were raised in a timely manner, as well as final judgments rendered on such objections, shall cease to have effect, subject to the ruling on reimbursement of costs, unless enforcement is sought within six months of the date specified in these orders or in the judgment for the vacating or takeover of the leased property

an application for enforcement is filed regarding such eviction or takeover.

§ 574

Appeals (§ 471), appeals to a higher court (§ 487), and appeals to the Supreme Court (§ 496) against decisions of the court of second instance are admissible only if the decision depends on the resolution of a question of substantive or procedural law that is of significant importance for the preservation of legal uniformity, legal certainty, or the development of the law, for example because the court of second instance deviates from the case law of the Supreme Court or because such case law is lacking or inconsistent.

Sections 575 and

576 Repealed

7. Section

**a) Debt Collection Proceedings**

§ 577

1) To collect claims for money or other fungible items, the creditor may, by way of debt collection proceedings (summary proceedings), request the issuance of a conditional payment order for any amount.

2) Claims that cannot be asserted before the court at all or at this time, as well as claims arising from bills of exchange, are not suitable for debt collection proceedings.

§ 578

The regional court has jurisdiction to issue the conditional payment order if the debtor's domicile or place of residence is known.

§ 579

A conditional payment order may not be issued against persons whose whereabouts are unknown.

§ 580

1) The application for a conditional payment order may be filed orally or in writing.

2) In the application, the creditor must:

1. state his and the debtor's name, status or trade, and place of residence;

2. specify the amount of the claim and the legal basis thereof and, if the claim consists of several items, the amount of each individual item and its legal basis.
- 3) If the claim relates not to money but to other fungible items, the creditor must specify in the petition the amount he is willing to accept in lieu thereof.

4) Repealed

§ 581

- 1) The petition shall be decided without hearing the debtor.
- 2) The same shall be dismissed if it does not comply with the provisions of §§ 577–580, or if the information provided by the petitioner indicates that the claim is inadmissible in whole or in part at this time, or that it is still contingent upon consideration.
- 3) There is no appeal against the issuance of the payment order; an appeal against the denial of the order is admissible within 14 days.

§ 582

- 1) The payment order must contain:

1. the heading: Payment Order;
2. the information specified in § 580, paragraphs 1 and 2;
3. an order to the debtor to pay the claim, including the interest demanded, within 14 days of service of the payment order in order to avoid enforcement, and to pay the costs of the payment order—if reimbursement thereof was requested in the petition—in the amount determined by the judge, or to file an objection to the payment order;
4. a statement that the payment order can only be set aside by filing an objection.

- 2) If the issuance of the payment order has been requested on the basis of multiple claims expressed or valued in specific monetary amounts, the payment order must specify the settlement of the claims separately.

- 3) If the claim concerns not money but other fungible goods, the payment order shall authorize the debtor to pay the amount in money specified in the application in lieu of the goods claimed.

§ 583

The payment order shall be served on the debtor and, if it is directed against several debtors, on each of them in accordance with the provisions governing the service of complaints.

§ 584

To file an objection, it is sufficient for the debtor to make a statement to the court, either orally or in writing, that he is objecting to the payment order. No statement of reasons is required.

§ 585

1) If the debtor has filed an objection in a timely manner, the payment order loses its effect.

2) If the debtor disputes the claim only in part, he must specify the disputed amount precisely; otherwise, the objection applies to the entire claim. Enforcement may be sought for the undisputed amount. The payment order also loses its effect if, in the case of a payment order issued against one or more debtors for the same claim, the objection is raised by only one of the debtors.

3) However, if the payment order separately ordered the settlement of several claims expressed in specific monetary amounts and the objection was expressly raised only against one or another of these claims, the payment order remains in force with respect to the remaining claims and the costs imposed.

§ 586

1) The creditor and the debtor shall be notified of the objection filed in a timely manner.

2) An objection filed after the deadline must be dismissed on the grounds that the deadline has passed; in this case, it is not necessary to notify the creditor.

§ 587

1) The costs of issuing the conditional payment order shall be borne by the creditor if an objection to it was filed in a timely manner, and the creditor shall be ordered to reimburse the costs of the objection, if claimed by the debtor, in an amount to be determined by the judge.

2) If, as a result of the objection, an action is brought or the initiation of enforcement proceedings is sought, the court shall rule on the aforementioned costs of the debt collection proceedings as well as on a portion of the costs of the legal dispute.

§ 588

An appeal may be filed against decisions rejecting the objection and ordering the creditor to bear the costs of the objection within a period of 14 days.

§ 589

1) An application for a payment order shall have the same effect as a complaint with respect to the pendency of the dispute and the interruption of the statute of limitations; however, this application shall have no effect on the determination of the venue for the counterclaim and the main proceedings.

2) If the payment order is rendered ineffective by the filing of an objection, the statute of limitations shall be deemed suspended until the objection is filed.

§ 590

1) An application for reinstatement of the previous status due to an excusable failure to meet the deadline for filing an objection must be made within 14 days after the debtor becomes aware of the failure and the impediment has ceased to exist. The granting of reinstatement shall have the effect of an objection, without the need to file a new objection.

2) If the debtor has applied for reinstatement of the previous status, enforcement proceedings against him may, until the application is dismissed, be conducted only to the extent of securing the debt.

§ 591

1) If the debtor has neither made payment nor filed an objection in a timely manner, the creditor shall, upon request, be granted enforcement based on the payment order.

2) If the payment order has been issued for claims that do not concern money but other fungible goods, the debtor may at any time discharge himself from the enforcement proceedings conducted for the production of these goods by paying the monetary amount specified in the payment order together with incidental costs.

3) Repealed

§ 592

1) Written submissions requesting the issuance of the payment order and for the filing of an objection shall be submitted in a single copy and retained by the court.

2) The payment orders, as well as the copies required to notify the creditor and debtor of the objection, shall be drawn up in official form; the inclusion of headings is not required for this purpose.

3) A copy of the minutes recorded regarding the application for a payment order or the filing of an objection shall not be provided to the opposing party.

4) Persons who file an objection on behalf of the debtor are not required to provide a power of attorney to substantiate their authority to act. However, if a power of attorney has not been provided, the court's decision must be served on the principal himself.

§ 593

1) The creditor may also file a request for a payment order in a lawsuit brought to collect the debt (summary judgment action).

2) In this case, the court must issue the payment order by means of a decision on the action, with the proviso that, in the event of an objection, further proceedings on the action will take place (§ 256). A copy of the complaint to be submitted by the plaintiff must be retained.

3) If the defendant files an objection to the payment order, the court must schedule a hearing to adjudicate the action and summon both parties to resolve the objection.

4) If the court finds the application for a payment order to be inadmissible, it shall, upon rejecting the application, immediately order a hearing on the claim in accordance with the statutory procedure.

5) A summons action has the same effect as any other action with regard to the pendency of the dispute and the interruption of the statute of limitations.

**b) Summary proceedings**

§ 593a

1) To assert any claim for a declaratory judgment, legal determination, performance, or injunction, and the like, an application for the issuance of a writ of summons may be filed with the district court prior to or concurrently with the action (writ of summons action).

2) Proceedings for a legal order may also be conducted prior to proceedings for protection of possession.



3) The legal notice proceedings do not apply to claims to be asserted in proceedings concerning matrimonial and partnership matters, in bill of exchange disputes, before an arbitration tribunal, in insolvency proceedings, or by means of an action for reinstatement or annulment; nor do they apply to claims concerning the contestation of a child's legitimacy or to paternity matters.

§ 593b

1) The application for the issuance of a writ of summons may be filed orally or in writing.

2) The applicant for the legal summons must, in the application:

1. state his own name, status, or trade, as well as that of the recipient of the summons, and their place of residence;

2. state the value of the claim asserted;

3. the claim asserted by the claimant and the grounds for it; if multiple claims are to be asserted, each individual claim and its grounds must be stated as a claim.

3) If the asserted claim is based on a land registry entry, or if such an entry, or its amendment or cancellation, is requested, the necessary land registry details must be provided; if applicable, a site plan or subdivision plan must be attached to the application.

4) If the asserted claim is contingent upon consideration, such consideration must be offered in accordance with the provisions of civil law.

§ 593c

1) The application for a legal notice shall be issued without hearing the addressee of the legal notice.

2) It shall be dismissed if it does not comply with the foregoing provisions; if it appears from the information provided by the petitioner that the claim is inadmissible in whole or in part, in particular if the court is aware that the request is precluded by a final decision issued in judicial or administrative proceedings.

3) No appeal may be filed against the issuance of the writ of summons, but an appeal may be filed against its denial.

§ 593d

1) The writ of summons to be issued by the Regional Court must contain:

1. the inscription: Legal Document;

2. the information specified in § 593b, paragraphs 1 and 2;
  3. the order to the recipient of the legal notice to comply with the specified request within 14 days of service of the legal notice in order to avoid enforcement, and to pay the costs of the legal notice, if reimbursement thereof was requested, to the extent determined by the judge, or else to file an objection to the legal notice within the same period;
  4. a statement that the writ of summons can only be set aside by filing an objection, but will become final and binding in the event of failure to do so.
- 2) If the issuance of the writ of summons has been requested on the basis of several specifically cited claims, the writ of summons must separately order their settlement and, if necessary, also state that the applicant for the writ of summons intends to fulfill his or her consideration, which must be precisely specified.

§ 593e

1) Unless otherwise provided in the preceding provisions, the provisions governing debt collection proceedings (summary proceedings) shall apply *mutatis mutandis* to the legal notice proceedings.

2) Repealed

8. Section

### **Arbitration Proceedings**

1. Title

### **General Provisions**

§ 594

#### *Scope of Application*

- 1) The provisions of this section apply if the seat of the arbitral tribunal is in Liechtenstein.
- 2) Sections 595, 597, 600, 601, 602, 610(3) through (6), 619, 629, and 630 shall also apply if the seat of the arbitral tribunal is not in Liechtenstein or has not yet been determined.
- 3) Until the seat of the arbitral tribunal has been determined, domestic courts shall have jurisdiction over the judicial matters referred to in Title III if one of the parties has its seat, domicile, or habitual residence in Liechtenstein.

§ 595

#### *Judicial Proceedings*

The court may act in the matters governed by this section only to the extent provided for in this section.

§ 596

*Duty to Raise Objections*

If the arbitral tribunal has failed to comply with a procedural provision of this section from which the parties may deviate, or with an agreed procedural requirement of the arbitration proceedings, a party may not subsequently raise the defect unless it has objected to it immediately upon becoming aware of it or within the time limit provided for that purpose.

§ 597

*Receipt of Written Communications*

1) Unless the parties have agreed otherwise, a written communication shall be deemed received on the day it was personally delivered to the recipient or to a person authorized to receive it, or, if this was not possible, on the day it was otherwise delivered at the recipient's registered office, domicile, or habitual residence.

2) If the recipient is aware of the arbitration proceedings and, despite reasonable efforts to locate him or a person authorized to receive service, his whereabouts are unknown, a written notice shall be deemed received on the date on which a verifiable attempt at proper delivery was made to a location that was provided as an address by the recipient to the other party or to the arbitral tribunal at the time the arbitration agreement was concluded or subsequently, and which has not yet been revoked by the provision of a new address.

3) Paragraphs 1 and 2 do not apply to notices in court proceedings.

2. Title

**Arbitration Agreement**

§ 598

*Definition*

1) An arbitration agreement is an agreement between the parties to submit all or specific disputes that have arisen or may arise between them in connection with a specific legal relationship, whether contractual or non-contractual, to the decision of an arbitral tribunal. The arbitration agreement may be concluded in the form of a separate agreement or as a clause in a contract.

2) The provisions of this section shall also apply mutatis mutandis to arbitral tribunals established in a manner permitted by law through a testamentary disposition or other legal acts not based on an agreement between the parties, or through statutes.

§ 599

*Arbitrability*

1) Any claim relating to property rights that is to be decided by the ordinary courts may be the subject of an arbitration agreement. An arbitration agreement concerning non-property claims is legally effective to the extent that the parties are capable of reaching a settlement regarding the subject matter of the dispute.

2) Claims under family law and claims arising from apprenticeship contracts under the Vocational Training Act may not be the subject of an arbitration agreement. Statutory provisions outside this section, pursuant to which disputes may not be submitted to arbitration or may be submitted only under certain conditions, remain unaffected.

3) The jurisdiction of the Regional Court over proceedings initiated ex officio on the basis of mandatory statutory provisions or upon application or notification by the foundation supervisory authority or the public prosecutor's office cannot be waived by an arbitration clause in the articles of association or equivalent documents of an association or trust.

§ 600

*Form of the Arbitration Agreement*

1) The arbitration agreement must be contained either in a document signed by the parties or in correspondence, faxes, emails, or other forms of communication exchanged between them that ensure proof of the agreement.

2) If a contract that meets the formal requirements of paragraph 1 refers to a document containing an arbitration agreement, this constitutes an arbitration agreement if the reference is such that it makes this arbitration agreement an integral part of the contract.

3) A defect in the form of the arbitration agreement is cured in the arbitration proceedings by a submission on the merits of the case, unless it is objected to no later than at the time of such submission.

§ 601

*Arbitration Agreement and Action in Court*

1) If a lawsuit is filed in court regarding a matter that is the subject of an arbitration agreement, the court must dismiss the lawsuit unless the defendant enters a defense or participates in oral proceedings without objecting to this. This does not apply if the court determines that the arbitration agreement does not exist or is unenforceable. If such proceedings are still pending before a court, arbitration proceedings may nevertheless be initiated or continued, and an award may be rendered.

2) If an arbitral tribunal has denied its jurisdiction over the subject matter of the dispute because no arbitration agreement exists or the arbitration agreement is unenforceable, the court may not dismiss a claim on that ground on the basis that an arbitral tribunal has jurisdiction over the matter. Upon filing the action in court, the plaintiff's right to bring an action under

§ 628 to bring an action to set aside the decision by which the arbitral tribunal denied its jurisdiction.

3) If arbitration proceedings are pending, no further legal proceedings regarding the asserted claim may be conducted before a court or an arbitral tribunal; any action brought regarding the same claim shall be dismissed. This does not apply if the lack of jurisdiction of the arbitral tribunal was raised before it no later than upon the submission of the statement of defense and a decision by the arbitral tribunal on this matter cannot be obtained within a reasonable time.

4) If a claim is dismissed by a court on the grounds of the jurisdiction of an arbitral tribunal, or by an arbitral tribunal on the grounds of the jurisdiction of a court or another arbitral tribunal, or if an award is set aside in annulment proceedings on the grounds of the arbitral tribunal's lack of jurisdiction, the proceedings shall be deemed to have continued properly if a claim is filed without delay before the court or arbitral tribunal.

5) A party that has previously invoked the existence of an arbitration agreement in proceedings may not subsequently claim that no such agreement exists, unless the relevant circumstances have changed since then.

§ 602

*Arbitration Agreement and Interim Judicial Measures*

An arbitration agreement does not preclude a party from applying to a court for a provisional or protective measure before or during the arbitration proceedings, nor does it preclude the court from ordering such a measure.

3. Title

**Constitution of the Arbitral Tribunal**

§ 603

*Composition of the Arbitral Tribunal*

1) The parties may freely agree on the number of arbitrators. However, if the parties have agreed on an even number of arbitrators, they must appoint an additional person as chairperson.

2) Unless the parties have agreed otherwise, three arbitrators shall be appointed.

§ 604

*Appointment of Arbitrators*

1) The parties may freely agree on the procedure for appointing the arbitrator or arbitrators.

2) In the absence of an agreement on the procedure for appointment, the following shall apply:

1. In arbitration proceedings with a sole arbitrator, if the parties cannot agree on his appointment within four weeks of one party receiving a written request to that effect from the other party, the arbitrator shall be appointed by the court at the request of one party.

2. In arbitration proceedings with three arbitrators, each party shall appoint one arbitrator. These two arbitrators shall appoint the third arbitrator, who shall act as the chairperson of the arbitral tribunal.

3. If more than three arbitrators are to be appointed, each party shall appoint an equal number of arbitrators. These arbitrators shall appoint a further arbitrator, who shall act as the chairperson of the arbitral tribunal.

4. If a party has not appointed an arbitrator within four weeks of receiving a written request to do so from the other party, or if the parties do not receive notification from the arbitrators regarding the arbitrator they are to appoint within four weeks of the arbitrators' appointment, the arbitrator shall be appointed by the court at the request of a party.

5. A party is bound by its appointment of an arbitrator as soon as the other party has received written notice of the appointment.
- 3) If the parties have agreed on a procedure for the appointment and
  1. if one of the parties fails to act in accordance with that procedure, or
  2. the parties or the arbitrators are unable to reach an agreement in accordance with this procedure, or
  3. does a third party fail to perform a task assigned to them under this procedure within three months of receiving a corresponding written notice,either party may apply to the court for the appointment of arbitrators, provided that the agreed appointment procedure does not provide otherwise to ensure the appointment.
- 4) The written request for the appointment of an arbitrator must also include details of the claim being asserted and the arbitration agreement on which the party relies.
- 5) If several parties who are jointly responsible for appointing one or more arbitrators cannot reach an agreement within four weeks of receiving a written notice to that effect, the arbitrator or arbitrators shall be appointed by the court at the request of a party, unless the agreed appointment procedure provides otherwise to ensure the appointment.
- 6) The arbitrator or arbitrators shall also be appointed by the court at the request of a party if his or their appointment cannot take place within four weeks of receipt of a corresponding written notice from one party to the other for reasons not covered in the preceding paragraphs, or if the appointment procedure designed to ensure the appointment does not lead to an appointment within a reasonable time.
- 7) If the appointment is made before the decision of the court of first instance and a party proves this, the request shall be dismissed.
- 8) When appointing an arbitrator, the court must give due consideration to all the requirements set forth in the parties' agreement regarding the arbitrator and take into account all factors that ensure the appointment of an independent and impartial arbitrator.

9) No appeal is permitted against a decision appointing an arbitrator.

§ 605

*Grounds for Challenge and Disqualification*

1) If a person wishes to serve as an arbitrator, they must disclose all circumstances that may raise doubts as to their impartiality or independence or that are inconsistent with the parties' agreement. From the time of their appointment and throughout the arbitration proceedings, an arbitrator must promptly disclose such circumstances to the parties if they have not already informed them.

2) An arbitrator may be challenged only if there are circumstances that give rise to justifiable doubts as to his or her impartiality or independence, or if he or she does not meet the requirements agreed upon by the parties. A party may challenge an arbitrator whom it has appointed or in whose appointment it has participated only on grounds that became known to it only after the appointment or participation therein.

3) Full-time judges of the ordinary courts may not accept an appointment as an arbitrator during their term of office.

§ 606

*Challenge Proceedings*

1) Subject to paragraph 3, the parties may freely agree on a procedure for the challenge of an arbitrator.

2) In the absence of such an agreement, the party challenging an arbitrator must, within four weeks after becoming aware of the composition of the arbitral tribunal or of a circumstance within the meaning of § 605(2), set forth the grounds for the challenge in writing to the arbitral tribunal. If the challenged arbitrator does not withdraw from office or if the other party does not consent to the challenge, the arbitral tribunal, including the challenged arbitrator, shall decide on the challenge.

3) If a challenge is unsuccessful under the procedure agreed upon by the parties or under the procedure provided for in paragraph 2, the challenging party may, within four weeks after receiving the decision denying the challenge, apply to a court for a ruling on the challenge. No appeal is permitted against this decision. While



such application is pending, the arbitral tribunal, including the challenged arbitrator, may continue the arbitration proceedings and render an award.

§ 607

*Premature Termination of the Arbitrator's Term*

1) The term of office of an arbitrator ends if the parties so agree or if the arbitrator resigns. Subject to paragraph 2, the parties may also agree on a procedure for the termination of the arbitrator's term of office.

2) Either party may apply to the court for a decision on the termination of the office if the arbitrator is either unable to perform his duties or fails to perform them within a reasonable time and

1. the arbitrator does not resign from office,
2. the parties cannot agree on the termination of the office, or
3. the procedure agreed upon by the parties does not lead to the termination of the arbitrator's office.

No appeal is permitted against this decision.

3) If an arbitrator resigns pursuant to paragraph 1 or § 606(2), or if a party consents to the termination of an arbitrator's office, this does not constitute an acknowledgment of the grounds specified in paragraph 2 or § 605(2).

§ 608

*Appointment of a Replacement Arbitrator*

1) If an arbitrator's term ends prematurely, a substitute arbitrator shall be appointed. The appointment shall be made in accordance with the rules applicable to the appointment of the arbitrator to be replaced.

2) Unless the parties have agreed otherwise, the arbitral tribunal may continue the hearing by referring to the proceedings to date, in particular the minutes of the hearing and all other case files.

4. Title

**Jurisdiction of the Arbitral Tribunal**

§ 609

*Power of the Arbitral Tribunal to Rule on Its Own Jurisdiction*

1) The arbitral tribunal shall decide on its own jurisdiction. The decision may be made together with the decision on the merits of the case, but may also be made separately in a separate award.

2) A plea challenging the jurisdiction of the arbitral tribunal must be raised no later than when the first substantive argument is presented. A party is not precluded from raising such a plea merely because it has appointed an arbitrator or participated in the appointment of an arbitrator. The objection that a matter exceeds the jurisdiction of the arbitral tribunal must be raised as soon as it becomes the subject of a substantive claim. In both cases, a later raising of the objection is precluded; however, if the arbitral tribunal is satisfied that the omission is sufficiently excused, the objection may be raised retroactively.

3) Even if an action to set aside an award in which the arbitral tribunal has affirmed its jurisdiction is still pending before a court, the arbitral tribunal may, for the time being, continue the arbitration proceedings and also render an award.

§ 610

*Ordering of Provisional or Protective Measures*

1) Unless the parties have agreed otherwise, the arbitral tribunal may, upon the request of a party and after hearing the other party, order such provisional or protective measures against that party as it deems necessary with respect to the subject matter of the dispute, where failure to do so would frustrate or significantly impede the enforcement of the claim or where there is a risk of irreparable harm. The arbitral tribunal may require any party to provide appropriate security in connection with such a measure.

2) Measures under paragraph 1 shall be ordered in writing; a signed copy of the order shall be served on each party. In arbitration proceedings with more than one arbitrator, the signature of the presiding arbitrator or, in the event of his or her inability to act, that of another arbitrator shall suffice, provided that the presiding arbitrator or the other arbitrator notes on the order the impediment preventing the signature. § 623(2), (3), (5), and (6) shall apply mutatis mutandis.

3) Upon the request of a party, the court shall enforce such a measure. If the measure provides for a security measure unknown under domestic law, the court may, upon request and after hearing the respondent, enforce that security measure under domestic law which corresponds to the measure of

that most closely resembles the arbitral tribunal's decision. In doing so, it may, upon request, formulate the arbitral tribunal's decision differently in order to ensure that its purpose is achieved.

4) The court must refuse to enforce a measure under paragraph 1 if

1. the seat of the arbitral tribunal is located in Germany and the measure suffers from a defect that would constitute grounds for setting aside a domestic arbitral award under § 628(2), § 634(3) and (4), or § 635;

2. the seat of the arbitral tribunal is not located in Germany and the measure suffers from a defect that would constitute grounds for refusing recognition or a declaration of enforceability in the case of a foreign arbitral award;

3. the enforcement of the measure is incompatible with a domestic judicial measure previously applied for or issued, or with a foreign judicial measure previously issued and to be recognized;

4. the measure provides for a form of security not recognized under domestic law, and no suitable form of security under domestic law has been requested.

5) The court may hear the respondent before deciding on the enforcement of the measure under paragraph 1. If the respondent was not heard prior to the decision, he or she may file an objection to the authorization of enforcement pursuant to Article 290 of the Enforcement Code. In both cases, the respondent may only assert that there is a ground for refusing enforcement under paragraph 4. In this proceeding, the court is not authorized to rule on claims for damages pursuant to Article 287 of the Enforcement Code.

6) The court must set aside the enforcement upon request if

1. the period of validity of the measure determined by the arbitral tribunal has expired;

2. the arbitral tribunal has restricted or revoked the measure;

3. a case under Article 291(1)(a) through (e) of the Enforcement Regulations exists, provided that such a circumstance has not already been unsuccessfully raised before the arbitral tribunal and that no obstacles to recognition (paragraph 4) stand in the way of the arbitral tribunal's decision in this regard;

4. security has been provided pursuant to paragraph 1, rendering the enforcement of the measure unnecessary.

5. Title

### **Conduct of the Arbitration Proceedings**

*General*

- 1) Subject to the mandatory provisions of this section, the parties may freely agree on the conduct of the proceedings. In doing so, they may also refer to rules of procedure. In the absence of such an agreement, the arbitral tribunal shall proceed in accordance with the provisions of this Title and, in addition, at its discretion.
- 2) The parties shall be treated fairly. Each party shall be afforded a fair hearing.
- 3) The parties may be represented or advised by persons of their choice. This right may not be excluded or restricted.
- 4) An arbitrator who fails to fulfill, or fails to fulfill in a timely manner, the obligations assumed by accepting the appointment shall be liable to the parties for all damages caused by his or her culpable refusal or delay.

*Seat of the Arbitral Tribunal*

- 1) The parties may freely agree on the seat of the arbitral tribunal. They may also leave the determination of the seat to an arbitral institution. In the absence of such an agreement, the seat of the arbitral tribunal shall be determined by the arbitral tribunal; in doing so, the circumstances of the case, including the suitability of the location for the parties, shall be taken into account.
- 2) Unless the parties have agreed otherwise, the arbitral tribunal may, notwithstanding paragraph 1, conduct proceedings at any location it deems appropriate, in particular to hold deliberations, make decisions, conduct oral hearings, and take evidence.

*Language of the Proceedings*

The parties may agree on the language or languages to be used in the arbitration proceedings. In the absence of such an agreement, the arbitral tribunal shall determine this.

*Statement of Claim and Answer*

- 1) Within the time limit agreed upon by the parties or determined by the arbitral tribunal, the claimant shall state its claim and set forth the facts on which the claim is based, and the respondent shall submit its response thereto. The

The parties may submit any evidence they deem relevant or identify additional evidence they wish to use.

2) Unless the parties have agreed otherwise, both parties may amend or supplement their claim or submissions during the proceedings, unless the arbitral tribunal refuses to allow this on the grounds of delay.

§ 615

*Oral Hearing and Written Proceedings*

Unless the parties have agreed otherwise, the arbitral tribunal shall decide whether the proceedings shall be conducted orally or in writing. If the parties have not excluded an oral hearing, the arbitral tribunal shall, upon the request of a party, conduct such a hearing at an appropriate stage of the proceedings.

§ 616

*Proceedings and Taking of Evidence*

1) The arbitral tribunal is entitled to decide on the admissibility of taking evidence, to conduct such proceedings, and to freely assess their results.

2) The parties shall be notified in a timely manner of every hearing and every meeting of the arbitral tribunal for the purpose of taking evidence.

3) All pleadings, documents, and other communications submitted to the arbitral tribunal by one party shall be brought to the attention of the other party. Expert opinions and other evidence on which the arbitral tribunal may rely in its decision shall be brought to the attention of both parties.

§ 617

*Failure to Perform a Procedural Act*

1) If the claimant fails to file the claim in accordance with § 614(1), the arbitral tribunal shall terminate the proceedings.

2) If the defendant fails to file a response within the agreed or prescribed time limit pursuant to § 614(1), the arbitral tribunal shall, unless the parties have agreed otherwise, continue the proceedings without the claimant's submissions being deemed true solely because of the failure. The same applies if a party fails to perform any other procedural act. The arbitral tribunal may continue the proceedings and render a decision based on the evidence presented. If, in the opinion of the arbitral tribunal, the failure is sufficiently excused, the omitted procedural act may be made up.

*Expert Appointed by the Arbitral Tribunal*

1) Unless the parties have agreed otherwise, the arbitral tribunal may

1. appoint one or more experts to render an expert opinion on specific issues to be determined by the arbitral tribunal;

2. require the parties to provide the expert with any relevant information or to submit or make available all documents or items relevant to the proceedings for the purpose of making a finding.

2) Unless the parties have agreed otherwise, the expert shall, if a party so requests or the arbitral tribunal deems it necessary, participate in an oral hearing after rendering his or her expert opinion. At the hearing, the parties may ask questions of the expert and have their own experts testify on the disputed issues.

3) Sections 605 and 606(1) and (2) shall apply mutatis mutandis to the expert appointed by the arbitral tribunal.

4) Unless the parties have agreed otherwise, each party has the right to submit expert opinions from its own experts. Paragraph 2 applies mutatis mutandis.

§ 619

*Judicial Assistance*

The arbitral tribunal, an arbitrator appointed by the arbitral tribunal for this purpose, or a party with the consent of the arbitral tribunal may apply to a court to perform judicial acts that the arbitral tribunal is not authorized to perform. Such judicial assistance may also consist of the court requesting a foreign court or authority to perform such acts. Sections 27, 28, and 29 of the Jurisdiction Act apply mutatis mutandis, provided that the right to appeal under Section 29 of the Jurisdiction Act is vested in the arbitral tribunal and the parties to the arbitration proceedings. The arbitral tribunal or an arbitrator appointed by the arbitral tribunal and the parties are entitled to participate in a judicial taking of evidence and to ask questions. Section 289 applies mutatis mutandis.

6. Title

**Award and Termination of Proceedings**

§ 620

*Applicable Law*

- 1) The arbitral tribunal shall decide the dispute in accordance with the laws or legal rules agreed upon by the parties. Unless the parties have expressly agreed otherwise, an agreement to apply the law or legal system of a particular state shall be construed as a direct reference to the substantive law of that state and not to its conflict-of-laws rules.
- 2) If the parties have not specified the applicable legal provisions or rules of law, the arbitral tribunal shall apply those legal provisions it deems appropriate.
- 3) The arbitral tribunal shall decide on the basis of equity only if the parties have expressly authorized it to do so.

§ 621

*Decision by a Panel of Arbitrators*

Unless the parties have agreed otherwise, the following shall apply:

1. In arbitration proceedings involving more than one arbitrator, every decision of the arbitral tribunal shall be made by a majority vote of all members. On procedural matters, the chairperson may decide alone if the parties or all members of the arbitral tribunal have authorized him or her to do so.
2. If one or more arbitrators do not participate in a vote without just cause, the other arbitrators may decide without them. In this case as well, the required majority of votes shall be calculated based on the total number of all participating and non-participating arbitrators. In the event of a vote on an award, the parties shall be notified in advance of the intention to proceed in this manner. In the case of other decisions, the parties shall be notified of the non-participation in the vote retroactively.

§ 622

*Settlement*

If the parties reach a settlement regarding the dispute during the arbitration proceedings and are able to conclude a settlement regarding the subject matter of the dispute, they may request that

1. the arbitral tribunal records the settlement, provided that the content of the settlement does not violate the fundamental principles of the Liechtenstein legal system (ordre public); it is sufficient for the record to be signed by the parties and the presiding arbitrator;

2. the arbitral tribunal records the settlement in the form of an award with agreed wording, provided that the content of the settlement does not violate fundamental principles of Liechtenstein law (ordre public). Such an award shall be rendered in accordance with § 623. It has the same effect as any award on the merits.

§ 623

*Arbitral Award*

1) The award shall be rendered in writing and signed by the arbitrator or arbitrators. Unless the parties have agreed otherwise, in arbitration proceedings with more than one arbitrator, the signatures of a majority of all members of the arbitral tribunal shall suffice, provided that the chairperson or another arbitrator notes in the award the obstacle preventing the missing signatures.

2) Unless the parties have agreed otherwise, the award shall state the reasons therefor.

3) The award shall state the date on which it was rendered and the seat of the arbitral tribunal as determined pursuant to § 612(1). The award shall be deemed to have been rendered on that date and at that location.

4) Each party shall be sent a copy of the award signed by the arbitrators in accordance with paragraph 1.

5) The award and the documents evidencing its service shall constitute joint documents of the parties and the arbitrators. The arbitral tribunal shall discuss with the parties any necessary safekeeping of the award and the documents evidencing its service.

6) The presiding arbitrator, or another arbitrator in the event of the presiding arbitrator's inability to act, shall, at the request of a party, certify the finality and enforceability of the award on a copy of the award.

7) The issuance of an award does not render the underlying arbitration agreement void.

§ 624

*Effect of the Arbitral Award*

The arbitral award shall have the same effect between the parties as a final court judgment.

§ 625

*Termination of the Arbitration Proceedings*



- 1) The arbitration proceedings shall be terminated by the award on the merits, a settlement, or a decision of the arbitral tribunal pursuant to paragraph 2.
- 2) The arbitral tribunal shall terminate the arbitration proceedings if
  1. the plaintiff fails to file the claim pursuant to § 614(1);
  2. the claimant withdraws the claim, unless the respondent objects and the arbitral tribunal recognizes a legitimate interest of the respondent in the final settlement of the dispute;
  3. the parties agree to terminate the proceedings and notify the arbitral tribunal thereof;
  4. it has become impossible for the tribunal to continue the proceedings, in particular because the parties previously involved in the proceedings have not continued the arbitration despite a written request from the arbitral tribunal pointing out the possibility of terminating the arbitration proceedings.
- 3) Subject to Sections 623(4) through (6), 626(5), and 627, as well as the obligation to revoke any ordered provisional or protective measure, the term of office of the arbitral tribunal ends upon the conclusion of the arbitration proceedings.

#### Section 626

##### *Decision on Costs*

- 1) If the arbitration proceedings are terminated, the arbitral tribunal shall decide on the obligation to reimburse costs, unless the parties have agreed otherwise. In doing so, the arbitral tribunal shall, at its discretion, take into account the circumstances of the individual case, in particular the outcome of the proceedings. The obligation to reimburse costs may include all costs reasonable for the proper pursuit or defense of the claim. In the case of § 625(2)(3), such a decision shall be rendered only if a party requests it simultaneously with the notification of the agreement to terminate the proceedings.
- 2) The arbitral tribunal may also, upon the defendant's request, rule on the claimant's obligation to reimburse costs if it has declared itself without jurisdiction because no arbitration agreement exists.
- 3) At the same time as it rules on the obligation to reimburse costs, the arbitral tribunal shall, to the extent possible and unless the costs are set off against each other, determine the amount of the costs to be reimbursed.

4) In any case, the decision regarding the obligation to reimburse costs and the determination of the amount to be reimbursed must be rendered in the form of an award pursuant to

§ 623.

5) If the decision regarding the obligation to reimburse costs or the determination of the amount to be reimbursed has not been made or is only possible after the conclusion of the arbitration proceedings, it shall be decided in a separate award.

§ 627

*Correction, Clarification, and Supplementation of the Arbitral Award*

1) Unless the parties have agreed on a different time limit, either party may, within four weeks of receiving the award, request the arbitral tribunal to

1. correct any arithmetic, clerical, or typographical errors, or errors of a similar nature, in the award;

2. to clarify certain parts of the award, provided the parties have agreed to this;

3. to issue a supplementary award regarding claims that were asserted in the arbitration proceedings but were not addressed in the award.

2) The request under paragraph 1 shall be sent to the other party. Before a decision is made on such a request, the other party shall be heard.

3) The arbitral tribunal shall decide on the correction or clarification of the award within four weeks and on the supplementation of the award within eight weeks.

4) The arbitral tribunal may correct the award pursuant to paragraph 1, item 1, within four weeks of the date of the award, even without a request.

5) Section 623 applies to the correction, clarification, or supplementation of the award. The clarification or correction forms part of the award.

7. Title

**Appeal against the Arbitral Award**

§ 628

*Application for Annulment of an Arbitral Award*

1) An action for judicial annulment may be brought against an arbitral award. This also applies to arbitral awards in which the arbitral tribunal has ruled on its own jurisdiction.

2) An arbitral award must be set aside if

1. there is no valid arbitration agreement, or if the arbitral tribunal has denied its jurisdiction but a valid arbitration agreement does exist, or if a party was not capable of entering into a valid arbitration agreement under the law applicable to that party;
2. a party was not duly notified of the appointment of an arbitrator or of the arbitration proceedings, or was unable to assert its means of attack or defense for any other reason;
3. the award concerns a dispute to which the arbitration agreement does not apply, or it contains decisions that exceed the scope of the arbitration agreement or the parties' claims for relief; if the defect concerns only a severable part of the award, that part shall be set aside;
4. the formation or composition of the arbitral tribunal is contrary to a provision of this Section or to a valid agreement between the parties;
5. the arbitration proceedings were conducted in a manner that is contrary to the fundamental principles of the Liechtenstein legal system (*ordre public*);
6. the conditions are met under which, pursuant to § 498(1)(1) through (5), a court judgment may be challenged by means of an action for retrial;
7. the subject matter of the dispute is not arbitrable under domestic law;
8. the arbitral award is contrary to the fundamental principles of the Liechtenstein legal system (*ordre public*).

3) The grounds for annulment under paragraph 2, items 7 and 8, must also be considered *ex officio*.

4) The action for annulment must be filed within four weeks. The period begins on the day on which the claimant received the arbitral award or the supplementary arbitral award. A motion under § 627(1)(1) or (2) does not extend this period. In the case of paragraph 2(6), the time limit for the action for annulment shall be determined in accordance with the provisions governing the action for retrial.

5) The setting aside of an arbitral award does not affect the validity of the underlying arbitration agreement. If an arbitral award concerning the same matter has already been set aside with final effect twice, and if a further arbitral award on the same matter is to be set aside, the court shall, upon the motion of one of the parties, simultaneously declare the arbitration agreement invalid with respect to that matter.

*Determination of the Existence or Non-Existence of an Arbitral Award*

A determination of the existence or non-existence of an arbitral award may be sought if the applicant has a legal interest therein.

*Assertion of Grounds for Annulment in Other Proceedings*

If a court or an authority determines in other proceedings, such as enforcement proceedings, that a ground for setting aside exists pursuant to § 628(2)(7) and (8), the arbitral award shall not be taken into account in those proceedings.

**Recognition                      and                      Declaration of Enforceability   of   Foreign  
Arbitral Awards**

1) The recognition and enforcement of foreign arbitral awards are governed by the provisions of the Enforcement Code, unless otherwise provided by international treaties or declarations of reciprocity. The formal requirement for the arbitration agreement is also deemed to be met if the arbitration agreement complies with both the formal requirements of § 600 and the formal requirements of the law applicable to the arbitration agreement.

2) The submission of the original or a certified copy of the arbitration agreement pursuant to Art. IV(1)(b) of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards is required only upon request by the court.

**Court Proceedings**

*Jurisdiction*

The High Court has exclusive and final jurisdiction over actions to set aside an arbitral award and actions to determine the existence or non-existence of an arbitral award. The District Court has jurisdiction over proceedings in matters under Title III.

*Procedure*

- 1) Proceedings concerning an action to set aside an arbitral award and an action to determine the existence or non-existence of an arbitral award shall be governed by the general provisions of this Act; proceedings in matters covered by Title III shall be governed by the provisions of the Act on Non-Contentious Proceedings.
- 2) At the request of a party, the public may also be excluded if a legitimate interest in doing so is demonstrated.
- 3) With the consent of all parties to the proceedings, third parties may also inspect the case files and take copies.
- 4) Documents submitted to the court by a party shall be returned to that party once the purpose of their retention has ceased to exist.

10. Title

**Special Provisions**

§ 634

*Arbitration Agreement Between Businesses and Natural Persons*

- 1) An arbitration agreement between an entrepreneur and a natural person may be validly concluded only for disputes that have already arisen, unless
  1. the natural person is an entrepreneur themselves or
  2. there is an arbitration agreement in place,
    - a) which is contained in a separate document,
    - b) which contains only provisions relating to the arbitration proceedings and
    - c) and in which the natural person was advised by a lawyer or represented by a lawyer when the arbitration agreement was concluded; the advice must be confirmed in writing by the lawyer.
- 2) Arbitration clauses in articles of association, partnership agreements, foundation deeds, or trust deeds, or in corresponding supplementary documents, are binding regardless of paragraph 1.
- 3) An arbitral award must also be set aside if, in arbitration proceedings involving a natural person who is not an entrepreneur,
  1. mandatory legal provisions have been violated, the application of which could not be waived by the parties' choice of law even in a case with foreign elements, or

2. the conditions exist under which, pursuant to § 498(1)(6) and (7), a court judgment may be challenged by means of an action for retrial; in such a case, the time limit for the action to set aside the award shall be determined in accordance with the provisions governing the action for retrial.

4) If the arbitration proceedings took place between an entrepreneur and a natural person who is not an entrepreneur themselves, the arbitral award must also be set aside if the consultation, the confirmation of such consultation, or the representation pursuant to paragraph 1, item 2, letter c did not take place.

§ 635

*Labor Law Matters*

Section 634 applies mutatis mutandis to arbitration proceedings concerning claims arising from the employment contract. This does not apply to managing directors and board members of a legal entity.

Vienna, December 10, 1912

Convention on

#### **IV. Recognition and Enforcement of Foreign Arbitral Awards**

Concluded in New York on June 10, 1958

Approval by the State Parliament: May 19, 2011

Entry into force for the Principality of Liechtenstein: October 5, 2011

##### **Art. I**

1) This Convention applies to the recognition and enforcement of arbitral awards rendered in disputes between natural or legal persons within the territory of a State other than the State in which recognition and enforcement are sought. It shall also apply to awards that are not considered domestic in the State in which their recognition and enforcement are sought.

2) The term “arbitral awards” shall include not only awards rendered by arbitrators appointed for a specific case, but also those of a permanent arbitral tribunal to which the parties have submitted.

3) Any State that signs or ratifies this Convention, accedes to it, or notifies its extension in accordance with Article X may, at the same time, declare on the basis of reciprocity that it will apply the Convention only to the recognition and enforcement of such arbitral awards as have been rendered in the territory of another Contracting State. It may also declare that it will apply the Convention only to disputes arising from such legal relationships, whether contractual or of a non-contractual nature, which are considered commercial goods under its domestic law.

##### **Art. II**

1) Each Contracting State shall recognize a written agreement by which the parties undertake to submit to arbitration all or any disputes between them arising out of a specific legal relationship, whether contractual or non-contractual, that have already arisen or may arise in the future, provided that the subject matter of the dispute is capable of being settled by arbitration.

2) A “written agreement” shall be understood to mean an arbitration clause in a contract

or an arbitration agreement, provided that the contract or arbitration agreement has been signed by the parties or is contained in letters or telegrams exchanged between them.

3) If a court of a Contracting State is seised of a matter in respect of which the parties have entered into an agreement within the meaning of this Article, the court shall, upon the request of one of the parties, refer the matter to arbitration, unless it finds that the agreement is void, invalid, or unenforceable.

### Art. III

Each Contracting State shall recognize arbitral awards as valid and shall permit their enforcement in accordance with the procedural rules of the territory in which the award is invoked, provided that the conditions set forth in the following Articles are met. The recognition or enforcement of arbitral awards to which this Convention applies shall not be subject to substantially stricter procedural requirements or substantially higher costs than the recognition or enforcement of domestic arbitral awards.

### Art. IV

1) For the recognition and enforcement referred to in the preceding article, the party seeking recognition and enforcement must, together with its application, submit:

- a) the duly authenticated (legalized) original of the arbitral award or a copy duly certified as conforming to such original;
- b) the original of the agreement within the meaning of Article II or a copy duly certified as conforming to such an original.

2) If the arbitral award or the agreement is not drafted in an official language of the country in which the arbitral award is being enforced, the party seeking its recognition and enforcement must provide a translation of the aforementioned documents into that language. The translation must be certified by an official or sworn translator or by a diplomatic or consular representative.

### Art. V

1) Recognition and enforcement of the award may be refused, upon application by the party against whom it is invoked, only if that party furnishes proof to the competent authority of the country in which recognition and enforcement



is sought, provides proof.

a) that the parties who have entered into an agreement within the meaning of Article II were in any respect incapable of doing so under the law applicable to them personally, or that the agreement is invalid under the law to which the parties have subjected it, or, if the parties have not specified this, under the law of the country in which the award was rendered, or

b) that the party against whom the award is invoked was not duly notified of the appointment of the arbitrator or of the arbitral proceedings, or that for any other reason it was unable to present its case or defend itself, or

c) that the award concerns a dispute not mentioned in the arbitration agreement or not falling within the scope of the arbitration clause, or that it contains decisions exceeding the limits of the arbitration agreement or the arbitration clause; however, if the part of the award relating to matters that were subject to the arbitral proceedings can be separated from the part relating to matters that were not subject to them, the former part of the award may be recognized and enforced, or

d) that the constitution of the arbitral tribunal or the arbitral proceedings did not comply with the agreement of the parties or, in the absence of such an agreement, with the law of the country in which the arbitral proceedings took place, or

e) that the award has not yet become binding on the parties or that it has been set aside or its effects have been suspended by a competent authority of the country in which or under the law of which it was rendered.

2) Recognition and enforcement of an arbitral award may also be refused if the competent authority of the country in which recognition and enforcement are sought determines

a) that the subject matter of the dispute cannot be settled by arbitration under the law of that country, or

b) that the recognition or enforcement of the award would be contrary to the public policy of that country.

Art. VI

If an application has been filed with the authority competent under Article V(1)(e) to set aside the arbitral award or to suspend its effects provisionally, the authority before which the arbitral award is being enforced may, if it deems it appropriate, suspend the decision on the application to permit enforcement; but it may also, upon application by the party seeking enforcement of the award, require the other party to provide adequate security.

Art. VII

1) The provisions of this Convention shall not affect the validity of multilateral or bilateral treaties concluded by the Contracting States concerning the recognition and enforcement of arbitral awards, nor shall they deprive any party of the right to rely on an arbitral award in accordance with the domestic law or treaties of the country in which it is invoked.

2) The 1923 Geneva Protocol on Arbitration Clauses and the 1927 Geneva Convention on the Enforcement of Foreign Arbitral Awards shall cease to have effect between the Contracting States at the time and to the extent that this Convention becomes binding upon them.

Art. VIII

1) This Convention shall remain open for signature until December 31, 1958, by any Member State of the United Nations, as well as by any other State that is or becomes a member of a specialized agency of the United Nations or a party to the Statute of the International Court of Justice, or to which an invitation has been extended by the General Assembly of the United Nations.

2) This Convention is subject to ratification; the instrument of ratification shall be deposited with the Secretary-General of the United Nations.

Art. IX

1) All States referred to in Article VIII may accede to this Convention.

2) Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Art. X

1) Any State may, at the time of signature, ratification, or accession, declare that this Convention shall apply to all or to any of the territories

for which it conducts international relations. Such a declaration shall take effect as soon as the Convention enters into force for the State that made it.

2) Subsequently, this Convention may be extended to such territories by notification addressed to the Secretary-General of the United Nations; the extension shall take effect on the ninetieth day after the notification is received by the Secretary-General of the United Nations or, if this Convention enters into force for the State concerned at a later date, only at that time.

3) With respect to territories to which this Convention has not been extended at the time of signature, ratification, or accession, each State concerned shall consider the possibility of taking the necessary measures to extend the Convention to them, with the consent of the governments of those territories if such consent is required for constitutional reasons.

#### Art. XI

The following provisions shall apply to a federal State or a State that is not a unitary State:

- a) With respect to the articles of this Convention that relate to matters within the legislative competence of the federal government, the obligations of the federal government are the same as those of Contracting States that are not federal states;
- b) With respect to those articles of this Convention that relate to matters within the legislative jurisdiction of the member states or provinces which, under the constitutional order of the Federation, are not required to take legislative measures, the Federal Government is obligated to bring the relevant articles to the attention of the competent authorities of the member states or provinces as soon as possible, expressing its support;
- c) a State Party to this Convention shall, upon request from another State Party transmitted to it by the Secretary-General of the United Nations, provide a statement of the law in force and the practice within the Federation and its constituent States or provinces regarding specific provisions of this Convention, indicating in particular the extent to which

to what extent these provisions have been given effect through legislative or other measures.

Art. XII

1) This Convention shall enter into force on the ninetieth day following the deposit of the third instrument of ratification or accession.

2) For any State that ratifies this Convention or accedes to it after the deposit of the third instrument of ratification or accession, it shall enter into force on the ninetieth day following the deposit of its instrument of ratification or accession. Art. XIII

1) Any State Party may denounce this Convention by written notification addressed to the Secretary-General of the United Nations. The denunciation shall take effect one year after the notification is received by the Secretary-General.

2) Any State that has made a declaration or given notice pursuant to Article X may at any time thereafter notify the Secretary-General of the United Nations that the extension of the Convention

to the territory in question shall cease to have effect one year after the notification has been received by the Secretary-General.

3) This Convention shall remain applicable to arbitral awards in respect of which proceedings for recognition or enforcement have been instituted before the denunciation takes effect.

Art. XIV

A Contracting State may invoke this Convention against another Contracting State only to the extent that it is itself bound to apply it.

Art. XV

The Secretary-General of the United Nations shall notify all States referred to in Article VIII of:

- a) the signatures and ratifications in accordance with Article VIII;
- b) the declarations of accession in accordance with Article IX;
- c) the declarations and notifications pursuant to Articles I, X, and XI;
- d) the date on which this Convention enters into force pursuant to Article XII;
- e) the denunciations and notifications pursuant to Article

XIII. Article XVI

1) This Convention, the Chinese, English, French, Russian,

and Spanish texts being equally authentic, shall be deposited in the archives of the United Nations.

2) The Secretary-General of the United Nations shall transmit a certified copy of this Convention to the States referred to in Article VIII.

*(Signatures follow)*

Reservation by the Principality of Liechtenstein

Pursuant to Article I, paragraph 3, of the Convention, the Principality of Liechtenstein declares that it will apply the Convention only to the recognition and enforcement of arbitral awards rendered in the territory of another Contracting State.

## V. Non-Contentious Proceedings Act (AussStrG)

of November 25, 2010

on judicial proceedings in non-contentious legal matters

### I. General Provisions

#### A. Scope of Application and Parties

##### Art. 1

##### *Scope of Application and Definitions*

- 1) This Act governs non-contentious proceedings (non-contentious proceedings).
- 2) Non-contentious proceedings shall apply in those civil matters for which this is provided for in this Act or in special laws. In any case, the following applies:
  - a) in child welfare proceedings for:
    1. custody decisions (Sections 144 et seq. ABGB), even if these are issued in the context of a divorce action (Articles 55–58 EheG);
    2. the extension of minority (§ 173 ABGB);
    3. the minimum rights of parents (Section 178 ABGB);
    4. the grandparents' right to regular contact with their grandchildren;
    5. Decisions concerning child support between parents and children;
    6. the determination of an appropriate dowry for unmarried or already married minor or adult daughters (Section 1220 of the Austrian Civil Code);
    7. disputes between the non-marital father of a child and the child's mother (Section 168 of the Austrian Civil Code);
    8. the determination of paternity of a child;
    9. adoption proceedings;
  - b) in guardianship and curatorship proceedings;
  - c) in proceedings concerning non-contentious matrimonial matters pursuant to Art. 49h of the Marriage Act;
  - d) in proceedings for divorce by mutual consent for all related matters;
  - e) in proceedings under the Advance Maintenance Act;
  - f) in probate proceedings;
  - g) in judicial deposit proceedings (Section 1425 of the Austrian Civil Code);
  - h) in proceedings concerning the invalidation of mortgages, promissory notes, securities, and similar instruments;

- i) in proceedings concerning involuntary commitment;
- k) in proceedings concerning residence in residential or nursing facilities.
- 3) Unless otherwise provided, the general provisions of this Act shall also apply to non-contentious proceedings governed by other statutory provisions.
- 4) 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.
- 5) Articles 93 through 99, insofar as they refer to spouses and matrimonial matters, shall apply mutatis mutandis to registered partners and partnership matters.

#### Art. 2

##### *Parties*

- 1) The parties are:
  - a) the petitioner;
  - b) the person designated by the petitioner as the respondent or otherwise as a party;
  - c) any person whose legally protected position would be directly affected by the decision sought or contemplated by the court, or by any other judicial action; and
  - d) any person or entity that must be included in the proceedings pursuant to statutory provisions.
- 2) A person who merely prompts a court action is not a party.
- 3) A party's capacity to act independently in court and the status of the legal representative are governed by the provisions of the Code of Civil Procedure.

#### Art. 3

##### *Acts of the Parties and Participation*

- 1) The acts and omissions of a party do not directly affect other parties.
- 2) Any party may have the court ask questions of the other parties or their representatives, witnesses, or experts, or, with the court's consent, may ask such questions directly. The court shall reject inappropriate and inadmissible questions.

#### Art. 4

1) The parties may represent themselves in court or be represented by any person with legal capacity.

2) If a party is unable to express itself clearly in writing or orally, the court shall, setting a reasonable deadline, order the party to appoint a suitable representative if this is necessary to conduct the proceedings appropriately. If the party fails to comply with such an order within the deadline, the court shall appoint a suitable representative at the party's risk and expense.

3) If a deaf or mute party, who is otherwise capable of expressing themselves clearly regarding the subject matter of the proceedings, has appeared neither with a suitable representative nor with a sign language interpreter, the court shall adjourn the hearing for as short a time as possible and arrange for such an interpreter to be present at the new hearing. The costs of the sign language interpreter shall be borne by the state.

Art. 5

*Appointment of a representative ex officio*

1) The court must, on its own initiative, take into account any lack of standing to sue, lack of legal representation, or any special authorization required to conduct the proceedings at every stage of the proceedings. To remedy such deficiencies, the court must issue the necessary orders and take steps to ensure that the party does not suffer any disadvantage as a result. Such court orders are not subject to separate appeal.

2) In pending proceedings, the court shall, ex officio:

a) appoint a legal representative (curator) if:

1. the legal representative of a party is prohibited from representing that party due to a conflict of interest;

2. service on a party could only be effected by public notice and the party would have to take procedural action to protect its rights as a result of such service, in particular if the document to be served contains a summons;

b) ensure the appointment of a curator if:

1. a party has not yet been born;



2. the identity or whereabouts of a party is unknown, and without such a representative, the party or a third party could be prejudiced in the pursuit of their rights;
  3. there are indications that the conditions of § 187 ABGB apply to the party;
  4. a party requires a legal representative for the proceedings for other reasons.
- 3) Unless otherwise ordered, decisions regarding the appointment and removal of the curator under paragraph 2(b), as well as claims arising from the curator's intervention, shall be made in the special proceedings provided for that purpose.
- 4) As soon as the court takes a procedural step regarding the appointment of a curator, any pending deadlines for the affected party are suspended, regardless of whether the proceedings are suspended. They resume once the decision on the appointment of the curator becomes final. If a curator is appointed and the service of a document triggered the start of a time limit, the time limit begins upon service of the document on the curator.

Art. 6

*Duty of Representation*

Unless otherwise provided, the provisions of the Civil Procedure Code regarding authorized representatives shall apply mutatis mutandis.

Art. 7

*Legal Aid and Legal Assistance*

- 1) The provisions of the Civil Procedure Code regarding legal aid and litigation support shall apply mutatis mutandis.
- 2) If a party applies for the appointment of a lawyer through legal aid within a procedural deadline or a grace period granted for such a deadline, the time limit for that party begins anew upon service of the order appointing the lawyer and, if a document triggered the time limit, upon service of that document to the appointed lawyer as well; the court must serve the order. If a timely application for the appointment of a lawyer is denied, the time limit shall begin to run anew upon the decision denying the application becoming final.
- 3) A decision on the appointment of a legal assistant shall, if possible, be made before or at the first hearing.

4) The legal assistant is entitled to remuneration in accordance with the rate applicable to legal aid, even in proceedings in which no reimbursement of costs can be claimed.

## **B. Procedure**

### **Art. 8**

#### *Commencement of Proceedings*

- 1) Unless otherwise ordered, proceedings shall be initiated only upon application.
- 2) Applications initiating proceedings shall, unless they are to be dismissed or rejected immediately, be served on all persons whose status as a party is apparent from the record (parties of record) at the latest at the same time as the initiation of investigations, in the same manner as a complaint.
- 3) In proceedings initiated ex officio, the court must clearly specify the subject matter of the proceedings to the party no later than in its first procedural act.

### **Art. 9**

#### *Petitions*

- 1) The motion need not contain a specific request, but must sufficiently indicate what decision or other judicial action the petitioner seeks and from what facts the petitioner derives this.
- 2) If the claim seeks solely a monetary award but does not specify the amount, the court must order the party to specify the amount of the claim within a reasonable time limit as soon as the findings of the proceedings permit such a specification. No appeal is permitted against this decision.
- 3) If the set deadline expires without result, a claim that is not specified in numerical terms must be dismissed. This legal consequence must be noted in the request.

#### *Submissions*

### **Art. 10**

#### *a) Principle*

- 1) Motions, statements, and communications (submissions) may be filed with the court of first instance in the form of a written pleading or entered into the record.

- 2) Written submissions must be submitted with as many copies as there are parties to the proceedings to whom a copy of the submission is to be served. If a party not represented by an attorney fails to do so, the court shall produce the necessary copies if this is necessary to expedite the proceedings.
- 3) They must include the case designation, the first and last names and address of the applicant, their representative, and—where necessary—the names and addresses of the other parties known to them; in civil status matters, they must also include the date and place of birth as well as the nationality of the parties.
- 4) If the submission contains a defect in form or content that prevents further proceedings, the court shall not immediately dismiss or reject it, but shall first ensure that the defect is corrected. If a deadline was to be observed for the submission, the party shall be requested to correct the defect within a reasonable period of time. The request must specify the defect and must be served in a verifiable manner.
- 5) If the deadline is met, the submission shall be deemed to have been filed at the original time. The deadline for correction granted for an urgent matter cannot be extended.

Art. 10a

*b) Confidentiality of Residential Address*

The provisions of the Code of Civil Procedure regarding the confidentiality of the residential addresses of parties and witnesses shall apply *mutatis mutandis*.

Art. 11

*Withdrawal of the motion*

- 1) Proceedings that can be initiated only upon application are terminated upon withdrawal of the application. The motion may be withdrawn until the court of first instance renders its decision. If an admissible appeal has been filed, the motion, to the extent that it is the subject of the appeal proceedings, may still be withdrawn until the appellate court renders its decision, but only by waiving the claim or with the consent of the respondent; to the extent of the withdrawal of the application, the contested order—with the exception of cost awards to other parties—becomes ineffective; the appellate court must determine this by order.

## Non-Contentious Proceedings

~~Act (AussStrG)~~

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2) Proceedings that may also be initiated ex officio are terminated upon withdrawal of the motion unless the court of first instance rules that it will continue the proceedings ex officio. Once the court of first instance has rendered its decision, the motion may no longer be withdrawn.

3) To the extent that the withdrawal of the petition also constitutes an effective waiver of the underlying claim, it may not be asserted again.

### Art. 12

#### *Pending Proceedings*

Proceedings are pending as soon as a petition to initiate them is filed with the court or the court has taken a procedural step in proceedings to be initiated ex officio.

### Art. 13

#### *Conduct of Proceedings*

1) The court shall, on its own initiative, ensure the progress of the proceedings and conduct them in such a way as to guarantee a comprehensive examination and thorough assessment of the subject matter of the proceedings, as well as the shortest possible duration of the proceedings. The parties shall assist the court in this regard.

2) Proceedings concerning a person under guardianship must be conducted in such a way as to best safeguard that person's welfare.

3) The court must strive to reach an amicable settlement between the parties at every stage of the proceedings.

### Art. 14

#### *Duty to Provide Guidance and Instruction*

1) The provisions of the Code of Civil Procedure regarding the duty to provide guidance and instruction shall apply.

2) In addition, the court shall instruct parties who are not represented by an attorney regarding the specific arguments and offers of evidence relevant to the subject matter of the proceedings that may serve the appropriate pursuit or defense of rights, and shall guide them in taking such procedural steps as are appropriate.

### Art. 15

#### *Right to a Hearing*

The parties shall be given the opportunity to comment on the subject matter regarding which the court has initiated proceedings ex officio, as well as on the motions and arguments of the

to be informed of other parties and the content of the surveys and to comment on them.

Art. 16

*Compilation of the Basis for the Decision*

- 1) The court shall, ex officio, ensure that all facts relevant to its decision are clarified and shall take all indications of such facts into account accordingly.
- 2) The parties must present or offer, completely and truthfully, all facts and evidence known to them that are relevant to the court's decision, and must answer all questions posed by the court in this regard.

Art. 17

*Consequences of Default*

- 1) The court may, setting a reasonable deadline, request a party to comment on another party's motion or on the content of the evidence presented, or summon the party for a hearing or a court session for this purpose. If the party allows the deadline to pass without acting or fails to comply with the summons, the court may assume that there are no objections to the other party's submissions or to an intended decision based on the disclosed content of the evidence.
- 2) The request for a statement and the summons must include a reference to this legal consequence and must be served in the same manner as a complaint. No appeal is permitted against such a deadline or summons.

Art. 18

*Oral Hearing*

Unless an oral hearing is mandatory, the court is free to order a hearing to hear the entire case or specific issues with the parties involved in the matter at hand if it deems this appropriate for expediting the proceedings, establishing the facts, or discussing legal issues. Even if a hearing has been held, the court is not required to conduct further proceedings orally.

Art. 19

*Publicity*

1) The oral hearing is public.

2) Public access shall be excluded ex officio if:

- a) public attendance appears to endanger public morals or public order;
- b) there is reasonable concern that it could disrupt the proceedings or hinder the establishment of the facts;
- c) it is necessary in the interest of a person under guardianship.

2a) The public may be excluded from the hearing ex officio or upon request if their presence would jeopardize a trade secret within the meaning of Article 1a(1)(n) of the Unfair Competition Act. In such cases, the reasons for excluding the public may be disclosed only to the persons specified in paragraph 5.

3) The public shall also be excluded upon the request of a party for reasons worthy of consideration, in particular because matters of family life are to be discussed.

4) The public may be excluded for the entire hearing or for individual parts thereof. To the extent that the public is excluded, the public disclosure of the content of the hearing is prohibited.

5) If the court has excluded the public, a party may request that, in addition to itself and its representative, a person of its choosing be permitted to attend the oral hearing; in all other respects, §§ 171(2) and (3), 173, and 175(2) of the Civil Procedure Code (ZPO) shall apply.

#### Art. 20

##### *Taking of Evidence Outside an Oral Hearing*

1) Parties who have appeared in court and their representatives may participate in the taking of evidence outside of an oral hearing, in particular in the examination of a person. Notification of the taking of evidence shall be provided only upon request. The court may exclude parties and their representatives from participation if the proceedings concern a minor or another person under guardianship and participation in the taking of evidence would endanger the welfare of a person under guardianship or significantly impede the determination of the facts.

2) No appeal is permitted against exclusion from the taking of evidence. Art. 21

##### *Restoration of Rights*

The provisions of the Civil Procedure Code regarding reinstatement to the previous status, with the exception of § 154 ZPO, shall apply mutatis mutandis if the legal disadvantage resulting from the failure to meet a deadline or attend a hearing cannot be averted by an appeal or a new motion.

Art. 22

*Minutes, Case Files, Court Order, and Penalties*

The provisions of the Code of Civil Procedure regarding minutes, case files, courtroom conduct, insults in written submissions, and penalties shall apply mutatis mutandis.

Art. 23

*Time limits*

1) The provisions of the Civil Procedure Code regarding time limits, with the exception of § 142 ZPO and those concerning interruption due to court recesses, shall apply mutatis mutandis.

2) The time limits for filing and responding to an appeal and for filing a motion to amend are strict time limits.

Art. 24

*Service*

1) Unless otherwise ordered, the provisions of the Civil Procedure Code regarding service and the Service of Process Act shall apply.

2) Service shall be effected by public notice (Art. 28 of the Service of Process Act) if the court deems it probable that the necessary conditions for such service are met. Edicts shall be published in the manner prescribed in § 117(2) of the Civil Procedure Code. In addition, a notice customary in the locality may be ordered ex officio or upon application.

*Suspension of Proceedings*

Art. 25

*a) Principle*

1) The proceedings are suspended if:

a) the unrepresented party dies or loses the capacity to act independently as a party in court;

b) the party's legal representative dies or loses the authority to represent the party, and the party is unable to act independently in court nor is represented by a person authorized to act on its behalf;

- c) the attorney dies or loses the capacity to continue representing the party, to the extent that such representation is required by law;
  - d) insolvency proceedings are opened against a party's assets, provided that the provisions of the Insolvency Code so provide; or
  - e) the court ceases its official activities as a result of a war or another similarly serious event.
- 2) The proceedings may be suspended in whole or in part, either ex officio or upon application, if:
- a) a preliminary question regarding the existence or non-existence of a legal relationship forms the subject matter of another pending proceeding or a proceeding to be initiated ex officio before a court or administrative authority, the resolution of the preliminary question in the pending proceeding is not possible without significant procedural effort, and the interruption does not entail an unreasonable delay;
  - b) there is suspicion of a criminal offense, the investigation and adjudication of which is likely to have a decisive influence on the decision in the pending proceedings; or
  - c) a party is prevented from participating in the proceedings as a result of a war or another event of comparable gravity, and there is concern that the absent party would thereby suffer significant prejudice.

Art. 26

*b) Effect*

- 1) During the suspension, the court shall perform only those procedural acts that are urgently required. In the cases provided for in Art. 25(2)(a) and (b), procedural acts may be performed by the court and the parties, provided they do not prejudice the decision on the preliminary issue. If the suspension occurs after the case has become ready for decision, it shall not prevent the issuance of the decision.
- 2) Upon suspension, the running of any time limit for taking a procedural step ceases. This does not apply to time limits set by the court for urgent procedural steps, notwithstanding the suspension. Otherwise, procedural steps taken during the suspension have no effect on other parties.



3) Proceedings that have been suspended shall be resumed by order upon the motion of a party if the grounds for the suspension no longer exist. A proceeding that may be initiated ex officio shall also be resumed ex officio by order if the interests of a party or the public—the protection of which is the purpose of the proceeding—might otherwise be jeopardized. Upon service of the order to resume the proceeding, any suspended time limits shall begin anew.

4) The order by which the interruption of the proceedings is ordered or the resumption of the interrupted proceedings is denied is independently appealable.

Art. 27

*c) Resumption of Proceedings*

1) If the proceedings are suspended for reasons attributable to a party or its legal representative (Art. 25(1)(a) and (b)), the proceedings shall be continued with the representative subsequently appointed. If the reason for the interruption lies with the attorney (Art. 25(1)(c)), the court shall require the party, within a reasonable time limit, to notify the court of its new representative. If the requirement is not met within the time limit, the proceedings shall continue by order notwithstanding this circumstance.

2) If proceedings are suspended to resolve a preliminary issue (Art. 25(2)(a)) and the preliminary issue is to be resolved in proceedings to be initiated ex officio, the court shall recommend the immediate initiation of such proceedings.

Art. 28

*Suspension of Proceedings*

1) If at least two parties are involved in a proceeding, the proceeding shall be suspended if all parties expressly agree to this and notify the court of the agreement; such an agreement shall take effect at the time it is notified to the court by all parties.

2) If at least two parties are involved in a proceeding that can be initiated only upon application, the proceedings are stayed even if all parties have been summoned to an oral hearing with notice of this legal consequence,

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but no party complies with the summons or the parties present declare that they do not wish to proceed with the hearing.

3) The suspension of proceedings has the same effects as an interruption of proceedings; however, time limits continue to run. Proceedings that are suspended may not be resumed before three months have elapsed since the suspension took effect. Proceedings that may also be initiated ex officio must, however, be resumed if the interests of a party or the public—the protection of which is the purpose of the proceedings—might otherwise be jeopardized.

4) After the three-month period has expired, the proceedings must be resumed upon the request of a party. Proceedings that may be initiated ex officio may also be resumed by the court ex officio.

5) If a suspended proceeding has already been resumed ex officio once, any new agreement to suspend the proceeding requires the court's approval to be effective.

6) The order denying the resumption of the suspended proceedings after the expiration of three months is independently appealable.

### Art. 29

#### *Stay*

1) If an amicable settlement between the parties is foreseeable, particularly with the assistance of an appropriate institution, the court may stay the proceedings, provided that this does not jeopardize the interests of a party or the public, the protection of which is the purpose of the proceedings.

2) A stay of proceedings may be ordered during proceedings on a matter only for a period not exceeding six months. During the stay, the court shall perform only those procedural acts that are urgently required.

3) If it becomes apparent before the expiration of the specified period that the conditions for the stay no longer exist, the proceedings shall be resumed by order.

4) An order to stay proceedings that violates paragraph 2 is independently appealable.

### Art. 30

#### *Settlement*

1) To the extent that the parties are entitled to dispose of rights that may be the subject of court proceedings, they may enter into a court-approved settlement regarding such rights.

2) If a settlement is reached, its contents shall be recorded in the minutes. Copies of the settlement shall be provided to the parties upon their request.

3) In proceedings that can only be initiated upon application, a motion may be filed with the competent court prior to filing the application to summon the opposing party for the purpose of attempting a settlement.

*Evidence Proceedings*

Art. 31

*a) Means of Proof*

1) Any appropriate means of evidence may be used to establish the facts.

2) The court may admit evidence and conduct inquiries even if all parties object, or if the court has reasonable doubts regarding facts that are presumed by law or for which conclusive evidence is available.

3) The court may appoint experts even without first hearing the parties regarding their selection. If the judge possesses the necessary expertise, he or she may dispense with expert testimony.

4) Even in proceedings where an oral hearing is required, the court must also consider evidence presented outside of the hearing. It may also admit evidence outside the hearing, order the parties to provide supplementary information, and take other procedural steps.

5) If the court deems it essential for a party to appear for questioning, to produce a document, or to allow an inspection of an object in its custody, it may apply coercive measures (Art. 79(2)) against the party if the party fails to comply with the summons or request without a valid reason.

Art. 32

*b) Assessment of Evidence*

The court shall, after carefully considering the results of the entire proceedings, assess according to its free conviction what is to be regarded as true and what is not.

Art. 33

*c) Waiver of Evidence*

1) The court may refrain from taking evidence if it is already convinced, based on publicly known facts or the undisputed and uncontroversial statements of one or more parties, that a claim is to be regarded as true.

2) The court may disregard unsubstantiated factual claims and refuse to admit evidence if such claims or evidence are raised or offered by a party after the deadline and, upon careful consideration of all circumstances, there is no reasonable doubt that the purpose is to delay the proceedings and that admitting them would significantly delay the conclusion of the proceedings.

Art. 34

*d) Determination of Monetary Awards*

If it is established that a party is entitled to a monetary payment, but determining the amount is not possible or would involve disproportionate difficulties, the court may, upon application or on its own motion, determine the amount according to its free conviction, even if it refrains from admitting the evidence offered.

Art. 35

*e) Supplementary Law*

Unless otherwise ordered, the provisions of the Civil Procedure Code regarding the use of technical equipment for the transmission of sound and images during the taking of evidence, the taking of evidence by a requested or appointed judge, the separate examination of parties or witnesses, the examination of minors, the taking of evidence abroad, and the individual means of evidence—with the exception of the provisions regarding the joint nature of evidence, the continuation of proceedings regardless of pending evidence-taking, and the examination under oath of a witness or a party, shall apply *mutatis mutandis*.

**C. Decisions**

Art. 36

*Principles of Decision-Making*

1) The court shall render its decisions in the form of orders. These shall be issued in writing; if at least one party is present, they may also be announced orally.

- 2) The court may rule on the merits of a claim by means of an interim order and on a part of the matter by means of a partial order.
- 3) Every order must be issued within the scope of the subject matter of the proceedings, taking into account the interests of the parties and their legally effective declarations of intent under civil law.
- 4) In proceedings that can only be initiated upon application, the order must be issued within the scope of the applications. In proceedings that may also be initiated ex officio, the court is not bound by the applications in its decision.

Art. 37

*Performance Period*

- 1) The imposition of a performance is permissible only if the due date has already arrived at the time the decision is rendered or if the resolution of a legal relationship requires the award of non-due performances.
- 2) To the extent necessary, the court shall set a reasonable time limit or a reasonable date for the fulfillment of its orders. Section 409(3) through (5) of the Code of Civil Procedure (ZPO) applies mutatis mutandis to the calculation of the time limit.

Art. 38

*Issuance and Service of Orders*

Orders shall be issued in writing and served on all parties of record. Orders announced orally shall be issued in writing unless a waiver of issuance and appeal has been agreed upon. In civil status matters, a waiver of the issuance and service of orders on the merits is invalid.

Art. 39

*Contents of written decisions*

- 1) The written copy of a decision must contain the following:
  - a) the name of the court and the case;
  - b) the first and last names of the parties, their addresses, and their representatives; in civil status matters, also the date and place of their birth as well as their citizenship;
  - c) the subject matter of the proceedings;
  - d) the ruling;
  - e) the reasoning.

2) The ruling and the reasoning must be clearly distinguished. Deadlines or dates set for the fulfillment of orders issued, as well as the provisional determination of enforceability or executability, must be included in the ruling.

3) The reasoning must include the parties' motions, a statement of the legally relevant facts, an assessment of the evidence, and the legal analysis.

4) The statement of reasons may be omitted if the parties' motions of the same nature are granted, the order corresponds to the declared will of all parties, or the order was announced orally in the presence of all parties and all parties have waived their right to appeal.

5) The written version of the decision (original) intended for the court records shall be signed by the judge or judicial officer; in cases before a panel, it shall be signed by the presiding judge.

Art. 40

*Binding Nature of Court Decisions*

The court is bound by its decisions upon their oral pronouncement; if no such pronouncement is made, upon the submission of the written version for execution; however, it is bound by procedural decisions only to the extent that these are independently appealable.

Art. 41

*Supplementing and Correcting Decisions*

The provisions of the Civil Procedure Code regarding the supplementation and correction of decisions shall apply *mutatis mutandis*.

Art. 42

*Res judicata*

To the extent that a party can no longer challenge a decision, it becomes final and binding on that party.

Art. 43

*Effects of a ruling*

1) Upon a decision becoming final, it becomes enforceable, and the findings or legal dispositions therein become binding.

2) If the effect of a decision extends to all parties of record by virtue of the nature of the legal relationship or by virtue of statutory provisions,

its effects shall, however, take effect only when it can no longer be challenged by any party.

3) If a decision specifies a performance period or a due date, it becomes enforceable only after the expiration of the performance period or the passing of the due date.

4) If an appeal against an orally announced decision has been waived, but a written copy of the decision is to be served, its effects take effect upon service.

5) Procedural orders become binding on the party upon oral pronouncement, if pronounced orally, or upon service of their written copy, otherwise. Art. 44

*Provisional Declaration of Binding Effect or Enforceability*

1) Unless the matter concerns civil status, the court may provisionally grant binding or enforceable status to a decision to the extent that it deems this necessary to avoid significant disadvantages for a party or the public.

2) The provisional effects of the order take effect as soon as the order granting them has been served and remain in effect until the decision on the merits becomes final, even if the order has since been set aside or replaced by another order.

3) The decision granting such effects may be amended, in particular if an appellant faces significant disadvantages that could not be remedied even if the appeal were successful. The appellate court has jurisdiction over such decisions after the appeal has been filed.

4) No appeal is admissible against decisions regarding provisional enforceability or enforceability.

**D. Appeal**

Art. 45

*Admissibility of the Appeal*

1) Decisions of the court of first instance may be challenged by filing an appeal with the court of second instance (appeals court).

2) Unless a separate appeal is provided for, procedural decisions may be challenged only in conjunction with an appeal against the decision on the merits.

*Appeal Period*

- 1) The time limit for filing an appeal is four weeks. It begins upon service of the written copy of the decision that may be appealed separately.
- 2) A party not of record to whom the decision has not been served may file an appeal until the time at which a party of record may file an appeal or submit a response to the appeal.
- 3) After the appeal period has expired, decisions may be challenged if their amendment or revocation does not entail any disadvantage for another person.

Art. 47

*Form and Content of the Appeal*

- 1) An appeal must be filed by submitting a written brief to the court of first instance; parties who are not represented by an attorney may also file an oral appeal for the record.
- 2) In addition to the general requirements for a pleading, the appeal must specify the order against which it is filed.
- 3) The appeal need not contain a specific request, but must sufficiently indicate the grounds on which the party considers itself aggrieved and what other decision it seeks (appeal request); in case of doubt, the decision against which the appeal has been filed is deemed to be contested in its entirety. Art. 9 does not apply.

Art. 48

*Response to the Appeal*

- 1) If an appeal is filed against a decision that has ruled on the merits of the case or on the costs of the proceedings, a copy of the appeal must be served on every other party of record.
- 2) The parties to whom a copy of the appeal has been served may file a response to the appeal with the court of first instance within four weeks of the date of service; Art. 47(1) applies mutatis mutandis. As long as a party of record may file an appeal or a response to the appeal, parties not of record may also file a response to the appeal.
- 3) The other parties shall be notified of the filing of the response to the appeal by service of a copy thereof.



Art. 49

*Admissibility of New Matters*

- 1) Facts newly presented and evidence offered in the appeal proceedings shall be taken into account to the extent that they do not concern uncontested parts of the decision and unless otherwise provided by Art. 55(2).
- 2) However, facts and evidence that were already available at the time of the first-instance decision shall not be taken into account if they could have been presented by the party prior to the issuance of the decision, unless the party can demonstrate that the delay (omission) in presenting them constitutes an excusable error.
- 3) If the newly presented facts were not yet available at the time of the decision, they shall be taken into account only to the extent that they cannot be made the subject of a new motion—except for a motion to amend—without significant prejudice.

Art. 50

*Decision on Appeal by the Court of First Instance*

- 1) If an appeal is filed against a decision, the court of first instance may grant the appeal itself if it is directed against:
  - a) a procedural order, provided that it is independently appealable;
  - b) a penalty order;
  - c) the dismissal of an appeal (Art. 67);
  - d) an order deciding the merits of the case, provided that, based on the record and without further investigation, it is apparent that the order must be set aside and the underlying motion to initiate proceedings must be dismissed, or that it must be modified in its entirety in accordance with the appeal.
- 2) The court may issue a decision under paragraph 1(d) only once during the proceedings on a matter.

Art. 51

*Submission of the files to the appellate court*

- 1) The court of first instance shall, as provided, after the filing of the response to the appeal or the fruitless expiration of the applicable deadline, submit the appeal to the appellate court together with all files pertaining to the case, unless it grants the appeal itself (Art. 50).

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2) If the content of an appeal or a response to an appeal gives rise to a decision by the court of first instance, such a decision must be rendered first; if defects in service are alleged, the necessary investigations must be conducted first.

3) If the matter was not or not fully resolved by the contested decision and the proceedings regarding the unresolved issues are to continue during the appeal proceedings, copies or originals of those parts of the files pertaining to the subject matter of the appeal proceedings—which are also required for the proceedings in the court of first instance—must be submitted to the appellate court.

### Art. 52

#### *Proceedings before the Court of Appeal*

1) The appellate court shall conduct an oral hearing if it deems such a hearing necessary. Even if no response to the appeal is required, the appellate court shall give the parties an opportunity to comment on the submissions of other parties, to the extent necessary to safeguard their right to a fair hearing.

2) If the appellate court considers deviating from the findings of the trial court, it may refrain from re-examining evidence that was directly admitted in the first instance and is relevant to the findings only if it has previously notified the parties that it has reservations regarding the trial court's assessment of that evidence, and has given them the opportunity to request that the Court of Appeals re-examine this evidence; this may also be carried out by a judge appointed by the Court of Appeals.

### Art. 53

#### *Basis for Decision*

The appellate court shall base its decision on the findings of fact and the results of the investigation from the first-instance proceedings to the extent that they have not been corrected by the results of the appellate proceedings.

### Art. 54

#### *Dismissal by the Court of Appeals*

1) The appeal shall be dismissed if:

a) it is inadmissible or—unless Art. 46(3) applies—is filed late;

b) it—despite the improvement process that has been carried out—does not have the required form or content.

2) An appeal is inadmissible in particular if it has been filed by a person who is not entitled to appeal or who has waived the right to appeal. *Decision on the appeal*

Art. 55

*a) Principle*

1) If the appeal is not to be dismissed, the appellate court shall decide on the merits of the case, if necessary after supplementing the proceedings.

2) The appellate court may decide only within the scope of the appeal. In proceedings that may be initiated ex officio, however, the appellate court is not bound by the appeal; it may also amend the contested decision to the detriment of the appealing party.

3) If, on the basis of an admissible appeal, the appellate court concludes that the contested decision or the proceedings of the court of first instance suffer from a defect under Art. 56(1), 57(a), or 58(1)(a) and (b) as well as (4), this defect must be addressed, even if it was not raised by any of the parties.

4) If the court of first instance has itself granted an appeal and the appellate court sets aside this decision of the court of first instance, it must at the same time rule on the appeal that was filed against the original decision of the court of first instance.

Art. 56

*b) Nullity and Remand*

1) If the contested decision was rendered in a matter that does not fall within the scope of contentious legal proceedings, is not subject to domestic jurisdiction, has already been decided with finality, or has been withdrawn with a waiver of the claim, the decision shall be set aside, the preceding proceedings shall be declared null and void, and any preceding motion shall be dismissed.

2) If the contested decision was rendered by a court lacking subject-matter jurisdiction, it shall be set aside and the matter referred to the court of first instance having subject-matter and territorial jurisdiction.

Art. 57

The appellate court may set aside the contested decision and, to the extent that the preceding proceedings were affected by the procedural violation, also set aside those proceedings and refer the matter for a new decision, or, if necessary, for further proceedings or

-refer the case back to the court of first instance for reconsideration if this is likely to significantly reduce the burden of the proceedings and the costs incurred by the parties, and

a) the wording of the order is so deficient that it cannot be reviewed with certainty, the order is self-contradictory, or—except in the cases provided for in Article 39(4)—it lacks a statement of reasons, and these defects cannot be remedied by a correction of the order,

b) the public has been unlawfully excluded,

c) the substantive claims have not been fully resolved by the contested decision and the decision cannot be affirmed or amended as a partial decision,

d) the proceedings at first instance suffer from substantial defects that prevent an exhaustive discussion and thorough assessment of the matter,

e) facts that appear to be significant based on the contents of the case file were not even raised in the first instance, or

f) other similarly serious procedural violations exist.

Art. 58

d) *Precedence of the Court's Own Decision*

1) If, even on the basis of the information provided in the appeal proceedings, the contested decision is to be upheld in its entirety, the appellate court must, even if

a) a party was not granted the right to be heard,

b) a party was not represented in the proceedings or, if such a party requires a legal representative, was not represented by one, and the conduct of the proceedings was not subsequently approved, or

c) contrary to specific statutory provisions, no oral hearing was held, the court of appeal shall not set aside the decision but shall itself decide on the merits of the case.

2) Retrospective authorization of the conduct of the proceedings exists, in particular, where the legal representative, without asserting the defect in representation, has entered the appeal proceedings by filing the appeal or submitting a response to the appeal.

3) If a decision under paragraph 1 is not an option and the contested decision cannot be amended without further investigation, the decision and the preceding proceedings—to the extent affected by the procedural violation—shall be set aside, and the case shall be remanded to the court of first instance for a new decision, if necessary following a supplement or repetition of the proceedings.

4) The court must in any event set aside the contested order and proceed in accordance with paragraph 3 if:

- a) a judge or judicial officer who was recused or successfully challenged has rendered the decision;
- b) a judicial officer has decided in place of a judge; or
- c) the court was not properly constituted. Art. 59

#### *Decision of the Appellate Court on Appeals*

The appellate court must state in the notice of appeal whether the appeal is admissible or inadmissible pursuant to Art. 62.

Art. 60

#### *Written copy of the appellate decision*

1) The written copy of the appellate decision must also include the names of the judges who participated in the decision.

2) In the written version of its decision, the appellate court may limit the reproduction of the parties' arguments and the factual basis for the decision to what is necessary for understanding its legal reasoning. To the extent that the appellate court considers the arguments in the appeal to be unfounded, but regards the reasoning of the contested decision as correct, it may, by referring to the correctness of the latter, confine itself to a brief statement of the grounds for its judgment.

Art. 61

#### *Binding Effect of the Appellate Court's Legal Assessment*

The court to which a case is remanded following a decision by the appellate court to conduct the proceedings or render a decision anew, in whole or in part, is bound by the legal assessment on which the appellate court based its decision.

### **E. Appeal for Review**

*Admissibility of the appeal for review*

1) Subject to paragraphs 2 and 3, an appeal for review is admissible against a decision of the appellate court issued in the context of the appellate proceedings.

2) An appeal is inadmissible if the decisions of the court of first instance and the appellate court are identical, with the exception of those concerning matters under Art. 1(2)(a) (child welfare proceedings), letter b (guardianship and curatorship proceedings), letter d (divorce by mutual consent), letter i (proceedings concerning involuntary commitment), letter k (proceedings concerning residence in residential or nursing facilities), and in proceedings concerning inheritance law (Art. 161).

3) However, an appeal on points of law is in any case inadmissible:

- a) on the issue of costs;
- b) regarding legal aid; and
- c) regarding fees. Art.

63

*Appeals against the ruling on the admissibility of an appeal for review*

There are no (special) appeals against the court's ruling that an appeal for review is inadmissible.

Art. 64

*Challenge to the order of annulment*

1) A decision by which the appellate court has set aside a decision of the court of first instance and directed the latter to render a new decision following the supplementation of the proceedings is appealable only if the appellate court has ruled that the appeal for review is admissible. The appellate court may only make such a ruling if it considers the requirements for admissibility under Art. 62 to be met. This ruling may be issued ex officio or upon application and must be briefly justified.

2) In the event of a ruling pursuant to paragraph 1, the proceedings in the first instance shall not be continued until the decision to set aside has become final.

Art. 65

*Time Limit, Form, and Content of the Appeal for Review*

1) The time limit for filing an appeal for review is four weeks. It begins upon service of the appellate court's decision. A party not of record to whom the decision has not been served may file an appeal for review until the

a party of record may file an appeal for review or submit a response to the appeal for review.

2) An appeal must be filed by submitting a written brief to the court of first instance; it cannot be entered into the court record orally.

3) In addition to the general requirements for a brief, the appeal for review must contain:

- a) the identification of the decision against which the appeal for review is directed;
- b) a specific statement of the extent to which the decision is being challenged, a brief and equally specific description of the grounds for the challenge, and a statement as to whether the decision is being sought to be set aside or amended, and if so, how;
- c) the factual arguments and the evidence intended to substantiate the grounds for the appeal;
- d) if the appeal is based on Art. 66(1)(d), a concise statement of the reasons why the legal assessment of the matter appears to be incorrect;
- e) the signature of the appellant or any representative. Art. 66

*Grounds for an appeal*

1) An appeal for review may only assert that:

- a) a case under Article 56, Article 57(a), or Article 58 applies;
- b) the appeal proceedings are marred by a defect that was likely to prevent an exhaustive discussion and thorough assessment of the matter;
- c) the decision of the appellate court is based, on a material point, on a factual premise that is inconsistent with the records of the first or second instance;
- d) the decision of the appellate court is based on an incorrect legal assessment of the matter.

2) New facts and evidence may only be presented to support or refute the grounds for the appeal for review.

Art. 67

*Dismissal of the appeal for review*

An appeal for review that is inadmissible for a reason other than the lack of the requirements under Art. 62 shall be dismissed by the court of first instance or, if necessary, by the court of second instance.

Art. 68

*Response to the appeal*

1) If an appeal for review is filed against a decision that has resolved the matter, and the court of first instance finds no grounds for dismissal, a copy must be served on every other party of record. These parties may submit a response to the appeal for review in writing within four weeks; Art. 65(1), second sentence, (2), second half-sentence, (3)(c) to (e), and Art. 66(2) shall apply *mutatis mutandis*.

2) Objections to the timeliness or admissibility of the appeal for review may not be raised by way of an appeal, but only in the response to the appeal for review.

3) The time limit for filing a response to the appeal for review begins, in the case of an appeal for review whose admissibility has been declared by the appellate court, upon service of a copy of the appeal for review by the court of first instance.

4) The response to the appeal for review must be filed:

a) with the appellate court, if the latter has exempted the other parties of record from filing a response to the appeal pursuant to Art. 63(5);

b) with the Supreme Court, if the latter has, pursuant to Art. 71(2), exempted the other parties of record from filing a response to the appeal;

c) otherwise, with the court of first instance.

5) The other parties must be notified of the filing of a response to the appeal by service of a copy thereof.

Art. 69

*Submission of the case files to the Supreme Court*

1) Unless an appeal for review is already dismissed by the court of first instance, it must submit the files.

2) The court of first instance shall, where applicable, submit an appeal for review to the court of second instance, together with all files pertaining to the case, upon receipt of the response or the fruitless expiration of the applicable deadline; the court of second instance shall forward the files to the Supreme Court after attaching the relevant appellate court files.



Art. 70

*Decision on the Appeal for Review*

- 1) The Supreme Court may decide on the contested decision only within the scope of the appeal for review. In proceedings that may be initiated ex officio, however, the Supreme Court is not bound by the appeal; it may also amend the contested decision to the detriment of the appealing party.
- 2) The Supreme Court may decide on an appeal for review under Art. 64 on the merits of the case if the case is ready for decision.
- 3) If the appellate court's decision is to be set aside, the court must remand the case to the appellate court if only the proceedings at the second instance require further action. If, however, the proceedings at the first instance require further action or suffer from a defect that must be remedied ex officio, the decision of the first instance must also be set aside and the case remanded to that court.
- 4) Furthermore, the Supreme Court may set aside a decision of the appellate court and refer the case back to it for a new decision if, in the context of an appeal for review, a more detailed examination of individual grounds for the claim or more thorough calculations are necessary for a final decision on the claim.

Art. 71

*Proceedings before the Supreme Court*

- 1) If the Supreme Court does not find, upon initial review, that an appeal for review must be dismissed for lack of the requirements under Art. 62, it shall notify the respondent to the appeal for review that the respondent is free to respond to the appeal for review. The court of first and second instance, as well as the appellant, shall be notified of this communication. Upon receipt of this notification, the appellate court shall submit its files regarding this proceeding to the Supreme Court.
- 2) In the written version of its decision, the Supreme Court may limit the restatement of the parties' arguments and the factual basis for the decision to what is necessary for understanding its legal reasoning. If the Supreme Court affirms the decision of the appellate court and considers its reasoning to be correct, it is sufficient for it to refer to the correctness of that reasoning

. The finding that an alleged defect or inconsistency with the record does not exist requires no justification.

3) Unless otherwise provided, the provisions on appeals, with the exception of Art. 50(1)(d), shall apply mutatis mutandis.

#### **F. Amendment Proposal**

Art. 72

##### *Admissibility of the motion to amend*

If the effects of a decision cannot be remedied by initiating other judicial proceedings, an amendment to the decision may be sought in accordance with the following provisions.

Art. 73

##### *Grounds for the motion to amend*

1) After a decision resolving the matter has become final, a motion to modify it may be filed if:

- a) the party requires a legal representative and was not represented by one, and the conduct of the proceedings was not subsequently approved;
- b) a judge or judicial officer who has been recused or whose recusal has been granted has rendered a decision;
- c) the requirements under § 498(1)(1) through (5) of the Code of Civil Procedure (ZPO) are met;
- d) a party discovers or is enabled to use a previous, final decision on the matter that establishes the law between the parties to the proceedings underlying the order to be modified; or
- e) the party becomes aware of new facts or discovers evidence, or is enabled to use evidence, the presentation and use of which in the earlier proceedings would have resulted in a decision more favorable to the party.

2) A ground for modification under paragraph 1(a) through (c) does not exist if the circumstance on which the motion for modification is based could have been asserted in the previous proceedings or was asserted without success.

3) A ground for modification under paragraph 1(d) and (e) exists only if the party was unable, through no fault of its own, to assert the finality of the decision or the new facts or evidence in the previous proceedings.

Art. 74

*Time limits for the motion to modify*

- 1) The motion for modification must be filed within four weeks.
- 2) This time limit shall be calculated from the day on which:
  - a) the decision was effectively served on the party (Art. 73(1)(a));
  - b) the party became aware of the grounds for exclusion (Art. 73(1)(b));
  - c) the criminal judgment or the order dismissing the criminal proceedings has become final (Art. 73(1)(c)); or
  - d) the party was able to rely on the final decision or to present the facts and evidence of which it had become aware in court (Art. 73(1)(d) and (e)).
- 3) If, prior to the motion to amend the decision to set aside its effects, another motion was filed or an appeal was lodged by a party not listed in the record, the four-week period shall not begin until the decision rejecting that motion or appeal becomes final.
- 4) In any case, the period shall not begin before the decision to be amended becomes final.
- 5) Ten years after the decision becomes final, the motion to amend may be filed only in the cases provided for in Art. 73(1)(a).

Art. 75

*Form and Content of the Application for Modification*

- 1) In addition to the general requirements for a motion, the amendment must include:
  - a) the title of the resolution that is to be amended;
  - b) the reasons for requesting the amendment;
  - c) details regarding the circumstances demonstrating compliance with the deadline under Art. 74.
- 2) The motion must indicate what alternative decision is sought. Art. 9, paras. 2 and 3, shall apply.

Art. 76

*Jurisdiction over the modification proceedings*

The application for modification must be filed with the Regional Court. The Regional Court shall decide on the application for modification, even if the decision to be modified was rendered by a higher court.

Art. 77

*Decision on the application for modification*

- 1) If the motion for modification is inadmissible, the court shall dismiss it.
- 2) If there is a valid ground for amendment, the decision must be amended within the scope of the motion to the extent that it is affected by the ground for amendment. Resolutions may be amended to the detriment of the party seeking the amendment only in proceedings that may also be initiated ex officio. Otherwise, the motion for amendment must be dismissed if no decision on the matter more favorable to the petitioner could be rendered.
- 3) The amendment of decisions establishing legal rights does not have retroactive effect against third parties.

**G. Reimbursement of Costs**

Art. 78

*Liability for Success, Equity*

- 1) Unless otherwise expressly provided in this Act or other statutory provisions, the court shall, without further inquiry and after careful consideration of all circumstances, determine the extent to which reimbursement of costs is to be imposed. A decision on this matter shall be made in every decision disposing of the case, unless the court of first instance reserves the decision on costs until the case is finally decided.
- 2) A party shall be reimbursed for the costs necessary for the proper pursuit or defense of its legal claims to the extent that it has been successful in pursuing or defending its claims against other parties who have pursued opposing interests. An exception to this shall be made only to the extent that equity so requires, in particular due to the factual or legal difficulties of the case or due to expenses attributable to the conduct of individual parties.
- 3) To the extent that no claims for reimbursement arise therefrom, the cash outlays referred to in § 43 (1), third sentence, of the ZPO shall be apportioned among the parties in proportion to their shares in the subject matter of the proceedings; if such shares cannot be determined, they shall be apportioned equally, taking into account any expenses attributable to the conduct of individual parties. In all other respects, the parties shall bear their own costs.

4) The provisions of the ZPO shall apply mutatis mutandis to the assessment of costs and the interest thereon.

## **H. Enforcement of Decisions**

### **Art. 79**

#### *Coercive Measures in Proceedings*

1) The court shall, ex officio, enforce orders necessary for the continuation of the proceedings against persons who fail to comply with them by means of appropriate coercive measures.

2) The following coercive measures may be considered in particular:

- a) Fines, including to compel reasonable conduct; the provisions of Art. 259 EO shall apply mutatis mutandis to the amount thereof;
- b) coercive detention, which may be imposed only in cases of unreasonable conduct, tolerance, or omissions, for a total duration of up to six months;
- c) compulsory appearance;
- d) the seizure of documents, information, and other movable property;
- e) the appointment of trustees who are to perform acts that can be challenged at the expense and risk of a defaulting party.

### **Art. 80**

#### *Enforcement*

Unless otherwise ordered, decisions shall be enforced in accordance with the Enforcement Code.

## **II. Proceedings in Matters of Marriage, Parentage, and Guardianship**

### **A. Descent**

#### **Art. 81**

##### *Acknowledgment of Paternity*

1) The court shall draw up a record of the acknowledgment of paternity and of any related declarations.

2) The record of the acknowledgment must contain:

- a) the express acknowledgment of paternity;
- b) the first and last names, date and place of birth, nationality, occupation, address, and membership in a recognized religious community of the person acknowledging paternity, as well as, if possible, a reference to the entry in his birth register; and

c) - to the extent known - the first and last names, date and place of birth, nationality, occupation, and address of the child and the mother, as well as, if possible, a reference to the entry in their registry.

3) The court shall forward copies of the declarations it has certified or of the certified declarations submitted to it for forwarding to the competent civil registry authority.

4) The foregoing provisions apply *mutatis mutandis* to the recognition of maternity, insofar as such recognition is provided for under foreign law.

*Special Procedural Provisions in Paternity Proceedings*

Art. 82

*a) Application and Parties*

1) Unless otherwise ordered, proceedings concerning filiation shall be initiated only upon application.

2) In proceedings concerning filiation, the parties are in any case the child, the person whose parenthood may be established, revoked, or re-established by the proceedings, and the other parent of the child, provided that the latter is of sound mind and judgment and is alive.

3) In proceedings concerning the filiation of minor children, the maintenance claims of the minor child shall not be taken into account in decisions regarding legal aid.

Art. 83

*b) Procedural Principles*

1) Proceedings concerning parentage shall be conducted orally.

2) An application shall be declared withdrawn *ex officio* without waiver of the claim to the extent that the request has been satisfied by means other than a court decision—in particular, by acknowledgment of paternity—and the applicant does not object to this after being informed of the consequences. If the proceedings concern the determination of non-paternity, the court shall, at the request of the respondent, declare the petition withdrawn without waiver of the claim if the petitioner fails to appear at the oral hearing. The petitioner shall be advised of this legal consequence in the summons.

3) Settlements or decisions based on an acknowledgment are inadmissible. Art. 17 shall apply only to the extent that it is in the interest of determining the filiation of a minor child.

4) In proceedings concerning the paternity of minor children, costs are not recoverable.

5) In paternity proceedings, the time limit under Art. 74(4) is 30 years. Decisions on the merits must always be reasoned. If the decision establishes paternity, it must, as a matter of course, contain the information specified in Art. 81(2)(b) and (c).

Art. 84

*Handling of Multiple Applications*

1) Proceedings concerning the filiation of the same child shall, as far as possible, be joined and decided by a single decision.

2) If, under the applicable substantive law, the determination of parentage requires the determination of non-parentage with respect to another person, then:

a) A joinder under paragraph 1 is permissible only if the petition for a declaration of paternity was filed before the first-instance decision on the declaration of non-paternity;

b) if the court has not received an application for a determination of non-paternity, it must inform the party seeking a determination of paternity of the legal situation and, if necessary, suspend the proceedings for a maximum of two years;

c) the order establishing paternity shall not take effect until the order establishing non-paternity has become final.

3) If multiple persons are named as parties in a paternity determination proceeding regarding the same child, and if, under the applicable substantive law, paternity can be established for only one of them, the court must combine the order establishing paternity for that person with the dismissal of the claims for paternity regarding the other persons. The decision dismissing the claims may only be challenged by means of appeals and motions for modification together with the decision establishing paternity, and shall become final.

Art. 85

*Duty to Cooperate*

1) To the extent necessary for the determination of parentage, the parties and all persons who, according to the results of the proceedings to clarify the

The defendant may be required to cooperate in the examination conducted by a court-appointed expert, particularly in the necessary collection of tissue samples, bodily fluids, and blood samples.

2) There is no obligation to cooperate if doing so would entail a serious or lasting danger to life or health. Prior to the examination, the court must inform the persons requested to cooperate of the grounds for refusal and invite them to comment. A decision on the refusal must be made by a separate, independently appealable order. In the event of a lawful refusal, the court must order a method of paternity testing that does not involve the cited risk.

3) To obtain tissue samples using methods that do not violate physical integrity, the court must, if necessary, order compulsory appearance and the use of appropriate direct coercion. In doing so, the state police are obligated to provide assistance. The costs of the appearance and the coercion shall be reimbursed by the person required to cooperate. If the tissue samples are no longer needed and the person from whom they were taken so requests, they shall be destroyed.

4) If the necessary evidence cannot be provided in accordance with the preceding paragraphs and no specific statutory provisions preclude it, the court may require any person to provide necessary tissue samples, bodily fluids, and blood samples from the persons referred to in paragraph 1, even if they have already died.

### **B. Adoption in lieu of a child**

#### *Declarations of Consent*

#### Art. 86

##### *a) General Principle*

1) Declarations of consent to adoption must be made in person before the court. If this would entail disproportionate difficulties or costs, or if court proceedings have not yet been initiated, consent may be declared in a document, in which case the signature must be certified.

2) A power of attorney to submit the declaration of consent is permissible in a document, provided that the signature is certified.



3) The declaration of consent under paragraph 1 and the power of attorney under paragraph 2 must specifically identify the child to be adopted and the adoptive parent. If the disclosure of the adoptive parent's name and place of residence and the service of the approval decision are waived (Art. 88, para. 1), the identification of the adoptive parent is omitted.

4) If such a waiver is made in a written declaration pursuant to paragraph 1 or in a power of attorney pursuant to paragraph 2, the signatures must be notarized. A declaration of consent containing such a waiver may also be submitted in person before a court. In such cases, the person waiving the right must be informed of the consequences of their declaration.

Art. 87

*b) Revocation*

1) Consent may be revoked in writing or before the court until the decision of the court of first instance (Art. 40).

2) If proceedings regarding the approval of the adoption are already pending, the revocation of a declaration of consent must be filed with the court. If the consent was given to or submitted to an adoption placement agency, the revocation may also be declared to that agency. The agency is obligated to forward the revocation to the court without delay.

3) Declarations of consent remain valid as long as they have not been revoked and may also form the basis for further proceedings.

Art. 88

*Anonymous Adoption*

1) The parties to the agreement may, by mutual agreement, make the approval of the adoption of a minor contingent upon all or some of the persons entitled to consent or be consulted—with the exception of the Social Services Office—waiving their right to be notified of the adopter's name and place of residence and to receive the approval decision.

2) At the request of the party waiving such notification, the personal and financial circumstances of the adoptive parent shall be described to them in general terms.

3) The copy of the decision served on the party waiving such rights shall contain no reference to the name or place of residence of the adoptive parent.

4) If the condition set forth in paragraph 1 is not met, the application shall be dismissed. Art. 89

*Approval*

In addition to Art. 39, the approval order shall contain:

- a) the decision granting permission for the adoption;
- b) a ruling on the termination of the legal relationship between the adopted child and a biological parent, and on the date on which such termination takes effect, provided that consent to this termination has been given;
- c) the first and last names of the adoptive parents and the adopted child, their date and place of birth, nationality, membership in a recognized religious community, and a reference to the corresponding entries in the civil registry;
- d) the date on which the adoption takes effect;
- e) upon request, other information necessary for the complete recording of the adoption by foreign civil registry authorities. *Special Procedural Provisions*

Art. 90

*a) Hearing and Other Procedural Principles*

1) Before the adoption of a minor child is approved, the following must be heard:

- a) the minor child, in accordance with the analogous application of Art. 105; and
- b) the Office of Social Services.

2) In proceedings concerning the adoption of a child, a motion to amend is not admissible, and costs are not reimbursed. Art. 104 applies mutatis mutandis.

Art. 91

*b) Revocation of Adoption in Lieu of a Child*

In the event of revocation of adoption in lieu of a child, Art. 88 and Art. 90(2) shall apply mutatis mutandis.

**C. Recognition of foreign decisions on adoption in lieu of adoption**

Art. 91a

*Recognition and Grounds for Refusal*

1) A foreign decision on adoption in lieu of a child shall be recognized in Liechtenstein if it is final and there are no grounds for refusing recognition. Recognition may be assessed independently as a preliminary issue without the need for a special procedure.

2) Recognition of the decision shall be refused if:

- a) it manifestly conflicts with the best interests of the child or other fundamental values of the Liechtenstein legal system (ordre public);
  - b) the right to a fair hearing of one of the parties has not been observed, unless the party manifestly agrees with the decision;
  - c) the decision is incompatible with a Liechtenstein decision or an earlier decision that meets the requirements for recognition in Liechtenstein;
  - d) the recognizing authority would not have had international jurisdiction if Liechtenstein law had been applied.
- 3) Furthermore, recognition shall be refused at any time upon application by any person whose rights to consent were not safeguarded under the applicable law, in particular because that person had no opportunity to participate in the proceedings of the State of origin.

Art. 91b

*Recognition Proceedings*

- 1) Any person with a legal interest may apply for recognition of the decision in separate proceedings.
- 2) The application must be accompanied by a copy of the decision and proof that it has become final under the law of the State of origin. Furthermore, if a party who did not apply for recognition did not participate in the proceedings of the State of origin, proof of service of the document serving to involve that party in the proceedings or a document showing that the party manifestly agrees with the foreign decision must be submitted.
- 3) The court must join the adoptive parents and the adopted child in the proceedings, but not other persons who participated in the foreign adoption proceedings.
- 4) If an appeal is filed against a decision of the court of first instance, the time limit for filing the appeal and the response to the appeal is four weeks. If a party that has not applied for recognition has its habitual residence abroad, and if filing an appeal or a response to the appeal is that party's first opportunity to participate in the proceedings, the time limit for filing the appeal or the response to the appeal is eight weeks.

Art. 91c

Articles 91a and 91b shall apply *mutatis mutandis* to applications seeking non-recognition of foreign decisions regarding the adoption of a child.

Art. 91d

*Precedence of International Law*

Articles 91a through 91c shall not apply to the extent that international law provides otherwise.

**D. Authorization by the Sovereign**

Art. 92 Repealed

**E. Matrimonial Matters**     *Special*

*Procedural Provisions* Art. 93

*a) Parties and Representation*

1) In proceedings for divorce by mutual consent, the parties may be represented. Representation of both parties by the same attorney or representative is permitted if the parties have reached an agreement on all ancillary matters related to the divorce. If this is not the case, the attorney or representative may no longer represent both parties in these proceedings.

2) In proceedings for divorce by mutual consent, only the spouses are parties.

3) In proceedings under Art. 86 of the Marriage Act, the creditor should, if possible, not be involved until the decision of the court of first instance has been served.

Art. 94

*b) Petition for Divorce, Hearing, and Withdrawal of the Petition*

1) The petition for divorce by mutual consent must be filed with the Regional Court in writing or entered into the record. It must contain information regarding:

- a) the place and date of the marriage;
- b) the office where the marriage was registered and, if possible, the registry number;
- c) the last common and current habitual residence;
- d) nationality;
- e) occupation;
- f) dates of birth;

- g) membership in a religious community;
- h) the names and dates of birth of the children;
- i) the spouses' previous marriages;
- k) the establishment of prenuptial agreements.

2) In proceedings concerning divorce by mutual consent, the case shall be heard orally. The court shall conduct the hearing in accordance with Article 50 of the Marriage Act and inform the spouses of the purpose and significance of the hearing.

3) If, in proceedings for divorce by mutual consent, a petitioner fails to appear at the oral hearing, the petition shall be declared withdrawn ex officio.

4) Either spouse may withdraw the petition for divorce by mutual consent until the divorce decree becomes final (Art. 43). Withdrawal of the petition results in a divorce decree that has already been issued becoming void; the court of first instance must confirm this by order. The same applies if a spouse dies before the divorce decree becomes final.

Art. 95

*Regulation of the Incidental Consequences of Divorce*

1) If a party in proceedings for divorce by mutual consent is not represented by an attorney and has not sought advice regarding the full consequences of the divorce, including the consequences under social security law and the requirements for a ruling on liability for loans, the court must point out any available counseling services and, in general, the disadvantages that may arise from insufficient knowledge of these consequences. The party must be given the opportunity to seek advice. A further extension for this reason is not permitted. The court must schedule the next hearing for a date within six weeks, if possible.

2) If the spouses do not submit an agreement regulating the consequences of the divorce, the court must guide them in concluding such an agreement. As long as the agreement on the consequences of the divorce is not in writing, any waiver of the withdrawal of the petition for divorce or of an appeal against the decree of divorce is ineffective.

3) If, despite the judge's request, no corresponding motions are filed by the spouses, particularly within the meaning of Art. 51(3) of the Marriage Act, the court must dismiss the joint petition for divorce.

4) Any subsequent adjustments to spousal support or alimony payments must be addressed in litigation proceedings due to changed circumstances.

Art. 96

*Decision on Divorce*

1) The court shall grant the divorce upon joint petition by order and shall approve the agreement submitted by the spouses regarding alimony, the allocation of the marital home, the distribution of household goods, as well as the division of the increase in assets accrued during the marriage and the withdrawal benefits from occupational pension plans, if the hearing reveals that both spouses have reached the decision to divorce of their own free will and after careful consideration, and the submitted agreement is not manifestly unreasonable.

2) Likewise, the court must approve by order the submitted agreement regarding maintenance, custody, and—in the case of joint custody—the care of the children, as well as regarding personal contact between a parent and the children.

3) The order must be supported by reasons.

4) The divorce decree has the effect of dissolving the marriage upon the decision becoming final.

5) If the spouses have requested a declaration pursuant to Art. 86 of the Marriage Act, this shall, if possible, be combined with the order for divorce.

6) Upon request, the parties shall be issued a copy of the divorce decree without a statement of reasons and without the declaration under paragraph 5.

**F. Recognition of Foreign Decisions Concerning the Existence of a Marriage**

Art. 97

*Recognition and Grounds for Refusal*

1) A foreign decision regarding legal separation, divorce, or the annulment of a marriage, as well as a decision determining the existence or non-existence of a marriage, is recognized in Liechtenstein within the meaning of Art. 89 PGR if it is final and there are no grounds for refusing recognition. Recognition may be assessed independently as a preliminary issue without the need for a special procedure.

2) The Government is responsible for recognition. It may delegate this matter to an administrative office for independent resolution, subject to the right of appeal to the Collegiate Government. Recognition in an independent proceeding pursuant to § 61 JN remains reserved.

3) Recognition of the decision shall be refused if:

a) it manifestly conflicts with the fundamental values of the Liechtenstein legal system (*ordre public*);

b) the right to a fair hearing of one of the spouses has not been upheld, unless that spouse clearly agrees with the decision;

c) the decision is incompatible with a Liechtenstein decision or an earlier decision that meets the requirements for recognition in Liechtenstein, by which the marriage in question was separated, divorced, annulled, or the existence or non-existence of the marriage was established;

d) the adjudicating authority would not have had international jurisdiction under Liechtenstein law.

Art. 98

*Procedure for Recognition*

1) Any person with a legal interest may apply for the recognition of the decision in a separate proceeding. The public prosecutor is authorized to file the application if the decision is based on a ground for invalidity comparable to Articles 29 through 38a of the Marriage Act.

2) The application must be accompanied by a copy of the decision and proof of its finality under the law of the State of origin. If the respondent did not appear in the proceedings of the state of origin, proof of service of the document instituting the proceedings or a document showing that the defaulting party manifestly agrees with the foreign decision must also be submitted.

3) The court may also only involve the respondent in the proceedings upon service of the decision. The respondent may raise all arguments in any appeal.

4) If an appeal is filed against a decision of the court of first instance, the deadline for filing the appeal and the response to the appeal is four weeks. If the respondent's

residence of the respondent is abroad and an appeal or a response to the appeal represents his or her first opportunity to participate in the proceedings, the time limit for filing the appeal or the response to the appeal is eight weeks. Art. 99

*Application for Non-Recognition*

Articles 97 and 98 shall apply mutatis mutandis to applications seeking non-recognition of foreign decisions regarding the existence of a marriage.

Art. 100

*Precedence of International Law*

Articles 97 through 99 shall not apply to the extent that international law provides otherwise.

**G. Maintenance between persons related in the direct line**

Art. 101

*Special Procedural Provisions*

- 1) The procedure for maintenance claims between persons related in the direct line shall be governed by this Act.
- 2) If the claim for support between lineal relatives depends on the outcome of a paternity proceeding, an application for support may be filed provided that an application to initiate the paternity proceeding is filed with the court at the same time or no later. No decision on the application for support may be made before the paternity proceeding has been finally concluded.
- 3) An obligation to pay maintenance that is not yet due is permissible if the maintenance obligation has already been breached or is at risk of being breached.
- 4) In proceedings concerning the assessment, enforcement, and collection of statutory child support for minors, the child's support claims shall not be taken into account when deciding on legal aid. *Duty to Provide Information*

Art. 102

*a) Principle*

- 1) Persons whose income or assets are relevant to the decision on statutory maintenance between persons related in a direct line must provide the court with information thereon and enable the court to verify its accuracy.



- 2) The court may also request information from the "Liechtenstein Employment Service" at the Office of Economic Affairs, the relevant social insurance agencies, and other entities providing social benefits regarding the employment or insurance status or income of persons whose income is relevant to the decision on statutory maintenance between persons related in a direct line. If a person fails to comply with the obligations under paragraph 1, their employer may also be requested to provide information. If the maintenance obligation is established as a matter of fact and the court cannot determine the amount of maintenance by other means, it may also request information from the tax administration or other government agencies.
- 3) The requests for information under paragraph 1 and the first and second sentences of paragraph 2 may also be made to the Social Services Office as the legal representative of persons under guardianship.
- 4) Requests for information must be formulated in such a way as to enable the party required to provide information to respond promptly, completely, and comprehensibly. The parties requested are obligated to provide the information.

Art. 103

*b) Breach of the Duty to Provide Information*

If a person obligated to provide information has failed to fulfill their duty through gross negligence, the court may, upon application, order them at its discretion to reimburse the additional procedural costs incurred as a result. The person obligated to provide information must be advised of this in the request for information.

**H. Regulation of Custody and Personal Contact Between Parents and Minor Children**

Art. 103a

*Initial Consultation, Mediation*

- 1) In proceedings concerning a petition for the determination of custody, guardianship, or the exercise of the right and duty to maintain personal contact with a minor child, the court may first schedule a hearing for an initial meeting with the parties. The parties and the minor child who has reached the age of 14 must be summoned to appear in person.
- 2) At the hearing, the court must explain to the parties the legal situation, the course of the proceedings, and the nature and possibilities of mediation. If

the application is not resolved at this hearing, the court may, provided this does not appear futile from the outset, instruct the parties to engage in mediation with a mediator pursuant to the Civil Mediation Act in order to reach an amicable settlement regarding the subject matter of the proceedings, and shall then stay the proceedings. No separate appeal is admissible against such an order. It does not preclude the ordering of provisional measures.

3) In all other respects, Art. 29 applies. The court shall continue the proceedings ex officio if a party submits to it a mediator's confirmation that mediation has been unsuccessful.

Art. 104

*Special Capacity to Be a Party for Minors*

1) Minors who have reached the age of 14 may act independently in court in proceedings concerning care and upbringing or the right to personal contact. To the extent that the minor's capacity to understand so requires, the court must ensure, at the latest during the hearing, that the minor can effectively exercise his or her procedural rights; the minor must be informed of available counseling options.

2) The authority of the minor's legal representative to take procedural actions on the minor's behalf remains unaffected. If the motions filed by the minor and the legal representative do not agree, the content of all motions must be taken into account in the decision.

3) If a minor who has reached the age of 14 lacks representation under Article 6 in an appeal proceeding before the Supreme Court, legal aid in the form of the appointment of an attorney shall be granted upon request without prior examination of the financial eligibility requirements. Upon conclusion of the appeal proceedings, the requirements for legal aid shall be examined, and a final decision shall be made regarding any potential additional payment. Art. 105

*Interrogation of Minors*

1) The court must hear minors in person in proceedings concerning their care and upbringing or their right to personal contact. The minor may also be heard through the Social Services Office or by other appropriate means, such as through experts, if the minor has not yet reached the age of 10, if this is necessary for the minor's development or state of health, or

if it is otherwise unlikely that the minor will be able to express a serious and uninfluenced opinion.

2) The hearing shall not take place if it, or a related delay in the decision, would jeopardize the minor's welfare, or if, in view of the minor's capacity to understand, a considered statement on the subject matter of the proceedings is clearly not to be expected.

Art. 106

*Consultation with the Office of Social Services*

The Office of Social Services may be consulted prior to decisions regarding care and upbringing or the right to personal contact, as well as prior to the approval of agreements concerning these matters.

Art. 107

*Special Procedural Provisions*

1) In proceedings concerning custody or the right of personal contact:

a) upon request, the parties shall be issued a copy of the decision without a statement of reasons or a document describing the scope of the custody arrangement;

b) contested decisions may also be modified to the detriment of the party contesting them if this is in the best interests of the minor concerned;

c) no modification proceedings shall take place.

2) The court may also grant custody and the exercise of the right of personal contact on a provisional basis.

3) In proceedings concerning custody and the exercise of the right to personal contact, no reimbursement of costs shall be made.

4) The costs of court-ordered mediation pursuant to Art. 103a(2) shall be reimbursed by the state up to an amount determined by the government by ordinance. In determining the reimbursement of costs, the government shall take into account the requirement for professional mediation appropriate to the purpose of the proceedings.

5) Costs not reimbursed by the state shall be borne by the parties in accordance with the contractual agreement with the mediator.

Art. 108

*Special Decisions in Visitation Proceedings*

If a minor who has already reached the age of 14, or a parent not living in the same household as the child, expressly refuses to allow personal contact, and if an explanation of the legal situation and the fact that establishing or maintaining personal contact with both parents is generally in the best interests of the minor, as well as an attempt at an amicable settlement, are unsuccessful, then applications for the regulation of personal contact must be dismissed without further substantive review, and the enforcement of personal contact must be discontinued.

Art. 109

*Agreements on Custody and the Right to Personal Contact*

The court shall record or accept agreements regarding custody or the right to personal contact. The court shall decide, without further application, whether to approve such an agreement. To the extent that the subject matter of the proceedings has thereby been settled, the proceedings shall be terminated without further action.

Art. 110

*Enforcement of Custody and Visitation Arrangements*

- 1) In proceedings for the compulsory enforcement of a court-ordered or court-approved arrangement regarding custody or the right to personal contact, enforcement under the Enforcement Code is excluded.
- 2) The court shall, upon application or on its own motion, order appropriate coercive measures pursuant to Art. 79(2). The court may also enforce decisions concerning custody by applying appropriate direct coercion.
- 3) The court may refrain from continuing enforcement, even on its own initiative, only if and as long as it endangers the welfare of the minor.
- 4) If the welfare of the minor concerned so requires, the court may, in enforcing a court-ordered or court-approved custody arrangement, request assistance from the Social Services Office, in particular for the temporary care of the minor. However, direct coercion to enforce the court order may be exercised exclusively by judicial authorities; these may call upon the cantonal police.

Art. 111

*Supervision of Visits*

If the welfare of the minor so requires, the court may appoint a suitable and willing person to assist in the exercise of the right to personal contact (supervised visitation). An application for visitation supervision must name a suitable person or entity (visitation supervisor). The proposed person or entity must be involved in the proceedings; the court must define their duties and powers, at least in general terms. Coercive measures against the visitation supervisor are not permitted.

**I. Declaration of enforceability of foreign court decisions regarding custody arrangements and the right to personal contact**

Art. 112

*Requirements*

- 1) Foreign court decisions regarding custody arrangements and the right of access may only be enforced if they have been declared enforceable by a Liechtenstein court. In this context, court settlements and enforceable public documents shall be treated as equivalent to court decisions.
- 2) A foreign decision shall be declared enforceable if it is enforceable under the law of the state of origin and there are no grounds for refusing the declaration of enforceability.

Art. 113

*Grounds for Refusal*

- 1) A declaration of enforceability shall be refused if:
  - a) it is manifestly contrary to the best interests of the child or other fundamental values of the Liechtenstein legal system (*ordre public*);
  - b) the respondent's right to a fair hearing was not upheld in the state of origin, unless the respondent manifestly agrees with the decision;
  - c) the decision is incompatible with a subsequent Liechtenstein or foreign custody or visitation rights decision that meets the requirements for a declaration of enforceability in Liechtenstein;
  - d) the adjudicating authority would not have had international jurisdiction to render the decision under Liechtenstein law.
- 2) Furthermore, a declaration of enforceability shall be refused upon application by the person who has custody of the child if that person had no opportunity to participate in the proceedings of the State of origin.

*Procedure for Declaration of Enforceability*

1) The application for a declaration of enforceability must be accompanied by a copy of the decision and proof that it is enforceable under the law of the State of origin and that it has been served. If the respondent did not appear in the proceedings of the State of origin, proof of service of the document instituting the proceedings or a document showing that the defaulting party expressly consents to the foreign decision must also be submitted.

2) The court may also involve the other parties in the proceedings only upon service of the decision and may refrain from hearing the child concerned.

3) If an appeal is filed against a first-instance decision, the time limit for filing the appeal and the response to the appeal is one month. If the respondent's habitual residence is abroad and an appeal or a response to the appeal constitutes their first opportunity to participate in the proceedings, the time limit for filing the appeal or the response to the appeal is two months.

4) If the foreign judgment has not yet become final under the laws of the state of origin, the proceedings for a declaration of enforceability may be stayed at the request of the respondent until the judgment becomes final. If necessary, the respondent may be given a period of time to challenge the foreign judgment.

5) An application for enforcement may be filed at the same time as the application for a declaration of enforceability. The court shall rule on both applications simultaneously.

6) No reimbursement of costs shall  
be made. Art. 115

*Recognition*

The foregoing provisions shall apply mutatis mutandis to applications seeking the recognition or non-recognition of judicial decisions regarding custody and the right of personal contact.

Art. 116

*Precedence of International Law*

Articles 112 through 115 shall not apply to the extent that international law provides otherwise.

## **K. Proceedings Concerning Guardianship for Persons with Disabilities**

### **Art. 117**

#### *Commencement of proceedings*

1) Proceedings for the appointment of a guardian for a person who, as a result of a mental illness or intellectual disability, requires a legal representative, shall be initiated if the person applies for the appointment of a guardian or if there are reasonable grounds for the necessity of such an appointment, for example based on a report regarding the person's need for protection.

2) If the person with a mental illness or intellectual disability is a minor, proceedings may be initiated no earlier than one year before the person reaches the age of majority; the appointment of a guardian does not take effect until the person reaches the age of majority.

3) If there are concrete and well-founded grounds for the necessity of appointing a guardian, the court must immediately notify the person concerned of:

- a) the initiation of the proceedings for the appointment of a guardian;
- b) where applicable, the commissioning of the guardianship association to conduct investigations pursuant to Art. 11(2) of the Association Guardianship Act.

### **Art. 118**

#### *Initial Hearing*

1) If the court continues the proceedings, it shall, to the extent that this is reasonable and possible, form a personal impression of the person concerned. It shall inform them of the grounds and purpose of the proceedings and hear their views on the matter.

2) If the person concerned fails to comply with the summons to appear in court, the court may have the person brought before it, taking due care. If it is impossible, impractical, or detrimental to the person's well-being for them to appear in court, the court shall visit them.

3) If the court is unable to form a personal impression of the person concerned due to disproportionate difficulties or costs, the initial hearing may be conducted through mutual legal assistance.

### **Art. 119**

#### *Legal Representative*

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If the proceedings are to be continued based on the results of the initial hearing, the court shall provide legal counsel for the person concerned in the proceedings if this appears necessary due to the special circumstances of the individual case. If the person concerned has no legal or self-chosen representative, or if the representative's interests conflict with those of the person concerned, the court shall appoint a guardian ad litem for the proceedings; this does not in itself restrict the person concerned in their legal actions. The procedural guardian shall be removed as soon as the person concerned has chosen a suitable representative. If motions filed by the person concerned, their legal representative, and the procedural guardian do not agree, the content of all motions shall be taken into account in the decision.

### Art. 120

#### *Provisional Guardian*

If the welfare of the person concerned so requires, the court shall appoint a provisional guardian with immediate effect to handle urgent matters for a period not exceeding the duration of the proceedings. The appointment of a provisional guardian shall restrict the person concerned in their legal acts only to the extent expressly ordered by the court. The appointment may only be made prior to the initial hearing if there is otherwise a risk of significant and irreparable harm to the person concerned and the initial hearing is held without delay. The provisions governing guardianship for persons with disabilities apply to provisional guardianship. Art. 123(a) through (d) and 126 apply *mutatis mutandis*.

### Art. 121

#### *Oral Hearing*

- 1) The appointment of a guardian shall be heard in an oral proceeding, unless this is unnecessary due to the proven and undisputed legal incapacity of the person concerned and the clear factual and legal situation.
- 2) The person concerned and their representative shall be summoned to the oral hearing. The person concerned need not be summoned if it is established that they are completely incapable of following the proceedings or that their well-being would be endangered by their presence at the hearing.
- 3) If the appearance of the person concerned before the court is impossible, impractical, or detrimental to their well-being, the court shall hold the oral hearing at the location



in the jurisdiction where the person concerned is located. If this is also not possible, the court may proceed without the person concerned if they have already been examined by an expert and an initial hearing has taken place.

4) At the oral hearing, the evidence necessary for the court's determination shall be taken, to the extent possible with the participation of persons close to the person concerned; in addition, the circumstances relevant to the decision shall be presented.

5) A guardian may be appointed only after at least one expert has been consulted. Experts may, if necessary, present their expert opinion during the oral hearing; the findings may also be recorded outside the oral hearing. The court must conduct an oral hearing and discuss the findings if there is even the slightest doubt or uncertainty.

6) The results of the taking of evidence must be discussed during the oral hearing.

Art. 122

*Dismissal*

1) If the court concludes that a guardian is not to be appointed, it shall dismiss the proceedings in any instance.

2) A decision to dismiss the case may only be made if:

a) the person concerned has already been informed of the motion (Art. 117) or the proceedings; or

b) a court or an authority has proposed the initiation of the proceedings.

3) The decision to dismiss the case must be served on the person concerned and their representative. The courts or authorities that initiated the proceedings, as well as the guardianship association that conducted the investigation, must be notified of the dismissal; in doing so, the protection of the person's private and family life must be ensured.

Art. 123

*Appointment*

1) The order appointing the guardian must include:

a) a statement that a guardian is appointed for the person concerned;

b) a description of the matters to be handled by the guardian;

- c) where applicable, the extent to which the person concerned may freely dispose of their affairs or enter into obligations;
  - d) the name of the guardian;
  - e) a reference to the special formal requirements for the execution of a testamentary disposition (Section 568 ABGB);
  - f) a ruling on costs.
- 2) The decision to appoint a guardian at the request of the person concerned must always be substantiated.

Art. 124

*Service and Explanation of the Order*

- 1) The order appointing a guardian must be served on the person concerned for their own use, as well as on their representative and the guardian.
- 2) If there is no doubt that the person concerned cannot even approximately comprehend the service procedure or the content of the decision, service is effective if the copy of the order is placed within the person's immediate physical vicinity in such a way that they could become aware of its content even without their mental illness or intellectual disability.
- 3) The court must explain the content of the decision to the person concerned in an appropriate manner. If appropriate, the court may entrust the guardian with the explanation.

Art. 125

*Effective Date of the Appointment of a Guardian*

The decision appointing the guardian may not be granted provisional effect.

Art. 126

*Duty to Notify*

- 1) The appointment of the administrator must be notified in an appropriate manner to those persons and entities who, based on the results of the proceedings, particularly on the information provided by the administrator, have a legitimate interest therein.
- 2) Furthermore, the court must ensure that the appointment of the administrator is entered in the relevant public records and registers if the administrator's scope of authority encompasses the rights recorded in such records or registers. In addition, the court must record the appointment of the administrator in the Central Register of Persons (ZPR) accordingly.

3) Furthermore, the court must, upon request, provide information regarding the appointment of the administrator and the scope of his or her authority to any person who demonstrates a legal interest.

Art. 127

*Appeal in the Appointment Proceedings*

The person concerned, their representative, the guardian ad litem, and the person to be appointed as guardian are entitled to appeal. The last sentence of Art. 119 applies mutatis mutandis. Art. 46(3) does not apply.

Art. 128

*Termination, restriction, and extension of guardianship*

1) The provisions governing the procedure for appointing a guardian shall apply mutatis mutandis to proceedings concerning the termination, restriction, or extension of guardianship; in such cases, the guardian already appointed shall assume the duties of the guardian for the proceedings.

2) The court is required to form a personal impression of the person concerned, conduct an oral hearing, and consult an expert only to the extent that the person concerned or their representative requests it or the court deems it necessary. This does not apply to proceedings concerning a significant extension of the guardianship.

Art. 129

*Costs*

If a guardian is appointed, the guardianship is extended, or proceedings under Art. 131 are conducted, the costs incurred by the state shall be imposed on the person concerned, provided that this does not jeopardize their necessary maintenance or that of their family for whom they are responsible. In all other respects, the state shall bear the costs definitively.

Art. 130

*Duty to Report and Request for a New Assessment of Mental Capacity*

1) The guardian shall report to the court at appropriate intervals, but at least every three years, on his or her personal contacts with the person concerned, the person's lifestyle, mental and physical condition, and capacity to exercise judgment with respect to elections and referendums. The court may also instruct the guardian to submit such a report.

2) If the person concerned has been deprived of the right to vote pursuant to Art. 131a et seq., the guardian may—if he or she deems it appropriate—request the court to review the person’s legal capacity with respect to elections and referendums.

Art. 131

*Approval for Sterilization*

In proceedings concerning the authorization of consent to a medical procedure intended to render the person concerned permanently incapable of procreation, the court shall appoint a special guardian to represent them. The court shall appoint two independent experts to assist in the proceedings.

**K. Proceedings regarding the exclusion from the right to vote**

Art. 131a

*Initiation of proceedings*

- 1) Proceedings regarding the deprivation of voting rights shall be initiated upon application or ex officio if there are reasonable grounds for the necessity of such deprivation.
- 2) The exclusion from voting rights shall be revoked upon application or ex officio if the conditions for such exclusion no longer apply.

Art. 131b

*Initial Hearing*

- 1) The court shall first, to the extent that this is reasonable and feasible, form its own impression of the person concerned. It shall inform the person of the grounds and purpose of the proceedings and hear the person’s statement on the matter.
- 2) If the person concerned fails to comply with the summons to appear in court, the court may have them brought before it with due consideration. If the person’s appearance in court is impossible, impractical, or detrimental to their well-being, the court must visit them.

Art. 131c

*Dismissal*

- 1) If the court concludes that a disqualification from voting is not necessary, it shall dismiss the proceedings in any case.
- 2) A decision to dismiss the case shall be made only if:
  - a) the person concerned has already been informed of the motion (Art. 131a) or the proceedings; or

b) A court or authority has initiated the proceedings.

3) The decision to dismiss the case must be served on the person concerned. Courts or authorities that initiated the proceedings must be notified of the dismissal.

Art. 131d

*Exclusion*

1) If the person concerned lacks legal capacity with respect to elections and referendums (Art. 2 para. 1 let. b VRG), the decision on the exclusion from the right to vote must include a statement to that effect.

2) The decision under paragraph 1 must also specify a reasonable time limit within which the court must review the exclusion from the right to vote; the time limit may not exceed five years.

Art. 131e

*Service of the decision on the exclusion from the right to vote*

1) The decision on the exclusion from voting rights must be served on the person concerned.

2) The municipality of residence of the person concerned must be notified of the suspension of voting rights.

3) In the event of a change of residence, the municipality of the previous residence must inform the municipality of the future residence of the exclusion from voting rights.

4) This provision applies *mutatis mutandis* if the exclusion from voting rights was to be lifted.

Art. 131f

*Costs*

The costs of conducting proceedings regarding the exclusion from voting rights shall be borne by the state.

**L. Property Rights of Persons Under Guardianship**

Art. 132

*Approval of Legal Acts by Persons Under Guardianship*

In its decision regarding the approval of a legal act by a person under guardianship, the court may not issue a version that differs in substance. The court may also approve a specific, previously planned legal act

or rule that a legal act does not require court approval. The decision regarding the approval of the legal act must always be reasoned, at least summarily. If the denial of approval is based on multiple grounds, all of them must be stated in the reasoning. Upon request, the court must certify on the document regarding the legal act, without attaching a statement of reasons, that it has granted approval or that the legal act does not require approval.

Art. 133

*Supervision of the Administration of the Assets of Persons Under Guardianship*

1) If there are concrete indications that a person under guardianship has significant assets, the court must investigate this on its own initiative. If the person under guardianship does indeed have significant assets, the court must supervise their administration with the aim of preventing any threat to the person's welfare.

2) If parents, grandparents, or foster parents are entrusted with the administration of the assets as part of their custody, the court need only supervise the administration of the assets if the assets include real property or if the value of the assets significantly exceeds 75,000 Swiss francs or the annual income significantly exceeds 25,000 Swiss francs. If the assets originate from the persons entitled to custody or their parents, supervision is not necessary as long as there are no indications of improper administration.

3) In any case, the court must also supervise the administration of even insignificant assets if this is necessary to avert an imminent danger to the welfare of the person under guardianship. Under these circumstances, the court must also supervise the administrative activities of the Social Services Office.

4) To investigate the assets and supervise their administration, including for the purpose of securing them, the court may, in particular, issue instructions to the legal representative, obtain information from banks and securities firms or from persons and entities required to provide information under Art. 102, order an appraisal, the freezing of assets, and the judicial custody of documents and movable property, as well as take provisional measures.

Art. 134

*Guardianship Account*

As part of the supervision of the administration of the assets, the legal representative must render an account to the court at the end of the first full year of supervision (initial account), thereafter at appropriate intervals of no more than three years (interim accounts), and upon termination of the administration of the assets (final account). To this end, the court must issue the necessary orders to the legal representative; in the case of the interim account and the final account, this must be done in conjunction with the decision on the respective account.

Art. 135

*Special Conditions*

- 1) Parents, grandparents, and foster parents acting within the scope of custody, as well as the Office of Social Services, are only required to render accounts to the court to the extent that the court so orders for special reasons.
- 2) The court may limit the obligation of other legal representatives to provide ongoing financial reports, provided that this does not result in any detriment to the ward.
- 3) Even if the legal representative is exempt from rendering an account to the court, he or she remains obligated to collect and retain documentation regarding the management of significant assets and to notify the court of the acquisition of real property or any expenditure exceeding 75,000 Swiss francs.
- 4) To prevent any threat to the welfare of the person under guardianship, the court must issue a special order to the legal representative regarding the rendering of accounts.

Art. 136

*Contents and Attachments of the Financial Statement*

- 1) The financial statement must first show the ward's assets as they existed at the beginning of the accounting period. It must then indicate changes in the principal assets, income and expenses, and finally the status of the assets at the end of the accounting period. The financial statement must be presented in a manner that is easily understandable.
- 2) If other regulations require the preparation of annual financial statements or the filing of a tax return, the legal representative must indicate this in the invoice

and attach these documents to the account, provided they are already available. Other supporting documents that the legal representative is required to collect and retain (Art. 135(4)) need only be submitted at the court's request.

3) If the legal representative is only required to prepare an opening and closing statement, the statement may be limited to presenting the financial position at the beginning and end of the accounting period, respectively.

Art. 137

*Approval of the account, compensation*

1) If there are no objections to the accuracy and completeness of the account, the court shall approve it. Otherwise, the legal representative shall be required to supplement or correct the account accordingly; if this is not done, approval shall be denied. To the extent that the assets or income do not appear to have been lawfully invested or secured, the court shall take the necessary measures pursuant to Art. 133(4).

2) Concurrently with its decision, the court shall rule on applications by the legal representative for the payment of remuneration, in particular on the basis of an hourly billing, compensation for personal efforts, and reimbursement of expenses. Upon application, the court shall make the necessary dispositions to satisfy these claims from the income or assets of the person under guardianship, and, if necessary, shall oblige the person under guardianship to make a corresponding payment. If the legal representative requests advances on remuneration, compensation, or reimbursement of expenses, the court shall grant them, provided that the legal representative certifies that this promotes the proper administration of the ward's assets.

3) The decision regarding the account does not limit the right of the person under guardianship to assert claims arising from the administration of assets through litigation.

Art. 138

*Termination of Asset Management, Final Account*

1) Articles 136 and 137 apply mutatis mutandis to the content of the final account and to the decision thereon. The court shall, to the extent necessary, explain the content of the final account to the ward.

2) Upon termination of the administration of assets, the court shall, if necessary, order the legal representative, by means of an enforceable order, to transfer the



assets to the person under guardianship or to another legal representative.

3) The ward who has attained the age of majority shall be required to take over assets held in judicial custody. In doing so, he or she shall be informed of the provisions regarding the termination of judicial custody. Measures under Art. 133(4) shall be revoked unless the ward requests their temporary continuation to avert otherwise imminent dangers. The court shall ensure that the restriction on legal capacity is deleted from public records and registers.

Art. 139

*Special Procedural Provisions*

1) The person under guardianship must be notified of court orders, regardless of their capacity to participate in proceedings, to the extent that this serves their best interests.

2) There shall be no reimbursement of costs or modification proceedings.

**M. Other Provisions**

Art. 140

*Protection of Private and Family Life*

1) Oral proceedings are not open to the public. Unless a party objects, the court may open the proceedings to the public, provided that matters relating to private and family life are not discussed and this is consistent with the best interests of the ward. In addition to the persons listed in Art. 19(5), the legal representatives of the minor and representatives of the Office of Social Services may also participate in the non-public portions of the evidentiary proceedings.

2) Information regarding matters of private and family life, in the confidentiality of which a party or a third party has a legitimate interest, may not be disclosed, provided that such knowledge was obtained exclusively through the proceedings (Section 301(1) StGB).

3) Furthermore, to the extent that the welfare of a minor so requires, the court must order persons to maintain confidentiality (Section 301(2), second case, StGB) regarding certain facts of which they have gained knowledge exclusively through the proceedings. This order is independently appealable.

Art. 141

*Confidentiality of Income and Financial Circumstances*

Information regarding income and financial circumstances may be disclosed by the court only to the person subject to guardianship and his or her legal representatives, but not to any other persons or entities.

Art. 142

*Authorization*

In proceedings under this chapter that are consolidated in a single court record, all further service of process must be made to a lawyer designated as the authorized representative, unless the scope of the authorization is clearly limited.

**III. Probate Proceedings**

**A. Preliminary proceedings**

Art. 143

*Commencement of proceedings*

- 1) Probate proceedings shall be initiated ex officio as soon as a death becomes known through a public document or in any other unequivocal manner.
- 2) Proceedings concerning an estate comprising movable property located abroad (Section 54 JN) shall be initiated only upon application by a party who certifies their status as an heir. If it turns out that the applicant is not entitled to inherit and the proceedings are not to be continued on the basis of other applications, they shall be discontinued by order.

Art. 144

*Municipalities*

- 1) To the extent that municipalities are competent under this chapter, they shall act on behalf of and in a provisional capacity for the court. The court may reassume jurisdiction in individual cases. The municipal council shall designate the competent official and their deputy, who shall act on behalf of the municipality.
- 2) To monitor the municipality's activities, the court may issue orders to the municipality, request reports, and conduct the necessary investigations. Persons whose statements or information serve as evidence have the same rights and obligations toward the municipality as they do toward the court.
- 3) An application for relief may be filed with the court against measures taken by the municipality. The court shall decide after hearing the municipality and the applicant.

4) The president of the district court will provide the municipalities with the necessary forms for carrying out their duties.

Art. 145

*Death Report*

1) The municipality shall prepare the death record. To this end, it shall gather all facts necessary for the estate proceedings and any guardianship court measures. It shall be assisted in this by the Civil Registry Office and the Office of Justice.

2) The death record must include:

- a) the first and last names, marital status, nationality, occupation, date and place of birth and death of the deceased, their last place of residence or habitual residence, and all other circumstances relevant to jurisdiction;
- b) the estate left behind, including assets and liabilities;
- c) the funeral expenses and the person who may have advanced them;
- d) the documents relating to testamentary dispositions (wills, codicils) and their revocation, bequest, inheritance, and compulsory portion agreements, inheritance and compulsory portion waiver agreements and their rescission, as well as the first and last names and addresses of the witnesses to oral testamentary dispositions;
- e) the first and last names, addresses, and dates of birth of the statutory heirs and those appointed by a testamentary disposition, as well as the legatees;
- f) First and last names, address, and date of birth of those for whom the deceased served as legal guardian.

3) The value of the estate left behind shall be determined in a straightforward manner, in particular by questioning informants, and without extensive investigations, if possible without consulting an expert.

Art. 146

*Investigations*

1) For the purpose of the investigation, the municipality may carefully open the deceased's residence, business premises, and safe deposit boxes, as well as their cabinets and other containers. For this purpose, two adults—preferably relatives, cohabitants, or neighbors of the deceased—must be called upon as trusted persons; they are obligated to provide assistance. The heirs, household members, and other persons who had access to the deceased's assets are obligated to

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provide truthful information and disclose any assets in their possession.

2) Banks, securities firms, and other financial institutions are required, upon proof of the existence of a business relationship, to disclose the assets of a deceased person to the court upon its order; the figures obtained in this manner may be used exclusively for the probate proceedings.

3) If the municipality discovers third-party funds, cash keys, documents, or files relating to the deceased's activities in public service, it must secure them without further inspection and hand them over to the relevant administrative authority.

4) The municipality must immediately report the death of persons who received ongoing payments from public funds and other pension schemes known to it to the paying agency, unless the latter is already clearly aware of this.

5) If the deceased was subject to official or professional secrecy, the municipality is obligated to refrain from any action that could impair or jeopardize the confidentiality interests protected thereby.

Art. 147

### *Safeguarding the Estate*

1) If there is a risk that assets may be removed from the estate proceedings, or if the presumed heirs, close relatives, or cohabitants are unable or unwilling to safeguard them, the municipality shall secure the estate in an appropriate manner.

2) In addition to placing the estate under lock and key, other measures that may be considered include sealing the estate or depositing it with the municipality or a custodian. The costs of securing the estate shall be borne by the estate.

3) Third parties, in particular relatives and cohabitants of the deceased, must refrain from any disposal of the estate, even if they are holding it in custody.

Art. 148

### *Release*

1) The municipality may—notwithstanding any measures taken to secure the estate—pay or release the amounts necessary to cover the costs of a simple funeral.

2) If it is undisputed or proven by uncontested documents that a third party has a right to items that apparently form part of the estate, that party may exercise such right even during the probate proceedings. Art. 149

*Freezing*

If the legal basis of a contract between a bank and the decedent provides that, following the decedent's death, a freeze shall apply with respect to certain dispositions, in particular account withdrawals or access to a safe deposit box, the court may order the release in accordance with Art. 148.

Art. 150

*Distribution Proceedings*

1) If the movable property located in Switzerland is not to be disposed of (Section 54 JN), the court shall, upon application by a person entitled to take possession on the basis of a declaration by the deceased's home authority or the authority of the state in which the deceased had his last habitual residence, order the distribution of the estate.

2) In the event of the death of a person whose estate is subject to probate proceedings and the resolution of disputed inheritance claims in accordance with the provisions of Liechtenstein law, which are to be left to a foreign court or other authority, the court shall, upon application by those heirs and legatees who are Liechtenstein nationals or who have never resided or are currently residing in Liechtenstein, the court shall refrain from transferring the estate or the portion of the estate necessary to satisfy their claims abroad until the competent foreign courts have rendered a final decision on their claims.

3) For creditors with jurisdiction in Liechtenstein who had already filed claims against the decedent prior to his death, or who have sued for the distribution of the estate, the court shall take such measures as are necessary to ensure that the estate assets may not be distributed until their claims have been satisfied or security for their claims has been provided.

4) Creditors, presumed heirs, and legatees shall be summoned by the court, unless they are already known, by public notice to file their claims and submit the necessary applications within a period of

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four weeks, failing which the estate would be delivered to the foreign court, the other authority, or the person duly designated by it to take over the estate.

5) This is subject to international treaties. Art. 151

### *Notification of Testamentary Dispositions*

Anyone who learns of the death of a person and who is in possession of documents relating to testamentary dispositions (wills, codicils) and their revocation, as well as contracts of bequest, inheritance, and compulsory portion, agreements waiving inheritance or the statutory share and their rescission, as well as records of an oral declaration of last will, is obligated to forward these documents without delay to the municipality or the court, even if the matter is, in his or her opinion, invalid, void, or revoked.

Art. 152

### *Acceptance of Testamentary Dispositions*

1) The municipality or the court shall take custody of documents concerning testamentary dispositions (wills, codicils) and their revocation, bequests, inheritance, and compulsory portion agreements, agreements to waive inheritance or the statutory share and their rescission, or other declarations to take effect upon death, and must record in a receipt protocol all circumstances that may be relevant to assessing the authenticity and validity of the document, such as whether the document was sealed and whether it had any external defects.

2) Uncertified copies shall be served on the parties and on those who, according to the record, would be entitled to inherit under the law of succession.

3) If the existence of an oral declaration of last will is alleged, the municipality shall identify the witnesses and report this to the court. The court shall question the witnesses regarding the content of the declaration and the circumstances upon which its validity depends.

Art. 153

### *Omission of the Proceedings*

1) If there are no assets in the estate or if they do not exceed a value of 8,000 francs and no entries in the public registers are required, the proceedings shall be discontinued if no application is filed to continue the probate proceedings. No notice is required.

2) Upon application, the court shall grant authorization to those whose claims are substantiated by the case file to take over the estate assets in whole or in part, to assert or waive rights pertaining thereto, to issue legally valid receipts for payments received, and to issue declarations of cancellation.

*Transfer in lieu of payment*

Art. 154

*a) Distribution*

1) Upon request, the court shall transfer the assets of an insolvent estate to the creditors, unless an unconditional declaration of acceptance of the inheritance or a request for transfer as an intestate estate has already been filed and no estate insolvency proceedings have been opened.

2) The assets shall be distributed:

- a) first, in accordance with Articles 43 and 44 of the Insolvency Act regarding claims against the estate;
- b) then to the estate administrator of the deceased, to the extent that amounts were awarded to him for the last year;
- c) finally, to all other creditors, in proportion to the amount of their undisputed claims or those evidenced by uncontested documents.

Art. 155

*b) Procedure*

1) If the value of the assets is expected to exceed 8,000 francs, the court must, prior to the distribution of the estate, notify the creditors of record and those persons of record who may be eligible as heirs or beneficiaries of a statutory share, provided their whereabouts are known, and give them an opportunity to be heard.

2) If the value of the assets is expected to exceed 40,000 Swiss francs, the creditors of the estate shall be summoned (Art. 174).

3) The order for transfer in lieu of payment must specify:

- a) the items to be transferred;
- b) the first and last names and addresses of the persons to whom the items are to be transferred in lieu of payment;
- c) which claims are to be satisfied thereby;
- d) any other information necessary for recording the transaction in the books.

**B. Probate Proceedings**

Art. 156

*Provision for Representation*

1) To conduct the proceedings, the court shall decide on the appointment of curators in the cases specified in Art. 5(2)(a)(1) and (b)(1), as well as for the estate, either ex officio or upon application. If the whereabouts of known heirs or beneficiaries of a statutory share are unknown, the court shall appoint a curator for them within the meaning of Art. 5(2)(b)(2).

2) If the appointment of an estate curator is necessary and the deceased has designated a person to represent the estate in his or her will, that person shall be appointed as estate curator whenever possible.

3) If a minor or other person under guardianship requires a legal representative, the guardianship court shall ensure that one is appointed. In doing so, the wishes of the deceased shall be taken into account as far as possible, provided they do not conflict with the interests of the person under guardianship.

Art. 157

*Submission of the Declaration of Acceptance of the Inheritance*

1) The court must formally request the persons identified in the case file as potential heirs to state whether and how they intend to accept the inheritance or whether they wish to renounce it. The request must include a reference to the legal consequences of paragraph 3 and an explanation of the legal consequences of submitting an unconditional or conditional declaration of acceptance of the inheritance, as well as information regarding the possibility of filing an application under Article 184(3).

2) A reasonable period of at least four weeks shall be set for the persons eligible to inherit to submit their declaration of acceptance of the inheritance. For compelling reasons, they may also be granted a period of reflection, which may not exceed one year in total.

3) If such a person misses the deadline, they shall no longer be involved in the further proceedings until they submit the declaration. If the legal representative of a person under guardianship misses the deadline, the guardianship court must be notified.

4) If no declaration of acceptance of the inheritance is made, an estate administrator must be appointed to prepare for the proceedings under Article 184, unless this has already been done.

Art. 158



*Unknown Heirs and Beneficiaries of a Statutory Share*

- 1) If no heirs are known or if the case file indicates that, in addition to the known persons, others may be eligible as heirs or beneficiaries of a statutory share, the court shall, by public notice, call upon them to assert their claims within six months.
- 2) If this deadline is missed, the estate may be transferred to the known heirs or declared intestate, without regard to the claims of the unknown heirs or beneficiaries of a statutory share. This legal consequence must be noted in the notice.

Art. 159

*Contents of the Declaration of Acceptance of the Inheritance*

- 1) The declaration of acceptance of the inheritance must contain:
  - a) the first and last names, date of birth, and address of the claimant;
  - b) the reference to a title of inheritance;
  - c) an express declaration to accept the inheritance;
  - d) an explicit statement as to whether this is done unconditionally or subject to the legal benefit of the inventory (conditional declaration of acceptance of the inheritance).
- 2) If possible at the time the declaration is submitted, the share of the inheritance must also be specified.
- 3) The declaration must be signed by the claimant or their designated representative in their own handwriting.

Art. 160

*Conflicting Declarations of Acceptance of Inheritance*

If declarations of acceptance of inheritance conflict with one another or with a declaration by the state, the court shall endeavor to ensure that the right of inheritance is recognized between the parties; if this is not successful, it shall proceed in accordance with the following provisions.

*Decision on the Right of Inheritance*

Art. 161

*a) Determination of the right of succession*

- 1) Based on the parties' submissions and their offers of evidence, the court must determine the right of inheritance of the entitled parties and reject the remaining declarations of acceptance of inheritance. This may be decided by a separate order (Art. 36, para. 2) or in the order of inheritance.

2) Even during the proceedings regarding the right of inheritance, all administrative measures that are independent of the determination of the right of inheritance must be continued.

Art. 162

*b) Oral Proceedings and Representation*

Proceedings regarding inheritance rights shall be conducted orally. The parties may be represented only by an attorney.

Art. 163

*c) Suspension of Proceedings*

1) If the parties agree before the court to stay the inheritance proceedings, or if other circumstances described in Articles 25 through 29 arise, the proceedings shall be stayed.

2) If the parties do not resume the probate proceedings after the suspension period has expired, the court shall order them to file appropriate motions within a period to be determined. If a claimant fails to meet this deadline, the probate proceedings shall continue without taking into account the claimant's declaration of acceptance of the inheritance. The claimant must be notified of this legal consequence in the order to file motions.

Art. 164

*d) Declaration of Acceptance of the Inheritance Following Determination of the Right of Inheritance*

If a party submits a declaration of acceptance of the inheritance only after the right of inheritance has been established, but before the court is bound by the order of distribution, the proceedings shall be conducted anew in accordance with Articles 160 through 163, whereby a rejection of the declaration of acceptance of the inheritance, which formed the basis of the earlier decision on the right of inheritance, is also permissible. Thereafter, claims under the law of succession may only be asserted by filing a lawsuit.

*Inventory*

Art. 165

*a) Grounds for Preparation*

1) An inventory must be prepared:

- a) if a conditional declaration of acceptance of the inheritance has been made;
- b) if persons eligible for a statutory share are minors or require a legal representative for other reasons;
- c) if the separation of the estate (Section 812 of the Austrian Civil Code) has been approved;
- d) to the extent that a reversionary inheritance must be taken into account or a foundation has been established by will;
- e) if the estate could devolve to the state as intestate (Art. 184);

- f) to the extent that an entitled person or the estate administrator requests it.
- 2) In the cases referred to in paragraph 1, letters a through c and e, the inventory must cover the entire estate.
- 3) The estate creditors must be summoned (Art. 174) if this is requested or if the court deems it necessary, based on the circumstances, to protect the persons referred to in paragraph 1, letters b.

Art. 166

*b) Scope of the inventory*

- 1) The inventory serves as a complete list of the estate (Section 531 of the Austrian Civil Code), namely of all tangible assets and all inheritable rights and obligations of the deceased, along with their value at the time of death.
- 2) If the claim that an item forms part of the estate is disputed, the court must decide whether this item is to be included in or excluded from the inventory. If the item was last in the possession of the deceased, it shall be excluded only if it is proven by indisputable documents that it does not form part of the estate.
- 3) To determine whether an item belongs to the estate, third parties are obligated to grant access to the disputed items and to permit their inspection and description.

Art. 167

*c) Valuation Rules*

- 1) Movable property shall be valued at market value. The valuation of household goods, articles of daily use, and other movable property may be based on the undisputed and unobjectionable statements of all parties, unless the municipality or the court has reservations regarding this valuation or the interests of a ward or other special circumstances require the consultation of an expert.
- 2) Real property shall be valued at market value. This is based on the economically justified average price at which plots of land of the same or similar size, location, and condition are sold in the relevant area. For developed plots, an average value shall be determined in accordance with recognized principles. The government shall regulate the details by ordinance.

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3) The assessed value may be used in place of the market value if only adults who are not under guardianship are eligible to inherit.

4) Debts are to be listed with their outstanding amounts, including incidental charges, as of the date of death, provided this is possible without extensive inquiries and significant loss of time.

### *Procedure for Drawing Up the Inventory*

#### Art. 168

##### *a) General Principle*

1) When drawing up the inventory, the municipality has the same powers as when recording a death (Art. 146, paras. 1 and 2). The court may instruct banks, securities firms, and other financial institutions to provide the relevant information directly to the municipality.

2) For the purpose of drawing up an inventory, the municipality may engage experts and require the parties to pay the fees directly. If the fees are paid directly, no resolution regarding the determination of the fees is required.

3) The costs of drawing up an inventory shall be borne by the estate.

#### Art. 169

##### *b) Service*

The inventory shall be transmitted to the parties without proof of service.

Acceptance before the court is not required.

#### Art. 170

### *Statement of Assets*

If no inventory is to be drawn up, the heir must describe and value the estate's assets in their entirety as if in an inventory and confirm the accuracy and completeness of the declaration by signing it or having it signed by his or her representative. The declarant must be informed of the criminal consequences of a false declaration. The declaration of assets takes the place of the inventory in the settlement.

### *Use, Administration, and Representation of the Estate*

#### Art. 171

##### *a) Duty to Inform; Notification of Representation*

1) The municipality shall inform the presumed heirs of the advantages of reaching a written agreement regarding the use, administration, and representation of the estate and of notifying the municipality and the court thereof.

2) Any change in the manner of representation of the estate (Section 810 of the Austrian Civil Code) takes effect at the time it is notified to the court or the municipality by all heirs with the authority to represent the estate.

Art. 172

*b) Confirmation*

Upon request, the court shall issue the entitled parties with a confirmation of their authority to represent the estate (Section 810 ABGB).

Art. 173

*c) Appointment of an Estate Administrator; Change in Representation*

1) If the persons jointly entitled to the rights under § 810 ABGB cannot agree on the form of representation or on individual acts of representation, or if proceedings regarding succession law are to be initiated (Art. 160 et seq.), the court shall appoint an estate curator if necessary. The power of representation of other persons ends with the appointment of the estate curator.

2) If the representation arrangements change during the proceedings, the court must request the recipients to return the confirmations that have thereby become obsolete. *Rights of Creditors*

Art. 174

*a) Convening*

1) If an oral hearing is scheduled when creditors of the estate are summoned (Sections 813–815 of the Austrian Civil Code), the court must publicly announce the date of the hearing and summon the presumed heirs, those entitled to a compulsory share, and, where applicable, any appointed estate administrators and executors.

2) During the hearing, the court shall endeavor to facilitate an agreement regarding the claims filed.

Art. 174a

*a) Care Bequests*

If a person asserts a legacy for nursing care (Sections 677 and 678 ABGB), the court shall work toward reaching an agreement on the fulfillment of the legacy. In preparation for the attempt at settlement, the court shall

obtain the necessary information and documents regarding the care allowance received by the decedent from the competent agencies.

Art. 175

*b) Application for Separation*

The court shall decide on an application for separation of the estate (Section 812 ABGB). Even before ruling on the application, the court may deprive the heirs of the administration and use of the estate's assets and appoint a curator. Upon approval of this application, a curator of the estate who has already been appointed shall assume the rights and duties of a curator of separation.

Art. 176

*Evidence Required for the Transfer of the Estate*

1) All persons who have claims to the estate under the law of succession other than those of an heir must be notified of this in writing prior to the transfer of the estate.

2) If the parties subject to guardianship are entitled to claims under paragraph 1 that have not yet been satisfied, security must be provided prior to the transfer of the estate (Section 56 of the Code of Civil Procedure). If security is not provided despite a time-limited request, the court shall order its provision by means of a ruling.

3) Security may also be provided from the estate's assets.

*Transfer of the estate*

Art. 177

*a) Requirements*

If the heirs and their shares have been determined and the fulfillment of the remaining requirements has been proven, the court shall confer the estate upon the heirs (Section 797 of the Austrian Civil Code).

Art. 178

*b) Decision on the Grant of Probate*

1) The order of admission to the estate must contain:

- a) the identification of the estate by the first and last names of the deceased, the date of his birth and death, and his last place of residence;
- b) the identification of the heirs by first and last names, date of birth, and address;
- c) the title to inheritance, the shares of the estate, and a reference to any agreement on the division of the estate;

- d) the type of declaration of acceptance of the inheritance submitted (Section 800 ABGB).
- 2) Furthermore, the following must be included, if applicable:
  - a) any restriction of the heirs' rights through reversionary rights or equivalent provisions (Sections 707–709 of the Austrian Civil Code);
  - b) the real estate properties for which adjustments must be made due to the transfer of ownership; in this context, it must be specified whether those to whom ownership is transferred are among the statutory heirs.
- 3) Simultaneously with the transfer of ownership, all other pending procedural acts shall also be carried out, in particular the lifting of restrictions, seizures (Art. 176(2)), and the determination of fees.
- 4) Anyone who can credibly demonstrate that failure to do so would otherwise result in an infringement of the privacy of the decedent or the parties may request a separate copy of the orders.
- 5) The order of inheritance shall be served on the parties; in the case of heirs under guardianship, beneficiaries of a compulsory portion, or legatees, it shall also be served on the guardianship court and, upon request, on other persons who demonstrate a legal interest therein, in particular creditors.
- 6) If the order of inheritance contains a statement of reasons for the determination of inheritance rights, the copy intended for persons who were not parties to the declaratory proceedings shall not contain such a statement of reasons.
- 7) Upon request, a confirmation containing the information specified in paragraph 1 shall also be issued to the parties.

Art. 179

*c) Overcoming the Block*

A copy of the order of inheritance with a confirmation of its finality within the meaning of Art. 36(1) GOG is sufficient to overcome a bar (Art. 149).

Art. 180

*d) Waiver of Appeal and Res Judicata*

- 1) The parties may waive their right to appeal a decision that grants their claims even before the final judgment is issued; the orders granting their claims may then be enforced immediately.
- 2) Once the transfer of ownership has become final, no modification proceedings may take place.

*Agreements on the Division of the Estate and the Provision of Support*

1) Prior to the transfer of ownership, multiple heirs may have their agreement regarding the division of the estate or the use of the estate's assets recorded in court. The same applies to agreements regarding guardianship services. Such agreements have the effect of a settlement concluded in court.

2) If persons under guardianship are involved, the agreement requires the approval of the guardianship court.

3) The foregoing provisions apply mutatis mutandis to agreements relating to the estate with other persons involved in the estate proceedings.

**C. Proceedings Outside the Settlement**

*Land Registry Matters*

After obtaining the necessary declarations of consent, the court shall forward a copy of the order of transfer to the Office of Justice, insofar as real property in Liechtenstein is concerned. The Office of Justice shall take the necessary steps.

*Changes to the Basis of the Proceedings*

1) If assets become known only after the conclusion of the probate proceedings, the court shall notify the parties who are not yet aware of this.

2) If the proceedings have concluded with a disposition of the estate, the court shall supplement the inventory or request the heirs to supplement their statement of assets. A supplement to the disposition order is generally not required, but Art. 178(2) shall apply.

3) If no estate proceedings have been conducted to date, a new decision must be made in accordance with Articles 153 et seq., based on the now-updated total values.

4) If documents within the meaning of Art. 151 are discovered after the conclusion of the probate proceedings, the procedure set forth in Art. 152 shall be followed anew.

*Intestate Succession*



1) Upon expiration of the period set forth in Art. 157(2) and the preparation of the inventory, an estate that has become heirless (Section 760 ABGB) shall be transferred to the Principality of Liechtenstein upon application by the Government. Upon its application, if this has not yet been done, an appraisal (Art. 167) of the assets shall be conducted.

2) The transfer order must contain, *mutatis mutandis*, the information required under Art. 178.

3) Prior to the adoption of this decision, the inventory must be served on those persons who were requested to submit a declaration of acceptance of the inheritance but had only filed a request for service of the inventory.

Art. 185

#### *Costs and Publicity*

In probate proceedings, except in proceedings concerning the right of inheritance, there shall be no reimbursement of representation costs and no public hearing.

### **IV. Certifications**

Art. 186

#### *Notarizations and Certifications*

Notarizations and certifications are governed by the relevant special statutory provisions, in particular the Legal Security Act, the law of persons and companies, and property law.

### **V. Transitional and Final Provisions**

Art. 187

#### *Change of Designations*

In Art. 46(3)(18) of the Court Fees Act, Art. 18(a) of the Judicial Officers Act, Art. 3 of the Act on the Fee Schedule for Attorneys and Legal Representatives, Art. 49h(1) of the Marriage Act, Art. 5(2) of the Act Implementing the European Convention of May 20, 1980, on the Recognition and Enforcement of Decisions Concerning Custody of Children and the Restoration of Custody, §§ 159(2) and 164 of the General Civil Code, Art. 10, 23, 27(3), and 28(2) of the Act on Advance Maintenance Payments, Art.

8(2), 43(3), 102(5), 105(3), 110(2), 120(3), 121(2), 155(

1, 234, 235, 280(4), 281(4), 282(3), 283(2), 295, 316(2), 340(3),

Section 351(1), Section 378(1) and (2), and Article 141(2)(12) of the Introductory Provisions to the Law of Property; Article 15(2) of the Act containing transitional provisions regarding properties included in a

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land consolidation and re-surveying and establishing liens and usufructs on such properties, Art. 9 para. 2 of the Act on the Protection of Topographies of Semiconductor Products, Art. 7 para. 2, 19 para. 2, 36 para. 3, 54 para. 1 and 2, 101(2), 121(3), 122(3), 124

§ 2, § 136(4), § 142(3), § 152(4), § 159(1), § 172(1), § 183(1), § 190(1, 192(7), 210(1), 211(5), 212(2), 213(1), 231(2), 258(1), 287(3), 318(5), 337(2), 351n(5), 406(1), 407(2), 414(1), 445

Sections 5 and 6, 461(4), 477(3), 516(2), 521(1), 544(2), (3), and (4), 549

(3), Art. 552 § 9 (4), Art. 552 § 19 (4), Art. 552 § 27 (1), Art. 552 § 29

(3) and (4), Art. 552 § 33 (1), Art. 552 § 34 (1), Art. 552 § 35 (1), Art. 552

§ 39(4) and (5), 659(5), 720(3), 738(5), 764(2), 773(2), 791(

2, 796(1), 804(2), 807(2), 819(3), 825(5), 826(3) and (4), 827(

1, 831(1) and (4), 904(1), 906(2), 910(4), 913(2) and (3), 919(6),

921(1), 923(7), 925(5), 927(2), 929(2) and (3), Art. 932a § 116(

1, 1061(3), 1062a(3), as well as §§ 66(1), 66b(1), 66c(1), 72a(1), 78

Section 1, Section 125(3), Section 128(1), Section 138(1), Section 149(2) and (3), Section 155(2)(4) of the Introductory Provisions to the Law on Persons and Companies, Art.

37(4) of the Data Protection Act, Art. 31(2) of the Media Act, Art. 12(1) of the

Social Assistance Act, Art. 24(4) of the Children and Youth Act, Art. 1(g) and (o),

270(3), and 284(2) of the Enforcement Code, as well as Art. 76, 98(2) and (3),

105(1) and (3), and 106(5) of the Legal Security Regulations, and § 633(1) of the

Code of Civil Procedure, the term “legal aid proceedings” shall be replaced by the term “non-contentious proceedings,” in the grammatically correct form in each

instance.

Art. 188

### *Implementing Regulations*

The government shall issue the regulations necessary for the implementation of this Act.

Art. 189

### *Transitional Provisions*

1) This Act shall not apply to disputes that arose prior to the entry into force of this Act in matters that would now be enforced in non-contentious proceedings rather than in contentious proceedings.

2) It applies to procedural steps taken after its entry into force.

3) The provisions of this Act concerning probate proceedings shall apply to those deaths that were first brought before a court or the municipalities after the Act entered into force, provided that they could not have been initiated earlier. Otherwise, the provisions on probate proceedings that were previously in force shall continue to apply.

Art. 190

*Repeal of Previous Law*

The following are repealed:

- a) The Act of April 21, 1922, on Legal Aid Proceedings, LGBL. 1922 No. 19;
- b) The Act of October 22, 1992, amending the Act on Legal Aid Proceedings, LGBL. 1993 No. 57;
- c) The Act of December 17, 1998, amending the Act on Legal Aid Proceedings, LGBL. 1999 No. 32;
- d) Instruction of April 8, 1846, on the Judicial Treatment of Abandonment Cases in the Sovereign Principality of Liechtenstein, ASW;
- e) Law of October 22, 2008, Amending the Instructions for the Judicial Administration of Estates in the Sovereign Principality of Liechtenstein, LGBL. 2008 No. 341;
- f) Law Concerning the Administration of the Estates of Foreigners, LGBL. 1911 No. 6;
- g) Art. IV of the Act of December 10, 1912, on the Introduction of the Code of Civil Procedure and the Rules of Jurisdiction, LGBL. 1912 No. 9/3.

Art. 191

*Entry into Force*

This Act shall enter into force on January 1, 2011, provided that the referendum period expires without being exercised; otherwise, it shall enter into force on the date of its promulgation.

Agreement between the Principality of Liechtenstein and the Republic of  
Austria on the

**VI. Recognition and Enforcement (FL-AT)**

of judicial decisions, arbitral awards, settlements, and authentic instruments

Concluded in Vaduz on July 5, 1973 Entry

into force: March 28, 1975

His Serene Highness the Ruling Prince of and to Liechtenstein

and

the Federal President of the Republic of Austria

Desiring to regulate the mutual recognition and enforcement of judicial decisions, arbitral awards, settlements, and authentic instruments in civil and commercial matters, have decided to conclude an agreement to this effect. To this end, they have appointed as their plenipotentiaries:

His Serene Highness the Ruling Prince of Liechtenstein: Dr.

Walter Kieber,

Deputy Prime Minister of the Principality of Liechtenstein, Vaduz; the

Federal President of the Republic of Austria:

Dr. Karl Gruber,

Ambassador Extraordinary and Plenipotentiary of the Republic of Austria, Bern,

who, after exchanging their full powers, found to be in good and due form, have agreed as follows:

Art. 1

1) Judicial decisions rendered in either State in civil and commercial matters shall be recognized in the other State if they meet the following conditions:

1. The recognition of the judgment must not be contrary to the public policy of the State in which the judgment is invoked; in particular,

- it must not be precluded by the defense of res judicata under the law of that State;
2. the judgment must have been rendered by a court having jurisdiction under the provisions of Article 2;
  3. the judgment must have become final under the law of the State in which it was rendered;
  4. in the case of a default judgment, the order or summons initiating the proceedings must have been served in a timely manner on the defaulting party, either personally or on its representative; this applies mutatis mutandis to the service of payment orders and payment commands. If service was to be effected within the territory of the State in which the decision is being enforced, it must have been effected through mutual legal assistance.
- 2) For the purposes of recognition, it is irrelevant whether the decision is designated as a judgment, order, payment order, or otherwise.
  - 3) The following may not be recognized or enforced under this Convention:
    1. Decisions in bankruptcy proceedings;
    2. Decisions of Liechtenstein courts regarding the confirmation of a composition agreement and of Austrian courts in settlement proceedings;
    3. Decisions in matters of inheritance and succession;
    4. Decisions in guardianship and conservatorship matters;
    5. interim injunctions;
    6. Administrative fines;
    7. Decisions rendered in criminal proceedings concerning claims under private law. Art. 2
  - 1) The jurisdiction of the courts of the State in which the decision was rendered is established within the meaning of Article 1(1)(2):
    1. for proceedings concerning civil status or legal capacity, if, at the time the proceedings were instituted, the person whose civil status or legal capacity is at issue was a national of that State;
    2. for proceedings concerning family law relationships, if, at the time the proceedings were instituted, the persons whose family law relationships are affected were nationals of that State;
    3. for proceedings concerning a right in rem in immovable property situated in that State.

2) In proceedings other than those referred to in paragraph 1, the jurisdiction of the courts of the State in which the decision was rendered is established within the meaning of Article 1(1)(2):

1. if, at the time the proceedings were instituted, the defendant had his domicile or habitual residence, or, if the defendant is not a natural person, his registered office or place of effective management, in the State in which the judgment was rendered;

2. if the defendant, who had a place of business or a branch in the State in which the judgment was rendered, was sued there for claims arising from the operation of that place of business or branch;

3. in the case of a counterclaim legally related to the original claim, if the court that rendered the judgment had jurisdiction under this Convention to rule on the original claim;

4. if the judgment concerns compensation for damages resulting from accidents that occurred in the State in which the judgment was rendered and that were caused by the operation of motor vehicles or bicycles, whether motorized or not;

5. if the defendant has, by written agreement with the plaintiff, submitted to the jurisdiction of the courts of the State in which the decision was rendered or of the court that adjudicated the matter, and is registered in the public register (commercial register);

6. if the defendant, in the event that he is not entered in the public register (commercial register), has, by an agreement with the plaintiff contained in a public document, submitted to the jurisdiction of the courts of the State in which the judgment was rendered or of the court that adjudicated the matter;

7. if, prior to the conclusion of the proceedings at first instance, the defendant neither contested the jurisdiction of the court seised nor raised any objection regarding the jurisdiction of that court as understood within the meaning of this Agreement.

3) Notwithstanding the provisions of paragraph 2, the jurisdiction of the court of the State in which the decision was rendered is not established within the meaning of Article 1(1)(2) if, under the law of the State in which the decision is being enforced, a court of that State or of a third State has exclusive jurisdiction in the matter in question.

Art. 3

Decisions rendered by the courts of one of the two States, the recognition of which is sought in the other State, may be reviewed only to determine whether the conditions set forth in Article 1 of this Agreement are met and whether the documents required under Article 5 have been produced. Beyond that, the decision may not be reviewed.

Art. 4

- 1) Judgments rendered by the courts of one of the two States that meet the conditions set forth in Article 1 may be enforced in the other State if they are enforceable in the State in which they were rendered.
- 2) Jurisdiction and the procedure for enforcement shall be governed by the law of the State in which enforcement is sought.

Art. 5

The party seeking recognition of a judgment or applying for its enforcement must produce:

1. a copy of the decision bearing an official signature and the official seal or stamp;
2. a judicial certificate of the finality and, where applicable, the enforceability of the judgment;
3. in the case of a default judgment, a copy of the order or summons initiating the proceedings and a judicial certification regarding the manner and time of its service on the party who failed to appear; this applies *mutatis mutandis* to the service of payment orders and payment commands;
4. if the decision does not sufficiently disclose the underlying facts to permit an examination within the meaning of Art. 1, a certified copy of the complaint or other appropriate documents.

Art. 6

The review of the application for enforcement shall be limited to the requirements set forth in Art. 1 of this Agreement and to the documents to be submitted pursuant to Art. 5. Beyond this, the decision may not be reviewed.

Art. 7

- 1) Arbitral awards rendered in one of the two States shall be recognized in the other

recognized and enforced by the State if they comply with the provisions of the preceding articles, to the extent that such provisions are applicable. In particular, Article 2(2)(5) and (6) shall apply *mutatis mutandis* to the arbitration agreement (arbitration clause or arbitration agreement), subject to the exclusive jurisdiction provided for therein in paragraph 3.

2) The provisions of the preceding paragraph shall also apply to the enforcement of settlements concluded in court or before arbitral tribunals.

3) If an application is made for the recognition or enforcement of an arbitral award or for the enforcement of a settlement reached before an arbitral tribunal or a court, a copy of the arbitral award and a certificate of its finality, and, where applicable, of its enforceability, or a copy of the settlement and a certificate of its enforceability must be submitted. This certifi-

Certificates shall be issued in the Principality of Liechtenstein by the Regional Court in Vaduz; in the Republic of Austria, by the district court within whose jurisdiction the arbitral tribunal rendered the award or the arbitral settlement was concluded; and, in the case of court-approved settlements, by the court before which the settlement was concluded.

#### Art. 8

1) Enforceable public documents drawn up in the Principality of Liechtenstein by the Regional Court in Vaduz or by a mediation office concerning a legal transaction, and enforceable notarial deeds drawn up in the Republic of Austria, shall be enforced in the other State if they are enforceable at the time of the application and their enforcement is not contrary to public policy.

2) If an application is made for the enforcement of an enforceable public document drawn up in the Principality of Liechtenstein, the original of such document or an official copy thereof must be submitted; in the case of applications for the enforcement of a notarial deed drawn up in the Republic of Austria, a copy bearing the seal and signature of the notary public must be submitted.

#### Art. 9

The documents referred to in Art. 5, Art. 7(3), and Art. 8(2) do not require certification.

#### Art. 10



1) If proceedings are pending before a court of either State and the decision on the subject matter of those proceedings is likely to be recognized in the other State, a court of that other State seised subsequently shall decline to hear a case concerning the same claim and between the same parties.

2) The provisions of paragraph 1 shall not preclude the issuance of provisional measures in the other State.

Art. 11

1) This Agreement shall not affect the provisions of other bilateral or multilateral treaties that are or will be in force between the two States.

2) Provisions of the domestic law of either State that provide for the recognition or enforcement of judgments of the other State to a greater extent than provided for in this Agreement shall remain unaffected.

Art. 12

The provisions of this Agreement shall apply, subject to Art. 2(1)(1) and (2), regardless of the nationality of the parties.

Art. 13

1) This Agreement shall apply to judicial decisions and arbitral awards rendered after its entry into force.

2) The Agreement shall apply to settlements and to the enforceable public documents and notarial deeds referred to in Art. 8 if they were concluded or drawn up after its entry into force.

Art. 14

The Government of the Principality of Liechtenstein and the Federal Ministry of Justice of the Republic of Austria shall, upon request, provide each other with legal advice on matters arising from the application of this Agreement. The discretion of the courts remains unaffected.

Art. 15

1) Any differences of opinion concerning the interpretation or application of this Agreement which cannot be resolved through diplomatic negotiations within six months shall, at the request of either State, be submitted to a commission charged with seeking a solution to the dispute, composed of one representative from each of the two Governments.

2) If one of the two States has not designated its representative and has not complied with the invitation of the other State to make such a designation within two months, the representative shall be appointed by the President of the International Court of Justice at the request of the latter State.

3) In the event that these two representatives are unable to reach a settlement within three months of the dispute being submitted to them, they shall, by mutual agreement, designate a member to be chosen from among the nationals of a third State. If no agreement is reached on the selection of this member within a period of two months, either of the two States may request the President of the International Court of Justice to appoint the third member of the Commission; the Commission shall then perform the functions of an arbitral tribunal.

4) Unless the two States determine otherwise, the arbitral tribunal shall determine its own procedure. The arbitral tribunal shall decide by a majority vote of its members; its decision shall be final and binding.

5) Each of the two States shall bear the costs incurred by the activities of the arbitrator appointed by it. The costs of the President of the arbitral tribunal shall be borne equally by both States.

Art. 16

1) This Agreement shall be ratified; the instruments of ratification shall be exchanged in Vienna.

2) This Agreement shall enter into force on the 60th day following the exchange of the instruments of ratification.

3) This Agreement may be terminated by either State at any time by written notification; termination shall take effect one year after notification.

4) The termination of this Agreement shall not affect enforcement proceedings already authorized at that time.

In witness whereof, the plenipotentiaries have signed this Agreement and affixed their seals thereto.

Done at Vaduz on the fifth of July nineteen hundred and seventy-three in two original copies.

Agreement between the Principality of Liechtenstein and the  
Swiss Confederation on the

**VII. Recognition and Enforcement (FL-CH)**

of judicial decisions and arbitral awards in civil matters Concluded in

Vaduz on April 25, 1968

Entry into force: March 15, 1970

His Serene Highness the Ruling Prince of and to Liechtenstein and

The Swiss Federal Council

desiring to regulate the mutual recognition and enforcement of judicial decisions  
and arbitral awards in civil matters, have decided to conclude an agreement to this  
effect. To this end, they have appointed as their plenipotentiaries:

His Serene Highness the Ruling Prince of Liechtenstein:

Dr. Gerard Batliner

Princely Head of Government

The Swiss Federal Council:

Dr. Walter Thalmann,

Director of the Department

of Justice

who, after exchanging their powers of attorney, which were found to be in good  
and due form, have agreed as follows:

Art. 1

1) Judicial decisions rendered in civil matters in one of the two States shall be  
recognized in the other State if they meet the following requirements:

1. the recognition of the judgment must not be contrary to the public policy of the  
State in which the judgment is invoked; in particular, it must not be precluded by  
the defense of res judicata under the law of that State;

2. the judgment must have been rendered by a court having jurisdiction under the provisions of Art. 2;

3. the judgment must have become final under the law of the State in which it was rendered;

4. in the case of a default judgment, the order or summons initiating the proceedings must have been served in a timely manner on the defaulting party, either personally or on its representative. If service was to take place within the territory of the State in which the judgment is being enforced, it must have been effected through mutual legal assistance.

1bis) Judicial decisions ordering the payment of litigation costs or the reimbursement of expenses in the context of legal aid (free legal assistance) shall also be recognized, even if the claim is against the State.

2) Judgments rendered in criminal proceedings concerning claims under private law, as well as judgments imposing administrative fines in civil proceedings or ordering detention or any other provisional measure, may not be recognized or enforced under this Agreement. The same applies to judgments in bankruptcy or composition proceedings.

3) Decisions by administrative authorities in Switzerland responsible for ordering and supervising guardianship, as well as settlements concluded before such authorities, shall be treated as judicial decisions and settlements for the purposes of this Agreement.

#### Art. 2

1) The jurisdiction of the courts of the State in which the decision was rendered is established within the meaning of Art. 1(1)(2) in the following cases:

1. if, at the time the proceedings were instituted, the defendant had his domicile or, if the defendant is not a natural person, his seat in the State in which the judgment was rendered;

2. if the defendant, who has a place of business or a branch in the State in which the judgment was rendered, has been sued there for claims arising from the operations of that place of business or branch;

3. in the case of a counterclaim legally related to the main claim, if the court that rendered the judgment had jurisdiction under this Convention to rule on the main claim;

4. if the judgment concerns compensation for damages resulting from accidents that occurred in the State in which the judgment was rendered and were caused by the operation of motor vehicles or bicycles, whether motorized or not;
4. provided that the judgment concerns compensation for damages caused by defective products and was rendered in the State in which the harmful event occurred;
5. if the action concerned a right in rem in immovable property situated in the State in which the decision was rendered;
6. in matters of civil status, legal capacity, or family law concerning nationals of the State in which the judgment was rendered;
7. if the parties have submitted to the jurisdiction of the court that ruled on the matter by means of a written agreement;
8. Repealed
9. if the defendant, regardless of whether he is registered in the commercial register or not, has argued the merits of the case without raising an objection regarding the jurisdiction of the courts of the State in which the decision was rendered, as understood under this Convention, even though he was informed by the judge of the possibility of raising such an objection.
- 2) Notwithstanding the provisions of paragraph 1(1), 2, 3, 7, and 9 of this Article, the jurisdiction of the courts of the State in which the decision was rendered is not established within the meaning of Article 1, paragraph 1, subparagraph 2, if, under the law of the State in which the decision is invoked, a court of that State or of another State has exclusive jurisdiction over the subject matter of the dispute.

#### Art. 3

Judgments rendered by the courts of one of the two States, the recognition of which is sought in the other State, may be reviewed only to determine whether the conditions set forth in Article 1 of this Convention are met. Under no circumstances may a review of the merits of such judgments take place.

#### Art. 4

- 1) Judgments rendered by the courts of one of the two States that satisfy the conditions set forth in Article 1 may be recognized in the other

Judgments may be enforced in another state if they are enforceable in the state in which they were rendered.

2) Jurisdiction and the procedure for enforcement shall be determined by the law of the State in which enforcement is sought. Art. 5

1) The party seeking recognition of a judgment or applying for its enforcement must produce:

1. the original of the judgment or a certified copy thereof;
2. a certificate of the finality and, where applicable, the enforceability of the judgment;
3. in the case of a default judgment, a copy of the order or summons instituting the proceedings and a certificate regarding the manner and time of service thereof on the party who failed to appear;
4. if the judgment does not disclose the underlying facts to the extent necessary to permit the review required under Article 1, a certified copy of the complaint or other appropriate documents;
5. where applicable, a translation of the documents referred to in paragraphs 1 through 4 into the official language of the authority from which recognition of the decision is sought or enforcement is requested. The translation must be certified as accurate in accordance with the law of one of the two States.

2) The documents to be submitted pursuant to this Article do not require legalization.

#### Art. 6

The examination of the application for enforcement shall be limited to the conditions set forth in Article 1 of this Agreement and to the documents to be submitted pursuant to Article 5. Under no circumstances may a substantive review of the decision take place.

#### Art. 7

1) Arbitral awards rendered in one of the two States shall be recognized and enforced in the other State if they comply with the provisions of the preceding Articles, insofar as these are applicable. In particular, Article 2(1)(7) applies *mutatis mutandis* to the arbitration agreement (arbitration agreement or arbitration clause), subject to the exclusive jurisdiction of the courts provided for in paragraph 2.

2) This also applies to settlements reached in court or before arbitral tribunals.

3) Repealed

Art. 8

Maintenance settlements concluded in one of the two States before a court or an administrative authority competent to order and supervise guardianship shall, regardless of the nationality of the parties, be enforced in the other State if they comply with the provisions of the preceding Articles, insofar as these are applicable.

Art. 9

1) If proceedings are pending before a court of one of the two States and the decision on the subject matter of those proceedings is likely to be recognized in the other State, a court of that other State seised subsequently shall decline to hear a case concerning the same subject matter and between the same parties.

2) The provisional or protective measures provided for in the legislation of Liechtenstein and Switzerland may be sought from the authorities of either State, regardless of which court is hearing the main action.

Art. 10

The provisions of international agreements to which both States are parties shall not be affected by this Agreement.

Art. 11

The provisions of this Agreement shall apply, subject to Art. 2(1)(6), regardless of the nationality of the parties.

Art. 12

This Agreement applies to court decisions, arbitral awards, and settlements entered into after its entry into force.

Art. 13

The Government of the Principality of Liechtenstein and the Federal Department of Justice and Police shall, upon request, provide each other with legal advice on matters arising from the application of this Agreement. The discretion of the courts remains unaffected.

Art. 14

1) Any differences of opinion concerning the interpretation or application of this Agreement that cannot be resolved through diplomatic negotiations within six months shall, at the request of either State, be submitted to a commission tasked with seeking a solution to the dispute, composed of one representative from each of the two Governments.

2) If one of the two States has not designated its representative and has not complied with the invitation from the other State to make such a designation within two months, the representative shall be appointed by the President of the International Court of Justice at the request of the latter State.

3) In the event that these two representatives are unable to reach a settlement within three months of the dispute being submitted to them, they shall, by mutual agreement, designate a member to be chosen from among the nationals of a third State. If no agreement is reached on the selection of this member within a period of two months, either of the two States may request the President of the International Court of Justice to appoint the third member of the Commission; the Commission shall then perform the functions of an arbitral tribunal.

4) Unless the two States determine otherwise, the arbitral tribunal shall determine its own procedure. The arbitral tribunal shall decide by a majority vote of its members; its decision shall be final and binding.

5) Each of the two States shall bear the costs incurred by the activities of the arbitrator appointed by it. The costs of the President shall be borne equally by both States.

Art. 15

1) This Agreement shall be ratified, and the instruments of ratification shall be exchanged in Bern.

2) The Agreement shall enter into force two months after the exchange of the instruments of ratification.

3) This Agreement may be terminated by either State at any time; however, it shall remain in force for one year following termination.

4) In witness whereof, the plenipotentiaries have signed this Agreement in duplicate and affixed their seals thereto.

Done at Vaduz on April 25, 1968



## **VIII. Enforcement Ordinance (EO)**

of November 24, 1971

on Enforcement and Legal Security Proceedings

Part 1

### **Enforcement**

1. Section

### **General Provisions**

1. Title

### **Enforcement Based on Domestic Documents**

Art. 1

#### *Enforcement Titles*

Enforcement titles within the meaning of this Act are the following documents and instruments issued domestically:

- a) Final judgments and other judgments and orders issued in civil and enforcement matters, provided that no further appeal is permitted or that no appeal capable of staying enforcement has been granted;
- b) Payment orders in bill of exchange and check proceedings against which no objections have been raised in a timely manner;
- c) Payment orders in debt collection proceedings against which no objection has been raised in a timely manner;
- d) Orders for the lifting of the stay of execution in proceedings for the lifting of the stay of execution, if the action to set aside the claim was not filed in a timely manner or has been dismissed with final and binding effect;
- e) Court-ordered terminations of a lease agreement concerning real property, buildings, and other immovable property or items declared immovable by law, if no objections to the termination were raised in a timely manner, as well as, under the same conditions, court orders for the surrender or takeover of a leased property;
- f) Settlements concluded in court regarding claims under private law;
- g) Decisions in non-contentious proceedings, insofar as they can be enforced in accordance with the applicable provisions;

EO

- h) final decisions in criminal matters, whereby a ruling has been made on the costs of the criminal proceedings or on claims under private law, or security has been declared forfeited;
- i) final decisions imposing fines on parties or their representatives;
- j) final decisions of administrative authorities;
- k) Repealed
- l) Repealed
- m) awards by arbitrators and arbitral tribunals that are no longer subject to appeal before a higher arbitral instance, and settlements concluded before them;
- n) arbitral awards of the Apprenticeship Commission that are recognized by the parties;
- o) Enforceable instruments under the Non-Contentious Proceedings Act;
- p) final orders and contribution assessments of the Liechtenstein Old-Age and Survivors' Insurance, the Liechtenstein Disability Insurance, the Liechtenstein Family Allowance Fund, and the Liechtenstein Unemployment Insurance Fund;
- q) Arbitration awards and fine orders issued by the Conciliation Office, and settlements concluded before the Conciliation Office;
- r) Enforcement applications by the Liechtenstein National Bank pursuant to the law concerning the Liechtenstein National Bank;
- s) Enforceable notarial deeds pursuant to Art. 41 of the Notary Act;
- t) all other documents expressly recognized by law as enforceable instruments.

## Art. 2

### *Authorization of Enforcement*

The order for enforcement is issued by the Regional Court in Vaduz upon application by the entitled party (the creditor initiating the proceedings). Unless otherwise provided in this Act, a decision on the application for an order for enforcement shall be made without a prior oral hearing and without hearing the opposing party.

## Art. 3

### *Maturity of the Claim*

- 1) Enforcement may only be authorized if the enforcement order specifies not only the identity of the creditor and the debtor but also the subject matter, nature, scope, and time of the performance or omission owed.
- 2) Enforcement may not be authorized before a claim becomes due or before the expiration of the time limit for performance specified in a judgment or other enforcement order. If the due date or the end of the performance period in the enforcement order is not specified either by a calendar date or by a fixed starting point of the period determined by the calendar, or if the enforceability of the claim in the enforcement order is made contingent upon the occurrence of a fact to be proven by the entitled party, namely a prior performance by the entitled party, the occurrence of the facts determining the due date or enforceability must be proven by a public document or a document in which the signatures of the parties are certified.

#### Art. 4

##### *Performance on a Conveyance Basis*

- 1) The authorization of enforcement for a claim that the obligor is required to fulfill only in exchange for a consideration to be granted to him on a simultaneous basis is not dependent on proof that the consideration has already been obtained or that its fulfillment has been secured.
- 2) Enforcement shall also be granted with respect to a claim arising from a value protection clause if
  - a) the value protection clause is linked to no more than one variable factor and
  - b) the revaluation formula is proven by an uncontested document. Proof is not required if the revaluation formula is a consumer price index published by the Office of Economic Affairs or if the amount of the revaluation formula is determined by law.
- 3) If, pursuant to an enforcement order, a claim is to be paid with value protection without further details being specified, the revaluation factor shall be the consumer price index published by the Office of Economic Affairs and valid for the month in which the enforcement order was issued. The claim shall be reduced or increased to the extent that the consumer price index changes from the time of issuance

the enforcement order. Changes need not be taken into account as long as they do not exceed 10% of the previously applicable index figure.

Art. 5

*Proof of Standing to Sue and to Be Sued*

Enforcement may be carried out in favor of a person other than the one designated as the entitled party in the enforcement order, or against a person other than the obligor named in the enforcement order, only to the extent that it is proven by a public document or a document on which the signatures of the parties are certified, that the claim recognized in the enforcement order or the obligation established therein has been transferred from the persons named therein to those persons from whom or against whom enforcement is sought.

Art. 6

If the documentary evidence required under Art. 3, 4(2), and 5 cannot be provided, the authorization of enforcement or its continuation must be preceded by the obtaining of a court judgment.

Art. 7

*Right of Choice of the Obligor*

- 1) If the obligor has the right to choose between several performances, the creditor may apply for enforcement with respect to one of these performances.
- 2) Notwithstanding this, the obligor may exercise his right of choice as long as the creditor has not received the performance chosen by the creditor, either in whole or in part.

Art. 8

Pursuant to a decision in which several independent claims have been awarded, if an appeal suspending enforcement has been filed only with respect to some of these claims, enforcement may be granted in favor of the remaining uncontested claims as soon as the decision regarding those claims has become final.

Art. 9

*Combination of Enforcement Measures*

- 1) The simultaneous use of multiple enforcement measures is permitted; however, authorization may be limited to individual enforcement measures if it is evident from the application for enforcement that one or more of the requested enforcement measures are already sufficient to satisfy the enforcing creditor.

2) If enforcement proceedings are pending against a wage claim or another claim consisting of ongoing payments, enforcement against movable tangible property to satisfy the same claim may only be carried out if:

- a) enforcement under Art. 217a has been unsuccessful because no potential third-party debtor is registered in the Central Register of Persons;
- b) the third-party debtor has not acknowledged the attached claim as valid in his or her statement or has not submitted a statement; or
- c) the enforcing creditor applies for the execution of movable property after receiving the third-party debtor's statement.

3) A creditor initiating enforcement proceedings may not apply for enforcement under Art. 217a against tangible movable property until one year has elapsed since the authorization of enforcement, or until the creditor demonstrates that he or she only learned, after filing the application for enforcement against tangible movable property, that the debtor is entitled to claims within the meaning of Art. 211. Art. 10

*Enforcement against the State, a municipality, or any other public-law corporation, institution, or foundation*

Enforcement proceedings against a state, a municipality, or any other public-law corporation, institution, or foundation to collect monetary claims may, unless they involve the enforcement of a contractual lien, only with respect to those assets that can be used to satisfy the creditor without impairing the public interests to be safeguarded by the state, the municipality, or the other public-law corporation, institution, or foundation. The government is responsible for issuing a statement regarding the extent to which the latter applies with respect to specific assets.

Art. 11

*Enforcement against extraterritorial persons*

Enforcement against persons enjoying extraterritoriality in Liechtenstein may not be permitted if the foreign state grants reciprocal treatment.

Art. 12

*Enforcement*

- 1) Unless otherwise provided in this Act, the enforcement of an approved judgment shall be carried out ex officio.
- 2) Enforcement is carried out either directly by the court or by the bailiff, who acts on behalf of and under the direction of the court.
- 3) The bailiff shall carry out enforcement actions until the court's enforcement order has been fulfilled or it is established that it cannot be fulfilled.

Art. 13

*Duties of the Bailiff*

- 1) The bailiff is authorized to receive the payments or other performance to be enforced, to issue a receipt therefor, and, if the obligor has fulfilled his obligation through such performance, to return to him the instruments of debt handed over to the bailiff for this purpose by the court or by the creditor initiating the proceedings. During the enforcement proceedings, the creditor may have the bailiff carry out the delivery of a document, a sum of money, or other items to the obligor, which the creditor is required to provide as consideration.
- 2) The bailiff is authorized, to the extent necessary for the purpose of enforcement, to search the debtor's residence, his or her containers, and, if necessary, with due regard for the debtor's person, even the clothing worn by the debtor. He may have locked house, apartment, and room doors, as well as locked containers, opened for the purpose of enforcement, notwithstanding minor damage; however, house and apartment doors may be opened by replacing the lock only if the key to the new lock can be retained at all times. However, if neither the obligor nor an adult member of his household is present, a trustworthy, competent person must be called in as a witness to the aforementioned enforcement actions. In anticipation of resistance or to overcome resistance directed against him, the bailiff may immediately request assistance from law enforcement authorities.
- 3) Repealed

Art. 13a *Place  
of Enforcement*

1) The bailiff shall execute the enforcement order at the location specified in the application for an enforcement order, unless he is aware that the enforcement action cannot be carried out there.

2) If the bailiff is aware of locations where enforcement can be successfully carried out, or if such locations can be ascertained by him through reasonable inquiries, he must seek them out ex officio.

Art. 13b

*Contacting the Obligor*

If the obligor is not found during an enforcement attempt, the bailiff may request that the obligor report to him, provided that this does not frustrate the purpose of the enforcement.

Art. 14

*Prohibition on Enforcement Beyond the Necessary Extent*

1) Enforcement proceedings may not be carried out to a greater extent than is necessary to satisfy the claim specified in the writ of execution.

2) In the enforcement of monetary claims, due consideration must always be given to the costs likely to be incurred until the creditor is satisfied.

Art. 15

*Time of Enforcement*

1) The bailiff shall determine the time of enforcement. In doing so, and taking into account paragraph 2, consideration must be given to when the debtor is most likely to be found.

2) On Saturdays, Sundays, and statutory holidays, as well as between 10 p.m. and 6 a.m., the bailiff may carry out enforcement actions only:

a) in urgent cases, particularly if the purpose of the enforcement cannot be achieved otherwise; or

b) if an attempt to enforce the judgment during business hours on weekdays was unsuccessful. Art. 16

All parties involved in an enforcement proceeding may be present during its execution. Persons who disrupt the enforcement proceeding or behave inappropriately may be removed by the bailiff.

Art. 17

*Death of the Obligor*

1) If the debtor dies after enforcement has been authorized, enforcement may be carried out or continued with respect to the estate left behind without further authorization as soon as a declaration of acceptance of the inheritance has been filed or an estate administrator has been appointed. Otherwise, the creditor initiating the enforcement must apply for the appointment of a provisional representative of the estate.

2) Enforcement against real property commenced during the debtor's lifetime may be continued without the prior appointment of a provisional estate representative if the registration required to initiate compulsory administration or compulsory auction was made prior to the debtor's death.

Art. 18

*Objections to the Claim (Action to Oppose)*

1) During enforcement proceedings, objections to the claim in favor of which enforcement has been granted may be raised only to the extent that they are based on facts that nullify or suspend the claim and that arose only after the enforcement order underlying these proceedings was issued. However, if this enforcement order consists of a court decision, the decisive date is the date by which the obligor could have effectively invoked the relevant facts in the preceding court proceedings.

2) These objections must be raised by filing a complaint, without prejudice to any possible appeal against the authorization for enforcement. Objections to a claim based on one of the enforcement titles listed in Art. 1(j) and (p) must be filed with the authority that issued the enforcement title.

3) All objections that the obligor was able to raise must be asserted simultaneously, failing which they shall be barred.

4) If the objections are upheld with final and binding effect, enforcement shall be suspended.

Art. 19

*Objections to the Authorization of Enforcement (Action to Challenge)*

1) If the obligor objects to the authorization of enforcement,

a) that the facts determining the due date or enforceability (Art. 3(2)) or the assumed succession (Art. 5) have not occurred,



- b) that the claim for which enforcement was granted does not arise from a value preservation clause,
  - c) that the creditor pursuing enforcement has waived the initiation of enforcement altogether or for a period that has not yet expired,
- then he must assert his objections by filing a lawsuit, unless they can be raised by appealing the authorization of enforcement.
- 2) The provisions of Art. 18(3) apply *mutatis mutandis* to this action.
  - 3) If the action is upheld with final and binding effect, the enforcement proceedings shall be discontinued.
  - 4) These provisions also apply in the case of Art. 706, last paragraph, of the Law on Persons and Companies of January 20, 1926, LGBI. 1926 No. 4.

#### Art. 20

##### *Objection (Exclusion) Proceedings*

- 1) If a third party asserts a right to an item subject to enforcement, to a part of such an item, or to individual items of appurtenances of a property subject to enforcement, which would render the enforcement inadmissible, the court shall set a period of 14 days for the enforcing creditor and the debtor to contest the third party's claim before the court.
- 2) If the claim is not contested, the enforcement proceedings with respect to the property in question shall be suspended.
- 3) If the claim is contested, the enforcing creditor, the debtor, and the third party must be notified of this by the court, with the addition that the enforcing creditor may bring an action against the third party if the property subject to enforcement is in the third party's possession, and, otherwise, the third party may bring an action (action to contest) against the creditor initiating enforcement and the obligor as co-defendants or against the creditor initiating enforcement alone.
- 4) If the action is upheld with final and binding effect, the enforcement proceedings shall be discontinued.

##### *Suspension of Enforcement*

#### Art. 21

- 1) Except in the cases listed in Articles 18, 19, and 20, enforcement shall be suspended, with simultaneous annulment of all enforcement acts carried out up to that point:
  - a) if the underlying enforcement title has been declared invalid, revoked, or otherwise rendered ineffective by a final decision;

b) if enforcement is being carried out against property, rights, or claims that are, under the applicable provisions of enforcement law, generally exempt from enforcement or subject to separate enforcement proceedings;

c) if enforcement is being carried out against the assets of a minor to which the minor has no right of disposal, based on judgments or settlements that were concluded without the participation of a legal representative pursuant to Art. 2 of the Civil Procedure Code;

d) if enforcement against the state, a municipality, or any other public-law entity, institution, or foundation has been declared inadmissible pursuant to Article 10;

e) if enforcement has been declared inadmissible for other reasons by a final decision;

f) if the creditor has withdrawn the application for enforcement, if the creditor has waived enforcement of the authorized order in its entirety or for a period that has not yet expired, or if the creditor has renounced the continuation of the enforcement proceedings;

g) if, in the case of Article 7, the debtor, after enforcement has been authorized, has, in exercising his right of choice, performed a different obligation than the one against which enforcement is directed;

h) if it cannot be expected that the continuation or execution of the enforcement will yield a return exceeding the costs of such enforcement;

i) if enforcement was authorized contrary to the provision of Article 3(2).

2) In the cases specified in subparagraphs (a), (f), and (g), the discontinuation shall occur only upon application; otherwise, it may also be ordered ex officio. However, in the cases specified in subparagraphs (b) and (c), the discontinuation ex officio must be preceded by a hearing of the parties, unless there is a final decision on the inadmissibility of the enforcement proceedings.

3) If an action is brought to declare the enforcement title invalid or ineffective, or to set it aside, or if an action is brought to assert objections against the claim, against the authorization of enforcement, or against the admissibility of enforcement, the motion to stay enforcement may be joined with the action.

#### Art. 22

1) If, after the enforcement order has been issued or, in the case of court decisions, after the time specified in Article 18(1),

, a deferment has been granted, or the creditor has waived the initiation of enforcement altogether or for a period that has not yet expired, the debtor may apply for a stay of enforcement without first filing a lawsuit pursuant to Art. 18 or 19. The decision on the application must be preceded by a hearing of the enforcing creditor if the creditor's satisfaction or declaration is not evidenced by uncontested documents.

2) If, based on the results of this hearing, the decision appears to depend on the investigation and determination of disputed facts, the debtor shall be directed to pursue legal remedies with his objections.

#### Art. 23

##### *Restriction of Enforcement*

1) If the grounds for suspension specified in Articles 18 through 22 apply only to certain items subject to enforcement or to a portion of the enforceable claim, enforcement shall be limited proportionately rather than suspended.

2) Furthermore, enforcement shall be limited if it has been carried out to a greater extent than is necessary to achieve full satisfaction of the creditor.

##### *Postponement of Enforcement*

#### Art. 24

A stay (suspension) of enforcement may be ordered upon application:

- a) if an action is brought to declare invalid, void, or set aside one of the enforcement titles listed in Art. 1 that forms the basis of an authorized enforcement;
- b) if a motion for retrial or reinstatement of the previous status is filed with respect to any of the enforcement orders listed in Article 1, or if an application is filed to set aside an arbitral award through legal proceedings;
- c) if a stay of enforcement is requested pursuant to Article 21(b) through (d), (f), and (h) or Article 22;
- d) if enforcement is being carried out in respect of a claim that is contingent upon a reciprocal performance by the enforcing creditor, and the creditor has neither performed the reciprocal obligation incumbent upon him nor is willing to perform or secure such performance;

e) if one of the actions mentioned in Articles 18, 19, and 20 is brought, if an action is brought to have the enforcement declared inadmissible for other reasons (Article 21(e)), or if, pursuant to Article 18(2), objections to the claim are raised with the authority specified therein;

f) if the convening of the estate creditors (Section 813 ABGB) is approved;

g) if the order authorizing enforcement is challenged by appeal;

h) if a complaint is filed against an act of enforcement and the hearing of the parties or other involved parties required for a decision on the matter cannot take place immediately (Art. 45);

i) if the obligor is seriously ill. Art. 25

1) Upon the postponement of enforcement, unless the court orders otherwise, all enforcement measures that had already been carried out at the time of the request for postponement shall remain in effect for the time being.

2) The court may order the revocation of enforcement measures already carried out only if maintaining such measures would cause the party requesting the postponement a disadvantage that would be difficult to remedy and if, in addition, that party provides security for the full satisfaction of the claim to be enforced.

3) If grounds for postponing enforcement arise only with respect to individual items subject to enforcement or a portion of the claim, enforcement shall, in the former case, be continued for the time being only with respect to the remaining items, and in the latter case, only with respect to the portion of the claim not affected by the grounds for postponement.

Art. 26

1) The postponement of enforcement shall not be granted if enforcement can be commenced or continued without this entailing the risk of an irreparable or difficult-to-remedy disadvantage for the party requesting the postponement.

2) Upon granting the postponement, the court shall specify the duration for which enforcement is to be postponed.

3) Unless otherwise ordered in individual cases, suspended enforcement proceedings shall be resumed only upon application.

Art. 27

The provisions of Articles 21 through 26 do not preclude the application of the special provisions contained in this Act regarding specific types of enforcement, such as the suspension, restriction, or postponement of enforcement or certain acts thereof.

Art. 27a

*Payment Agreement*

Enforcement shall be suspended by order, without the requirement of security, upon application by the creditor pursuing enforcement or with the creditor's consent, if a payment agreement has been reached between the parties. It may be resumed only after the expiration of three months from the date the court received the application for suspension. If resumption is not requested within two years, enforcement shall be discontinued.

Art. 28

*Suspension of Enforcement*

The bailiff may suspend the execution of the enforcement measure without a judicial order only if it is demonstrated to him that the enforcing creditor has been satisfied after the issuance of the order to be executed by the bailiff, has granted a deferral, or has withdrawn from the continuation of the enforcement proceedings.

*Affidavit of Insolvency*

Art. 29

*Statement of Assets*

- 1) If the property for which enforcement is being carried out is not found in the possession of the debtor, the debtor must state before the court or before the bailiff where such property is located, or that he does not possess it and does not know where it is located.
- 2) If enforcement proceedings for monetary claims have been unsuccessful because no assets subject to enforcement were found in the debtor's possession, or only such assets were found that are clearly insufficient due to their low value or because liens have already been established on them in favor of other creditors, or because they are claimed by third parties, the debtor must submit a list of his assets to the court, indicating the location of the individual assets

and, in the case of claims, to specify their basis and the evidence supporting them. The debtor must sign this inventory of assets before the court or the bailiff, thereby confirming that the information provided is accurate and complete and that he has not concealed any of his assets.

3) At the suggestion of the creditor initiating the proceedings or on its own initiative, the court may include in the inventory of assets other questions that, given the circumstances, are useful for identifying the property to be surrendered or subject to execution.

4) With respect to legal entities, unincorporated associations, trust companies, legal representatives, insolvency estates, etc., § 373 of the German Code of Civil Procedure (ZPO) shall apply *mutatis mutandis* to the submission and signing of the statement of assets.

#### Art. 30

##### *Waiver of the Preparation of an Inventory of Assets*

If the value of the item to be surrendered or delivered, or the monetary claim including incidental fees and costs, does not exceed 100 Swiss francs, the preparation of a statement of assets shall be waived.

#### Art. 31

##### *Enforcement of the Submission and Signing of the Statement of Assets*

1) If the duly summoned obligor fails to appear in court without sufficient excuse to submit and sign the statement of assets, or if the obligor unjustifiably refuses to submit the statement of assets or to sign it before the bailiff, the court shall order the compulsory appearance of the obligated party.

2) If the obligated party unjustifiably refuses to submit or sign the statement of assets before the court, the court shall impose detention to compel compliance. Imprisonment shall be enforced in accordance with Articles 264 through 266. Its total duration may not exceed six months and shall end as soon as the obligated party submits the statement of assets and signs it before the court.

3) The detained obligor may at any time submit a statement of assets to the court and request to be permitted to sign it before the court. The request shall be granted without further proceedings.

4) The imposition of imprisonment shall cease to have effect if it has not been enforced within one year. However, the obligor may again be required to submit a statement of assets and to sign it before the court. Imprisonment may also be imposed again under the conditions specified in paragraph 2.

#### Art. 32

##### *Resubmission and signing of a statement of assets*

1) A person who has submitted a statement of assets pursuant to Art. 29(2) and signed it in court is obligated to resubmit and sign it again, even with respect to third-party creditors, only if it is credibly demonstrated that he or she has subsequently acquired assets. The same demonstration is required if, following the enforcement of the six-month imprisonment under Article 31, imprisonment is to be imposed again on the obligated party to compel the submission of a statement of assets and its signing in court. However, such proof is not required in either case if more than one year has elapsed since the imprisonment was served or since the inventory of assets was submitted and signed before the court or the court officer.

2) After submitting a statement of assets pursuant to Art. 29(1), the debtor may be required by the court to submit another statement of assets at the request of the same enforcing creditor and in connection with the same claim only if the enforcing creditor demonstrates that the circumstances regarding the debtor's possession of the property or the debtor's knowledge have changed since then.

3) If the requirements of Art. 29(2) are met and an order to submit a new statement of assets and to sign it pursuant to paragraph 1 is inadmissible, a copy of the most recently submitted and signed statement of assets shall be sent to the enforcing creditor.

#### Art. 33

##### *Application for Enforcement*

1) In addition to the other required specific information and supporting documents, the application for an enforcement order must contain:

- a) the exact identification of the applicant and of the party against whom enforcement is to be carried out;
- b) a specific description of the claim for which enforcement is sought and the enforcement title available for that purpose. In the case of monetary claims, the following must also be included:

the amount to be collected through enforcement proceedings, as well as the ancillary fees claimed;

c) the designation of the enforcement measures to be applied and, in the case of enforcement against property, the designation of the assets to be subject to enforcement, as well as the location where they are situated, and finally all information that, depending on the nature of the case, is relevant to the orders to be issued by the court in the interest of conducting the enforcement proceedings.

2) If the application is based on one of the enforcement titles listed in Art. 1(j), (p), and (q), a confirmation from the relevant authority must be submitted stating that the decision or order is not subject to any legal remedy that would suspend its enforceability. In the case of arbitral awards (Art. 1(m)), a confirmation from the arbitrators regarding the finality and enforceability of the arbitral award must be provided.

3) If the enforcement order was not issued in Germany, it must be submitted as an original or a certified copy.

#### *Hearing*

#### **Art. 34**

1) Judicial decisions and orders in enforcement proceedings shall be issued, unless otherwise provided by this Act, without a prior oral hearing. A hearing of the parties or other participants ordered by law is not subject to the provisions applicable to oral hearings. It may take place orally or by requesting written statements; in the former case, it may proceed without the simultaneous presence of the other persons to be heard and without the preparation of a record; a brief written note in the file regarding the outcome of the hearing is sufficient. Nor does the hearing require that each of the persons to be questioned be given the opportunity to comment on the statements made by the other persons. Each party may request that, in addition to its authorized representative, a person of its choosing be permitted to be present during its oral examination. The presence of such a person may be prohibited if there is reasonable concern that their presence would be misused to disrupt the examination or to hinder the determination of the facts.



2) All circumstances essential to a requested judicial decision or order must be proven by the applicant. Except for an application for authorization of enforcement, the court may, even prior to rendering decisions for which the law does not require it, order the oral or written examination of one or both parties or other interested parties and request them to produce the necessary documents and other evidence if the matter involves the determination of material facts.

3) The court may, however, obtain the information it deems necessary even without the involvement of the parties or other interested parties, and for this purpose may, on its own initiative, conduct all appropriate investigations and, in accordance with the provisions of the Code of Civil Procedure, order the necessary certifications or the taking of evidence.

#### Art. 35

1) If, pursuant to the provisions of this Act, an oral hearing is scheduled or the examination of parties or other participants is ordered, the failure of persons duly summoned to the hearing or examination to appear shall not preclude the commencement and continuation of the hearing and the rendering of a judicial decision.

2) If the hearing or examination is based on a motion, then, unless the law provides otherwise, those persons who fail to appear despite having been duly summoned shall be deemed to have consented to the motion. The essential content of the motion and the legal consequences of failure to appear shall be stated in the summons.

3) The foregoing provisions also apply to the failure to meet deadlines set for written statements or submissions by the parties or other participants.

#### Art. 36

1) Motions and objections for which a hearing has been scheduled may not be raised subsequently by persons who, having been duly summoned, failed to appear at said hearing. The same applies to failure to appear at a hearing at which an objection could have been raised.

2) If a hearing is rescheduled—whether for oral proceedings, the examination of parties or other participants, the filing of motions and objections, or the filing of an appeal—

not to be notified of the rescheduling of a hearing intended for oral proceedings, for the examination of parties or other participants, for the filing of motions and objections, or for the filing of an appeal.

Art. 37

*Time Limits*

- 1) The time limits specified in this Act are non-extendable, unless otherwise provided for with respect to individual time limits.
- 2) No reinstatement of the previous status shall take place due to the failure to meet a time limit or to appear at a hearing; however, this does not apply to proceedings arising in the course of enforcement proceedings and in connection therewith, which are to be heard and decided in accordance with the provisions of the Code of Civil Procedure.

Art. 38

*Oral Hearing*

- 1) The oral hearing in enforcement proceedings is not open to the public.
- 2) At every oral hearing, the judge or a sworn court clerk shall take minutes.
- 3) These minutes must contain the names of the parties and other participants present at the hearing, as well as a brief description of the course and content of the proceedings, the motions filed during the hearing that were not withdrawn prior to a decision, and the decisions and orders pronounced by the court. Those present are free to request that individual points or statements be recorded in the minutes to safeguard their rights.
- 4) Unless otherwise provided in this Act, the minutes shall be signed only by the judge and the court clerk.

Art. 39

- 1) The bailiff shall draw up a brief record of the enforcement proceedings carried out by him.
- 2) The record shall contain the place and time of the entry, the names of the persons involved present at the enforcement action, the subject matter of the enforcement action, and a description of the essential proceedings. In particular, every payment made by and on behalf of the obligor shall be recorded. The record shall be signed by the bailiff.

Art. 40

If an enforcement action was not carried out by the bailiff in accordance with the order, the court shall issue instructions to the bailiff necessary to correct the errors committed or otherwise to ensure the proper execution of the enforcement action.

#### *Decisions*

##### Art. 41

Unless a dispute initiated by an action is to be decided, judicial decisions in enforcement proceedings and all judicial orders issued in such proceedings shall be made by order.

##### Art. 42

The order authorizing enforcement must include, in particular:

- a) the name, occupation, and place of residence of the creditor initiating enforcement and of the debtor, as well as their representatives;
- b) the enforcement title and the claim to be enforced, with a precise description of its content and subject matter, as well as any incidental charges; in the case of claims bearing interest, the interest rate and the date from which interest is due must be specified;
- c) a specification of the enforcement measures to be applied;
- d) in the case of enforcement against the debtor's assets, a description of the assets to be used to satisfy the creditor. *Appeal*

##### Art. 43

- 1) An appeal may be filed against court orders issued in enforcement proceedings, provided that this Act does not declare such orders to be final and non-appealable or deny a separate remedy against them. Section 485 of the Code of Civil Procedure (ZPO) does not apply.
- 2) The time limit for filing an appeal is 14 days.
- 3) No separate appeal is permitted against orders scheduling or rescheduling court hearings, ordering the examination of the parties or other persons involved in the enforcement proceedings, or against orders issued to the bailiff for the execution of individual enforcement acts.

##### Art. 44

- 1) Unless otherwise provided by this Act, court orders in enforcement proceedings may be enforced even before the expiration of the appeal period.
- 2) An appeal shall have the effect of suspending the execution of the contested decision only in the cases specifically designated by law.

Art. 45

*Complaints Against Enforcement*

Any person who considers themselves aggrieved by an act of enforcement, in particular by the procedure observed by the bailiff during an official act or by the refusal or delay of an enforcement act, may seek redress by filing a supervisory complaint in accordance with the Court Organization Act.

Art. 46

*Publication by Edict*

- 1) In all cases where notification must be made by edict, the edict to be issued by the court shall be published in the Official Gazette.
- 2) The court may, upon request or on its own initiative, also publish the edict in another suitable manner, in particular through publication in the official gazettes.

Art. 47

*Requests and Notifications*

Unless otherwise provided in this Act, requests and notices issued in the course of enforcement proceedings shall be made orally; in the case of absent parties, they shall be made in writing.

*Costs*

Art. 48

- 1) Unless otherwise provided in individual cases, the debtor must, upon request, reimburse the creditor pursuing enforcement for all costs of the enforcement proceedings incurred by the creditor and necessary for the enforcement of the judgment; the court shall determine which costs are necessary after careful consideration of all circumstances.

- 2) The claim for reimbursement of enforcement costs not yet legally awarded shall lapse if a request for their judicial determination is not made no later than one month after the conclusion or discontinuation of the enforcement proceedings.

Art. 49

If enforcement proceedings are discontinued for any of the reasons listed in Art. 18, 19, and 21(1)(a) and (i), or if the discontinuation was required for other reasons already known to the enforcing creditor at the time of filing the application for an enforcement order or at the commencement of enforcement, the enforcing creditor shall have no claim to reimbursement of the total enforcement costs incurred up to the discontinuation. This does not apply if enforcement is discontinued because the debtor was granted reinstatement of the previous status in the title proceedings.

Art. 50

*Investment of Parties' Funds*

Party funds deposited with the court shall be invested profitably with the Landesbank, unless the amounts are small or the deposit is expected to be of short duration.

Art. 51

*Application of the Code of Civil Procedure*

Unless otherwise provided in this Act, the general provisions of the Code of Civil Procedure regarding the parties, the proceedings and oral hearings, evidence, the taking of evidence and individual types of evidence, judicial orders, and appeals shall also apply in enforcement proceedings.

2. Title

**Enforcement Based on Foreign Instruments**

*Foreign Enforcement Orders*

Art. 52

On the basis of files and documents drawn up abroad and enforceable under the legal provisions applicable there, enforcement or the performance of individual enforcement acts within the country may take place only to the extent provided for in international treaties or where reciprocity is guaranteed by international treaties or by a declaration of reciprocity by the government.

Art. 53

Furthermore, an application for enforcement based on a judgment of a foreign court or other authority, or on a settlement concluded before such a body, shall be granted only if:

- a) if the case could have been brought before the courts of the foreign state in accordance with domestic rules of jurisdiction;
- b) if the summons or order initiating the proceedings before the foreign court or authority was served directly on the person against whom enforcement is sought;
- c) if, according to the certificate issued by the foreign court or other authority, the judgment is no longer subject to any legal remedy that would prevent its enforcement under the law applicable to that authority.

Art. 54

Authorization for enforcement or for the requested enforcement measure shall be denied, notwithstanding the existence of the conditions set forth in Articles 52 and 53:

- a) if the person against whom enforcement is to be carried out was deprived of the opportunity to participate in the proceedings before the foreign court or authority as a result of an irregularity in those proceedings;
- b) if the enforcement is intended to compel an act that is entirely prohibited or at least not enforceable under domestic law;
- c) if the enforcement order concerns the civil status of a Liechtenstein citizen and is to be enforced against that person;
- d) if the enforcement or the requested enforcement measure is intended to give effect to a legal relationship or to enforce a claim that is denied validity or enforceability under domestic law within the country on grounds of public policy or morality.

Art. 55

- 1) If the application is granted without the statutory conditions for authorization of enforcement set forth in Articles 52 through 54 being met, the party against whom enforcement has been authorized may, without prejudice to any appeal, file an objection to the authorization of enforcement.
- 2) Unless the objection is based on the lack of reciprocity or on one of the grounds listed in Art. 54(b) through (d), it must be filed within 14 days of service of the enforcement order, failing which it shall be barred. The Regional Court shall decide on the objection by order following an oral hearing. After the objection has been filed, the court may, upon request, order a stay of execution.

**Art. 56**

The foregoing provisions shall not apply if international treaties or declarations of reciprocity by the government regarding the granting of enforcement and the conditions for the enforceability of foreign enforceable instruments contain deviating provisions.

**Art. 57**

The provisions of this Act shall apply to the initiation and execution of enforcement proceedings or enforcement authorized on the basis of foreign enforceable instruments.

**Section 2****Enforcement for Monetary Claims****Title 1****Enforcement against Real Property****Division 1****Compulsory Creation of a Lien (Executory Registration) Art.****58***Compulsory creation of a lien*

- 1) At the request of the creditor pursuing enforcement, a lien may be established on a parcel of real property or a share of real property owned by the debtor in favor of an enforceable monetary claim.
- 2) This lien arises upon entry in the land register.
- 3) Upon registration of the lien, the claim for which the lien is registered must be designated as enforceable. This registration has the effect that, based on the enforceable claim against the real property or share of real property, enforcement may be carried out directly against any subsequent purchaser thereof.
- 4) If a claim has become enforceable for which a lien had already been registered based on a security interest established prior to the claim becoming enforceable, the registration of the enforceability in the land register must be granted upon application by the enforcing creditor. Through this notation, the claim becomes directly enforceable against any subsequent purchaser of the property or share of the property.

**Art. 59***Restriction on Enforcement*

1) If, through the creation of a compulsory lien—either on its own or in conjunction with other liens on real property that the enforcing creditor had previously acquired for the enforceable claim (Art. 58, para. 4)—the enforcing creditor has obtained security in excess of what is necessary for full satisfaction of the claim, the court may, upon application by the obligor, order the cancellation of the lien established by compulsory means or its restriction, in particular the restriction of the lien securing the enforceable claim on multiple properties or shares of property to one or some of these properties, provided that the remaining security can still be considered sufficient. In the event of such a restriction, any liens originally established under the contract shall remain in force under all circumstances.

2) The order may not be enforced until it has become final.

Section 2:

Compulsory

Administration

*Compulsory*

*Administration Art.*

60

1) Compulsory administration shall be granted upon application by the enforcing creditor for the purpose of satisfying the enforceable claim from the use and income of the debtor's real property or shares of real property.

2) If compulsory administration was terminated within the past year on the grounds that, under the circumstances, no income—or at least no income for a considerable period of time—could be expected that could be used to satisfy the creditors pursuing the matter, the court may refuse to order the commencement of compulsory administration.

Art. 61

1) The court shall, ex officio, order that the compulsory administration of the property in question be noted in the land register. The note shall specify the name of the enforcing creditor and the enforceable claim.

2) This annotation has the effect that the approved compulsory administration may be enforced against any subsequent purchaser of the property.

Art. 62

1) Once the court grants a court-ordered receivership, it must appoint a receiver and notify the debtor that he must comply with any order



regarding the proceeds affected by the enforcement and that he may not participate in the administrator's management against the administrator's will.

2) This order must be served on the creditor initiating the proceedings, the obligor, the administrator, and the competent tax authority. At the same time, the court must order that the property be handed over to the administrator by the bailiff for the purpose of managing and collecting the proceeds.

3) If compulsory administration of the co-owner's share of a property is authorized, the court's decision must be communicated not only to the persons specified in paragraph 2 and the competent tax authority but also to the other co-owners. In this case, the transfer of the property to the administrator shall take place only in accordance with the rights of possession to which the obligated party is entitled.

#### Art. 62a

The obligor must hand over to the receiver all documents necessary for the management of the property and provide all necessary information. The court may, upon application by the receiver, take the obligor into custody if he persistently fails to fulfill his obligations without sufficient cause. The surrender of the documents may also be enforced against the obligor by way of execution (Art. 251, 252) upon application by the receiver.

#### Art. 63

If a creditor is granted compulsory administration of a property for which an administrator has already been appointed at the request of another creditor, the court shall not appoint a new administrator but shall instruct the administrator already appointed to conduct the administration also for the benefit of the newly added creditor. In addition to the new creditor and the competent tax authority, every creditor who has previously obtained the compulsory administration of this property must be notified of this decision.

#### Art. 64

If compulsory administration is not feasible based on the current status of the land register, the court shall, depending on the circumstances of the case, either dismiss the proceedings or order the creditor initiating the proceedings to demonstrate, within a period to be determined at the court's discretion, that the obstacle has been removed. Upon the fruitless expiration of this period, the proceedings shall be dismissed ex officio.

#### Art. 65

*Effect of Commencement*

1) Once the compulsory administration has been registered in the land register, and as long as it has not been legally terminated, enforcement against the proceeds of the property may be carried out only through compulsory administration, without prejudice to rights previously acquired therein.

2) Once the compulsory administration of a property has been initiated pursuant to the first paragraph, no further compulsory administration of the same property may be initiated in favor of other enforceable claims, provided that the initial compulsory administration has not been legally terminated. All creditors to whom compulsory administration of the property is granted during this period thereby join the compulsory administration already initiated; they must accept it in the state in which it exists at the time of their joining. From that point on, the joining creditors have the same rights as if the compulsory administration had been initiated upon their application.

Art. 66

*Priority*

The priority of the enforcing creditor's right to satisfaction is determined by the specific date and time when the request for the registration of the priority notice was received by the Office of Justice. The enforcing creditor in whose favor the priority notice is issued takes precedence over all persons who acquire registered rights in the property or obtain compulsory administration after this time with respect to the satisfaction of their enforceable claim, including incidental costs, from the proceeds.

Art. 67

*The Debtor's Dwelling*

1) If, at the time the order for compulsory administration is issued, the obligated party is residing on the property subject to such administration or in the house to be administered, he or she shall be provided with the living quarters necessary for himself or herself and for the family members living in the same household for the duration of the compulsory administration. The court shall determine the extent of these living quarters. If the obligor jeopardizes the administration, the living quarters provided to him may be withdrawn.

2) Sick persons and women in childbirth may not be required to vacate the dwelling as long as they cannot leave it without endangering their health.

*Scope of the Administrator's Authority*

## Art. 68

- 1) The powers and rights to which the administrator is entitled by law take effect upon the transfer of the property to him.
- 2) The administrator shall take all measures necessary for the proper and profitable economic use of the property transferred to him. He shall collect all revenues and income from the administered property in lieu of the obligor and, in general, perform all legal acts and transactions and bring all actions necessary for the execution of the compulsory administration. The court may also issue instructions to him.

## Art. 69

- 1) Third parties who are obligated to make payments to the obligor that constitute income from the administered property shall, upon application by the administrator or the enforcing creditor, be ordered by the court to pay the administrator the arrears as well as any payments due until the termination of the compulsory administration.
- 2) Following this order, they may no longer validly make payments to the obligor. Previous payments to the obligor are invalid if it is proven that the third parties were aware of the order of compulsory administration or the transfer of the property to the administrator at the time of payment.

## Art. 70

The order appointing a receiver has no effect on existing lease and tenancy agreements pertaining to the property under administration. However, the administrator may terminate such agreements under the conditions otherwise applicable thereto, file a lawsuit for eviction, and conclude new lease agreements for the term customary in the locality. To lease the property or individual parts thereof, the administrator requires the court's approval.

## Art. 71

- 1) For dispositions not included in the ordinary course of business, as well as for all other measures of particular importance, the administrator requires the court's approval. Unless there is imminent danger, the enforcing creditor, the obligor, and the administrator must be consulted beforehand.

2) If the administrator appointed for a portion of the property has also been entrusted with the administration by the other co-owners, the co-owners not affected by the receivership must also be consulted regarding the administrator's request prior to the court's approval of dispositions of the type specified in paragraph 1.

Art. 72

*Remuneration of the Administrator*

1) The administrator is entitled to remuneration to be determined according to the scope, difficulty, and diligence of his management, and to reimbursement of the administrative expenses he has incurred. The amount of the remuneration and the expenses to be reimbursed shall be determined by the court.

2) The court may, upon the administrator's request, authorize the administrator at any time to draw reasonable advances from the proceeds.

*Supervision of Management; Accounting*

Art. 73

1) The court shall supervise the administrator's management and remedy any deficiencies or irregularities. It may also remove the administrator and appoint a new one.

2) The administrator must render an account of his activities at a time to be determined by the court and must remit any surplus funds to the court.

3) The court may impose administrative fines on defaulting administrators. It may also have the accounts prepared by another person at the expense of the defaulting party.

Art. 74

The court shall decide by order on the approval of the administrative account, the remuneration of the administrator, and the amount of expenses to be reimbursed to him. This decision may be preceded by a hearing of the pursuing creditor and the obligor and, if further clarification is necessary, also of the administrator.

Art. 75

*Income from Administration*

1) The proceeds from the administered property shall be used, in accordance with the following provisions, to cover administrative expenses and to satisfy the creditor pursuing enforcement and other entitled parties.

2) These proceeds include all benefits and income from the property due to the debtor that are not exempt from execution, namely the fruits obtained after the property was handed over to the administrator, as well as the fruits already separated and located on the property at the time of this handover, as well as income already due at that time but not yet collected, and income that becomes due only after the property has been handed over to the administrator.

3) If separate fruits have already been attached by the obligor's creditors prior to the transfer of the property to the administrator, only the portion of the proceeds from those fruits remaining after adjustment of the order of priority of attachments, including incidental fees, constitutes administrative income; unless the creditor conducts the enforcement proceedings himself, the sale is the responsibility of the administrator. The same applies to income already due at the time of the transfer of the property to the administrator that has not yet been collected but has already been attached. *Direct adjustment from the administrative proceeds*

Art. 76

1) Expenses associated with the administration and ordinary economic use of the property shall be reimbursed by the administrator from the proceeds without further proceedings.

2) These expenses include, in particular:

- a) taxes and other public charges payable on the property that become due during the period of receivership, including late payment interest;
- b) the benefits owed to the obligor under insurance contracts, provided that such contracts relate to the administered property, individual parts thereof, its appurtenances, or the inventory included in the administration;
- c) wages and other remuneration of persons working on the administered property that become due during the receivership and those in arrears from the last six months prior to the approval of the receivership;
- d) the costs of the receivership, the costs of maintaining and making necessary improvements to the property, and the advances made to cover these costs on a provisional basis;
- e) interest, annuities, alimony, and other recurring payments due during the receivership, arising from uncontested

claims and rights secured on the property, as well as the installment payments calculated on the basis of principal repayment, which, pursuant to an uncontested agreement entered into prior to the approval of the receivership, are to be made through annuities or through equal installments due at intervals of no more than one year.

3) The direct adjustment of the expenses listed under letter e is permissible only to the extent that the relevant rights of claim undisputedly take precedence over the right of satisfaction of the pursuing creditor.

Art. 77

1) The expenses necessary for the maintenance and management of the property, including the payments specified in Article 76(2)(b) and (c), shall be paid from the proceeds before taxes and public charges due during the period of compulsory administration (Article 76(2)(a)).

2) For the payments specified in Art. 76(2)(e), the priority order in the land register shall be decisive.

*Distribution of Surplus Income*

Art. 78

The distribution of the remaining proceeds (surplus income) after deduction of the directly settled expenses (Art. 76) shall generally take place after the settlement of each individual administrative account.

Art. 79

The court shall schedule a hearing to determine the distribution. In addition to the debtor and the competent tax authority, the court shall summon the enforcing creditor and all persons for whom, according to the land register extract to be obtained, claims and rights giving rise to monetary obligations are established with respect to the property or the rights attached to the property. These latter persons need not be summoned if their claims have been directly satisfied from the proceeds. If liens on bearer mortgage notes encumber the property, a curator shall be appointed to safeguard the creditors' rights and summoned to the hearing.

Art. 80

From the surplus proceeds available for distribution, the following shall be satisfied in the order specified below:

- a) the administrator's claims for remuneration and reimbursement of administrative expenses incurred by him, to the extent that they are not already covered by the advances granted (Art. 72);
- b) insofar as they have not already been adjusted directly from the income pursuant to Article 76, the taxes and public charges specified in Article 76(2)(a), together with any late-payment interest;
- c) to the extent that they have not also already been adjusted pursuant to Art. 76(2)(e), the interest, annuities, maintenance payments, and other recurring payments arising from claims and rights secured on the property, including the capital installment payments specified in Art. 76 para. 2 lit. e, in the order of priority applicable to the claims themselves, provided that these claims take precedence over the enforcing creditor.

#### Art. 81

- 1) The amounts remaining after adjustment of these payments shall be used to satisfy the claim for which the receivership was authorized. Where there are multiple creditors enforcing their claims through compulsory administration, the date specified in Article 66 shall determine the order of repayment of their claims, unless individual creditors are entitled to priority based on a previously acquired lien. The creditor who is subordinate under this provision shall be paid once all prior claims of the other enforcing creditors, together with three years' interest and other arrears, as well as litigation and enforcement costs, have been satisfied.
- 2) Claims that rank equally among themselves shall be repaid in proportion to their total amounts. The claims of the enforcing creditors take precedence over the outstanding, unsecured taxes and public levies with respect to satisfaction from the surplus proceeds.
- 3) The remaining portion of the surplus proceeds shall be used to satisfy the claims specified in Article 80(c) that become due during the period of receivership and that rank below the enforcing creditor's right to satisfaction. Any balance remaining after all such claims have been satisfied shall be allocated to the debtor.

#### Art. 82

1) The claims listed in Art. 80(a) through (c) shall be taken into account in the distribution only upon filing by the creditors. However, the claims in favor of which the compulsory administration was authorized shall be included in the distribution ex officio.

2) To avoid exclusion from the distribution in question, the filing must be made no later than at the scheduled hearing; it may also be made in writing. The filing must specify the amount claimed to be allocated from the surplus proceeds.

3) Creditors whose claims are subject to filing must be notified in the summons of the legal consequences of failing to file or of a delay in filing.

Art. 83

1) At the meeting, the court shall consider the claims filed and the claims to be taken into account ex officio, as well as the order and manner of their satisfaction.

2) Objections raised in this context against the payment of individual claims or their interest from the surplus income, against the proposed order of payment, against the amount of the sums to be paid, or against the entitlement to receive the payments, shall be referred to the courts only if the decision on the objection depends on the determination and establishment of disputed facts.

3) All creditors whose claims could be satisfied from the surplus income in the event that the disputed right fails are authorized to file objections. The obligor may only object to the consideration of such claims for which no enforcement order exists.

4) The further proceedings upon the filing of objections, the legal consequences of a failure to file a lawsuit, the issuance of the distribution order, the disbursement of the allocated amounts to the entitled parties, and the impact of pending objection proceedings on the execution of the distribution order shall be governed by the provisions established for distribution by highest bid.

*Termination of Receivership*

Art. 84

1) Forced administration shall be terminated ex officio when all claims, including incidental fees, for the collection of which the forced administration was authorized, have been satisfied.



2) The court may order the termination of the receivership ex officio or upon application if the continuation of the receivership would entail special costs that cannot be covered by the property's income and the pursuing creditor does not advance the necessary funds, or if income that could be used to satisfy the enforcing creditor are not to be expected at all or not for a considerable period of time.

3) The parties must be heard before a termination is ordered ex officio.

4) Furthermore, compulsory administration must be terminated at any time upon request by the creditor initiating the proceedings. If compulsory administration is taking place simultaneously in favor of several creditors, a request for termination of the compulsory administration filed by only one of them shall merely have the effect that this creditor loses the rights and obligations of a creditor initiating enforcement proceedings, the notice of compulsory administration registered in his favor is deleted, and this creditor's claim shall henceforth be taken into account in the distribution of proceeds solely in accordance with its other security (Art. 76(2)(e) and 80(c)). Art. 85

1) The receiver and all parties involved must be notified of the termination of receivership.

2) Upon the finality of the order terminating the compulsory administration, the obligor regains the authority to manage and use the property, to collect the proceeds, and to dispose of them. The court shall, ex officio, order the cancellation of the notice of receivership from the land register and instruct the administrator to hand over the property to the obligor, to notify those persons who were required to make payments to the administrator pursuant to Art. 69, and to submit the final account. Any remaining balance resulting from the final account shall be returned to the obligor.

Art. 86

#### *Appeal*

No appeal may be filed against the decisions referred to in Articles 62 and 63, nor against decisions by which

a) third parties are notified, pursuant to Art. 69, of the authorization of the compulsory administration and of the appointment of the administrator;

- b) the extent of the living quarters to be provided to the obligor is determined (Art. 67);
- c) instructions are given to the administrator regarding the manner of administration (Art. 68) and regarding the payment of the expenses specified in Art. 76;
- d) the court orders the rectification of any deficiencies or irregularities observed in the administrator's management and appoints a new administrator (Art. 73);
- e) the timing of the distribution of surplus income is determined (Art. 78).

Section 3:

Foreclosure Auction

Art. 87 *Foreclosure*

*Auction*

- 1) At the request of the enforcing creditor, the compulsory auction of a property belonging to the debtor may be authorized in favor of an enforceable monetary claim.
- 2) Repealed
- 3) In addition to the enforcing creditor and the debtor, all persons for whom a personal right is registered in the land register or for whom claims secured by a lien are liable must be notified of the authorization of the auction.
- 4) Contractually based preemptive rights may not be exercised in a foreclosure auction. Statutory preemptive rights may only be exercised at the auction itself and under the conditions under which the property is awarded to the successful bidder. Agreements within the meaning of Art. 63(1) of the Property Act that grant preferential rights to the person entitled to preemption shall not be taken into account at the auction.

Art. 88

*Curator*

- 1) In foreclosure proceedings, a curator shall be appointed for persons whose summons is unlikely to be served in a timely manner or for whom attempts to serve the summons have been in vain; the summons shall be served upon the curator. Provided that there is no conflict of interests to be feared, the same person may be appointed as curator for several parties. The appointment of the curator may be announced by edict.

2) The curator shall represent the person for whom he or she is appointed until that person appears in person, designates another representative to the court, or their interests no longer require further representation.

3) If the property is encumbered by liens on bearer mortgage notes, a trustee must also be appointed to protect the rights of the creditors. Art. 89

1) The court shall, *ex officio*, order that the initiation of the auction proceedings concerning the property in question be noted in the land register. The notice shall specify the name of the creditor initiating the proceedings and the enforceable claim.

2) The registration of the initiation of the auction proceedings has the effect that the authorized auction may be conducted against any subsequent purchaser of the property, and that the creditor in whose favor the annotation is made takes precedence over all persons who subsequently acquire registered rights to the property or who obtain the auction of said property, with respect to the satisfaction of his enforceable claim, including incidental fees, from the auction proceeds. The priority of the enforcing creditor's right to satisfaction is determined by the specific date and time when the request for the registration of the preliminary notice was received by the Office of Justice. If a lien was previously acquired for the enforceable claim, the priority of the lien, rather than the rank of the preliminary notice, is decisive.

3) If the auction proceedings cannot be carried out based on the current status of the land register, the court must proceed in accordance with the provisions of Art. 64.

Art. 90

*Joinder*

1) Once the initiation of the auction proceedings has been recorded in the land register, no separate auction proceedings may be initiated with respect to the same property for the benefit of other enforceable claims while the original proceedings are still pending.

2) All creditors who are granted permission to foreclose on the same property while an auction proceeding is pending thereby join the auction proceeding already initiated; they must accept it in the state in which it is at the time of their joining.

3) From that point on, the joining creditors have the same rights as if the proceedings had been initiated upon their application.

4) The court that authorizes the auction of the same property must notify the creditor who filed the application for auction of the pending auction proceedings to which they have joined. The court must also notify the debtor and those creditors on whose application the auction proceedings were initiated or who have already joined of each accession.

*Description and Appraisal*

Art. 91

1) The court shall order an appraisal of the property to be auctioned; the appraisal shall not be conducted before the expiration of three weeks from the date the auction was legally approved. The debtor and the creditor initiating the proceedings shall be notified of the scheduled appraisal, including the location and time.

1a) Locked house and apartment doors may be opened even if the property is occupied by a third party and the doors are locked at the time of the appraisal, which has been notified to the third party; Art. 13(2) applies mutatis mutandis.

2) At the same time as the appraisal, the fixtures (Art. 23 Property Law) located on the property shall be described and appraised in favor of the enforceable claim of the creditor pursuing enforcement.

Art. 92

1) The order for the valuation of the property may be omitted if the property was valued in connection with a previous court proceeding, no more than two years have elapsed since then, and no material change in the condition of the property has occurred in the meantime. Under the same conditions, a new description and valuation of the appurtenances of a property may be omitted if neither the nature nor the extent of such appurtenances has changed significantly since then.

2) In such a case, the results of the earlier description and valuation shall form the basis of the auction proceedings.

3) The decision must be preceded by a hearing of both parties or, if a motion has been filed, of the opposing party.

Art. 93

- 1) The bailiff shall be entrusted with the description and appraisal. If necessary, the court shall appoint an expert to perform the appraisal.
- 2) The valuation shall be determined by establishing the market value.
- 3) When appraising real property, the appraiser must state the value of the property both with and without the easements, encumbrances, and registered personal rights that encumber it; in addition, the easements, encumbrances, and registered personal rights encumbering the property must be appraised separately, and the corresponding capital amounts must be stated in the appraisal report.
- 4) Repealed
- 5) Repealed
- 6) If a property is encumbered with encumbrances that pass to the purchaser by operation of law (public-law encumbrances), only the value of the property while the encumbrance remains in effect shall be stated. A separate valuation of the right arising from the encumbrance is not required.
- 7) For the purpose of determining the value of the property assuming the aforementioned encumbrances remain in place, the resulting reduction in income—if the performance or tolerance is limited to a specific number of years or to the lifetime of the entitled person—is to be capitalized in the former case based on the number of remaining years (but in no case for a duration exceeding twenty years), in the latter case, after a period of ten years, and the capital shall be deducted from the value of the property determined without regard to the encumbrance; in the case of a perpetual encumbrance, the value of the encumbrance shall be deducted from the market value at twenty times the annual reduction in income.
- 8) The valuation of the rights arising from the encumbrances shall be based on the beneficiary's interest in maintaining the encumbrance, capitalized in accordance with the provisions of paragraph 7.
- 9) If several parcels of land are to be appraised that are managed as a single unit, the appraisal must specify the value of each parcel individually and the value of all parcels together as a single economic unit.

10) If a lien has been registered on multiple properties to secure a claim (Art. 270 of the Property Act), the properties that are not being auctioned must also be appraised.

11) The description and valuation of the appurtenances to the property shall be carried out in accordance with the provisions governing the attachment of movable property.

12) The parties involved have the right to draw attention during the appraisal to all circumstances that are essential for determining the appraised value.

Art. 94

1) Based on the appraisal report submitted, the court must determine, in accordance with the principles of § 272 of the German Code of Civil Procedure (ZPO), the appraised value to be used as the basis for the enforcement proceedings. In doing so, the values of easements, encumbrances, and registered personal rights that take precedence over the right of satisfaction or the lien of the enforcing creditor must be deducted. If necessary, the court must conduct further investigations before rendering its decision.

2) The order determining the estimated value must be served on the enforcing creditor, the debtor, and all persons for whom rights in rem or encumbrances have been established on the property. They are entitled to raise objections to the amount of the estimated value within 14 days. On the basis of these objections, the court shall, if necessary, order supplements or corrections to the appraisal report and render a final decision on the amount of the appraised value. No appeal may be filed against this decision.

Art. 95

*Conditions of Auction*

The conditions set forth in Articles 96 through 105 apply to the conduct of the foreclosure auction.

*Deposit*

Art. 96

1) Each bidder must provide a security deposit (vadium) equal to one-tenth of the appraised value of the property and its appurtenances.

2) No security deposit shall be required from persons participating in the auction as bidders on behalf of the State, a municipality, or any other public-law entity, institution, or foundation.

3) The security may consist of cash, Liechtenstein securities, or a guarantee from a Liechtenstein bank.

Art. 97

1) The deposit paid by the highest bidder shall be held in court custody until the purchaser has fully fulfilled the obligations incumbent upon them under the auction terms and conditions or until the award of the bid has been legally revoked.

2) The security provided by the other bidders shall be returned to them at the conclusion of the auction, and this shall be noted in the minutes with the signature of the bidder concerned.

3) Any item held in court custody as security for the highest bidder shall, from the time of its surrender, serve as collateral for all claims arising from the auction against the highest bidder.

Art. 98

*Assumption of Liabilities*

Easements, land charges and registered personal rights that take precedence over the right of satisfaction or the lien of the enforcing creditor must be assumed by the purchaser without being set off against the highest bid; however, such encumbrances ranking below the enforcing creditor must be assumed only to the extent that they are covered by the distribution fund in accordance with their respective priority. Where there are multiple enforcing creditors, only those encumbrances that take precedence over the enforcing creditor with the highest priority shall be assumed without being set off against the highest bid.

Art. 99

*Minimum Bid*

1) Bids that do not reach the amount of any secured claims ranking ahead of the enforcing creditor, including incidental fees, and half of the appraised value of the property and its appurtenances, may not be considered at the auction. Where there are multiple enforcing creditors, the calculation of the secured claims ranking ahead is based on the creditor with the highest priority.

2) If the bids at the auction date are lower than the minimum bid, the sale of the property may not take place. Upon application to be filed within two years, a further auction date must be scheduled. The new auction must be conducted in accordance with the provisions applicable to the first auction.

*Correction of the Highest Bid*

Art. 100

1) The highest bid must be paid to the court within two months of the award becoming final. If the transfer of ownership is subject to the Real Property Transactions Act, the period begins when the approval from the real property transactions authority becomes final. The amount to be paid is reduced by those amounts attributable to claims of secured creditors who are expected to be satisfied from the highest bid and who consent to the purchaser assuming the debt, or to claims secured by liens, easements, and encumbrances that the purchaser must assume in satisfaction of the highest bid. Arrears of annuities, alimony, and other recurring payments, as well as interest arrears on the claims to be assumed and litigation and enforcement costs, shall not be taken into account in this calculation.

2) The deposit paid to the court also reduces the amount of the highest bid to be paid.

3) The purchaser must pay interest on the highest bid, to the extent that it is not offset against claims and encumbrances, from the date of the award of the bid until payment at the statutory interest rate. This interest, as well as the interest on the highest bid installments paid in cash, shall be included in the distribution estate.

4) The fees payable for the purchase of the property may not be included in the highest bid.

5) With the consent of the enforcing creditor and the creditors whose claims are secured by a lien on the property, the judge may, upon request, establish other provisions regarding the adjustment of the highest bid.

Art. 101

1) The purchaser may terminate claims secured by a lien that he has assumed in set-off against the highest bid on a semi-annual basis and repay them without regard to the contractual provisions governing repayment.



2) If shorter notice periods apply under the contract, these shall apply to the purchaser.

*Re-auction*

Art. 102

1) If the highest bid is not paid in full and on time by the purchaser, the property shall be re-auctioned upon request at the expense and risk of the defaulting purchaser. The request may be made by the enforcing creditor, by any creditor whose claim is secured by a lien on the property, and by the obligor.

2) The re-auction shall not take place if, before the deadline for appealing the authorization of the re-auction expires, the defaulting purchaser deposits the outstanding highest bid installments—to be settled in cash—plus interest in favor of the court at the Landesbank and submits the relevant receipt to the court. Once the authorization for the re-auction becomes final, the first auction shall cease to be effective.

3) The re-auction shall be conducted in accordance with the provisions applicable to the first auction.

4) Those persons for whom real rights and encumbrances were established or rights of repurchase and pre-emption were reserved only after the first auction was scheduled must also be notified of the new auction date.

5) The defaulting purchaser may not bid in the re-auction. Art. 103

1) The defaulting purchaser shall be liable for the shortfall on the highest bid resulting from the re-auction, for the costs of the re-auction, and for all other damages caused by his default, both with the deposit and the highest bid installments paid, as well as with his remaining assets.

2) The shortfall on the highest bid and the costs of the re-auction shall be determined ex officio by a court order; to the extent that these amounts cannot be covered by the deposit and the highest bid installments paid, enforcement proceedings shall be conducted to collect them once the order becomes final. This may be requested from the court by the enforcing creditor as well as by any of the other persons designated for the highest bid and carried out for the benefit of the distribution estate.

3) The defaulting purchaser has no claim to the amount by which the highest bid achieved at the re-auction exceeds the highest bid of the first auction.

4) If the re-auction is unsuccessful, the shortfall shall be deemed to be the difference between the lowest bid (Art. 99) and the highest bid made by the defaulting purchaser.

*Transfer of Risk, Benefits, and Burdens, and Delivery of the Property*

Art. 104

1) The risk associated with the property put up for auction passes to the purchaser on the day the bid is accepted. This applies even if the transfer of ownership is subject to the Real Property Transactions Act. From that date on, the purchaser is entitled to all fruits and income from the property. Conversely, from that date on, the purchaser must bear the encumbrances associated with ownership of the property, to the extent that they are not extinguished by the auction proceedings, as well as the taxes and public charges payable on the property, and must pay interest on the amounts of debt assumed against the highest bid.

2) The transfer of the property and the appurtenances sold to the purchaser, as well as the registration of the purchaser's title in the land registry, shall take place only after all conditions of the auction have been fulfilled. The transfer of the property shall be carried out in accordance with the provisions of Art. 253. The costs of a compulsory eviction shall be determined by a court order; the obligated party shall be ordered to pay the purchaser.

Art. 105

1) If the award is legally revoked, or if it loses its effect as a result of the authorization of a re-auction or the court's acceptance of a higher bid, the purchaser must reimburse the fruits and income received. However, unless a re-auction takes place due to his default, he may set off against the amount due the taxes and public charges paid by him in the meantime, the costs incurred in obtaining the fruits and income, and the interest on the highest bid installments imposed by the court, calculated from the respective due date.

2) The reimbursement of the fruits and income received shall be ordered by the court by decree upon application by one of the persons referred to in Art. 102(1); in doing so, the necessary arrangements for the realization of the fruits shall be made. Before the decree is issued, the former purchaser shall be heard. After

Once the decision becomes final, the creditor initiating the proceedings, as well as any of the other bidders who were awarded the property, may apply for enforcement against the former purchaser's assets, which shall be carried out for the benefit of the distribution estate.

3) The amounts reimbursed and the proceeds from the fruits of the property shall be placed in court custody.

#### *Provisional Administration*

##### Art. 106

1) As long as the property sold at auction has not yet been transferred to the purchaser, the enforcing creditor and any creditor with a lien on the property may apply for an order for provisional administration of the auctioned property.

2) The purchaser may also apply for the initiation of such administration at the auction or later, provided that he is not in default of fulfilling the auction conditions.

##### Art. 107

The provisions governing compulsory administration shall apply *mutatis mutandis* to this provisional administration, subject to the following exceptions:

a) unless there are objections in the specific case due to the identity of the purchaser or for other important reasons, the purchaser may be appointed as administrator;

b) The right to influence the administration granted to the creditor conducting the auction is equally vested in the creditor who has applied for administration following the auction, as well as, if that creditor is not the administrator, in the successful bidder, provided that the latter is not in default of fulfilling the terms of the auction;

c) Administration ends with the final termination of the auction proceedings or with the transfer of the property to the purchaser (Art. 104(2)); if the court orders the transfer of the property to the purchaser, it must issue the orders required under Art. 85;

d) from the proceeds, only the costs of administration and the expenses specified in Art. 76(2)(a) through (c), to the extent they become due during the administration, shall be paid; the remaining proceeds shall be deposited with the court and shall be paid to the purchaser only after all auction conditions have been fulfilled; if the award is legally revoked earlier, or if it is revoked as a result of the

If the authorization for a re-auction or the court's acceptance of a higher bid loses its effect, the proceeds ordered by the court shall be included in the estate for distribution;

e) Another administrator may be appointed ex officio or upon request in place of the purchaser if the purchaser fails to fulfill the terms of the auction or if the removal of the administrator appears necessary or appropriate for other significant reasons.

Art. 108

An administration ordered pursuant to Art. 106 shall continue until the property is handed over to the new purchaser if the award is legally revoked or if it loses its validity as a result of the authorization of a re-auction or the court's acceptance of a higher bid. The administration shall be removed from the former purchaser. In place of the former administrator, the new purchaser may, upon his application and subject to the conditions set forth in Art. 107(a), be appointed as administrator.

Art. 109

1) A receivership initiated prior to the auction date in favor of a creditor is transferred, without interruption, to an administration in favor of the successful bidder on the date of the award (Art. 106–108). The administrator shall be notified ex officio of the award of the bid. In his place, the purchaser may be appointed as administrator upon application, subject to the conditions set forth in Art. 107(a).

2) The distribution of proceeds attributable to the period prior to the date of the award shall be carried out in accordance with the provisions of Articles 78 through 83; if the auction proceedings are discontinued before their conclusion, the distribution of proceeds shall be made in favor of the purchaser without regard to any interim administration.

Art. 110

*Auction Date*

1) After the estimated value has been legally determined, the court shall set the auction date by public notice (edict).

2) This date shall be set at the court's discretion for a period of two to three months. There must be a period of at least six months between the authorization of the auction and the auction date; however, this provision does not apply to re-auctions.

*Auction Notice*

## Art. 111

The auction edict must contain:

- a) a clear description of the property to be auctioned, including a brief description of the appurtenances to be auctioned with it; the stated value of the property and the appurtenances; and, in the case of an auction of fractional interests in the property, the size of the interest;
- b) the time and place of the auction;
- c) a notice that bids which do not reach the amount of any secured claims ranking higher than those of the enforcing creditor, including incidental fees, and half of the appraised value of the property and its appurtenances, may not be considered at the auction;
- d) a notice stating that the conditions set forth in Articles 96 through 105 of the Enforcement Regulations apply to the conduct of the foreclosure auction, and that documents, appraisal reports, etc., relating to the property may be inspected at the court;
- e) a request that any rights to the property that would render the auction inadmissible be registered with the court no later than the start of the auction, failing which they may no longer be asserted to the detriment of a bona fide purchaser.

## Art. 112

- 1) Copies of the auction notice shall be served on the debtor, the enforcing creditor, the competent tax authority, the municipality in which the property to be auctioned is located, and all persons for whom real rights and encumbrances exist on the property or on the rights attached to the property, or for whom preemptive rights have been registered. If a co-ownership share that is not structured as condominium ownership is auctioned, a copy of the notice must also be sent to each co-owner at the address listed in the land register.
- 2) Creditors whose claims are secured by a lien on the property, with the exception of simultaneous lien creditors (Art. 270 Property Law) and creditors with conditional claims, shall be simultaneously requested to state whether they consent to the assumption of the debt by the purchaser with simultaneous release of the previous debtor.

3) Creditors whose claims are secured by a lien on the property and whose claims take precedence over the enforcing creditor's right of satisfaction or lien must also be required to file their claims, including incidental costs, with the court by the date of the auction; otherwise, their claims will be determined on the basis of the case file and in accordance with the principles set forth in Art. 117(2).

4) Creditors whose claims against the property to be auctioned are secured by a statutory lien without registration in the land register must be requested to notify the court of their claims, including incidental costs, by the auction date; otherwise, claims filed later will be satisfied from the distribution proceeds only after the enforcing creditor has been fully satisfied.

5) Service of the auction notice shall be effected in accordance with the provisions governing the service of legal actions.

6) The auction notice shall be published in accordance with Art. 46. Publication abroad may be ordered if insufficient interested parties for the auctioned property are expected domestically. Furthermore, the auction date shall be announced in the municipality where the property to be auctioned is located in the manner customary in that locality.

#### Art. 113

A copy of the auction notice must also be served on persons in whose favor an application for the transfer of rights in rem and encumbrances has been filed since the entry in the land register regarding the initiation of the forced sale.

#### Art. 114

1) During the period between the announcement and the conduct of the auction, the obligor must allow prospective buyers to inspect the property and its appurtenances. Third parties must also be permitted to inspect the property.

2) At the request of the creditor initiating the proceedings or a prospective bidder, the court shall set specific days and times for the inspection, taking into account as far as possible the circumstances of the debtor and the need to ensure the undisturbed operation of the business. The debtor and third parties must be notified of the inspection time.

3) Locked house and apartment doors may be opened even if the property is occupied by a third party and the doors are locked at the time of the inspection, which has been notified to the third party. Art. 13(2) shall apply *mutatis mutandis*.

#### Art. 115

1) The auction is open to the public; it is generally held at the location where the property to be auctioned is situated. For compelling reasons, the auction may take place in the courthouse.

2) The judge presides over the hearing and the auction. He is authorized to issue all orders necessary to maintain peace and order, as well as to prevent unauthorized agreements, intimidation, and other obstacles to bidding, and to enforce them, if necessary with the assistance of law enforcement. He shall, as far as possible, rule on all objections and motions raised during the auction at the hearing.

#### Art. 116

After the case is called, the terms and conditions of the auction must be announced at the auction on request. The judge must then read aloud the statements made by the creditors regarding the adjustment of their claims and the assumption of the debt by the purchaser (Art. 112, para. 2) and the secured claims filed by the creditors (Art. 112, paras. 3 and 4). He must also announce the order in which multiple properties of the same obligor or shares in properties, which are to be auctioned at the same hearing, are to be offered. Upon request, he must also provide clarification regarding other circumstances pertaining to the property to be auctioned.

#### *Encumbrances*

#### Art. 117

1) Based on the reports submitted by the creditors pursuant to Art. 112, paras. 3 and 4or, if no such declarations have been made, based on the land register and the case file, the judge shall, *ex officio* and taking into account any changes made in the auction notices, determine the total amount of the lien claims that take precedence over the enforcing creditor's right of satisfaction or lien (status of encumbrances).

2) Unless otherwise indicated by the statements of the parties or the available records, in determining the encumbrance status, conditional claims shall be treated as unconditional and claims with a maturity date as due; for claims to recurring payments, the present capital value of the entitlement to such payments shall be applied; for claims bearing interest, one year's arrears of interest must be added; for rights to receive recurring payments, one year's arrears of payments that have become due shall be assumed. Simultaneous mortgages on each property shall be valued in accordance with the ratios specified in Art. 152(2); the determined appraised values shall be used as the basis instead of the remaining portions of the distribution estates.

3) Claims of an indeterminate amount shall be valued at the specified maximum amounts.

4) Encumbrances and rights that the purchaser must assume without offsetting them against the highest bid, or that must be extinguished after the auction process has been completed without any claim to compensation (Art. 98), are not taken into account when determining the encumbrance status.

#### Art. 118

The judge shall announce the amount determined pursuant to Art. 117 and the lowest bid (Art. 99) at the auction hearing.

#### Art. 119

1) After the lowest bid has been announced, bidders are invited to bid.

2) The judge presiding over the auction may specify bidding increments. The specified bidding increments may not exceed 3% of the appraised value.

#### Art. 120

1) The obligor is prohibited from bidding on his own behalf or on behalf of others. The same applies to the presiding judge, the court clerk, and the auctioneer.

2) Bids by a representative may only be accepted if the power of representation is proven by documentary evidence. If this proof is provided to the judge before the auction begins, the judge may, upon request and if there are compelling reasons, permit that the name of the principal be made public only after the auction has concluded.

3) Representatives of the obligor shall not be permitted to bid.



- 4) Bids that do not comply with the auction terms and conditions, in particular bids from persons who have not paid the deposit required in the auction terms and conditions, shall not be accepted.
- 5) Every bidder whose bid has been accepted remains bound by it until a higher bid is submitted. The bidder is released from this obligation upon the termination of the proceedings.
- 6) After the highest bid has been announced three times, the judge must invite the holders of a statutory right of first refusal who are present or represented to state whether they wish to exercise that right. Until this has been done, the highest bidder remains bound by their bid.

Art. 121

- 1) The auction shall continue as long as higher bids are submitted. Upon request, a short period of consideration may be granted.
- 2) The auction shall be closed if, despite two calls for bids, no higher bid is submitted.
- 3) Before closing the auction, the judge must announce the last bid aloud once more. The closing of the auction must be announced. Art. 122

*Award of the Bid*

- 1) The highest bidder, whose bid the judge has deemed admissible, shall be awarded the property immediately at the auction by means of a ruling, and this ruling shall be announced. The decision must also be served in writing on the obligor, the enforcing creditor, and the highest bidder within eight days of the auction date. If the transfer of ownership is subject to the Real Property Transactions Act, the award must be granted subject to conditions and declared legally effective upon receipt of approval from the real property transaction authority.
- 2) This copy shall specify the auctioned property, the appurtenances passing to the purchaser, the purchaser, the bid for which, and the conditions under which the bid was accepted. The appurtenances may be specified by reference to the description and appraisal records on file with the court, and the terms of the award may be specified by reference to the auction terms and conditions.

3) The award of the bid must be announced within eight days of the auction date by publication in the Official Gazette. The announcement of the award must specify the amount of the highest bid received, the deadline for submitting higher bids, and the minimum amount of the permissible higher bid.

4) The provision of paragraph 3 also applies if the bid is accepted only following an appeal.

5) If, upon request by the judge pursuant to Art. 120(6), one of the entitled parties declares that they wish to exercise their statutory right of first refusal at the offered price, the bid shall be awarded to them.

Art. 123

*Denial of the Award*

1) The decision to refuse the award shall also be announced at the auction and served on the persons listed in Art. 122(1) within eight days.

2) Once this decision becomes final, the security deposit paid by the highest bidder shall be returned and the auction proceedings shall be discontinued. The persons listed in paragraph 1 shall be notified thereof.

3) In the event of discontinuation, the enforcing creditor shall have no claim to reimbursement of the costs of the auction proceedings; multiple enforcing creditors shall bear the costs in proportion to their claims.

Art. 124

1) The rights of the purchaser acquired through the final award of the bid cannot be challenged on the grounds that the enforcement order on which the authorization for the forced sale is based has been revoked or is subsequently revoked.

2) The purchaser may not assert a claim for warranty on the grounds of inaccuracies in the information contained in the files regarding the auctioned property or its appurtenances.

Art. 125

*Minutes of the Auction*

1) The minutes to be taken of the auction must include, in particular:

a) the names of the presiding judge, the court clerk, and those persons present who were to be notified of the auction;

- b) the time of the start of the auction, the call for bids, and the conclusion of the auction;
  - c) the names of the bidders and the security provided by each of them;
  - d) all bids made during the auction, whether accepted or rejected by the judge;
  - e) the decision regarding the award of the bid announced at the hearing;
  - f) the return of the bid bond to the bidders.
- 2) The minutes must also be signed by the persons who participated in the auction proceedings as bidders.

*Outbid*

## Art. 126

- 1) If the highest bid for which the property was awarded does not reach three-quarters of the appraised value of the property and its appurtenances, the auction may be invalidated by a higher bid.
- 2) Such a higher bid shall be considered if the higher bidder is not prevented from bidding at the auction by any impediment and if he declares himself willing to pay a price exceeding the previous highest bid by at least one-fourth and to fulfill the auction conditions.

## Art. 127

- 1) The higher bid must be filed with the court within 14 days of the announcement of the award (Art. 122). At the same time, proof must be provided to the court that the higher bidder has secured one-fourth of the purchase price offered by him through a court deposit of cash or Liechtenstein securities or through a guarantee from a Liechtenstein bank.
- 2) Withdrawal of the higher bid is not permitted.

## Art. 128

The successful bidder must be notified of each higher bid. The successful bidder may counter such higher bids by increasing their highest bid to match the amount of the highest bid within three days of being notified of the last higher bid received in a timely manner. This declaration must be made in writing or on the record and cannot be withdrawn.

## Art. 129

1) Upon expiration of the period designated for the purchaser's declaration, the court shall issue a ruling on the acceptance of the bids received. If the purchaser increases the highest bid in accordance with Art. 128, all bids shall be rejected. Otherwise, among multiple bidders, the one who has offered the highest price shall be accepted; in the event of equal bids, priority shall be given to the bid received first.

2) The purchaser, the higher bidder, the enforcing creditor, the obligor, and all persons who have filed an appeal against the award preceding the higher bid shall be notified of the decision and may challenge it by filing an appeal. Failure by those who have lodged an appeal against the award to challenge the court's acceptance of the higher bid shall be deemed a withdrawal of that appeal.

Art. 130

1) Once a court's acceptance of a higher bid becomes final, the previous auction loses its legal effect. The court must, *ex officio*, revoke the previous award and award the property to the higher bidder. A written copy of this decision must be served on the higher bidder whose bid was accepted, the obligor, the enforcing creditor, and the previous purchaser within eight days after the acceptance of the higher bid becomes final (Art. 122(2)). Within the same period, the award of the bid must be announced by publication in the Official Gazette. No further higher bid is admissible against the decision awarding the bid.

2) The higher bidder whose higher bid has been accepted shall be deemed the purchaser from the date of the award and shall fulfill all obligations incumbent upon the purchaser under the provisions of this Act and the auction terms; however, from that day on, he is entitled to all benefits to which the purchaser is entitled under the provisions of this Act or the auction terms and conditions from the date of the award.

3) The deposit of the former purchaser held in court custody, together with accrued interest; the highest bid installments already paid by him, together with accrued interest; and the funds and securities deposited by the unsuccessful bidders shall be returned, and bank guarantees shall be released.

4) Any provisional administration of the property granted pursuant to Art. 106 shall take effect in favor of the higher bidder from the date of the award. If the property has already been handed over to the purchaser, the court shall order provisional administration *ex officio* (Art. 107 et seq.).

*Suspension and Postponement of the Auction Proceedings*

## Art. 131

Except in the cases otherwise specified in this Act, the auction proceedings shall be terminated by order:

- a) if a third party, upon providing appropriate security, wishes to purchase the property at a price that exceeds its appraised value by at least one-quarter, and at the same time agrees to assume all encumbrances identified as remaining in force during the appraisal, without offsetting them against this price, as well as to bear all costs incurred by the obligor, provided that this offer is accepted by the persons awarded the highest bid who appeared at the hearing on the offer and whose claims are not unquestionably and fully covered by the purchase price; an objection by the obligor does not preclude judicial approval of the application, but the obligor must be heard before a decision is rendered; the provisions of Articles 140 through 165 apply to the distribution of the purchase price and to the entries and cancellations in the books;
- b) if a secured creditor redeems the enforceable claim on the basis of which the auction was authorized, while simultaneously reimbursing all costs incurred by the obligor, and applies for the auction to be discontinued; such a request may also be made by the enforcing creditor who settles the claims of all other enforcing creditors, subject to reimbursement of the costs borne by the debtor;
- c) if the enforcing creditor withdraws from continuing the enforcement proceedings before the auction begins; a new auction may not be requested regarding the enforcing creditor's enforceable claim until six months have elapsed since the suspension;
- d) if, prior to the commencement of the auction, the debtor offers all enforcing creditors full satisfaction of their enforceable claims, including incidental fees and the payment of the costs of the auction proceedings accrued up to that point, hands over the necessary sums of money to the judge presiding over the auction or deposits them with the court, and applies for the suspension; to the extent that the costs of the auction proceedings have not yet been determined, a sum to be set by the judge must be handed over as security to cover them.

Art. 131a

The postponement of enforcement due to a payment agreement under Art. 27a is possible until the start of the auction.

Art. 132

1) At the request of the debtor, instead of the auction proceedings, the court may order the compulsory administration of the property in favor of the enforceable claim of the creditor pursuing enforcement, and the auction proceedings may be postponed if the average annual income from the management of the property to be auctioned is sufficient to cover the annuities or other principal payments agreed upon between the creditor and the debtor, together with the accruing interest.

2) The same may occur at the request of the debtor if, although no agreement was made for the enforceable claim to be repaid in installments, the claim, together with incidental charges, can be repaid from the expected surplus income over the course of a year.

3) At the request of the debtor, the foreclosure proceedings may be postponed for a maximum of seven months if the debtor undertakes before the court to make monthly installment payments of at least one-eighth of the claim subject to enforcement, including incidental charges, to the creditor initiating the proceedings, and pays the first installment at the same time as filing the request with the court. If the claim to be enforced, including incidental fees, amounts to 100 francs or less, the postponement may be granted only for installment payments of one-quarter and for a maximum of three months. If the debtor fails to meet an installment payment deadline, the foreclosure proceedings shall be resumed at the request of the enforcing creditor. A further postponement under this provision is not permitted.

4) A postponement of the foreclosure proceedings under paragraph 3 may not be granted if it is not urgently required in the interest of the debtor or if, under the circumstances, it cannot reasonably be expected of the creditor pursuing the claim.

5) The benefits of paragraph 3 do not apply to state and municipal taxes owed, nor to contributions owed to old-age and survivors' insurance, disability insurance, the family equalization fund, or the unemployment insurance fund.

Art. 133

1) Motions to postpone the auction proceedings based on Article 132(1) and (2) must be filed within 14 days of the obligor being notified of the approval of the auction, failing which they shall be deemed barred; motions under paragraph (3) may be filed up to the date of the auction. Applications under Art. 131(a) that are not filed at least eight days before the scheduled auction date shall be dismissed without further proceedings.

2) If, at the time the motion to stay or postpone is filed, the appraisal has not yet taken place, the court may, upon motion or on its own initiative, order that the appraisal be suspended until a decision on the motion has been made.

#### Art. 134

1) At the oral hearing regarding proceedings initiated pursuant to Art. 131(a) a and b, or regarding a motion for postponement under Art. 132, paras. 1 and 2, the petitioner, the obligor, the enforcing creditor, and those persons awarded the highest bid whose rights or claims are likely to be affected by the decision on the motion must be summoned. If the motion is denied, the petitioner shall bear the costs of the hearing and the annulment that became necessary as a result of the motion.

2) Decisions on motions to dismiss under Art. 131(c) and (d) shall be made without an oral hearing. In the case of a motion for postponement under Art. 132(3), the enforcing creditor shall also be heard if necessary.

#### Art. 135

1) If an application for the assumption of the property (Art. 131(a)) is filed, the auction proceedings shall be suspended with respect to the property to be assumed as soon as the security provided by the applicant has been deemed sufficient by the court. The security provided shall be forfeited in favor of the distribution estate, without prejudice to any claims arising against the applicant from the approved acquisition, if the applicant defaults on payment of the acquisition price and costs after approval of the application. With regard to the payment of the purchase price plus interest, the provisions of Art. 103(2) apply.

2) Upon approval of the purchase and payment of the purchase price together with incidental fees, the court shall discontinue the auction proceedings. In the event of

In the event of default in payment of the purchase price, the suspended auction proceedings shall be resumed upon application or ex officio.

Art. 136

1) All parties involved must be notified of any discontinuation or postponement of an auction proceeding. The enforcing creditor must simultaneously be informed of the powers to which he is entitled under Art. 139 and of the time limit within which these powers must be exercised.

2) Furthermore, following the announcement of the auction date, the suspension or postponement must be publicly announced in the same manner as the scheduling of the auction date.

Art. 137

1) If the suspension or postponement is based on a reason that does not affect all creditors conducting the auction proceedings in the same manner (Art. 18–20, 21, 22, 27a, 123, 131(c), 132), the auction proceedings shall be continued in favor of the remaining creditors conducting the proceedings.

2) If, due to the withdrawal of a creditor pursuing enforcement, the existing determination of the encumbrance status no longer covers all claims that take precedence over the creditor now holding the highest priority, the court must, on its own initiative, determine the missing items in a timely manner prior to the auction date.

Art. 138

1) Upon the expiration of 14 days from the final suspension of the auction proceedings, the court shall, ex officio, order the deletion of the registered notice of the initiation of the auction proceedings. The administrator of the property appointed pursuant to Art. 106 or 130 shall also be notified of the final suspension.

2) If the auction proceedings are discontinued only with respect to one or a few creditors, only those entries in the land register that are registered in favor of the creditor withdrawing from the auction proceedings shall be deleted.

Art. 139

1) Within the time limit specified in Art. 138(1), all creditors in whose favor the initiation of the auction proceedings has been noted in the land register (Art. 89) may file a motion with the court requesting that, in the order of priority



of this priority notice, the lien on the property subject to execution be registered for their enforceable claim.

2) Such registration of the lien is not precluded by the fact that the property has since been sold or encumbered by the obligor.

3) However, a request filed pursuant to paragraph 1 may not be granted if the auction proceedings were discontinued because enforcement proceedings in respect of the specific claim are inadmissible, because the enforcement order has been definitively revoked or declared invalid, or because the claim to be enforced has been corrected or definitively disallowed against the creditor.

*Distribution of the Highest Bid*

Art. 140

1) No later than upon full payment of the highest bid or the purchase price (Art. 131(a)), the court shall schedule a hearing to determine the distribution of the highest bid or the purchase price.

2) The persons listed in Art. 112(1) and 113 shall be summoned to this hearing. Co-owners shall not be summoned.

3) The purchaser shall be notified of the scheduling of the hearing, with the addition that he is free to attend.

4) The scheduling of the meeting must also be announced by publication in the official gazette. There shall be a period of at least 14 days between the publication in the official gazette and the meeting.

Art. 141

Persons whose claims have been referred to the highest bidder shall be requested in the summons to file their claims for principal, interest, recurring payments, costs, and other ancillary claims before or at the meeting and to submit the documents serving as evidence of their claims, if such documents are not already in the court's possession, to submit them in original or certified copy no later than at the meeting; otherwise, their claims will be considered in the distribution only to the extent that they appear in the land register or the execution files as legally valid and suitable for satisfaction. The filing may also be made in writing.

Art. 142

- 1) In the case of easements, encumbrances, registered usufructs, and other rights and encumbrances not to be assumed by the purchaser pursuant to the auction terms and the results of the auction, the amount of compensation claimed for non-transfer must be specified; in the case of maximum mortgages (Art. 266(2) of the Property Act), however, the amount for which satisfaction is claimed.
- 2) Anyone willing to waive their secured claim to the payment of annuities and other recurring benefits and payments in exchange for a specific lump-sum amount must specify this amount.
- 3) After the conclusion of the distribution hearing, no additions to the claim may be made.
- 4) In the case of a maximum-amount mortgage, submission of the balance statement that remained uncontested by the obligor at the time of the last such statement is sufficient proof of the outstanding amount.

Art. 143

- 1) At the distribution hearing, the persons present shall negotiate the claims to be considered in the distribution of the highest bid and the order of their satisfaction. The obligor must provide all clarifications requested by the court or by any of the persons present that are necessary for verifying the correctness and priority of the claims to be satisfied from the highest bid.
- 2) Claims that would not be satisfied from the auction proceeds even if preceding disputed claims were to fail shall not be included in the proceedings.

Art. 144

- 1) Any of the parties summoned to the hearing may file an objection to the inclusion of claims filed or derived from the land register and the execution records in the distribution, to the amounts allocated to principal and incidental fees, and to the order of priority sought for individual claims whose claims could be satisfied from the auction proceeds if the disputed right were to fail. The obligor may only object to the consideration of such claims for which no enforcement order exists.
- 2) If an objection is raised, the judge shall, as far as possible, facilitate the reaching of an agreement. If such an agreement

, all circumstances relevant to the court's decision must be clarified by questioning the persons present who are affected by the objection.

3) The minutes to be taken of the hearing must contain the essential content of the statements made by the parties that are relevant to the distribution.

Art. 145

1) Based on the results of this hearing, a decision on the distribution shall be made on the basis of the claims, the records of the auction proceedings, and the account statements supplemented up to the date of publication of the award.

2) To the extent that the entitled persons affected in the specific case are in agreement, the distribution shall be carried out in accordance with such agreement; otherwise, the following provisions shall be observed.

Art. 146

#### *Distribution Estate*

The distribution estate consists of:

- a) the highest bid, the purchase price, or the higher bid—the amount offered to increase the highest bid (Art. 128)—and the interest thereon, to the extent that such interest does not accrue to the purchaser under the provisions of this Act;
- b) the proceeds of any provisional administration ordered during the auction proceedings (Art. 107(d));
- c) the deposit of the defaulting purchaser and the highest bid installments paid by the latter, to the extent that they form part of the distribution fund under the provisions of this Act, as well as any other compensation paid by the purchaser, including interest (Art. 103);
- d) the refunds paid by the purchaser pursuant to Art. 105 and all other amounts flowing into the distribution fund in accordance with the provisions of this Act.

#### *General Principles of Distribution*

Art. 147

1) The following shall be paid from the distribution fund in the following order of priority:

- a) if, during the auction proceedings, administration was carried out in favor of the persons awarded the highest bid, the expenses and advances specified in Art. 76(2)(d);

b) claims, including incidental charges, for which a statutory lien exists on the auctioned property, provided they have been filed in a timely manner (Art. 112(4));  
c) wages and other compensation owed to personnel employed in the management of the property for the six-month period preceding the date of the award of the bid;  
d) claims secured by a lien on the property, the unsecured claim of the enforcing creditor, the coverage for easements and encumbrances to be assumed by the purchaser against the highest bid, and claims for compensation for registered easements as well as for other rights and encumbrances not to be assumed by the purchaser pursuant to the auction terms and the results of the auction, all in accordance with the order of priority of the relevant registry entries.

2) The court-determined litigation and enforcement costs incurred through the assertion of any of the claims listed in paragraph 1, letters b through d, and interest, annuities, maintenance payments, and other recurring payments due under a contract or by law that are not more than three years past due as of the date of the award of the bid, shall enjoy the same priority as the principal or subscription rights. Article 290(1)(3) of the Property Act remains reserved. Claims arising from a contract concluded in the event of early repayment of a claim secured by a lien shall also have the same priority as the principal. If the estate is insufficient, incidental charges shall be paid before the principal.

Art. 148

1) To the extent that the distribution fund has not been exhausted by the payments mentioned above, interest, annuities, maintenance payments, and other recurring payments due under a contract or by law that are more than three years in arrears shall be paid from the distribution fund, to the extent that a lien attaches to them, in accordance with the priority of capital or subscription rights.

2) Any remaining portion of the estate after all such claims have been satisfied shall be allocated to the obligor.

Art. 149

1) If the distribution fund is insufficient, claims of equal rank, together with incidental charges, shall be adjusted in proportion to their total amounts.

2) Claims for which the compulsory administration of the property was ordered prior to the commencement of the auction proceedings shall be satisfied from the distribution fund in the order of priority to which the creditor is entitled under Art. 66, even if such creditor has neither a lien on the property nor has joined the auction proceedings.

Art. 150

1) Claims secured by a lien for annual pensions, alimony, and other recurring payments shall be satisfied from the distribution estate in such a manner that first the payments in arrears up to the date of the award (Art. 147 and 148) are paid, and then the capital required to cover the payments due from the date of the award of the bid from its interest is invested in an interest-bearing manner.

2) The capital released by the expiration of subscription rights shall, to the extent practicable, be transferred in advance, in accordance with the priority of their claims, to the beneficiaries whose claims cannot be fully satisfied from the distribution fund, and, in the absence of such beneficiaries, to the obligor.

Art. 151

1) Claims secured by a lien subject to a condition subsequent shall be settled by allocating the cash amount attributable to the claim pursuant to Articles 147 and 148; the creditor must ensure the return of the amount received in the event that the condition is fulfilled.

2) If such assurance is refused, the amount required for satisfaction shall bear interest for the period until it is certain that the condition has not been fulfilled. The interest accrued up to that point shall be allocated to the conditionally entitled creditor as compensation for the interest due to him under the contract; however, if the claim is non-interest-bearing, it shall be allocated to the entitled parties who will no longer receive their full share from the distribution estate, in accordance with the priority of their claims, or, in the absence thereof, to the obligor. The security shall be deemed refused if the creditor does not agree to provide it by the last distribution hearing at the latest, or if the creditor fails to provide the security offered in a timely manner before the distribution order becomes final.

3) In both cases, due consideration must be given to the fulfillment of the condition within the meaning of Article 150(2) when distributing the assets.

4) Claims for which a note of dispute or a priority notice of an action for cancellation has been entered in the land register shall be treated as claims subject to a condition subsequent.

Art. 152

1) The amounts from the estate of distribution, after cash adjustment of the incidental fees due to the creditor under Articles 147 and 148, that are attributable to claims secured by a lien subject to a suspensive condition shall be invested to bear interest for the period until the condition is fulfilled.

2) The interest shall be allocated to the conditionally entitled creditor; however, if the creditor is not entitled to receive the interest, it shall be allocated to the persons specified in Art. 151(2). The provisions of Art. 150(2) shall apply to the use of the capital thus released.

Art. 153

1) Claims for which a simultaneous mortgage (Art. 270 Property Law) has been created shall be satisfied by cash payment from the distribution estate (Art. 147 and 148).

2) If all properties jointly liable for the claim are auctioned off, the individual distribution funds shall contribute to the satisfaction of the claim with that portion of the proceeds which, in relation to the claim including its incidental costs, corresponds to the ratio of the surplus remaining in the distribution fund for each individual property after satisfaction of prior claims to the sum of all such surpluses.

3) If the creditor demands payment in a different proportion, the following entitled parties, who consequently receive less than they would have if the creditor had satisfied his claim from all auctioned properties in accordance with paragraph 2, may request that the amount that would have been allocated to the jointly and severally liable claim under the distribution provided for in paragraph 2 be paid to them to the extent necessary to cover their loss.

4) If not all jointly liable properties are put up for auction, the calculation of the compensation due to the subsequent beneficiaries shall be based on the appraised values of all jointly liable properties rather than on the residual amounts of the individual distribution funds. In this case, the claim for compensation of the subsequent beneficiaries shall be registered in their favor on the non-auctioned, jointly encumbered properties in the order of priority of the claim of the satisfied simultaneous pledgee that has been fully or partially

and to be extinguished simultaneously. The entry shall be ordered by the court upon application.

Art. 154

1) All other claims secured by a lien shall be satisfied by cash payment. However, the creditor may still agree at the distribution hearing to the purchaser's assumption of the debt in set-off against the highest bid and to the release of the former debtor.

2) In the case of settlement of claims secured by a lien through assumption, only the interest in arrears up to the date of the award of the bid and other incidental charges (Art. 147 and 148) shall be settled by cash payment from the distribution fund.

3) In the case of settlement of non-interest-bearing matured claims by cash payment, the amount from the distribution fund attributable to the claim shall be invested at interest for the period up to the due date. The interest accrued up to the due date shall be allocated to the entitled parties who are no longer fully satisfied from the distribution fund in accordance with the priority of their claims; in the absence of such entitled parties, however, it shall be allocated to the obligor.

4) For non-interest-bearing, long-standing claims that are assumed in satisfaction of the highest bid, the purchaser shall pay interest at the statutory rate from the date of the award of the bid until the due date. This interest shall be applied in accordance with the provisions of the preceding paragraph.

Art. 155

1) If a lien for a maximum amount is registered on the property (Art. 266(2) of the Property Act), the creditor's claims for principal and incidental charges that have already accrued up to the date of the final distribution hearing shall be settled by cash payment (interest-bearing investment) or assumption in accordance with the provisions otherwise applicable to claims of the same kind secured by a lien.

2) The portion of the specified maximum amount not exhausted thereby shall be satisfied by the allocation of a corresponding cash amount from the distribution estate. This amount shall be invested in an interest-bearing manner. The interest shall, without prejudice to the

use of the amount paid for the creditor's newly arising claims, to be allocated to the entitled parties who are no longer fully satisfied from the distribution fund, in accordance with the priority of their claims, or, in the absence thereof, to the obligor.

Art. 156

1) The amount at which easements and encumbrances of indefinite duration—which the purchaser is required to assume against the highest bid pursuant to the auction terms and the results of the auction—are to be valued shall be determined by the judge, taking into account the results of the appraisal (Art. 93). In the case of easements and encumbrances entitling the holder to periodic payments, this amount shall be equal to the capital required to adjust the payments due from the date of the award of the bid, or their monetary value derived from interest. The amount attributable to an encumbrance assumed by the purchaser shall be paid to the purchaser.

2) In the case of easements and encumbrances of limited duration that the purchaser assumes in set-off against the highest bid, the cover capital shall be invested to bear interest. The interest shall accrue to the purchaser for the duration of the encumbrance in question. With regard to the cover capital that becomes available, the procedure set forth in Art. 150(2) shall apply.

Art. 157

1) Easements and encumbrances that are no longer fully covered by the distribution estate shall be rescinded; in their place shall be the claim for compensation for the untransferred encumbrance. The compensation shall be determined by the judge and, subject to the sufficiency of the distribution estate, shall be paid in cash in the order of priority that applied to the rescinded right.

2) The same applies with respect to claims for compensation for a reserved usufruct that has not been transferred to the successor.

*Distribution Order*

Art. 158

1) The distribution order shall first state the total amount of the distribution estate. It must then list the cash amounts to be paid to or on behalf of the individual beneficiaries, the encumbrances and debts assumed by the purchaser against the highest bid, including incidental fees, and the coverage amounts corresponding to the assumed encumbrances and debts, in numerical order according to the priority of the rights to be satisfied or secured thereby



, with a note indicating the extent to which the beneficiaries' claims to capital and incidental fees have been satisfied.

2) The distribution order must also specify how the interest on profitably invested amounts is to be used, how any amounts that become available are to be handled, what security must be provided in the event of cash settlement of claims subject to a condition subsequent, which creditors are entitled to compensation under Article 153, in what amounts, and in what order, and what portion of the estate remains with the obligor.

3) The distribution order shall be served on all persons summoned to the hearing.

#### Art. 159

1) If the identity or whereabouts of a mortgagee is unknown under circumstances that, pursuant to Art. 303 through 306 and 352 of the Law of Property, the distribution order shall also specify those claims that are to be satisfied from the portion of the distribution estate attributable to the relevant claim in the event of the declaration of invalidity.

2) A petition for annulment may be filed not only by the purchaser but also by any creditor who, following the distribution order, is entitled to satisfaction from the amount released by the annulment. This amount shall bear interest for the duration of the annulment proceedings. The interest accrued in the meantime shall be allocated to the persons entitled to receive the amount released, in accordance with the priority of their claims, for the payment of interest and the repayment of those claims.

#### Art. 160

1) If the decision on an objection raised at the distribution hearing (Art. 144) depends on the determination and establishment of disputed facts, the resolution of the objection shall be referred to the courts in the distribution order; otherwise, the objection shall be decided immediately in the distribution order. Claims against which an objection referred to the courts is directed shall be treated provisionally in the distribution order as if they were uncontested with respect to the amount claimed and the alleged order of priority.

2) Any party referred to the courts as a result of an objection must, within one month of service of the distribution order, demonstrate that they have already initiated the litigation necessary to resolve the objection; otherwise, the distribution order shall be enforced upon the request of any entitled party affected by the objection, regardless of the objection. This shall be stated in the distribution order.

3) The right of the party who filed an objection to assert his or her specific claim against persons who have been satisfied pursuant to the distribution order is not forfeited either by the failure to meet the deadline for filing the action or by the execution of the distribution order.

Art. 161

1) Objections raised by several persons with respect to the same claim may be asserted by them as co-plaintiffs in a joint action.

2) The judgment rendered in the proceedings concerning an objection raised at the distribution hearing is effective for and against all participating creditors and entitled parties, as well as for and against the obligor (Section 14 of the Code of Civil Procedure).

Art. 162

1) In the judgment granting an objection that has been raised, the court shall, even without a specific request to that effect, determine, on the basis of the distribution order and the records of the distribution proceedings, to which creditor and in what amount the disputed portion of the estate is to be paid.

2) If, in the court's discretion, such a determination is hindered by significant difficulties, the judgment shall order a new distribution proceeding, which shall be initiated ex officio once the judgment becomes final. This new distribution shall be limited to the portion of the estate affected by the objection.

Art. 163

1) If an objection to the set-off of a claim secured by a lien against the highest bid is upheld in the distribution order, in the decision on an appeal filed against it, or in the judgment rendered on the objection, then, once the decision becomes final, the

must be ordered by the court to pay the remaining portion of the highest bid—equal to the non-offsetable amount of the claim secured by a lien, including incidental costs—as well as statutory interest thereon from the date of the award, to the court within 14 days.

2) Pursuant to this order, upon expiration of the deadline, execution shall be carried out against the purchaser's assets upon application for the collection of the remaining highest bid amount plus interest. Any person summoned to the distribution hearing is entitled to file such an application.

3) The remaining portion of the highest bid paid shall be handled in accordance with Art. 161(2). Art. 164

*Execution of the Distribution Order*

1) Once the distribution order becomes final, the amounts transferred to the individual beneficiaries for cash payment shall be disbursed, provided that no legal dispute is pending regarding them or the deadline for filing a lawsuit has already expired without result.

2) To the extent that the distribution order cannot be executed due to a pending legal dispute, the corresponding amounts shall remain in court custody until a final decision is rendered.

Art. 165

*Registration and Discharge*

1) In order to have his property right in the auctioned real property, acquired by the successful bid, entered in the registry, the transfer of the registered rights associated with ownership of the property, and the cancellation of the notice of the initiation of the auction proceedings, the purchaser may apply to the court even before the distribution of the highest bid has been finalized, provided that proof is provided of the timely and proper fulfillment of all auction conditions.

2) If investigations are necessary to decide on this application, the costs thereof shall be borne by the purchaser. Upon approval of the application, the court shall simultaneously order the execution of the registry entries.

3) In all cases, a corresponding decision must be issued ex officio after the decision on the distribution of the highest bid has become final.

4) The cancellation of encumbrances and rights registered on the auctioned property that have not been assumed by the purchaser may only be authorized by the court after the distribution decision has become final.

Art. 166

*Auction of Shares in Real Property*

Unless the law provides otherwise, its provisions regarding the auction of real property shall also apply to the auction of individual shares of real property subject to execution.

Art. 167

*Appeal*

1) No appeal may be filed against decisions by which

a) an entry regarding the initiation of the auction proceedings is ordered to be made in the land register (Art. 89);

b) pursuant to Art. 91, the description and appraisal of the property to be auctioned and its appurtenances are ordered;

c) pursuant to Art. 92, it is determined that a new description and appraisal shall not take place;

d) pursuant to Art. 106, the administration of the auctioned property is ordered;

e) the postponement of the appraisal is ordered pursuant to Art. 133;

f) the cancellation of the entry regarding the initiation of the auction proceedings in the land register is ordered due to a final discontinuation or the conduct of the auction proceedings.

2) No separate appeal is admissible against the decision determining the number of experts to be consulted for the appraisal and appointing the experts, nor against the decisions adopted and announced during the auction hearing and during the distribution hearing.

Title 2

**Enforcement against Movable Property**

Section 1

Enforcement against Tangible

Property Art. 168

*Enforcement against Tangible Property*

1) Enforcement against movable tangible property (chattels) is carried out through attachment, appraisal, and sale of such property.

2) The enforcement order also includes the order to prepare an inventory of assets.

*Exempt property*

Art. 169

Enforcement proceedings may not be conducted against items used for the worship of a church or religious community.

Art. 170

1) The following are also exempt from execution:

- a) items intended for personal use or household purposes, to the extent that they correspond to a modest standard of living for the debtor and the family members living with him in the same household, or if it is readily apparent that their sale would yield proceeds that are disproportionate to their value;
- b) unless otherwise ordered for exceptional periods, the food and heating materials necessary for the debtor and the family members living with him in the common household for four weeks;
- c) Animals kept in the household and not for financial or commercial purposes;
- d) Pets and livestock, provided they are indispensable for the sustenance of the obligated party and the family members living with him in the common household;
- e) assistance in kind granted to the obligated party from public or private funds in the event of an emergency;
- f) for persons personally engaged in or preparing for a professional occupation, the items necessary for such purposes;
- g) for persons who derive their income from personal services, as well as for small business owners and small farmers, the items necessary for the practice of their profession or for the personal continuation of their gainful employment, as well as raw materials intended for processing, at the obligor's discretion, up to a maximum amount to be determined by the court;
- h) cash, to the extent that it was provided in an emergency, as well as amounts of the type specified in Article 210;
- i) in the case of persons whose income is exempt from attachment or subject to limited attachment by law, the portion of the cash found that corresponds to the exempt income for the period

from the time of the attachment until the next payment date of the income;

k) the equipment, containers, and inventory essential for the operation of a pharmacy, without prejudice to the admissibility of the compulsory administration of such a business;

l) educational materials intended for use by the obligor and the family members living with him in the same household in church or school;

m) the obligor's wedding or partnership ring, their letters and other writings, family photographs (excluding frames), medals, and decorations;

n) Assistive devices to compensate for a physical, mental, or psychological disability or a sensory impairment, and assistive devices for the care of the obligor or family members living with him in the same household, as well as therapeutic agents and assistive devices required as part of medical therapy;

o) all other items declared exempt from attachment by or pursuant to law.

2) The bailiff shall not attach items of negligible value even if it is evident that the continuation or execution of the enforcement will not yield proceeds exceeding the costs of such enforcement.

#### Art. 170a

##### *Substitute Seizure*

1) The bailiff may provisionally attach an unattachable item if substitution with a replacement item is appropriate under the circumstances, in particular if the proceeds from the sale will significantly exceed the value of a replacement item that satisfies the protected purpose of use.

2) The enforcing creditor must be notified of the provisional attachment without delay. The bailiff must also inform the creditor of the value of a substitute item or the amount of money required to procure such a substitute item.

3) If the enforcing creditor, within 14 days of service of the notice, or if present at the attachment but not willing at that time to provide the obligor with such a substitute item or the amount necessary for its procurement, or if he fails to provide the obligor with the substitute item or the amount necessary for its procurement by the date set by the, the lien shall expire.

4) If, within the time limit specified in paragraph 3, the creditor initiating enforcement has filed an appeal against the value of the substitute item notified by the bailiff or against the amount of money required to procure such a substitute item, this time limit is suspended until the decision on the appeal becomes final.

Art. 171

*Accessories to Real Property*

Accessories located on a piece of real property (Art. 23 Property Law) may be subject to enforcement only together with that piece of real property itself.

Art. 171a

*Renewed Enforcement*

An application for enforcement may be filed before the expiration of six months following an unsuccessful enforcement attempt only if it is demonstrated that the debtor now possesses attachable property, or if the creditor specifies a new place of enforcement.

Art. 171b

*General blocking period*

An application for an enforcement order or for renewed enforcement directed against a debtor against whom enforcement could not be carried out in another proceeding within the last six months because no attachable assets were found shall be granted, but enforcement shall not be carried out until six months have elapsed since the last unsuccessful enforcement attempt, unless an earlier enforcement attempt is likely to succeed. The creditor initiating the proceedings must be notified of this. If the creditor initiating the proceedings credibly demonstrates that the debtor now possesses attachable assets, enforcement must be carried out before the expiration of this period.

Art. 172

*Seizure and Valuation*

- 1) The attachment of tangible property in the debtor's possession is effected by the bailiff recording and describing such property in a report.
- 2) Furthermore, the seized items shall be officially appraised by the bailiff, if necessary with the assistance of one or more experts.

3) The estimated value must be stated in the attachment and appraisal record. The record must also include a statement that the listed items have been attached to satisfy the enforceable claim of the creditor to be named. The claim must be specified in the record by principal and incidental charges, with reference to the enforcement order. The attachment may only be made for a specific monetary amount; a numerical indication of the incidental charges to be paid by the debtor is not necessary. The attachment and appraisal record must specify the name and place of residence of the enforcing creditor, the debtor, and their representatives. The attachment and appraisal record must be submitted to the court.

4) If third parties or the debtor assert rights to the property listed in the record during the attachment that would render the execution inadmissible, such claims must be noted in the attachment and appraisal record. If the name and exact address of the third party are disclosed, the bailiff must notify that party of the attachment.

5) The order authorizing the attachment must be served on the debtor at the time the attachment is carried out. The enforcing creditor and the debtor must be notified of the execution of the attachment, unless they were present or represented at the time of the attachment.

Art. 172a

*Preparation of an Inventory of Assets*

If the conditions of Art. 29(2) are met, the debtor must submit an inventory of assets to the bailiff at the place of execution and sign it. The enforcing creditor may have the bailiff ask the debtor questions to identify the property subject to execution, or, with the bailiff's consent, may ask such questions directly.

Art. 173

1) If the items to be seized are not expressly listed in the writ of execution, the bailiff must, when selecting the items, ensure that the creditor is assisted in satisfying his claim by the shortest possible means. The needs of the debtor shall be taken into account as far as possible.

2) First and foremost, cash and securities shall be seized, followed by property that is dispensable to the debtor, and then property that can be easily sold at a reasonable price.



## Art. 174

The bailiff shall execute the orders assigned to him without delay and, if possible, in the order in which they were assigned.

## Art. 175

- 1) Through the attachment, the enforcing creditor acquires a lien on the tangible property listed and described in the attachment and appraisal records for his enforceable claim.
- 2) The lien expires after two years if the sale proceedings have not been properly continued.
- 3) If the attachment is made simultaneously in favor of several creditors, the liens thereby established rank equally. Each of these creditors is deemed to be a creditor pursuing enforcement.

*Subsequent Attachment*

## Art. 176

- 1) If tangible property is attached that has already been attached in favor of another enforceable claim, this must be noted in the attachment and appraisal record.
- 2) Each creditor in whose favor the attachment is made shall be deemed a pursuing creditor.

## Art. 177

With regard to the priority of liens acquired on movable tangible property through judicial attachment, the time of the description of the property for attachment shall be decisive, except in cases of simultaneous attachment.

## Art. 178

*Register of Attachments*

- 1) Every attachment must be recorded in a register (the attachment register) at the court clerk's office, specifying the case number of the enforcement order, the creditor initiating the proceedings, the debtor, the enforceable claim, the date of the attachment, and a brief description of the attached property. Upon completion of the enforcement, the entries must be struck through in red ink.
- 2) Information from the attachment register shall be provided to any person who can demonstrate that they require such information for the purpose of initiating legal proceedings or

enforcement proceedings, to raise objections against enforcement proceedings already initiated, or for other important reasons.

Art. 179

1) A third party who is not in possession of the property may not object to the attachment on the grounds of a lien to which he is entitled. However, even before the claim for which the lien exists becomes due, he may assert his right to preferential satisfaction from the proceeds of the property in question by filing a lawsuit. If an action is brought against the enforcing creditor and the debtor, they shall be treated as co-parties.

2) If the property is sold prior to a final decision on the action in the course of enforcement proceedings and the plaintiff's claim is sufficiently substantiated, the court may, upon application, order the provisional deposit of the proceeds.

*Custody*

Art. 180

1) The pledged items must be taken into custody upon application by the enforcing creditor; items suitable for judicial settlement may also be taken into custody ex officio. If immediate custody is not possible, measures may be taken to prevent the removal of the pledged item or any disposition thereof in preparation for custody.

2) The application to initiate custody may be combined with the application for authorization of the attachment. If the items must be transported to the custodian, custody shall be executed only if the enforcing creditor provides the means of transport.

3) Custody is effected, provided the attached items are suitable for this purpose, by their judicial deposit; otherwise, by delivery to a custodian to be appointed by the court at the risk of the enforcing creditor (Section 968 ABGB). In the latter case, with the consent of the debtor, the enforcing creditor—or, if there are multiple such creditors, one of them—may also be appointed by the court as custodian. If the expected proceeds from the property exceed the amount of the claim being enforced, the debtor's consent is required.

4) The costs of custody shall be borne provisionally by the enforcing creditor and, if there are multiple enforcing creditors, by all of them in proportion to their enforceable claims.

5) The bailiff must comply with the request made at the time of the attachment to initiate custody through judicial deposit without first obtaining a court order to that effect.

6) The initiation of custody shall be recorded in the attachment and appraisal report, specifying the custodian.

Art. 181

The custodian shall be appointed by the bailiff. If the custodian was appointed without the consent of the debtor and the enforcing creditors, they shall be notified of the appointment, with the custodian's name disclosed. They may at any time apply to the court for the appointment of another custodian, provided they state suitable grounds.

Art. 182

1) The bailiff must take any money found into custody and, if the attachment is made in favor of a single creditor, deliver it to that creditor against a receipt in accordance with the amount of the claim to be enforced. In this case, the bailiff's removal of the money is deemed to be payment by the debtor.

2) The exchange rate on the date of attachment shall be used to calculate the value of coins and foreign currency.

3) If the attachment is made in favor of several creditors (Art. 175, para. 3), the bailiff shall deposit the money found with the court, and the court shall distribute it, depending on the circumstances of the case, either separately or together with the proceeds from the attached property. A separate distribution shall be carried out in accordance with the provisions applicable to the distribution of the proceeds of sale.

4) If the debtor or any other person present at the attachment asserts that a circumstance exists whose assertion may lead to a postponement of enforcement, the money found must in any case first be deposited with the court, and the preceding provisions must be followed; however, it may not be released before the expiration of eight days. When carrying out the attachment, the bailiff must inform those present of this time limit.

Art. 183

The same provisions apply to the attachment and custody of the debtor's movable tangible property that is in the custody of the enforcing creditor or a third party prepared to surrender it.

Art. 184

*Restriction on Seizure*

If the enforcing creditor has a tangible movable property of the debtor in his custody, over which he holds a lien or a right of retention for the claim to be enforced, the debtor may, to the extent that this claim is covered by the property, apply to the court for the attachment to be limited to this property. If the lien or right of retention also applies to another claim of the enforcing creditor, the application shall be granted only if this claim is also covered by the item. *Sale*

Art. 185

- 1) The seized property shall be sold upon the request of one of the creditors for whose enforceable claim it was seized.
- 2) The application for authorization of the sale must be combined with the application for authorization of the attachment. The court shall decide on these applications simultaneously.

Art. 186

- 1) The sale of securities that are frozen or held in custody as collateral in favor of the state or a municipality may only be authorized once the relevant contractual relationship has been terminated and any claims for compensation have been determined through administrative proceedings.
- 2) All persons who have acquired a lien on the security shall be notified of this determination.

Art. 187

- 1) Prior to the entry into force of the attachment order, a sale may only be if the property seized is of such a nature that it is subject to spoilage if stored for a prolonged period, or if the seized property would lose considerable value if the sale were postponed and the enforcing creditor provides security for all disadvantages arising for the debtor from the earlier sale.

2) The sale may not take place until the security, to be determined by the court, has been provided.

Art. 188

1) Once the sale has been authorized, no separate sale proceedings may be initiated with respect to the same property for the benefit of other enforceable claims while the sale proceedings are still in progress.

2) All creditors who, while a sale proceeding is pending, are granted permission to sell the same property—including property attached in their favor—thereby join the sale proceeding already initiated and must accept it in the state in which it exists at the time of their joining.

3) From the time of their joining, the joining creditors have the same rights as if the proceedings had been initiated at their request.

*Private sale*

Art. 189

1) The court shall have seized items, in particular securities that have a market price or are traded on the open market, sold through a bank; other securities shall be sold at public auction. Upon authorizing such a sale, the court shall, upon request, determine the minimum price below which the sale may not be made and the time within which the sale must be effected.

2) If the security is registered in the name of a specific person, the court shall arrange for the transfer of ownership to the buyer's name and shall issue, in lieu of the obligor, all documentary declarations required for the purpose of the sale that are legally effective.

Art. 190

The provision of Art. 513 of the Law of Property regarding legal protection for lost items that were publicly auctioned also applies to sales made by private agreement pursuant to Art. 189, as well as to the transfer of ownership to the enforcing creditor (Art. 201).

Art. 191

1) All other seized items, insofar as they are subject to sale at all, shall be publicly auctioned by the bailiff.

2) Securities whose sale was ordered by private contract pursuant to Art. 189 shall also be sold by public auction at the request of the enforcing creditor if they were not sold by private contract within the time limit set by the court (Art. 189(1)).

Art. 192

1) If, no later than 14 days before the auction date, a person agrees—while simultaneously providing security in the amount of at least one-quarter of the appraised value—to purchase the seized items in their entirety or in large lots at a price that exceeds their appraised value by at least one-quarter, and to bear, in addition to any appraisal costs, all enforcement costs incurred to date and attributable to the obligor without offsetting them against the purchase price, the court may grant this request after hearing the obligor. A prerequisite for this is that the enforcing creditor and those persons who have acquired a lien on these items, but whose claims are not unambiguously covered in full by the purchase price, consent.

2) The provisions of Art. 135 apply to the further proceedings, including the postponement and suspension of the auction.

*Date of Auction*

Art. 193

1) Unless the court orders otherwise, the bailiff shall determine the date of the auction. Notice of the auction must be given by edict. The edict shall specify the location and time of the auction and describe the items to be auctioned by type. If the items can be viewed prior to the auction, the location where they are situated shall be indicated.

2) The debtor and the creditors pursuing the claim must be notified of the scheduled auction date by service of a copy of the notice.

Art. 194

There must be a period of at least 30 days between the attachment and the auction. This period may be shortened if circumstances exist under which, pursuant to Art. 187, the sale of the attached property may be permitted before the attachment order becomes final, or if the continued storage of the attached property would incur disproportionate costs.

**Art. 195**

The auction shall take place at the location where the seized items are situated, unless the parties agree on another location or the court, upon application by the debtor or the enforcing creditor, permits the items to be auctioned at another location in order to achieve a higher proceeds. This applies in particular to items of great value, such as gold and silver items, other valuables, works of art, collections, and the like.

**Art. 196**

- 1) At the auction, the pledged items must be offered individually or, if large quantities of similar items are being sold, in lots, with an indication of the estimated value and the minimum bid.
- 2) The services of an auctioneer may be dispensed with.
- 3) Bidders are not required to pay a deposit. Art.

**197***Starting Price*

Bids that do not reach at least half of the starting price may not be considered at the auction. At the request of the creditor conducting the auction, and with the consent of the other creditors to be notified of the auction date (Art. 35), the court may, prior to the auction date, set a minimum bid exceeding half of the starting price.

**Art. 198***Award*

- 1) The contract is awarded to the highest bidder if, despite two requests made to the bidders, no higher bid is submitted. In all other respects, the provisions of Art. 119(1), Art. 120(1), (3), and (5), and Art. 121(1) and (3) shall also apply to the auction of movable property.
- 2) The highest bidder may be granted a payment period of eight days for items under Article 195(1), last sentence. Other items are sold only for cash. Upon request, the purchaser shall be issued a confirmation of the purchase.

3) The items shall be handed over to the highest bidder only after payment has been made. The highest bidder must take possession of them immediately thereafter and remove them. The purchaser has no claim for warranty due to a defect in the sold items.

4) If the highest bidder has not paid the purchase price in cash immediately upon request, or by the end of the auction, the auction may be continued starting with the bid preceding the highest bidder's bid, provided this is feasible under the circumstances; otherwise, the item awarded to the highest bidder must be put up for auction again at a new date. The highest bidder shall not be permitted to bid at the new auction; he shall be liable for any shortfall without being entitled to claim the additional proceeds. With regard to the recovery of the shortfall in the purchase price, Art. 103(2) applies.

Art. 199

1) The auction shall be closed as soon as the proceeds obtained are sufficient to satisfy the enforceable claims of all creditors conducting enforcement through sale and to cover all incidental fees and the costs of enforcement.

2) The provisions of Art. 125(1)(a) and (b) shall apply *mutatis mutandis* to the minutes to be taken at the auction. In addition, the minutes shall specify, in addition to the starting prices, the highest bids achieved and the buyers.

Art. 200

*Seized property not found*

If the seized items are not found on the premises at the time of transfer or auction, the debtor must disclose their location to the court or the bailiff. The bailiff must request this information from the debtor. Section 29(1), Section 31, and Section 32(2) apply. If this does not reveal the location of the items, or if the debtor has moved away taking the items with them and the bailiff cannot determine the debtor's whereabouts through reasonable inquiries, the execution regarding the items not found shall not continue until the creditor discloses their location. The bailiff shall notify the creditor pursuing the claim of this.

*Other Disposal of Seized Property*



## Art. 201

1) The court may, if this is clearly to the advantage of all parties involved, upon application by the creditor or the debtor, authorize that the seized property, provided it does not consist of securities (Art. 189) and no application for assumption under Art. 192 has been filed, be disposed of by means other than public auction; however, the application must be filed no later than three days before the auction date. Furthermore, a private sale may only be authorized if the named buyer gives an assurance to pay the specified purchase price. The auction date must then be set. A private sale is only permissible against cash payment.

2) The court may further order ex officio or, upon application, authorize that items for which the minimum bid was not met at auction be disposed of by means other than public auction. However, the sale price may not fall below half of the appraised value. If a private sale is ordered, the pursuing creditor may be instructed to identify a buyer to the bailiff within 14 days of service of the order authorizing the private sale. If the enforcing creditor fails to do so and the sale is not effected within this period, even to other buyers who come forward to the bailiff, the sale proceedings shall be discontinued. The provision of Art. 131(c) applies. The order to discontinue proceedings may not be challenged by appeal; the order need not be served; this shall be stated in the order. The unsold items may also be transferred to the enforcing creditor, who holds the sole lien thereon, upon his application, at half the appraised value, to the extent of his claim.

## Art. 202

Upon application, the court may permit pledged items of lesser value, the sale of which has been authorized, to be auctioned off without prior special notice of their auction at an auction scheduled and announced against another obligor or in favor of another creditor.

## Art. 203

1) With regard to the waiver of enforcement and the discontinuation of a sale proceeding, Art. 131(c) and (d), Art. 132(3), (4), and (5), Art. 134(2), and Art. 137(1) shall apply mutatis mutandis.

2) In the event that the sale proceedings are continued pursuant to Art. 137(1), the creditors affected by the grounds for discontinuation or annulment shall be satisfied from the proceeds of the sale in accordance with any lien to which they may be entitled (Art. 206(3)).

3) Only the debtor and the enforcing creditors are to be notified of the discontinuation of the sale proceedings.

*Use of the Proceeds from the Sale*

Art. 204

1) From the proceeds of the auction, including the forfeited security pursuant to Art. 192 and the compensation paid by the defaulting highest bidder pursuant to Art. 198, the bailiff shall, if the execution is conducted solely in favor of the creditor who, according to the contents of the attachment records, holds the sole lien on the sold items, hand over to that creditor the amount remaining after deduction of the auction and appraisal costs, which is necessary to satisfy the enforceable claim together with incidental charges.

2) In the case of claims bearing interest, the interest, to the extent it has not become time-barred, shall be calculated up to the date of the auction.

3) The delivery of these amounts to the enforcing creditor shall be deemed payment by the obligor.

4) Any remaining balance shall be delivered to the obligor, provided that a subsequent secured creditor has not meanwhile claimed it.

Art. 205

1) If the enforcing creditor seeks reimbursement of enforcement costs not yet determined by the court, he must simultaneously submit a list of these costs to the bailiff. The costs shall be determined by the court.

2) The bailiff shall withhold the amount necessary, as stated by the creditor, to cover the aforementioned costs and shall deposit it with the court clerk. The same procedure shall apply to the amount withheld by the bailiff to cover auction costs and expert fees.

3) If the sums deposited are not exhausted by the costs awarded to the enforcing creditor by the court or by the auction and appraisal costs determined by the court, the remaining amount shall be used for the further satisfaction of the enforcing creditor or, after full satisfaction of his claims, in accordance with the last paragraph of Article 204.

4) The claim for reimbursement of costs must be filed by the creditor conducting the auction before the end of the auction, failing which it will be excluded.

Art. 206

1) If, according to the contents of the attachment records, the enforcing creditor does not hold the sole lien, or if the auction took place for the benefit of several relevant creditors, the proceeds shall be deposited by the bailiff with the court clerk's office and distributed by the court.

2) If the proceeds have been invested profitably until distribution, the interest shall be added to the distribution fund; likewise, the security forfeited pursuant to Art. 192 and the compensation paid by the defaulting highest bidder pursuant to Art. 198 shall be included in the distribution fund.

3) If necessary, the court shall schedule a distribution hearing *ex officio*. The debtor and all creditors listed in the attachment records who have not yet been fully satisfied and whose lien has not already expired pursuant to Art. 175(2) shall be summoned to the hearing. The creditors shall simultaneously be required to file their claims for principal, interest, costs, and other incidental claims before or at the distribution hearing and to submit the documents serving as evidence of their claims—if these are not already in the court's possession—in original or certified copy no later than at the distribution hearing; otherwise, their claims would be taken into account in the distribution only to the extent that enforcement by auction was authorized in their favor. A subsequent discontinuation of the sale proceedings and the postponement of enforcement due to a payment agreement under Art. 27a preclude such consideration, as does the fact that the seized items were not initially located and that, at the request of another enforcing creditor, the auction of the items subsequently located took place. Creditors must be informed of this in the notice.

Art. 207

1) In distributing the proceeds, the court shall proceed in accordance with Articles 143 through 145, 150 through 152, 154(3), 158, 160 through 162, and 164, applying them *mutatis mutandis*.

2) From the estate subject to distribution, the costs of the appraisal and the auction shall first be paid, followed by the timely filed lien claims and the enforceable claims for the collection of which the auction was authorized. The amount of the claims shall be calculated based on the filing and supporting documents, as well as on the court's enforcement orders.

3) Notwithstanding the priority established for individual claims by the existence of a statutory or contractual lien, the order of priority to be determined following judicial attachment shall be decisive for the payment of the claims described above.

4) With regard to the adjustment of interest, recurring payments, and litigation and enforcement costs, the principles set forth in Articles 147, 148, 149(1), and 150 shall apply.

#### Art. 208

The provisions of Articles 204 through 207 shall apply *mutatis mutandis* to the use of proceeds obtained from a private sale. In such cases, the creditor initiating the enforcement proceedings must file a claim for reimbursement of costs within the time limit specified in Article 48(2), failing which the claim shall be barred. No portion of the proceeds may be paid to the debtor before the expiration of this period.

#### Art. 209

##### *Appeal*

Decisions ordering the custody of attached items (Art. 180), the auction at another location (Art. 195), or the inclusion of the seized items in the auction authorized with respect to other pledged items (Art. 202), and against the decision setting the date of the auction (Art. 193), no appeal may be filed.

#### Section 2

##### Enforcement of Monetary Claims

#### Art. 210

##### *Enforcement of Monetary Claims*

1) The following claims are exempt from attachment:

- a) support and benefits from the state, municipalities, and other public institutions in cases of need, illness, or death;
  - b) Allowances and subsidies for family support and the upbringing and education of children, provided they are not claimed by the family member for whom they are intended to cover statutory maintenance obligations;
  - c) Compensation for pain and suffering and lump-sum payments owed to the affected person or, in the event of their death, to their family as compensation for bodily injury or impairment of health;
  - d) other benefits declared exempt from attachment by or pursuant to laws.
- 2) Claims under subparagraph (c) may, upon application by the enforcing creditor, be declared attachable by way of exception up to the maximum amount specified in Article 211 if this is necessary to avoid particular hardship for the creditor and is not precluded by the overriding interests of the obligor.

*Limitedly attachable claims*

Art. 211

- 1) Claims to wages, salaries, pensions, and all other income arising from existing or former employment or service relationships are subject to enforcement to the extent to be determined by the government by ordinance; in doing so, the government shall regulate, in particular, the calculation of attachable income, the unattachable minimum amount and its increase in the event of maintenance payments, as well as the value of benefits in kind.
- 2) In the case of enforcement against a claim representing remuneration for a period of more than one month, the amount exempt from enforcement for a single month must first be determined, followed by the sum of the amounts exempt from enforcement for the entire period. This sum must remain with the debtor.

Art. 211a

*Aggregation; Benefits in Kind*

- 1) If the obligor has several claims for money that are subject to limited attachment or claims for money and claims for benefits in kind against a third-party debtor, the third-party debtor must aggregate them.

2) If the obligor has claims for money that are subject to limited attachment or claims for money that are subject to limited attachment and claims for benefits in kind against various third-party debtors, the court shall, upon application, order the aggregation.

3) When aggregating multiple monetary claims subject to limited attachment against various third-party debtors, the basic exempt amounts must be granted primarily to the claim that constitutes the essential basis of the obligor's livelihood. The court must designate the third-party debtor who is required to grant the basic exempt amounts.

4) When aggregating claims for money subject to limited attachment with claims for benefits in kind, the exempt portion of the total claim is reduced by the value of the benefits in kind remaining to the obligor. However, at least half of the amounts withheld from the obligor's monetary payments pursuant to Article 211(1) of the Enforcement Act must remain exempt.

5) The court shall determine the value of the benefits in kind when aggregating

a) pursuant to paragraph 1 upon application,

b) pursuant to paragraph 2 ex officio at the same time as ordering the aggregation in accordance with its free conviction within the meaning of §

273 ZPO. Art. 211b

*Disguised remuneration*

1) If the obligor provides services to the third-party debtor on a continuing basis—services that are customarily remunerated based on their nature and scope—without or in exchange for a disproportionately small consideration, an appropriate fee is deemed to be owed in the relationship between the enforcing creditor and the third-party debtor.

2) In determining the remuneration, particular attention shall be paid to

a) the nature of the work,

b) the family or other relationships between the third-party debtor and the obligor, and

c) the third-party debtor's financial capacity

. The third-party debtor's economic livelihood must not be impaired. The remuneration is deemed agreed upon as of the date of attachment.

Art. 212

Other recurring income of the obligor may, upon his application, be declared subject to limited attachment pursuant to Art. 211 if he certifies that he is compelled to use this income to cover the living expenses for himself and his family.

Art. 213

If a non-recurring payment for personally performed work or services is attached and the obligor certifies that he has no further income to expect for a certain period, he may, upon application, be allowed to retain as much as would remain to him for that period under the attachment restriction of Art. 211. In making the decision, the obligor's financial circumstances, in particular his other earning potential, must be taken into account. The obligor's application shall be rejected to the extent that it conflicts with the overriding interests of the enforcing creditor.

Art. 214

*Increase in the exempt amount; modification of the conditions for exemption from garnishment*

1) Upon request, the court must appropriately increase the exempt amount if, in light of

- a) significant additional expenses incurred by the obligor, in particular due to the obligor's helplessness, infirmity, or illness, or that of the obligor's dependents, or
- b) unavoidable housing costs that are disproportionately high in relation to the amount remaining to the obligated party for living expenses, or
- c) special expenses of the obligated party that are objectively related to the performance of his or her profession, or
- d) an emergency situation of the obligor resulting from an accident or a death, or
- e) particularly extensive statutory maintenance obligations of the obligor, and there is no risk that the enforcing creditor could thereby suffer serious harm.

2) Upon application, the court shall amend the orders determining the exempt amount accordingly if:

- a) the circumstances relevant to the calculation of the exempt amount have changed; or

b) the court was not fully aware of these circumstances at the time the decision was made.

Art. 214a

*Account Protection*

1) If monetary claims subject to limited attachment are transferred to the debtor's bank account, the court must, upon the debtor's request, lift the attachment of the account balance to the extent that the balance corresponds to the portion of income not subject to attachment for the period from the date of attachment until the next payment date.

2) If a garnished balance held at a bank by an obligor who is a natural person is transferred to the enforcing creditor, payment from the balance to the enforcing creditor or the deposit of the amount may not be made until 14 days after service of the transfer order on the third-party debtor.

3) The court must lift the attachment of the account balance in advance for the portion that the obligor urgently needs until the next payment date to cover his or her necessary living expenses and to fulfill his or her ongoing statutory maintenance obligations. The portion of the account balance released in advance may not exceed the amount that is expected to be left to the obligor pursuant to paragraph 1. The obligor must demonstrate that claims subject to limited attachment have been transferred to the account and that the conditions of the first sentence are met. The enforcing creditor need not be consulted if the resulting delay cannot reasonably be expected of the obligor. Art. 214b

*Provisions for Calculation by the Third-Party Debtor*

1) Payment by the third-party debtor discharges the debt if the third-party debtor is not guilty of either intent or gross negligence. This is certainly the case if the third-party debtor makes the payment in accordance with the terms of the order establishing the exempt amount.

2) When taking maintenance obligations into account, the third-party debtor must rely on the information provided by the obligor, unless the third-party debtor is aware that such information is incorrect.

3) When taking into account payments in kind, the third-party debtor must rely on the value to be determined by the government by ordinance.

Art. 214c

*Court Decision; Right to File a Motion*



1) The court shall, upon application—in the cases under subparagraphs (a) and (b) at its discretion within the meaning of § 273 ZPO—decide

a) whether maintenance obligations are to be taken into account in the calculation of the exempt amount, or

b) whether and to what extent a payment or portion of a payment is attachable, or

c) whether a lien has in fact been established on the salary claim or another claim consisting of ongoing payments, the attachment of which has been authorized by the court.

2) The third-party debtor may withhold the amounts covered by an application under paragraph 1 until the court's decision becomes final.

3) In addition to the parties, the following are entitled to file an application:

a) the third-party debtor, for an application under paragraph 1 and for an amendment to the decisions establishing the exempt amount under Article 214(2);

b) a third party to whom the obligor is legally required to provide maintenance, for an application under paragraph 1(a), for an increase in the exempt amount under Article 214(1), and for an amendment to the orders establishing the exempt amount under Article 214(2);

c) a creditor pursuing other claims who succeeds a creditor pursuing enforcement based on a claim under Art. 215(1), for an application under Art. 214(2).

In these cases, each party shall bear its own costs.

4) Before ruling on motions under paragraph 1 to aggregate and determine the value of benefits in kind pursuant to Article 211a, to increase the exempt amount pursuant to Art. 214(1), to reduce the minimum exempt amount, and to amend the orders determining the exempt allowance pursuant to Art. 214(2), the parties must reach an agreement (Art. 34(1)). In these proceedings, the enforcing creditor may claim reimbursement of costs only in accordance with the provisions of the Civil Procedure Code (ZPO) and only to the extent that the debtor does not consent to the application. This also applies *mutatis mutandis* to a claim by the debtor for reimbursement of costs.

Art. 214d

*Statement of the outstanding claim*

1) The third-party debtor is entitled, in the case of wage claims or other claims arising from ongoing payments, to demand full payment of the amount specified in

to no longer take into account the fixed amounts specified in the writ of execution until he receives from the enforcing creditor a statement of the outstanding claim against the obligor; this statement must also be sent to the obligor. The third-party debtor must notify the enforcing creditor in writing at least four weeks in advance that he intends to exercise this right. If the third-party debtor does not receive a statement of the outstanding claim, enforcement must be suspended upon his request. The enforcing creditor must be heard before a decision is made (Art. 34(1)).

2) The enforcing creditor must, within four weeks of the obligor's written request, send the obligor a receipt for the amounts received and disclose the amount of the outstanding claim. The statement of the amount of the outstanding claim must also be sent to the third-party debtor. The obligor may not request a new settlement until one year has elapsed or until the fixed amounts have been paid off. If the enforcing creditor fails to comply with the request, the court shall suspend enforcement upon the obligor's application. The enforcing creditor must be heard prior to the decision (Art. 34(1)).

3) In the cases referred to in paragraphs 1 and 2, the third-party debtor may make a payment in full discharge of the debt in accordance with the statement of the amount of the outstanding claim.

4) The creditor conducting the enforcement proceedings is not required to send a receipt and a statement of the amount of the outstanding claim pursuant to paragraphs 1 and 2 if the enforcement is conducted solely to collect current statutory maintenance or other recurring payments.

#### Art. 215

##### *Special Provisions for Enforcement Proceedings Concerning Maintenance Claims*

1) In the case of enforcement regarding

- a) a statutory maintenance claim,
  - b) a statutory maintenance claim that has been transferred to a third party,
  - c) a claim for reimbursement of expenses that the obligor would have had to incur himself due to a statutory maintenance obligation (Section 1042 ABGB), as well as for
  - d) the litigation and enforcement costs, including all interest incurred through the enforcement of a claim under subparagraphs (a) through (c),
- the obligor shall not be entitled to any increase to the unseizable minimum amount with respect to those persons conducting enforcement proceedings for such a claim.

2) Upon application, the court shall:

- a) reduce the minimum amount exempt from attachment applicable under paragraph 1 and Article 211(1) by an appropriate amount, in particular if ongoing statutory maintenance claims cannot be fully recovered through enforcement;
  - b) rule that a maintenance obligation is not to be taken into account to the extent that its amount does not reach the exempt increase granted for this purpose.
- 3) In the cases referred to in paragraph 2 or in the event of a reduction in the exempt amount within the meaning of Article 214(2), the debtor shall, however, be allowed to retain as much as is necessary for his or her basic subsistence and for the fulfillment of his or her ongoing statutory maintenance obligations.

Art. 215a

*Special Provisions for Enforcement Proceedings Concerning Recurring Payments*

1) Enforcement regarding claims for recurring payments that will become due in the future is permitted only for claims

- a) under Art. 215, para. 1, or
- b) for recurring payments that are to be made to the injured party due to bodily injury or damage to health, or to the surviving dependents due to homicide, provided that enforcement is also authorized at the same time for claims of this kind that are already due.

2) Enforcement under paragraph 1 shall be suspended at the request of the obligor if he:

- a) has paid all claims that are due; and
- b) certifies that he will fulfill his payment obligations in the future. This is particularly likely to be the case if he has already paid the amounts due for the next two months:

- 1. either has already paid them; or
- 2. has been ordered by the court to pay them to the creditor. The enforcing creditor must be heard before the decision is made (Art. 34(1)).

3) Upon application by the creditor initiating enforcement, the court must, upon reauthorizing enforcement, rule that the lien retains the originally established priority, the date of which the court must specify.

Art. 216

Any agreement whereby a claim is classified as a claim of a different nature at the time of its creation or subsequently, in order to exempt it wholly or partially from enforcement, shall have no legal effect.

*Attachment*

Art. 217

1) Enforcement of the obligor's monetary claims shall be effected by attachment and transfer. Unless the provision of Art. 218 applies, attachment shall be effected by the court prohibiting the third-party debtor from making payment to the obligor. At the same time, the obligor himself is prohibited from disposing of his claim or of any security established for it, and in particular from collecting the claim. In the case of monetary claims subject to limited attachment, he must be instructed to immediately notify the third-party debtor of any maintenance obligations and the income of the persons entitled to maintenance.

2) Both the third-party debtor and the obligor must be informed that the enforcing creditor has acquired a lien on the claim in question. The service of the payment prohibition must be effected in accordance with the provisions governing the service of complaints.

3) The attachment shall be deemed to have taken effect upon service of the payment prohibition on the third-party debtor.

4) The third-party debtor may challenge the payment prohibition by filing an appeal. Art. 217a

*Unknown Third-Party Debtor*

1) If the creditor claims that the obligor is entitled to claims within the meaning of Article 211(1) but does not know the third-party debtor(s), the following special provisions apply:

a) The third-party debtor need not be named in the application for enforcement, nor does the claim need to be specified in detail. However, the debtor's date of birth must be provided.

b) The court must determine, by querying the Central Population Register, whether, based on the data stored therein, the obligor is in a legal relationship from which he may be entitled to claims within the meaning of Art. 211(1), and, if so, with whom. If this query does not identify any third-party debtors, the court must inquire with the Office of Labor and Social Affairs whether the obligor is receiving unemployment insurance benefits.

c) If these inquiries reveal one or more potential third-party debtors, the court shall proceed with the service of process on the obligor and the third-party debtor(s) as provided for in Article 217.

2) An application for enforcement under paragraph 1 may be repeated only after one year has elapsed since its filing if it is credibly demonstrated that the obligor has since acquired such a claim.

3) Municipalities must provide persons who present them with a copy of an enforcement order or a photocopy thereof with information from the residents' register regarding the date of birth of the debtor named in the enforcement order.

Art. 218

1) The attachment of claims arising from bills of exchange, checks, and other securities, without which the claim cannot be asserted, is effected by the bailiff taking possession of these documents, drawing up a record of attachment, and depositing them with the court.

2) The provision of Article 176 applies to any subsequent attachment of the same claim granted in favor of another creditor.

Art. 219

1) Presentations, protests, notifications, and other acts necessary to preserve or exercise the rights arising from the instruments referred to in Art. 218 shall, as long as the instrument is subject to court proceedings, be performed by the court in lieu of the obligor.

2) In case of imminent danger, the due claim shall be collected. The amounts received shall be deposited with the court; the lien established for the enforcing creditor on the claim extends to these incoming payments.

3) If the enforcement of the claim appears necessary to interrupt the statute of limitations or to avoid other disadvantages, the court shall, ex officio or upon application, appoint a curator for this purpose.

Art. 220

A pledge appointed for the attached claim shall be taken into custody upon application by the enforcing creditor (Art. 180). The application to initiate custody may be combined with the application for authorization of the attachment of the claim or filed separately after the attachment has been authorized.

Art. 221

1) The lien acquired through the garnishment of a wage claim or another claim arising from ongoing payments also extends to payments due after the garnishment; the lien obtained on an interest-bearing claim extends to interest due after the garnishment.

2) The garnishment of employment or labor income specifically also affects income that the obligor receives as a result of an increase in their earnings or as a result of the termination of the employment or labor relationship. However, this provision does not apply in the event of a change in employer.

Art. 222

1) If several creditors obtain an attachment of the same claim at different times, the priority of the rights thereby acquired shall, in the case of claims arising from the instruments specified in Art. 218, be determined by the time at which the instrument was taken into custody by the bailiff or the subsequent attachment was authorized.

2) In all other cases, the order of priority of the liens shall be determined by the time at which the payment prohibitions issued in favor of the individual creditors were served on the third-party debtor.

3) If the documents referred to in paragraph 1 are taken into possession simultaneously for the benefit of several creditors, or if several payment prohibitions are served on the third-party debtor on the same day, the liens established thereby shall rank equally. If the attached claim is insufficient, the claims to be enforced, together with incidental charges, shall then be adjusted in proportion to their total amounts.

Art. 222a

*Attachment of an Assigned or Pledged Claim*

1) A judicial lien does not extend to a claim to the extent that it was assigned prior to the creation of the lien.

2) If the claim was pledged prior to the creation of a judicial lien, this does not preclude the creation of a judicial lien. Art. 222, paras. 2 and 3, regarding the priority of liens shall apply *mutatis mutandis*. In the case of a claim for wages or another claim consisting of ongoing payments, the contractual lien covers only those payments

that become due as soon as the claim is asserted in court or a right to enforcement exists and the third-party debtor has been notified of the judicial assertion or the right to enforcement. The third-party debtor is not required to make payments under the contractual lien until the creditor has a right to enforcement and this has been notified to the third-party debtor. Prior to that, the third-party debtor is obligated, upon a creditor's request, to deposit the payments covered by the contractual lien with the court in accordance with their due dates.

3) The fact that a judicial lien under Art. 215a para. 2 expires is irrelevant under paras. 1 and 2 as soon as it is revived.

Art. 223

*Third-Party Debtor's Declaration*

1) Unless the enforcing creditor requests otherwise, the court shall, at the same time as issuing the payment prohibition, order the third-party debtor to declare within four weeks:

- a) whether and to what extent he acknowledges the attached claim as valid and is willing to make payment;
- b) whether and on what conditions his obligation to pay is contingent;
- c) whether and what claims other persons assert against the attached claim, in particular those under Art. 222a;
- d) whether and on account of which claims in favor of other creditors a lien exists on the claim, even if the proceedings under Art. 215a(2) have been discontinued;
- e) the maintenance obligations disclosed by the obligor.

2) The third-party debtor must submit his statement to the court. He is also entitled to have his statement recorded in the court minutes. A copy of these minutes shall be sent ex officio to the creditor initiating the proceedings.

3) If the third-party debtor has culpably, intentionally, or through gross negligence failed to fulfill his obligations under paragraph 1, or has fulfilled them incorrectly or incompletely, the third-party debtor shall be ordered to reimburse the costs of the proceedings despite prevailing in the third-party debtor proceedings (Art. 229). § 43(2) ZPO applies mutatis mutandis. Furthermore, the third-party debtor is liable to the enforcing creditor for any damage resulting from the fact that

he culpably failed to fulfill his obligations at all, or fulfilled them incorrectly or incompletely through intent or gross negligence. These consequences must be communicated to the third-party debtor upon service of the order.

4) If a recurring claim has been attached, the third-party debtor must notify the enforcing creditor of the continued termination of the legal relationship underlying the claim within one week after the end of the month following the month in which the legal relationship was terminated.

5) The costs incurred by the third-party debtor in submitting the declaration shall be borne provisionally by the enforcing creditor; the court shall order the creditor to reimburse the third-party debtor for such costs. The amounts awarded shall be determined ex officio as costs of the enforcement proceedings. Multiple enforcing creditors shall bear the costs in equal shares.

*Transition*

Art. 224

1) The attached monetary claim shall, upon application, be transferred to the enforcing creditor for collection or in lieu of payment, in accordance with the lien established in his favor, up to the amount of the enforceable claim.

2) The application for transfer must be combined with the application for authorization of the attachment. The court shall decide on these applications simultaneously.

Art. 225

1) If the claim is based on a document referred to in Article 218, the transfer is permissible only for the total amount of the attached claim and, if that amount exceeds the amount of the enforceable claim, only if the enforcing creditor provides security for the payment of the excess. The same applies if the attached claim is indivisible for other reasons with respect to transfer or enforcement.

2) Likewise, if the attached claim is partially exempt from execution or if it was previously attached in favor of another creditor, the creditor requesting the transfer must provide security to ensure that the amount exempt from execution or due to the prior secured creditor is paid to the debtor or the prior secured creditor upon receipt of sufficient funds.

3) Among several enforcing creditors applying for transfer and offering equal security, preference shall be given to the one in whose favor



whose claim was attached earlier; however, if the security offered is not equal, preference shall be given to the creditor offering better security. If only one of the creditors is willing to provide security, the claim shall be transferred to that creditor regardless of the priority of his lien.

Art. 226

- 1) The transfer is effected by serving the order granting the application for transfer on the third-party debtor; however, in the case of claims arising from the instruments specified in Article 218, it is effected by delivering the instrument, accompanied by the required written declaration of transfer, to the creditor pursuing the claim to whom the claim has been transferred. This declaration of transfer must be issued by the court.
- 2) To the extent that a claim has been transferred to a creditor for collection, a further transfer to another creditor is not permitted.

Art. 227

- 1) The debtor must provide the enforcing creditor to whom the claim has been assigned with the information necessary to assert the assigned claim and must surrender to him the documents pertaining to the claim. If the transfer is limited to a portion of the attached claim, the debtor must, upon request, provide security for the return of the documents pertaining to the entire claim.
- 2) The surrender of the documents may be enforced against the obligor at the request of the enforcing creditor by way of execution (Art. 251 and 252). The enforcing creditor may seek the surrender of the documents from third-party holders through legal action.
- 3) The court must indicate the transfer on the documents delivered to the creditor.

Art. 228

*Deposit with the Court*

- 1) If a claim, the attachment and transfer of which have been ordered—albeit subject to the rights of third parties acquired earlier—is asserted not only by the enforcing creditor but also by other persons, the third-party debtor is authorized, and upon the request of a creditor is obligated, in cases where the factual and legal situation is unclear, to deposit the amount of the claim, together with incidental

in accordance with their due dates in favor of all such persons. A decision on such a request shall be made by order after hearing the third-party debtor (Art. 34 para. 1).

2) The amounts ordered by the court are to be distributed. Articles 206 and 207 apply here, with the proviso that “creditors” are understood to include not only creditors pursuing enforcement but also those who have rights to the claim as specified in Article 222a.

3) If legal proceedings have been instituted against the third-party debtor for payment of the claim, the third-party debtor may, after the payment has been made, apply to the court hearing the case to be released from the legal dispute.

4) The third-party debtor’s authority under paragraph 1 does not apply to the extent that the third-party debtor is entitled to a right of application under Article 214c.

*Transfer for Collection*

Art. 229

1) The order for collection authorizes the creditor pursuing the claim on behalf of the obligor, to demand payment from the third-party debtor of the amount specified in the order of assignment in accordance with the legal basis of the attached claim and the date on which it becomes due, to bring about the due date by means of a demand notice or termination, to carry out all presentations, protests, notifications, and other acts necessary to preserve and exercise the right to the claim, to accept payment in satisfaction of his claim and in set-off against it, to sue for the claim against the third-party debtor on behalf of the obligor, and to enforce the lien established for the transferred claim. However, the assignment order does not authorize the pursuing creditor to enter into settlements on behalf of the obligor regarding the assigned claim, to release the third-party debtor from his debt, or to refer the determination of the legal validity of the claim to arbitrators.

2) Objections arising from the legal relationships between the enforcing creditor and the third-party debtor cannot be raised against the action brought by the creditor as a result of the transfer.

3) Any assignment of the transferred claim by the obligor has no effect on the creditor's rights arising from the transfer.

Art. 230

1) If the third-party debtor's obligation to perform is contingent upon the transfer of property to be effected as consideration and such property is in the obligor's possession, the obligor must, upon request by the pursuing creditor to whom the claim has been assigned for collection, surrender it for the purpose of transferring it to the third-party debtor.

2) The enforcing creditor may effect this surrender by way of execution (Art. 251 and 252) if the obligation to provide consideration has been established by a judgment obtained against the third-party debtor or rendered against the obligor, or is evidenced by conclusive documents.

3) The obligor must be heard before a decision is made on the application. Art. 231

1) The enforcing creditor who brings an action for the transferred claim must serve the defendant with notice of the proceedings, provided the defendant's place of residence is known and located within the country.

2) Any creditor for whom the claimed debt has also been attached may join the proceedings as an intervenor at their own expense. The decision rendered in these proceedings regarding the debt asserted in the complaint shall be effective for and against all creditors in whose favor the debt has been attached.

3) Any delay in the enforcement proceedings regarding a claim that has been assigned for collection, as well as any failure to give notice of the dispute, renders the enforcing creditor to whom the claim was assigned liable for all damages thereby caused to the debtor and to the other creditors enforcing the same claim.

4) In the event of a delay in collection, any other creditor enforcing the same claim may also file a motion to revoke the transfer of the claim to the defaulting creditor and to appoint a curator for the purpose of collecting the attached claim. Before a decision is made on such a request, the enforcing creditor to whom the claim was transferred must be heard.

Art. 231a

If enforcement to collect a claim for recurring payments is suspended due to a payment agreement under Art. 27a, enforcement measures already carried out shall be revoked. The priority of the lien shall be maintained.

Art. 232

- 1) Payment by the third-party debtor shall extinguish the claim of the enforcing creditor up to the amount due to him in accordance with his lien.
- 2) The pursuing creditor must either distribute the excess amount directly to the entitled secured creditors in exchange for the return of the security provided by the pursuing creditor, or deposit it with the court, or hand it over to the obligor, provided that the obligor is entitled to a portion of the payment due to partial exemption of the claim from enforcement or that the amount received is not claimed by anyone else.
- 3) The third-party debtor is released from his liability in proportion to the payment he has made to the enforcing creditor.

*Collection by a trustee*

Art. 233

- 1) If the transfer for collection cannot take place because none of the enforcing creditors provides the security required under Art. 225, or if the transfer must be rescinded due to a refusal to provide the security specified in Art. 227, the court shall, upon application, appoint a trustee for the collection of the attached claim.
- 2) A trustee may also be appointed for the collection of the claim if the same claim is transferred to different creditors for collection in partial amounts and they cannot agree on the appointment of a joint representative.

Art. 234

- 1) The curator appointed by the court pursuant to the provisions of this Act (Art. 219, 231, and 233) for the collection of a seized claim shall have all the rights granted by law to the enforcing creditor to whom a claim has been assigned for collection. The court shall supervise the curator's activities and urge the promptest possible execution of the assigned mandate.

2) The amounts paid by the third-party debtor shall be deposited with the court and distributed in accordance with Articles 206 and 207. In doing so, the costs awarded to the curator in the proceedings against the third-party debtor shall be included in the distribution estate, and the costs arising from the appointment and activities of the curator, as well as the costs of the auction proceedings, shall be satisfied before all other claims.

*Enforcement of claims secured by book entries*

Art. 235

1) If enforcement is carried out against claims for which a lien is registered in the land register on a parcel of land or a share of a parcel of land, the registration of the lien in the land register is required for the attachment of such claims. If a lien on the claim secured by registration has been entered in favor of the claim to be enforced on the basis of a prior encumbrance, a registration of the enforceability in the land register is sufficient for attachment.

2) Upon registration of the lien, it must be stated that the lien is authorized by the court for the purpose of enforcing an enforceable monetary claim.

3) At the same time as authorizing the registration of the lien or the annotation of enforceability, the court must issue the prohibitions listed in Art. 217 to the obligor and the third-party debtor.

Art. 236

1) The transfer of a claim secured by a land register entry for collection shall be noted ex officio in the land register.

2) In addition to the rights listed in Art. 228, the enforcing creditor is entitled in this case to obtain the registration of the notice of termination and the mortgage action and to make all declarations on behalf of the obligor that are necessary for the cancellation of the lien registered for the assigned claim. These declarations of cancellation require the approval of the court to be effective.

Division 3

Enforcement of claims for Surrender and  
performance of physical items

*Enforcement of Claims for the Return and Delivery of Tangible Property*

Art. 237

1) The attachment of claims of the obligor that have as their object the surrender or delivery of tangible property shall be carried out in accordance with the provisions of Articles 217 through 220.

2) The provisions of Articles 222 through 234 shall apply *mutatis mutandis* to the subsequent enforcement steps, taking into account the following provisions.

Art. 238

1) If a claim for the surrender or delivery of movable tangible property has been assigned for collection, the third-party debtor must surrender the property to the bailiff upon the claim becoming due.

2) The provisions governing the sale of seized movable property apply to the realization of the property surrendered.

3) The enforceable monetary claim of the pursuing creditor and the monetary claims of the other creditors who have acquired a lien on the same claim shall be satisfied from the proceeds of the sale in accordance with the provisions of Articles 204 through 207.

Art. 239

1) In the event of the assignment of a claim by the obligor that is directed toward the delivery of immovable property, such property must, upon the claim becoming due, be handed over by the third-party debtor to an administrator to be appointed by the court at the request of the enforcing creditor.

2) In order to satisfy his enforceable monetary claim, the creditor initiating enforcement proceedings must enforce the claim against the property handed over to the administrator through compulsory administration or compulsory auction in accordance with the provisions governing the enforcement of claims against immovable property, without the debtor's registration in the land register being required in the case of a compulsory auction; If the enforcing creditor obtains compulsory administration, both he and the administrator may apply for the registration of the obligor's ownership right.

3) If the enforcing creditor fails to file the applications necessary to initiate compulsory administration or a compulsory auction within one month of the transfer of the property to the administrator, the enforcement proceedings shall be discontinued *ex officio*.

Art. 240

The provision of Art. 227 also applies with respect to claims for the surrender and delivery of tangible property. If the property to be delivered is not suitable for judicial

, the third-party debtor must apply to the court for the appointment of a custodian or administrator and surrender the property to the latter.

#### Section 4

Enforcement against other property rights

*Enforcement against other property*

*rights* Art. 241

Claims of the obligor for recurring non-monetary benefits are exempt from attachment to the extent that they are intended to provide the obligor with the necessities of life. Articles 210 through 216 apply mutatis mutandis.

Art. 242

1) For the purpose of enforcing property rights that are not part of the claims, the court shall, upon application by the enforcing creditor, issue an order to the obligor to refrain from any disposition of the right (attachment). If a specific person is obligated to perform under this right, the attachment shall not be deemed effective until the court order prohibiting performance to the obligor has also been served on that third party. To the extent practicable given the nature of the matter, a description of the right subject to enforcement may also be made by way of attachment (Art. 172).

2) The manner in which the right is to be exercised shall be determined by the court, upon application by the enforcing creditor, after hearing the debtor and all creditors in whose favor the attachment was made.

Art. 243

The sale of a right in rem by public auction shall be conducted in accordance with the provisions governing the sale of attached movable property; the distribution of the proceeds shall be carried out by applying the provisions of Articles 204 through 207 mutatis mutandis.

Art. 244

1) If the obligor is entitled, by virtue of the attached right, to claim the delivery of an estate or the partition thereof and the allocation of the share due to him, the court may, upon application, authorize the enforcing creditor to assert this right of the obligor in the obligor's name and, for this purpose, in accordance with the provisions of civil law

to request the division or the initiation of partition proceedings, to give notice of termination, and to make any other declarations necessary for the exercise and realization of the attached right, all of which shall be effective on behalf of the obligor. This authorization also grants the creditor the power to bring an action to enforce the attached right or individual claims arising therefrom (Art. 228).

2) The assets seized in this manner shall be used to satisfy the creditor's claim, in accordance with the nature of their various components, by means of one of the methods of enforcement permitted under this Act.

Art. 245

In the case of rights granting the repeated receipt of fruits or any other use of movable or immovable property that can be realized for the benefit of the enforcing creditor, in the case of business licenses, and in the case of hunting and fishing rights

and the like, the court may, upon application by the enforcing creditor, authorize compulsory administration. The provisions regarding the compulsory administration of real property shall apply *mutatis mutandis*.

Art. 246

1) If this appears more advantageous to avoid significant administrative costs or for other reasons, the court may, upon application, order the realization of the property through leasing instead of compulsory administration.

2) The lease may be awarded to the highest bidder through a public auction. With regard to the auction, the provisions governing the auction of seized movable property shall apply *mutatis mutandis*; the distribution of the lease payments to be paid to the court shall be carried out in accordance with the provisions governing the distribution of surplus revenues arising from receivership.

Art. 247

1) Enforcement against commercial and manufacturing enterprises, trading businesses, and similar economic enterprises may, upon application, be carried out through receivership (Art. 245) or through leasing (Art. 246).

2) If the conduct of the trade or the operation of another enterprise by a representative requires government approval, and if, as a result of the authorization of receivership, management is to pass to the receiver himself, the court's decision appointing the receiver must be submitted to the government for approval before being served on the parties.



3) The same applies to a decision regarding the leasing of a trade, insofar as government approval is required for the leasing.

Art. 248

1) In the case of companies whose names are entered in the commercial register, the order appointing a receiver and the name of the receiver must be noted in the register and made public.

2) The administrator must sign personally in court. Art.

249

By virtue of his appointment, the administrator is authorized to perform all business transactions and legal acts that are customarily associated with the operation of an enterprise of the type to be administered.

Art. 250

1) No appeal may be filed against decisions that

a) prohibit the obligor, following an approved attachment, from disposing of the attached right and the collateral provided for the attached claim (Art. 217 and 242);

b) require the pursuing creditor to provide security pursuant to Art. 225 and 227;

c) appoint a curator for the purpose of recovering a transferred claim pursuant to Art. 219, 230, and 233.

2) With regard to orders directing the safekeeping of property or appointing a custodian, the provisions of Art. 209 apply.

Section 3

### **Enforcement to Compel Acts or Omissions**

*Enforcement to Compel Acts or Omissions*

Art. 251

1) If the obligor is required to surrender specific movable property or movable property of a specific kind and such property is in the obligor's custody, it shall be seized from the obligor by a bailiff acting on the court's order and delivered to the enforcing creditor against a receipt.

2) This provision also applies if the obligor is required to deliver securities or a specific quantity of fungible goods.

Art. 252

1) Enforcement may be carried out in the same manner in favor of a claim for the surrender of movable property if the property to be surrendered is in the custody of a third party who is prepared to deliver it.

2) If the third party refuses to surrender the property, the enforcing creditor may apply to the court to have the obligor's claim against the possessor of the property for its surrender assigned to him. The provisions enacted for the assignment of monetary claims for collection shall apply *mutatis mutandis* to such an assignment.

Art. 253

*Surrender or Eviction of Immovable Property*

1) If a parcel of land or a portion thereof is to be surrendered or vacated, the bailiff shall ensure the necessary removal of persons and movable property and shall place the enforcing creditor in possession of the parcel of land or the portion thereof. If appurtenances are also to be handed over, Art. 251 applies.

2) The movable property to be removed that is not the subject of the execution shall be handed over by the bailiff to the obligor or his authorized representative, or, if this is not possible, shall be stored at the obligor's expense. The persons for whom the property has been seized or who may otherwise assert a claim to it shall be notified thereof. If the obligor fails to pay the storage costs and no one asserts any rights to the property, the property shall be sold at the obligor's expense following a prior warning. The proceeds remaining after the storage and sale costs have been covered shall be deposited in court on behalf of the obligor.

Art. 254

*Granting or Cancellation of Registered Rights*

1) The enforcement of a claim seeking the grant, transfer, restriction, or cancellation of a registered right is effected by the corresponding entry in the land register.

2) The enforcing creditor may, on the basis of the enforcement title, demand registration as the owner of the property or share of property awarded to him or the registration of the transfer of a registered right awarded to him to his name, even if the obligor has not yet been registered as the owner of the property or the registered right. However, this is subject to the condition that the enforcing creditor proves the obligor's extraregister acquisition of the right.

3) If, on the basis of the enforcement order, entries are to be made regarding shares of the obligor's real property for which the obligor is not yet registered as the owner, or if encumbrances are to be imposed on rights of the obligor that are not yet registered in his name, the enforcing creditor may, upon providing proof of the debtor's acquisition of the right, request the registration of ownership or the relevant registered right in favor of the debtor at the same time as the enforcement.

Art. 254a

*Granting or Revocation of Rights to Bearer Shares*

The enforcement of a claim aimed at the grant, transfer, restriction, or revocation of a right in bearer shares is effected by entry in the register pursuant to Art. 326c PGR.

Art. 255

*Termination of co-ownership*

Art. 30 of the Law of Property applies to the termination of co-ownership ordered by an enforceable title.

Art. 255a

*Auction of a Jointly Owned Property*

The provisions governing the compulsory auction of real property shall apply mutatis mutandis to the enforcement of a claim for the judicial auction of jointly owned real property for the purpose of partition, subject to the following exceptions:

- a) The rights granted to and obligations imposed upon the enforcing creditor or the debtor in the proceedings apply to all co-owners.
- b) The writ of execution shall be served on the person with the right of first refusal; that person shall be summoned to the auction.

c) Holders of rights in rem are not parties to the proceedings. They need not be heard, they need not be summoned to hearings; decisions need not be served on them.

d) The discontinuation pursuant to Art. 21(1)(f) also requires the consent of the obligor.

e) Art. 48 shall not apply in partition proceedings. The cash outlays incurred shall be apportioned among the parties in proportion to their co-ownership shares; cash outlays that a party has provisionally contested to a greater extent shall be reimbursed to that party, to the extent they were necessary for the enforcement of rights, upon the party's request.

Art. 255b

*Conditions of Auction*

1) The party seeking enforcement may, in the application for enforcement, propose auction terms that deviate from the statutory provisions governing forced sales, provided that the obligated party is notified of such terms within 14 days of service of the order authorizing enforcement. A hearing must be held on this matter, to which all co-owners must be summoned. The court must approve these auction terms if all other co-owners consent and they do not contain any unlawful or invalid provisions.

2) The rights of holders of rights in rem shall remain unaffected by the auction. These encumbrances must be assumed by the purchaser without being offset against the highest bid, even if they are not covered by the highest bid. A registered right of first refusal shall also remain unaffected. § 1408 ABGB applies. Deviations from this are not permitted.

3) The minimum bid is the appraised value. The auction terms may provide otherwise, but not for less than three-quarters of the appraised value.

4) An appraisal is not required if the co-owners agree on a reserve price prior to the appraisal date. The auction notice must indicate that no appraisal has been conducted. Furthermore, the reserve price shall take the place of the appraised value to the extent that statutory provisions refer to the appraised value. Art. 255c

*Auction*

The following applies to auctions:

a) The time limit set forth in Article 110(2) does not apply.

b) The obligated party is not excluded from bidding.

c) If no bids are submitted at the auction, the court shall set a period of at least four but no more than eight weeks within which written bids must be submitted to the court. This shall be announced in the auction notice and made public. Article 111 shall apply.

d) Written bids may not be less than one-quarter below the appraised value. The written bid must be submitted in a sealed envelope. Its contents shall be excluded from public inspection until opened by the judge. Immediately after the deadline has expired, but under no circumstances before that time, the judge must personally open all received envelopes in a public hearing and request the bidder with the highest bid to pay the deposit within 14 days. If the deposit is paid on time, the contract must be awarded to this bidder by order.

Art. 255d

*Distribution*

The highest bid shall be divided among the parties as agreed. If the parties cannot agree, the court shall decide the matter by judgment following an oral hearing. The provisions governing civil court proceedings shall apply to this proceeding.

*Enforcement of Other Actions*

Art. 256

1) If the obligor is required to perform an act that may be performed by a third party, the creditor initiating the proceedings shall, upon application, be authorized by the court to have the act performed at the obligor's expense.

2) The creditor may simultaneously request that the debtor be ordered to pay in advance the costs that will arise from the performance of the act. The order granting this request is enforceable against the debtor's assets.

Art. 257

1) A claim for an act that cannot be performed by a third party and whose performance depends exclusively on the will of the obligor is enforced by the court, upon application,

by the court, the obligor is compelled to perform the act through fines or imprisonment.

2) Enforcement proceedings shall commence with a warning of the penalty to be imposed in the event of default. Upon the fruitless expiration of the period granted in this order for the performance of the act, the threatened coercive measure shall be enforced at the request of the pursuing creditor, and at the same time, a new period shall be set for the performance of the obligation, accompanied by a threat of an increasingly severe coercive measure. The enforcement of such a measure shall take place only at the request of the pursuing creditor.

Art. 258

*Enforcement of Obligations to Tolerate or Refrain from Acts*

1) Enforcement against a person obligated to refrain from an act or to tolerate the performance of an act shall be effected by the court, upon application, imposing fines or imprisonment for each violation following the authorization of enforcement. In the event of repeated violations, these penalties shall be increased in proportion to the fine or imprisonment initially imposed.

2) At the request of the creditor bringing the action, the court may order the debtor to provide security for damages resulting from any further breach. In doing so, the court shall determine the amount and type of security to be provided, as well as the period for which it is to be valid. Article 256(2) applies to the enforcement of this order.

*Fines and Imprisonment*

Art. 259

1) The fine imposed in a single penalty order may not exceed 1,000 francs, and the total amount of fines imposed on the obligated party may not exceed 10,000 francs.

2) Imprisonment may be imposed in an individual penalty order only for a maximum period of two months and, in total, only for a maximum period of one year.

Art. 260

1) If, in the case of Article 258, the debtor's actions have resulted in a change that conflicts with the rights of the creditor pursuing the claim, the court shall, upon request, authorize the creditor to have the previous state of affairs restored at the debtor's risk and expense.

2) The order determining the costs of such restoration is enforceable against the debtor's assets.

**Art. 261**

If the debtor resists the performance of an act which he is required to tolerate under Art. 260(1), the bailiff shall, upon application by the creditor, ensure that the resistance is removed. If necessary, he may call upon the assistance of law enforcement authorities. Art. 262

Prior to the issuance of the judicial decisions and orders referred to in Articles 256 through 261, the obligor may be heard, provided there is no imminent danger.

**Art. 263**

Fines shall accrue to the municipality in which the obligor is domiciled and shall be allocated by the municipality to any existing poor relief fund. However, if the obligor has no known domicile within the country, the fines shall accrue to the state.

**Art. 264**

The arrest shall be carried out by a law enforcement agency on the basis of an arrest warrant issued by a court, which must specifically state the grounds for the arrest. The arrest warrant must be served on the person subject to arrest at the time of the arrest.

**Art. 265**

Detention shall be served in the district court's prison, separately from pretrial detainees and convicted prisoners. It may not be enforced if doing so would significantly endanger the detainee's health, and must be revoked if such a danger arises.

**Art. 266**

The execution of detention shall not be made contingent upon the payment of an advance on costs.

**Art. 267***Submission of a Declaration of Intent*

1) If the obligor is required to submit a declaration of intent pursuant to the content of the enforcement order, such declaration shall be deemed submitted as soon as the judgment becomes final or another enforcement order of the same content entitles the applicant to a writ of execution.

2) To the extent that the obligation to make a declaration of intent is contingent upon the performance of a consideration, the legal consequence referred to in paragraph 1 takes effect only upon the performance of the consideration by the pursuing creditor.

Art. 268

*Interest*

1) Articles 251 through 269 do not affect the enforcing creditor's claim for interest due to non-performance of the obligation incumbent upon the obligor or for compensation for the resulting damage.

2) These claims may be asserted at any time by means of a lawsuit, either by waiving the continuation of the initiated enforcement proceedings or following the unsuccessful completion thereof.

Art. 269

*Costs of Enforcement*

1) The authorization of enforcement for the purpose of realizing claims for the surrender or transfer of property, for acts, or for omissions includes the authorization of enforcement in favor of the enforcing creditor for the costs incurred through the enforcement proceedings.

2) The pursuing creditor must specify, in the initial application for enforcement, the debtor's assets to be used to cover the costs and the means of enforcement to be applied within the meaning of Art. 33.

**Part 2: Legal**

**Protection Legal**

*Protection Art.*

270

1) Both before the initiation of a legal dispute and during the same, as well as during the enforcement proceedings, provisional measures may be ordered upon application to secure a party's rights.

2) At the request of an administrative authority, provisional measures may also be issued to secure claims under public law.

3) Claims that are to be asserted in non-contentious proceedings may also be secured by an injunction ex officio.

4) The admissibility of preliminary injunctions is not precluded by the fact that the claim of the petitioning party (applicant for relief) is a future or conditional claim, unless the conditional claim lacks the



possibility of the condition being fulfilled.

Art. 271

- 1) As a general rule, the court has jurisdiction over the granting of preliminary injunctions, the orders necessary for their enforcement, and any other motions and proceedings arising from such injunctions.
- 2) The court is also responsible for hearing and deciding all disputes arising in the course of and in connection with security proceedings, provided that such disputes are not to be resolved in administrative proceedings.

Art. 272

- 1) In urgent cases, the creditor may also apply to the mayor of the municipality in which the debtor resides, the municipal councilors, the municipal bailiff, police officers, or the court's bailiff for the provisional ordering of protective measures, such as the seizure of movable property, the collection of money, or the maintenance of a provisional status.
- 2) These officials are obligated to order and carry out the requested protective measures unless the request appears to them to be manifestly inadmissible. They must immediately notify the applicant and the court of the protective measure ordered and carried out; furthermore, they must issue the applicant a confirmation of the ordering and execution of the protective measure.
- 3) The court must review the provisional measures ordered by the officials referred to in paragraph 1 for their legal admissibility and revoke them if they are unlawful.
- 4) The applicant for the protective measure must apply to the court for the issuance of a preliminary injunction within two days of being notified (para. 2); otherwise, the provisional protective measures lose their validity. A decision on this application shall be made in accordance with the following provisions.

Art. 273

To the extent that enforcement is impermissible, the security measure is also impermissible.

*Security Officer*

Art. 274

- 1) Provisional injunctions are not permitted to secure monetary claims if the party can obtain enforcement measures against the debtor's assets for the same purpose.
- 2) Otherwise, preliminary injunctions (security orders) may be issued to secure monetary claims if it is likely that, without such an order, the debtor would, through actions such as damaging, destroying, concealing or removing assets, by selling or otherwise disposing of items of his assets, in particular through agreements made with third parties, or through omissions, could frustrate or impede the collection of the monetary claim (grounds for security).
- 3) A ground for security exists in particular if the debtor
  - a) has no fixed residence;
  - b) makes preparations to flee or flees with the intent to evade fulfillment of his obligation;
  - c) does not reside in Liechtenstein or if the enforcement order would otherwise have to be enforced abroad.
- 4) A security order may not be issued if the applicant is already sufficiently secured by a lien or right of retention, or if, in view of the general financial situation of the debtor residing in the country, the applicant appears to be sufficiently secured in the court's discretion.

Art. 275

- 1) To secure monetary claims, the following may in particular be ordered:
  - a) the seizure, custody, and administration of the debtor's tangible movable property and the judicial deposit of money;
  - b) a court-ordered prohibition on the sale or pledging of tangible movable property, with the effect that any sale or pledging in violation of the prohibition is void, unless the purchaser in good faith is protected under the provisions of property law;
  - c) a court-ordered prohibition against third parties, where the debtor is required to assert a monetary claim or a claim for performance or surrender of other property against a third party, including the security holder themselves.
- 2) The third-party prohibition is enforced by prohibiting the debtor from disposing of the claim—and in particular from collecting it—and by ordering the third party, subject to their own liability, not to pay the amount owed to the security creditor until further court order, and not to deliver the property to be received by the security creditor

, nor to take any other action with respect to them that could frustrate or significantly impede the enforcement of the monetary claim or the collection of the property owed or subject to surrender. Through this prohibition, the security holder acquires a lien on the claims or rights of the debtor that have been pledged as security.

3) In the case of real property and registered rights, a prohibition on sale, encumbrance, or pledging (restriction on disposal) may be issued to secure a monetary claim, or the registration of a lien or the appointment of a receiver may be ordered.

#### *Official Orders*

##### Art. 276

1) To secure other claims, provisional orders (official orders) may be issued:

a) if it is likely that, otherwise, the judicial pursuit or enforcement of the claim would be thwarted or significantly impeded, in particular by a change in the existing situation; such an impediment shall be deemed to exist if the enforcement order would have to be enforced abroad;

b) even if there is no inherent risk of jeopardizing or thwarting legal proceedings, to regulate the parties' relationship to the subject matter of the dispute, namely to determine the state of possession or to maintain any existing factual state of a thing or a legal relationship, if such measures appear necessary, in the court's discretion, to prevent imminent violence, to avert imminent irreparable damage or other significant disadvantage, or for other reasons (provisional regulation of the status quo).

2) In all other respects, the grounds for interim relief set forth in Art. 274, paras. 2 and 3, apply *mutatis mutandis*.

##### Art. 277

1) Measures of preservation that the court may order upon application, depending on the nature of the purpose to be achieved in the particular case, include in particular:

a) the judicial deposit of movable property in the debtor's possession, the surrender or performance of which is the subject of the claim asserted by the applicant for security or already awarded to him, or

if the property is not suitable for judicial disposal, the ordering of custody pursuant to Article 180;

b) the administration of the movable property referred to in subparagraph (a) or of such immovable property or rights to which the claim asserted by the applicant for security or already awarded to him relates;

c) authorization for the applicant for security to retain in his custody the debtor's property to which a claim asserted by him or already awarded to him relates, until a final decision on this claim has been rendered;

d) an order directed at the debtor (secured party) to perform specific acts that appear necessary to preserve the items referred to in subparagraphs (a) and (b) or to maintain the current state of affairs;

e) a prohibition directed at the party against whom security is sought against performing specific detrimental acts or making certain or all alterations to the property described in subparagraphs (a) and (b);

f) a court order prohibiting the sale, encumbrance, or pledging of real property or rights entered in the land register to which the claim asserted by the security seeker or already awarded to him relates (restriction on disposal);

g) a court injunction against third parties, where the party against whom security is sought is required to assert a claim against a third party for performance or surrender of property to which the claim asserted by the applicant for security or already awarded to the applicant relates; claims of the party against whom security is sought against the applicant for security may also be subject to an injunction (secondary injunction);

h) the ordering of precautionary measures in the context of divorce or separation proceedings or proceedings for the judicial dissolution of a registered partnership.

2) The prohibition against third parties under subparagraph g is enforced by prohibiting the party against whom the security is sought from disposing of his claim against the third party and, in particular, from accepting those items while remaining personally liable, and at the same time by ordering the third party, pending further court order, neither to surrender the items due to the party against whom the security is sought nor to take any other action that could frustrate or significantly impede the enforcement proceedings.

***Protection against domestic violence***

## Art. 277a

*General Provisions*

1) The court shall, upon the application of a person or their legal representative, grant a person who, through a physical assault, a threat of such an assault, a violation of sexual self-determination, a threat of such a violation, or other conduct significantly impairing mental health, makes continued cohabitation with a close relative unreasonable,

1. to order the person to leave the residence and its immediate surroundings and/or

2. to prohibit entry into the residence and its immediate surroundings, if the residence serves to satisfy the applicant's housing needs.

2) The court shall, upon the request of a person for whom further cohabitation with a close relative has become unreasonable due to a physical assault, a threat of such an assault, a violation of sexual autonomy, a threat of such a violation, or other conduct that significantly impairs mental health,

1. to prohibit the person from staying in specifically designated locations and/or

2. to order the respondent to avoid contact with and meeting the petitioner, provided that this does not conflict with the respondent's serious interests.

3) Close relatives within the meaning of paragraphs 1 and 2 are:

1.

a) spouses, registered partners, and de facto partners,

b) siblings and lineal relatives, including adopted and foster children as well as adoptive and foster parents,

c) the spouses, registered partners, and de facto partners of the persons referred to in subparagraph (b),

2.

a) Lineal relatives, including adopted and foster children and adoptive and foster parents, the spouse, registered partner, or de facto partner, as well as

b) siblings of the spouse, registered partner, or de facto partner, if they live in the same household as the respondent or have lived there within the last three months prior to the filing of the petition.

4) A temporary injunction under paragraph 1 or 2 may be issued regardless of whether the parties continue to live together and even without any connection to proceedings for separation, divorce, or annulment of marriage, proceedings for dissolution or annulment of a registered partnership, or proceedings to determine the right of use of the residence; provided that, as long as no such proceedings are pending, the period for which such an order is issued may not exceed a total of three months.

Art. 277b

*Proceedings and Order*

1) In particular, the respondent need not be heard prior to the issuance of the interim order under Art. 277a(1) if there is an imminent threat of further danger from the respondent. In this regard, the report of the State Police, which the court must obtain ex officio, shall be taken into account; the State Police is obligated to forward such reports to the Regional Court without delay. However, if the application is filed without undue delay following a prohibition on entry (Art. 24g(8) of the Police Act), it must be served on the respondent without delay.

2) Unless the petitioner requests otherwise, the order to vacate the residence must be served on the respondent by the bailiff at the time of enforcement. The petitioner must be notified of this time.

3) The state police must also be notified

1. the State Police,

2. the Office of Social Services, provided that one of the parties is a minor.

4) If the respondent has notified the State Police of a designated delivery address in connection with an expulsion under Art. 24g(4) of the Police Act, that address shall serve as the designated delivery address for the court proceedings. If the respondent

failed to make such a notification despite being advised of the legal consequences, the provisions governing the service of complaints shall apply.

Art. 277c

*Enforcement*

- 1) Interim injunctions pursuant to Art. 277a(1) shall be enforced immediately ex officio.
- 2) The bailiff shall evict the respondent from the residence, take all keys to the residence and any weapons in the residence from him, and deposit them with the court. The bailiff shall allow the respondent the opportunity to remove his personal valuables and documents, as well as any items intended for his sole personal use or for the practice of his profession.
- 3) If the respondent is not present during the execution, the bailiff must, upon the respondent's request, give him an opportunity within two days to remove his belongings as described in paragraph 2 from the residence. The bailiff must inform the respondent of this right by leaving a note on the residence's door.
- 4) The court may also instruct the state police to enforce a temporary injunction pursuant to Article 277a. In any case, the state police, as the enforcement authority, are obligated, upon request by the applicant, to restore the situation corresponding to a preliminary injunction under Section 277a(1) through the direct exercise of authority and coercive power, and to report thereon to the state court.

***Protection against invasions of privacy***

Art. 277d

- 1) The right to an injunction against invasions of privacy may be secured in particular by the following means:
  1. Prohibition of personal contact and prohibition of stalking the opposing party,
  2. Prohibition on contacting the opposing party by letter, telephone, or other means,
  3. a prohibition on being present at specified locations,
  4. a prohibition on the disclosure and dissemination of personal data and photographs of the opposing party,
  5. A prohibition on ordering goods or services from a third party using the opposing party's personal data,

6. Prohibition on causing a third party to initiate contact with the opposing party.

2) The court may entrust the enforcement of preliminary injunctions under paragraph 1, items 1 and 3, to the state police. Article 277c, paragraph 4, applies *mutatis mutandis*. In all other respects, preliminary injunctions under paragraph 1 shall be enforced in accordance with the provisions of Section Three.

3) Art. 284, paras. 2 and 4, shall not apply to interim orders under para. 1, nos. 1 and 2, and nos. 4 through 6. The period for which such an interim order is issued may not exceed one year.

Art. 278

1) The administration referred to in Art. 275, para. 3, and Art. 277, para. 1, letter b, shall be carried out with respect to real property by applying *mutatis mutandis* the provisions enacted regarding the compulsory administration of real property, but in all other cases in accordance with Art. 245 and 247 through 249 or by applying these provisions *mutatis mutandis*.

2) The movable property to be held in custody or administered shall be seized from the party against whom the security is sought by the bailiff and handed over to the custodian or administrator.

3) Any surplus income remaining after all costs and expenses to be settled from the proceeds have been paid shall be remitted to the party subject to the security measure, provided that no rights of third parties preclude this. If ownership of the property is disputed, the surplus income shall be deposited with the court.

Art. 279

1) If the party subject to the security measure has been ordered to perform or refrain from performing certain acts or making certain changes, the provisions of Articles 256 through 262 shall apply *mutatis mutandis* to the enforcement of these official orders.

2) The prohibition on the sale, encumbrance, or pledging of real property and registered rights shall be noted *ex officio* in the land register (restriction on disposal).

3) Entries made after this annotation has been entered, based on a voluntary disposition by the party against whom the security is sought that contravenes the prohibition, shall confer a right on the party seeking security only if the claim asserted by that party to the real property or registered right is finally dismissed.



## Art. 280

- 1) The prohibition referred to in Art. 277(1)(g) becomes effective against the owner of the property only upon service upon him.
- 2) From that point on, he shall be liable for all damages resulting from failure to comply with the court order; however, he may be released from this liability by having the items subject to the order seized by the court or by handing them over to a custodian or administrator appointed by the court at his request.
- 3) These provisions apply equally to the third-party debtor or the possessor of the property if the court injunction was issued pursuant to Art. 275(1)(c).

## Art. 281

- 1) To secure the person of the party against whom the security is sought, only arrest and detention may be ordered. Arrest may be ordered only if the party against whom the security is sought is a fugitive or suspected of fleeing, and there is a well-founded concern that his or her flight would frustrate the enforcement of the applicant's right; furthermore, the applicant for security must not have sufficient security for his right in any other way. Arrest and detention of the party against whom security is sought may not be ordered to secure monetary claims.
- 2) With regard to the admissibility of detention and the execution of such detention, the provisions of Art. 259(2) and 264 through 266 apply.

## Art. 282

*Application for a preliminary injunction; prima facie evidence*

- 1) An application for the issuance of a protective order or an administrative order may be filed separately or in conjunction with a lawsuit, an application for a payment order, or any other application.
- 2) Upon filing the application, the applicant for the protective order must
  - a) the disposition he seeks and the assets to which it is to apply;
  - b) the period for which the disposition is to apply, as well as
  - c) specify in detail the claim he asserts or has already been awarded, and

d) to state in detail and truthfully the facts justifying the application.

3) If the application is not accompanied by the necessary certifications in documentary form, the facts justifying the application and, unless a decision granting the claim already exists, also the claim asserted by the applicant for security and the grounds for security must be substantiated upon the court's request.

4) In the case of claims, the applicant must specify, in particular, the amount of money owed or the monetary value of the item otherwise to be delivered and, if the applicant declares that he will be satisfied with security in the form of a judicial deposit of a specific sum of money or with another form of security instead of the requested preliminary injunction, such security must be specified.

#### Art. 283

##### *Security*

1) If the claim asserted by the applicant for security is not sufficiently substantiated, the court may issue a preliminary injunction if the disadvantages threatening the respondent as a result can be compensated by monetary compensation and the applicant for security provides security for this purpose, the amount of which shall be determined by the court at its discretion.

2) The court may, depending on the circumstances, make the granting of a preliminary injunction contingent upon the provision of such security, even if the applicant has sufficiently substantiated the claims incumbent upon him.

3) The granting or continuation of a preliminary injunction may be made contingent upon the posting of security if the applicant is a party required to provide security for litigation costs under the Code of Civil Procedure.

4) In such cases, enforcement of the injunction may not commence until proof of the provision of security has been provided.

5) The opposing party acquires a lien on the security provided.

6) The granting of a preliminary injunction pursuant to Art. 277a or 277d may not be made contingent upon the provision of security.

#### Art. 284

##### *Contents of the Security Order or Official Order*

- 1) The order granting the provisional injunction must, in particular, contain:
  - a) the heading "security order" or "official order";
  - b) the names, occupations, and places of residence of the applicant and the respondent and their representatives;
  - c) the claim for which the preliminary injunction is issued;
  - d) the grounds for the security measure (Art. 274 and 276);
  - e) the protective measures (Art. 275 and 277);
  - f) in the event of an order for the judicial deposit of property or the performance of acts, the time limit within which the party against whom the protective measure is directed must comply with this order;
  - g) provided that this is sufficient to secure the applicant's interests given the nature of the case, a sum of money or other security, the judicial deposit of which suspends the enforcement of the approved order and entitles the party against whom the order is directed to apply for the revocation of the order already enforced;
  - h) where applicable, the security to be provided by the applicant for the injunction (Art. 283);
  - i) the period for which the preliminary injunction is issued;
  - j) a reference to any liability for damages on the part of the applicant for the injunction;
  - k) the grounds;
  - l) information on available remedies.
- 2) If a preliminary injunction is granted before the right asserted by the applicant for relief becomes due or before civil, non-contentious, administrative, or enforcement proceedings are initiated, the order shall specify a deadline—generally 14 days—for initiating the proceedings to establish the right.
- 3) If an objection is raised in debt collection proceedings, the applicant for security must file the action or request the lifting of the stay of enforcement within 14 days of being notified of the objection; if the request for the lifting of the stay of enforcement is denied, the action must be filed within 14 days of this order becoming final.
- 4) Upon the fruitless expiration of the deadline, the order issued shall be revoked upon application or ex officio.

5) The period for which the provisional order was granted may be extended upon application.

Art. 285

*Multiple Orders*

1) Upon application, multiple orders may be issued simultaneously in a protective order or court order for the same claim if, in the court's view, this appears necessary in light of the circumstances of the case to fully achieve the purpose of the protective measure.

2) Among several orders that are equally applicable in a particular case, the one that is most suitable for preventing the danger to be averted under the specific circumstances and least burdensome for the party against whom the order is sought shall be granted.

Art. 286

*Costs*

1) Interim injunctions shall always be issued and enforced at the expense of the applicant for the protective measure, without prejudice to the applicant's right to reimbursement of these costs.

2) This applies in particular to the costs of urgent measures taken by municipal heads and other public authorities (Art. 272) as well as to the costs of depositing, safeguarding, or administering property subject to a prohibition (Art. 280).

3) When a protective order or official order is issued, the applicant may be required to deposit with the court in advance the sum of money necessary for the enforcement of the issued orders. Enforcement of the order may not commence until this sum has been deposited.

4) In proceedings for preliminary injunctions under Art. 277a and 277d(1)(1) and (2), as well as (4) through (6), liability for costs is governed by the provisions of the Code of Civil Procedure.

Art. 287

*Claim for Damages*

1) If the applicant's alleged claim, for which a security order or an official order has been issued, is definitively dismissed, if the applicant's claim otherwise proves to be unjustified, or if the applicant fails to meet the deadline set for justifying the claim (Art. 284), the applicant shall compensate the respondent for all financial losses incurred as a result of the preliminary injunction.. The amount of compensation shall be determined by the court upon application

according to its free conviction (§ 273 ZPO). This order is enforceable against the applicant's estate once it becomes final.

2) If the preliminary injunction was manifestly obtained in bad faith, the applicant shall, upon the respondent's motion, be ordered to pay a penalty for bad faith of up to 1,000 francs, to be assessed by the court with due regard to the particular circumstances of the individual case.

Art. 288

#### *Service*

1) The provisions governing the service of complaints shall apply to the service of injunctions and official orders on the respondent, the third-party debtor, and the possessor of the property subject to the prohibition.

2) In the event of an arrest warrant, service of the preliminary injunction on the person to be detained shall take place upon their arrest.

3) In urgent cases, prior to service, the court may issue a telephone or telegraphic order to the officials specified in Article 272 to implement the protective measures.

Art. 289

#### *Prohibition on Enforcement*

The enforcement of an approved order is impermissible, unless it has been suspended due to a filed appeal, if more than one month has elapsed since the date on which the approval was announced or notified to the applicant for protective measures by service of the decision.

Art. 290

#### *Objection proceedings*

1) The party against whom the provisional order is directed may file an appeal against the approval of the provisional order and, if they were not heard prior to the decision, may also file an objection.

2) The filing of an objection does not suspend the enforcement of the orders issued.

3) The following provisions apply to the objection proceedings:

a) The objection must be filed in writing or orally with the court within 14 days of service of the preliminary injunction;

b) the objection must set forth the facts justifying the inadmissibility or inappropriateness of the preliminary injunction, the motions based thereon, and the evidence;

c) an oral hearing must be scheduled regarding the objection, at which the parties must substantiate the circumstances they have presented (Art. 273 ZPO), and the court must decide by order on the admissibility and appropriateness of the preliminary injunction;

d) the court may make the confirmation, modification, or revocation of the preliminary injunction contingent upon the provision of security, the amount of which it shall determine at its discretion;

e) If the objection is upheld, the applicant for the provisional remedy shall be ordered to reimburse the respondent for the costs of the objection proceedings; if, however, the objection is dismissed, the applicant for the provisional remedy shall not be provisionally awarded costs (Art. 286), but a decision on these costs shall be made after the conclusion of the proceedings on the merits.

*Revocation or Restriction of a Preliminary Injunction*

Art. 291

1) Apart from the case of revocation of an order issued as set forth in Art. 284(4), a motion for revocation or restriction may be filed, even after the dismissal of an objection raised under Art. 290:

a) if the injunction ordered has been enforced to a greater extent than is necessary to secure the applicant's interests;

b) if, in the meantime, the circumstances on the basis of which the preliminary injunction was granted have changed to such an extent that the continuation of this injunction is no longer necessary to protect the applicant;

c) if the party against whom the security was sought has provided the security reserved for him (Art. 284(1)(g)) or another security deemed sufficient by the court and provides proof thereof;

d) if the claimant's claim has been corrected, finally dismissed, or its extinction has been finally established;

e) if the period for which the provisional order was granted has expired.

2) The court shall decide on such motions by order, if necessary following an oral hearing.

Art. 292

Security provided by the applicant to cover costs or claims for damages (Art. 283 and 290) may not be released to the applicant until 14 days have elapsed since the decision revoking the preliminary injunction became final.

Art. 293

*Order Regarding Seized Property*

- 1) If any orders are necessary or useful to prevent a significant reduction in value, disproportionate costs, or other disadvantages, or to secure an advantage with respect to property taken into custody, the court may grant such orders upon application.
- 2) If the parties do not agree on the order to be issued, the court shall, taking into account the rights of the owner, order what is necessary in light of the circumstances of the case.
- 3) In particularly urgent cases, such an order may be issued without hearing the opposing party. This applies in particular to actions necessary for the preservation or exercise of rights arising from the documents referred to in Art. 218.

*Special Security Measures for Contracts of Sale*

Art. 294

- 1) To secure the lessor's statutory right of retention under § 1090 and Articles 53 and 54 of the Austrian Civil Code (ABGB), the lessor may demand that a description of the items brought in by the lessee be included.
- 2) The request may be made upon filing the complaint or the application for a payment order, or later by means of a separate pleading.
- 3) The court shall order the inventory of retained items by decree without hearing the lessee and shall arrange for its enforcement by the bailiff. The decree shall be served on the lessee upon enforcement.

Art. 295

- 1) The statutory right of retention expires if the items are removed before the inventory of retention is drawn up, unless this occurs as a result of a court order and the landlord asserts his right in court within three days of enforcement.
- 2) If the tenant intends to move out or remove items without the rent having been paid or secured, the landlord may retain the items at his own

risk and, for this purpose, seek the assistance of the mayor, a municipal council member, a municipal bailiff, or a police officer; however, he must apply for a description of the items as collateral within three days or surrender the items.

3) If a third party asserts a right to any of the described items, Art. 20 shall apply.

Art. 296

In all other respects, the provisions on legal security (Art. 270–293) apply to the securing of rent and leasehold claims and the securing of the lessor’s statutory right of retention.

Art. 297

In enforcement proceedings, unless otherwise provided in Articles 270 through 296, the provisions governing enforcement proceedings (Articles 1 through 269) apply *mutatis mutandis*.

Art. 298

The special security measures in land registry proceedings and probate proceedings remain reserved.



## IX. Ordinance (FpfBV)

of July 1, 2008

on the determination of exempt amounts in enforcement proceedings  
against wages and service income  
Pursuant to Art. 211(1) of the Act of November 24, 1971, on Enforcement and  
Legal Security Proceedings (Enforcement Code), LGBL 1972 No. 321, the  
Government hereby decrees:

FpfBV

### Art. 1

#### *Minimum amounts exempt from attachment*

In the case of garnishments of income within the meaning of Art. 211(1) of the  
Enforcement Ordinance, the following minimum amounts are exempt from  
garnishment:

- a) for monthly payments: 1,980 francs per month;
- b) for weekly payments: 495 francs per week;
- c) for daily payments: 70 francs per day. Art. 2

#### *Increase in the case of maintenance*

1) If the obligor provides maintenance to their spouse, a former spouse, their  
registered partner, a former registered partner, or a child born in or out of wedlock,  
the exempt amount is increased:

- a) for maintenance payments to a spouse or registered partner, by 803 francs per  
month, 202 francs per week, and 26 francs per day;
- b) for maintenance payments to children, by 542 francs per month, 149 francs per  
week, and 20 francs per day per child.

2) The exempt amount may not exceed the actual maintenance paid.

### Art. 3

#### *Deductions*

The following amounts shall be deducted when calculating the attachable income:

- a) payments exempt from garnishment under Article 210 of the Enforcement Code;
- b) contributions that must be deducted directly from the obligor's income pursuant  
to social security and tax laws;
- c) contributions that the obligor pays to health insurance funds for himself or his  
family members within the scope of statutory minimum benefits;

## Regulation (FpfBV)

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d) contributions that the obligor pays to his employer's employee welfare funds.

Art. 4

### *Benefits in Kind*

The value of benefits in kind pursuant to Art. 211(1) of the Enforcement Ordinance amounts to per day:

- a) for free lodging and full board: 28 francs;
- b) for free lodging: 10 francs;
- c) for breakfast: 4 francs;
- d) for lunch: 8 francs;
- e) for dinner: 8 francs. Art. 5

### *Repeal of previous legislation*

The Regulation of December 10, 1996, on the Determination of Exempt Amounts in Enforcement Proceedings Against Earnings from Employment and Services, LGBI. 1997 No. 6, is hereby repealed.

Art. 6

### *Entry into Force*

This Regulation shall enter into force on August 1, 2008.

## **X. Regulation (GFerV)**

of October 13, 1987,

on Court Recesses

Pursuant to § 222 of the Act of December 10, 1912, on Judicial Proceedings in Civil Disputes (Code of Civil Procedure), LGBI. 1912 No. 9/11, as amended by the Act of May 20, 1987, LGBI. 1987 No. 27, the Government hereby decrees:

Art. 1

The court recess begins each summer on July 15 and lasts through August 25 of each year. During the Christmas and New Year's holidays, it begins on December 24 of each year and lasts through January 6 of the following year.

Art. 2

The Ordinance of July 2, 1943, LGBI. 1943 No. 15, is hereby repealed.

Art. 3

This Ordinance shall enter into force on the date of its promulgation.

GFerV

## **XI. Rules of Procedure for the Princely District Court in Vaduz**

of December 31, 1969

Pursuant to § 27 of the Court Organization Act of April 7, 1922, LGBl. 1922 No. 161, the Government decrees:

### **I. Allocation of Cases at the Regional Court**

#### **Art. 1**

1) The district judges appointed to the District Court must allocate judicial duties annually by December 15 at the latest for the coming calendar year. In doing so, care must be taken to ensure that the workload is distributed as evenly as possible and that each district judge is assigned to all branches of the administration of justice.

2) In the allocation of duties, the substitution of any individual regional judge during vacation or in the event of short-term absence shall be arranged only with respect to those matters that cannot be postponed.

3) In the event of a district judge's prolonged absence from duty, the allocation of duties must be amended even during the course of the year.

4) If a resolution on the distribution of duties is not adopted in a timely manner, the old distribution of duties shall remain in effect until the new one takes effect.

#### **Art. 2**

1) The annual allocation of duties shall be decided by the district judges by a simple majority vote. In the event of a tie, the vote of the District Court Presidium shall be decisive.

2) If the allocation of duties was decided by a majority vote, the district judges who were outvoted have the right to challenge the resolution on the allocation of duties within fourteen days of its adoption by filing a written appeal with the President of the High Court. The President of the High Court shall make a final decision on the appeal after hearing all district judges.

#### **Art. 3**

1) The current division of duties must be summarized in a table. The overview must clearly indicate, in a simple and clear manner, the individual divisions, the numbers of the departments, the names of the presiding judge of the regional court, the regional judges, and the court clerks, the designations of the offices assigned to these individuals and the individual departments, the office to which the parties must turn for oral submissions, as well as the hours and days designated for such submissions (Art. 10, para. 1) must be clearly and simply indicated.

2) The overview shall be posted on the court notice board and kept up to date by recording all changes.

## II. Structure and Principles of the Judicial Service The Regional Court Board

### Art. 4

1) A regional court judge shall be appointed to the Presidium of the Regional Court. The procedure shall be governed by the law on the appointment of judges.

2) In the event that the President of the Regional Court is unable to perform his or her duties, the most senior regional judge shall be appointed as his or her representative.

### Art. 5

1) The Presiding Judge of the Regional Court is responsible for the administration of justice, represents the Regional Court externally, and performs the duties assigned to him by law and this regulation.

2) The Regional Court Executive Board exercises general supervision over the Regional Court Registry and exercises disciplinary authority in the first instance over all non-judicial staff.

### Art. 6

The Regional Court Board shall hold joint meetings with the other regional court judges to promote uniform jurisprudence and to ensure consistent application of the rules of procedure.

### Court Library Art. 7

1) A court library shall be established at the Regional Court. The Regional Court Board shall supervise the court library; it may delegate this supervision to a regional court judge.

2) The Regional Court Executive Board or the regional judge designated by it shall issue rules of use for the official library. These rules shall be posted for public notice.

### Vacation Schedules Art. 8

1) The Regional Court Board or a regional judge designated by it shall draw up a list for the annual vacations of the judicial and non-judicial staff of the Regional Court and the offices incorporated therein, in which the individual vacation requests are to be noted.

2) The District Court Board shall then draw up vacation schedules and include in them

to assign a specific period of leave to each individual. In doing so, the employer must observe the extent of statutory leave entitlements and take into account the wishes, duties, and length of service of each individual.

3) The approval of a vacation does not preclude a subsequent modification of the decision if required for special operational reasons. However, the start and continuation of the vacation must be made possible as soon as operational circumstances permit. Leave of Absence

Art. 9

- 1) The Presiding Judge of the Regional Court is authorized to grant leave of absence for up to five working days per calendar year for valid reasons.
- 2) Leave of absence exceeding the limit specified in the first paragraph requires the approval of the government.
- 3) Leave of absence shall not be counted toward statutory vacation time.
- 4) A record shall be kept of such leave of absence. Public Access, Court Days, Official Attire

Art. 10

- 1) The District Court Board shall determine, in consultation with the government and the other district judges, the time and scope of public access.
- 2) The District Court Board shall determine the court session dates in consultation with the other district judges.
- 3) During all proceedings before the trial court, the district judges and the public prosecutor must wear their judicial robes. When the judgment is pronounced and the oath is administered, the judges and all persons present must stand, and those wearing judicial robes must cover their heads.

The Regional Court Registry, Art. 11

- 1) The court registry of the District Court (§ 9 Court Organization Act) is administered under the supervision of a registry director and is divided into three departments.
- 2) The first division (Civil Division) is responsible for all matters assigned to it by law or by order of the competent district judge in the areas of contentious and non-contentious jurisdiction, including legal assistance in civil matters.
- 3) The second division (Criminal Division) is responsible for the same matters in the area of criminal jurisdiction, including mutual legal assistance in criminal matters.
- 4) The third division (Enforcement Division) is responsible for matters arising from

debt collection, terminations, enforcement, bankruptcy, and estate (composition) proceedings.

5) Accounting, the registry, and the court archives are managed jointly for the entire District Court.

Art. 12

1) Each division of the court registry is headed by a court clerk serving as division head, under the supervision of the registry director. The registry director may also serve as the head of a division.

2) In cases of doubt, the Regional Court Board decides which of the three divisions a case belongs to (Art. 11) after consulting with the other regional judges.

Art. 13

1) The head of the court registry (registry director) is appointed by the government upon the recommendation of the Regional Court Board.

2) The Registrar is subject to the administrative supervision and disciplinary authority of the Regional Court Board. He must follow the instructions issued by the regional judges within their respective jurisdictions in individual cases.

3) The Regional Court Board shall make the final decision on objections to general instructions or to such instructions from regional judges that contradict instructions issued earlier or by other parties, after hearing the regional judges involved. In matters of fundamental importance, all regional judges must be heard.

Art. 14

1) The Chief Clerk shall ensure the orderly, efficient, and prompt conduct of business in the individual divisions. In consultation with the district judges, he is responsible for the allocation of work and the supervision of all court staff. The Regional Court Board shall make the final decision on objections to an instruction or order of the Chief Clerk after hearing the Chief Clerk.

2) The Chief Clerk is responsible for the ongoing management of the clerical services of the Regional Court, the Higher Regional Court, and the Supreme Court. He must ensure that the clerks are adequately trained to independently draft the minutes of hearings and deliberations.

Art. 15

1) A single accounting system shall be established for the Regional Court, and the

Regional Court Board must appoint an accountant.

2) A separate account sheet, designated by the case number, must be opened for each pending case. The account balance must be evident from this at all times. In addition, a general ledger must be maintained in accordance with commercial principles.

3) Any funds or security deposits of any kind deposited with the court registry, if they exceed the amount of 500 francs, must be transferred to a separate deposit account at the Liechtensteinische Landesbank within five days of deposit and recorded in the account sheet.

4) Securities and valuables must be placed in secure custody without delay.

5) The accountant must issue a deposit receipt using a carbon copy form for advance payments of costs and other monetary amounts; in the case of cash deposits, the depositor must have the receipt prepared using a carbon copy form, and a copy must be submitted to the relevant department of the court registry for inclusion in the file.

6) The parties are to be encouraged to conduct financial transactions on a cashless basis whenever possible. For this purpose, a separate postal checking account and a checking account are to be opened for the Court Registry at the Liechtensteinische Landesbank. The Court Registry Board shall, after consultation with the Government, determine the signing authority for all accounts maintained by the Court Registry.

#### Art. 16

1) The payment of court costs and fees shall be verified by the accounting officer upon the conclusion of each case based on the account statement contained in the file.

2) Outstanding amounts shall be collected ex officio from the parties liable for payment in accordance with the statutory provisions.

3) Any surplus amounts shall be paid without delay to the parties in whose favor a balance remains after settlement.

#### Art. 17

1) To receive the documents arriving at the Regional Court, the Regional Court Presidium shall designate a member of the court staff who shall be solely responsible for the reception desk for the entire Regional Court.

2) At the receiving office, all documents and all copies and partial copies shall be stamped with the receipt stamp immediately upon receipt.



The absence of any copies, half-copies, or attachments listed in the submission, as well as the fact that the submission arrived opened or damaged, must be noted on the document retained by the Regional Court (court record) next to the receipt stamp.

3) On documents sent by mail, a note regarding the postmark must be affixed in addition to the receipt stamp. If the postmark is illegible, this must be noted on the court document, and the envelope must be added to the file.

4) Documents addressed personally to a judge shall be stamped only with the receipt stamp by the clerk at the receiving office and handed over to the judge unopened. All other documents and files shall be forwarded without delay to the competent department of the court registry.

FLG

Art. 18

1) The court registry shall maintain inventories of all files received by it.

2) The Civil Division shall maintain a separate incoming register for

a) civil disputes (lawsuits, cases involving the lifting of a stay of execution, cases involving the preservation of rights, contested judicial notices),

b) probate matters,

c) Guardianship matters, incapacitation proceedings, and curatorship matters,

d) Wills drawn up or filed with the court,

e) Certifications,

f) Legal assistance in civil matters,

g) appeals in land registry matters,

h) other legal matters assigned to the department (Nz Register) and

i) Dispatches of the department's own civil files (outgoing register).

3) An alphabetical register of names must also be maintained for the cases referred to in paragraph 2, letters a through d.

4) The Criminal Division maintains a separate register for

a) crimes and misdemeanors based on the occurrence of the case,

b) misdemeanors by case,

c) criminal cases of all kinds by the name of the accused,

d) Mutual legal assistance in criminal matters based on the nature of the case and

e) Dispatch of the Office's own criminal case files (outgoing register).

- 5) The Enforcement Division maintains a separate incoming register for
    - a) payment orders (debt collection proceedings) and enforcement proceedings of all kinds,
    - b) bankruptcies,
    - c) estates (settlements),
    - d) descriptions of retention,
    - e) judicial terminations, and
    - f) Dispatches of the Enforcement Division's own files (outgoing register).
  - 6) The Enforcement Division must also maintain an alphabetical register of names for each of the legal matters specified in paragraph 5(a) through (e), as well as for the affidavits of insolvency filed in the course of enforcement proceedings.
  - 7) All incoming registers shall contain a sequential number starting at one each year, the date the case was filed, the names of the parties, the type of case, the date and manner of resolution, and, if applicable, the transfer of the file to another register or department.
  - 8) Entries in the registers must be made regularly and without delay. Art. 19
    - 1) The Criminal Division is responsible for maintaining the criminal record (Art. 11, para. 3).
    - 2) The criminal record shall be maintained in card form. Art. 20
      - 1) The file number and the case designation must be clearly visible on the outside of the file covers or envelopes.
      - 2) The attachments shall be collected in a document folder, which shall be attached to the file.
- Art. 21
- 1) Individual documents shall be filed in the case file in the order in which they were received and shall be assigned consecutive serial numbers and page numbers.
  - 2) In civil and enforcement matters, exhibits submitted by the plaintiff or petitioner shall be marked with capital letters, those submitted by the defendant or respondent with consecutive Arabic numerals, and those submitted by third parties with Roman numerals.
  - 3) In criminal matters, attachments filed in the case file shall be designated with consecutive Arabic numerals.

Art. 22

1) Files received by the court clerk's office shall be assigned a file number consisting of an abbreviated case designation, a sequential number, and a brief indication of the year of receipt.

2) The following letters are to be used as abbreviated case designations:

1) In civil matters

C for lawsuits, resumption of enforcement proceedings, proceedings to secure legal rights, and contested judicial terminations,

A for probate matters,

P for guardianship matters, incapacitation, and curatorship, T for wills drawn up and deposited by a court,

Gb for appeals in land registry matters, Rz for legal assistance in civil matters, and Nz for civil law documents that cannot be classified under any of the above abbreviated subject headings and are also not to be included in the file of a pending civil case.

2) In criminal matters

U for misdemeanor cases,

Vr for felony and misdemeanor cases, Rs for legal assistance in criminal matters, and Ns for criminal documents that do not fall under any of the above abbreviated subject headings and are also not to be included in the file of a pending criminal case.

3) In enforcement matters

E for payment orders and enforcement proceedings of all kinds,

S for bankruptcies, Sa for estates (settlements),

R for notices of retention,

K for judicial terminations, provided they are not disputed, and

Ne for enforcement-related documents that do not fall under any of the above abbreviated subject headings and are also not to be included in the file of a pending enforcement case.

3) If a file already designated in accordance with the preceding paragraphs is transferred or assigned to another division of the court registry, the file number on the file cover or envelope shall be struck through, and the file shall be continued under the new file number. The new file number shall be entered in the first register.

Art. 23

- 1) Court-ordered summonses and service of process shall be carried out by the head of the department or by a court clerk designated by him using the forms provided.
- 2) The proofs of service shall be filed with the original document upon completion or kept together in an envelope at the end of the file.
- 3) Notices of service that are irrelevant to further proceedings and unnecessarily burden the file, such as those for summonses that have been complied with, shall be destroyed.

Art. 24

- 1) All files generated in the court registry shall be stored in the joint court archive, organized by year and in ascending order of file number, after the final resolution of the case. The files may be destroyed no earlier than 35 years after the final decision in the case becomes legally binding.
- 2) Documents submitted by the parties or by third parties shall be returned to the submitter upon request, against a receipt, after the final resolution of the case or in the event of a stay or interruption of proceedings. The receipt shall be kept in the file in place of the document that was returned.

Art. 25

- 1) The entire court registry shall be inspected by the Presiding Judge of the District Court at least once a year.
- 2) The Regional Court Board shall take any urgent measures required based on the results of the inspection without delay. To the extent that the measures do not fall within the Regional Court Board's sphere of authority, it shall initiate them by submitting appropriate motions.
- 3) The Regional Court Board must notify the President of the Higher Regional Court of the results of the inspection in writing within one month.

Art. 26

The case files in matters where an appeal has been filed shall, unless the appeal is already dismissed by the district judge, be submitted to the president of the appellate court designated to hear the case, together with a referral report, without delay after all appeal briefs and counter-arguments have been filed; otherwise, they shall be submitted after the expiration of the time limits available to all parties for filing or submitting appeals or counter-arguments.

Art. 27

1) The referral report of the Regional Court shall contain the case, the contested decision, its serial number, the designation of the appeal, and the party acting as appellant.

2) Any prior case files attached to the record shall be listed in the referral report. Art. 28

1) Service of process and summonses ordered by the presiding judge of the appellate court shall be carried out without delay by the head of the division or by a court clerk designated for that purpose.

2) The members of the collegiate courts shall be summoned to the sessions and hearings, with the agenda provided, in sufficient time so that they are generally in possession of the summons at least ten days prior to the date of the session.

FLG

Art. 29

1) The appellate courts shall enclose with their decisions, in addition to the copies intended for the parties and for the case file, an additional copy of the decision, which shall be retained by the court registry for the collection of decisions.

2) The Executive Board of the Regional Court shall decide on the nature and scope of the publication of appellate decisions after consulting with the President of the Supreme Court or the High Court.

Art. 30

Unless otherwise ordered, the tasks assigned to the divisions of the court registry regarding the conduct of the Regional Court's business shall also be performed by them, *mutatis mutandis*, when they act on behalf of the collegiate courts or appellate courts.

III. Final Provisions Art.

31

1) This ordinance shall enter into force on January 1, 1970, with the exception of Articles 11, 12, and 15(1) and (2).

Articles 11, 12, and 15(1) and (2) shall be brought into force by the Government through publication in the State Law Gazette as soon as the spatial and personnel requirements for their implementation are met.

2) Until the articles referred to in paragraph 1 enter into force, the provisions of Art. 3, para. 1; Art. 14, para. 1; Art. 15, para. 5; Art. 16, para. 1; Art. 18, paras. 1–6; Art. 19, para. 1; Art. 22, para. 3;

23(1), 28(1), and Article 30 shall apply *mutatis mutandis* to the clerks of the undivided court registry assigned to the relevant division.

3) Cases pending at the time this ordinance takes effect shall be continued and concluded by the district judges who previously handled them. This is subject to any agreements to the contrary among the district judges.

4) Files and registers relating to pending cases may continue to be processed as before even after the entry into force of this Ordinance.

## **XII. Court Fees Act (GGG)**

of May 4, 2017

on the Fees of the Courts and Appeals Commissions

### **I. General Provisions**

#### **Art. 1**

##### *Subject Matter and Scope*

1) This Act regulates the fees for the services of the following courts and commissions, including submissions made to them:

- a) the ordinary courts;
- b) the State Court;
- c) the Supreme Court acting as an administrative court;
- d) the appeals commissions within the meaning of Article 78(3) of the Constitution (hereinafter “appeals commissions”).

2) Unless expressly provided otherwise, the Appeals Commissions shall also be deemed courts within the meaning of this Act.

#### **Art. 2**

##### *Terminology*

The designations of persons, professions, and functions used in this Act apply to persons of both male and female gender.

#### **Art. 3**

##### *Arising of the Right to Fees*

Unless otherwise provided below, the State’s entitlement to the fee arises:

a) upon the submission or receipt of the following documents by the court:

1. claims or counterclaims in civil proceedings at the court of first instance;
2. Actions to set aside an arbitral award and actions to determine the existence or non-existence of an arbitral award;
3. Appeal briefs and appeals in civil and criminal proceedings at the second and third instances, as well as in proceedings before the State Court, the Supreme Court acting as an administrative court, or the appeals commissions;

4. Pleadings in civil proceedings where the claim is amended; if the claim is amended without the amendment having been previously notified to the court in a pleading, any additional fee shall become due upon the commencement of the recording of the proceedings;

5. Motions to summon the opposing party pursuant to § 227(1) ZPO, written requests for the issuance of a conditional payment order (§§ 577 et seq. ZPO) or a writ of execution (§ 593 ZPO), Motions pursuant to § 567 ZPO, applications for judicial termination (§§ 560 et seq. ZPO), motions for the issuance of a bill of exchange or check order or a payment order pursuant to § 548 ZPO;

6. Applications in proceedings for the issuance of preliminary injunctions (Art. 270 et seq. EO) or enforcement applications, applications for a description of attached property (Art. 294(2) EO), or actions for opposition, impugnation, and exclusion (Art. 18–20 EO);

7. motions to initiate non-contentious proceedings (Art. 20(1) of the Non-Contentious Proceedings Act) as well as probate proceedings initiated upon application (Art. 143(2) of the Non-Contentious Proceedings Act) and non-contentious proceedings under the law of persons and companies initiated upon application;

8. written private indictments and subsidiary indictments;

b) upon certification by the court of settlements reached prior to the initiation of proceedings;

c) upon service of the decision in non-contentious proceedings, in bankruptcy proceedings—provided that the petition to open bankruptcy proceedings is filed by a creditor of the debtor—and in reorganization proceedings;

d) upon the decision determining liability for costs in official criminal proceedings of the first instance becoming final;

e) upon the commencement of the recording of minutes in cases involving motions for the recording of minutes;

f) upon the party's request or preparation of copies (copies, photocopies, printouts);

g) upon the commencement of all other official acts and proceedings.

Art. 4

#### *Determination of Fees*

1) The amount to be used as the basis for fee calculation (assessment basis) is determined by the specific provisions of this Act.

2) The calculated assessment basis and fee shall be rounded up to the next higher Swiss franc amount.



3) If an amount in foreign currency forms the assessment basis, the corresponding amount in Swiss francs shall be determined at the current daily exchange rate published by SIX AG on the date the fee claim arises.

Art. 5

*Decision on Fees*

1) Under this Act, the following decisions must be made:

- a) Determination of whether a claimed fee exemption exists or does not exist;
- b) Determination and assessment of the fee to be paid;
- c) Determination of an advance payment to be made toward the fee;
- d) Determination that a submission is deemed withdrawn.

2) Decisions under paragraph 1(a) through (c) are the responsibility of:

- a) in the case of fees for proceedings before the ordinary courts and the Supreme Court acting as an administrative court, to the Central Services Division established at the Regional Court;
- b) in the case of fees for proceedings before the Constitutional Court or the Appeals Commissions, to the single judge or single member designated by them as competent for this purpose.

3) Decisions under paragraph 1(d) shall be made by:

- a) in proceedings before the Regional Court, to the judicial officer or single judge competent to hear the case;
- b) for proceedings before the State Court, the Administrative Court, the Supreme Court, the High Court, or the Appeals Commissions, to the single judge or single member designated by them as competent for this purpose.

4) If, in the course of the proceedings, it is determined that the fee or an advance payment to be made for the fee has been incorrectly set or must otherwise be adjusted, the court may correct the determination ex officio or upon application by the person liable for the fee or their opponent.

5) A final decision on fees constitutes an enforcement order within the meaning of the Enforcement Code.

*Payment of Fees*

Art. 6

*a) Method of Payment*

- 1) Unless otherwise specified, the fee is payable only once, regardless of whether the submission contains multiple requests or relates to multiple persons.
- 2) If a submission subject to a fee is returned to the party for correction and resubmitted, no further fee is payable.
- 3) Fees may be paid in cash, by bank transfer, or, subject to technical feasibility, by using debit cards with ATM functionality or credit cards, by direct debit, or by collection.
- 4) The deduction under paragraph 3 shall be made from the escrow account maintained by the court. Fees debited that are not owed or are not owed in the amount debited shall be refunded by the court. If a deposit account does not have sufficient funds to cover a fee, the court shall notify the account holder. If the deposit account is not replenished by at least the outstanding amount within two weeks of the date of such notification, the court shall declare the petition withdrawn.
- 5) The collection under paragraph 3 requires that the court be authorized to collect the fees from an account and that the filing include the account from which the fees are to be collected and, if applicable, the maximum amount to be debited. The specification of the account from which the fees are to be collected, or the account code under which an account is stored for the collection of fees, shall be deemed consent to the collection of fees.

Art. 7

*b) Time of Payment*

- 1) If the obligation to pay the fee arises upon the filing or receipt of the petition by the court, and if the fee is not paid, or not paid in full, within four weeks of the obligation arising, the court shall declare the petition withdrawn unless the person liable for payment is exempt from the fee. However, this has no effect on the claim underlying the petition. If, upon expiration of the deadline, only an amount of up to 100 francs remains outstanding, the court may schedule a hearing, in which case the outstanding amount must be paid in cash at the beginning of the hearing, or set a reasonable grace period for payment of the fee, or issue a payment order. Otherwise, the court shall refund the portion of the fee that has been paid.
- 2) The payment order under paragraph 1 must contain a detailed list of the amounts owed and a demand to pay the specified amount within

to be paid within two weeks. In addition to the fee owed, the payment order must include an additional amount of 25 francs. Once the payment deadline has expired, a payment order is immediately enforceable. There is no right of appeal against the issuance of a payment order. However, if the party liable for payment considers the content of the payment order to be incorrect, they may, within the payment deadline set for them, request a correction, stating the reasons therefor. A request for correction shall be granted without further ado if the error is manifest. In all other cases, the president of the district court, the president of the State Court, or the president of the relevant appeals commission shall make the final decision on the request for correction.

3) The deadline referred to in paragraph 1 shall be extended in the case provided for in Art. 9(2) AussStrG until the time at which the court has requested the party to specify the claim in numerical terms.

4) The court may shorten the payment period under paragraph 1, continue the proceedings prior to payment of the fee, and waive the prior collection of the fee.

5) If the obligation to pay the fee does not arise upon the submission or receipt of the petition by the court, a reasonable advance payment of the fee (Art. 9) must be made. This does not apply to:

a) official acts or decisions under Art. 37; in this case, the fee must be paid to the court immediately;

b) official criminal proceedings.

Art. 8

*c) Deferral, Reduction, and Waiver*

1) Upon application by the party liable for payment, the prescribed payment deadline may be extended or payment in installments may be granted if payment would entail particular hardship for the party liable for payment and does not appear to be jeopardized by the deferral. If payment in installments is granted, failure to pay a due installment on time results in forfeiture of the right to payment.

2) Fees may be waived in whole or in part upon application by the party liable for payment if payment would entail particular hardship for that party.

3) The president of the regional court, the president of the State Court, or the president of the relevant appeals commission shall make the final decision on applications for deferral or waiver of fees.

4) The President of the Regional Court, the President of the State Court, or the President of the relevant Appeals Commission may refrain from officially collecting fees if, based on the circumstances known to the court, success in enforcement proceedings is not to be expected.

Art. 9

*d) Advance Payment of Fees*

1) In the cases referred to in Article 7(5), the court shall not perform the requested official act or render a decision until the advance payment has been made.

2) If, in the course of the proceedings, it becomes apparent that the advance payment made is insufficient, the court shall require that it be supplemented.

3) If the advance payment under paragraph 1 or the additional payment under paragraph 2 is not made within a period set by the court, the request for the performance of an official act or for a decision to be rendered shall be deemed withdrawn.

4) Upon conclusion of the proceedings, the advance payment shall be offset against the actual fee.

*Obligation to Pay*

Art. 10

*a) General Principle*

1) Unless otherwise provided by specific provisions, the obligation to pay shall rest:

a) in the case of submissions and motions for the record that replace them, the intervening party;

b) in the case of certifications, copies, and official confirmations, the person requesting them or in whose interest these documents are issued, or, in the case of copies, also the person producing them;

c) in settlements reached before the initiation of proceedings, the parties shall each bear half of the costs, regardless of any contrary agreements between the parties;

d) in the case of other official acts or proceedings, the party who initiated them or in whose interest they are conducted.

2) If two or more persons are obligated to pay the same amount of fees, they are jointly and severally liable for payment.

3) If a fee-liable submission is filed by one or more fee-liable and fee-exempt parties, the fee-liable party shall pay the full amount of the fee. The same applies to decisions or official acts subject to a fee in which fee-liable and fee-exempt parties participate, provided that such official acts were initiated by a joint request of these parties or that they are jointly and severally liable for payment.

4) In cases of personal exemption from fees, the opposing party is obligated to pay the fee that the exempt person would have been required to pay, to the extent that the costs of the proceedings are imposed on the opposing party or to the extent that the opposing party has assumed the costs by way of settlement. In cases of doubt, half of the fee shall be collected.

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Art. 11

*b) Probate Proceedings*

1) In probate proceedings, Art. 10(2) does not apply if the decedent has imposed the payment of fees on a specific person.

2) The following are subject to fees: the transfer of an estate, its distribution to legatees, or its delivery pursuant to Art. 150 of the Austrian Succession Act (AussStrG).

3) No decision granting title may be issued, nor may the transfer of any estate assets to heirs or legatees be approved, until the fee has been paid or secured.

4) A statutory lien exists on all estate assets to secure the fee.

Art. 12

*c) Enforcement Proceedings*

1) If, in enforcement proceedings, the enforcing creditor is exempt from paying the fee, the order authorizing enforcement shall simultaneously require the obligor to pay the fee that the fee-exempt person would have been required to pay; this order is immediately enforceable.

2) Enforcement proceedings shall also be conducted to collect the fee; the fee claim takes precedence over the claim being enforced.

Art. 13

*d) Insolvency Proceedings*

1) In insolvency proceedings, the State's claim for the fee shall be treated as a claim against the estate.

2) The intervening party shall be required to pay the fee if:

- a) the insolvency proceedings are terminated due to a lack of assets to cover costs; or
- b) the petition to open insolvency proceedings is withdrawn or dismissed.

Art. 14

*e) Reorganization Proceedings with Self-Administration*

In reorganization proceedings with self-administration, the fee must be paid or secured by the debtor prior to the confirmation of the reorganization plan.

*Fee Exemption*

Art. 15

*a) General*

*Principle*

Repealed

Art. 16

*b) Personal exemption from fees*

1) The following are exempt from the obligation to pay fees:

- a) Parties, on a provisional basis, if such exemption has been granted to them under the provisions of the Civil Procedure Code regarding legal aid;
- b) the Principality of Liechtenstein and all domestic public-law corporations, institutions, and foundations, to the extent that they are parties to proceedings in the pursuit of their statutory or chartered duties;
- c) the Prince and the members of the Princely Family;
- d) the Liechtenstein Public Prosecutor's Office;
- e) the insolvency administrator, provided that he or she is not acting as a plaintiff or petitioner in the relevant proceedings;
- f) officially appointed trustees or administrators, with the exception of the cases specified in Art. 141(1) PGR.

2) Personal exemption from fees applies only to the party to whom it is granted and does not pass to legal successors.

Art. 17

*c) Exemption from Fees*

1) The following are exempt from the obligation to pay fees:

- a) all submissions, official acts, and decisions in non-contentious proceedings for which no basis for assessment is provided under this Act; the

obligation to reimburse costs incurred through publications, as well as costs for experts or interpreters to be consulted, remains unaffected;

b) approved applications for legal aid to the extent of their provisional exemption from court fees;

c) all fee matters under this Act.

2) In the case of a judgment by default, admission, or waiver, an appropriate portion of the fee shall be refunded by the court. The determination of the appropriate portion of the fee shall be made within the framework of the respective judgment. The same applies to orders by which:

a) the petition is dismissed on the grounds of inadmissibility of the legal remedy, lack of jurisdiction of the court, *lis pendens*, a matter already decided with finality, or premature filing of the divorce action (§ 592 ZPO);

b) the petition is declared withdrawn on the grounds of an affidavit of indigence or the action is declared withdrawn pursuant to § 529 of the German Code of Civil Procedure (ZPO);

c) the petition is withdrawn.

## **II. Basis for Calculation**

### **A. Civil proceedings at first instance**

Art. 18

#### *General Principle*

1) Unless otherwise specified below, the basis for assessment is the value of the subject matter of the dispute at the time the fee claim arises. Appreciation, fruits, interest, damages, and costs asserted as ancillary claims shall not be taken into account in the calculation of value.

2) In cases where the subject matter of the dispute does not consist of a monetary amount, the plaintiff must state this value in the complaint or in the pleading initiating the proceedings. This applies in particular to actions for the performance of work and other personal services, for tolerance or abstention, and for the issuance of declarations of intent.

3) If the basis for assessment is not stated, or is stated in a manner that clearly does not correspond to the actual circumstances, it shall, at most, be determined *ex officio* by the court at its discretion following an investigation. No appeal may be filed against such a decision.

4) If the defendant considers the plaintiff's valuation of the subject matter of the dispute to be too high or too low, the defendant may object to the valuation no later than at the first hearing scheduled for oral proceedings. In the absence of an agreement between the parties, the court shall, as far as possible, assess the value of the subject matter of the dispute within the range of the amounts claimed by the parties without conducting further inquiries and without significantly delaying the proceedings or incurring costs. This decision may not be appealed. In determining the value in dispute, the court is also not bound by the parties' agreed valuations.

5) Multiple claims asserted in civil proceedings by a single party or by co-litigants shall be aggregated; unless otherwise specified below, the sum of the asserted claims constitutes a uniform basis for assessment for the entire proceedings.

6) If the same claim is asserted by or against several persons who are jointly and severally entitled to the claim or who are jointly and severally liable for it, the value shall be determined based on the amount of the single claim.

7) If only a portion of a monetary claim is sought, only the portion claimed shall form the basis for calculating the fee.

#### Art. 19

##### *Special Procedural Provisions*

1) If claims for maintenance or support payments are asserted, the value in dispute is deemed to be twice the annual amount thereof; in the case of pensions for physical injuries sustained or for the killing of a person, the value in dispute is deemed to be three times the annual amount. If such a claim is asserted for a shorter period, the total amount claimed is deemed to be the value in dispute.

2) In proceedings to increase or reduce maintenance payments, the value in dispute shall be based on twice the annual amount of the sought increase or reduction; in the case of a claim for provisional maintenance, it shall be based on the single annual amount.

3) Where future and past-due maintenance are claimed jointly, the amount for future maintenance and the amount claimed for the past shall be added together.

4) For actions to set aside an arbitral award (Section 628 of the Code of Civil Procedure), the value of the subject matter of the dispute decided in the arbitral award shall be decisive. For a



Only a partial challenge of an arbitral award by means of an action for annulment is permitted, and Article 22(2) applies *mutatis mutandis* to the filing of such actions by either party. If an action for annulment concerns only the arbitral tribunal's decision on its jurisdiction (Section 628(1), second sentence, ZPO), then, notwithstanding the rule in the first sentence, the plaintiff must state the amount in dispute in the action for annulment; if the plaintiff fails to do so, the procedure set forth in Article 18(3) shall apply. For an action to declare the existence of an arbitral award (Section 629 of the German Code of Civil Procedure), the value of the subject matter of the dispute decided in the arbitral award is decisive; for an action to declare the non-existence of an arbitral award (Section 629 of the German Code of Civil Procedure), the value in dispute regarding which, according to the plaintiff's allegations, no arbitral award has been rendered is decisive.

#### Art. 20

##### *Assessment of Individual Disputes*

The assessment basis is 3,000 Swiss francs for:

- a) labor law disputes, unless a monetary amount—whether in a claim for performance or in any other claim, such as a declaratory or injunctive relief claim—is the subject of the action;
- b) judicial terminations of lease agreements and contracts for the transfer or takeover of leased property;
- c) disputes concerning tenancies, provided that the subject matter of the action is not a monetary amount—whether in a claim for performance or in any other claim, such as a declaratory judgment or an injunction;
- d) Disputes that concern solely the priority of claims in enforcement proceedings and insolvency proceedings;
- e) proceedings under matrimonial and family law, as well as proceedings concerning registered partnerships, apart from any associated claims of a property-law nature;
- f) Proceedings for the protection of possession.

#### Art. 21

##### *Changes in Value*

- 1) The basis for assessment remains the same for the entire proceedings.
- 2) However, if the value in dispute is altered as a result of an expansion of the claim or increased by a judicial determination of the value in dispute, or if the subject matter of the

settlement is a benefit whose value exceeds the claim, the fee shall be calculated on the basis of the higher value in dispute. The fee already paid shall be credited.

3) There is no change in the value in dispute for fee purposes if the claim is withdrawn or limited, or if a partial or interim judgment is rendered.

## **B. Civil appellate proceedings and proceedings concerning actions for annulment or retrial**

Art. 22

### *Principle*

1) The basis for assessment is the same as that of the preceding proceeding.

2) However, if the appeal proceedings or the proceedings concerning an action for reinstatement or annulment relate only to a part of the original subject matter of the dispute, only the value of that part shall be decisive for the calculation in those proceedings. If this part does not consist of a monetary amount, it must be valued in the pleading. If a valuation is omitted or if it clearly does not correspond to the actual circumstances, the fee shall be assessed on the basis of the entire original value in dispute.

3) In the case of cross-appeals, the fees shall be calculated separately in accordance with the claims of each party to the dispute and shall be paid by the respective appellant.

4) In appeals regarding costs, the value in dispute is 1,000 Swiss francs, but never more than half of the original value in dispute.

## **C. Non-contentious proceedings**

Art. 23

### *Welfare proceedings concerning maintenance between parents and children*

1) The basis for calculating the maintenance claim awarded for the past is the amount awarded.

2) For the award of future maintenance, the annual amount shall be used as the basis for calculation; however, if the entitlement is awarded for a period shorter than one year, the total amount of the awarded benefits shall serve as the basis for calculation.

3) Where future and past-due maintenance are awarded jointly, the amount for future maintenance and the amount awarded for the past shall be added together.

Art. 24

*Probate Proceedings*

- 1) In probate proceedings, a fee shall be levied on the basis of the estate's value.
- 2) When determining the net estate, real property is generally to be valued at its assessed tax value. However, estate liabilities secured by land registry entries may in this case be deducted only up to the amount of the assessed tax value of the property in question.
- 3) If the heirs demand full deduction of the estate liabilities secured in the land register, the encumbered real estate shall be valued at its official assessed value.

Art. 25

*Commercial Register Matters*

In commercial register matters, the asset shall be valued at the statutory share capital unless the application specifies a different value.

**D. Enforcement and legal security proceedings**

Art. 26

*General Principle*

- 1) In enforcement proceedings, the basis for assessment is the amount of the claim to be enforced; in security proceedings, it is the amount of the claim to be secured.
- 2) The provisions governing civil proceedings at first instance apply mutatis mutandis to the valuation of the claim. If the proceedings were preceded by civil proceedings concerning the same claim, the value in dispute determined in those proceedings remains decisive for the valuation of the claim to be enforced or secured. However, if the enforcement or legal protection proceedings concern only a part of the original subject matter of the dispute, only the value of that part shall be decisive for the calculation in these proceedings. If this part does not consist of a monetary amount, it must be valued in the petition. If a valuation is omitted or if it clearly does not correspond to the actual circumstances, the entire original value in dispute shall serve as the basis for calculating the fee. Litigation costs or incidental fees shall be taken into account only if they alone constitute the subject matter of the claim to be enforced or secured.

3) There shall be no change in the basis for calculating the fees if the proceedings are limited to a part of the enforceable or to-be-secured claim.

### **E. Criminal proceedings**

#### **Art. 27**

##### *Private and Subsidiary Prosecution Proceedings*

In private and subsidiary prosecution proceedings, the following amounts shall serve as the value in dispute for the assessment of fees:

- a) for misdemeanors, 1,000 francs;
- b) 5,000 francs for misdemeanors;
- c) for felonies, 20,000 francs.

### **F. Proceedings before the State Court**

#### **Art. 28**

##### *Principle*

- 1) The basis for assessment in the proceedings before the State Court corresponds to that of the preceding proceedings.
- 2) However, if the proceedings before the State Court concern only a part of the original subject matter of the dispute, only the value of that part is decisive for the calculation in these proceedings. If that part does not consist of a monetary amount, it must be valued in the submission.
- 3) If the basis for assessment is not stated, or is stated in a manner that clearly does not correspond to the actual circumstances, it shall, if necessary, be determined ex officio by the State Court at its discretion following an investigation. No appeal may be filed against such a decision.

### **G. Proceedings before the Supreme Court as an Administrative Court and the Appeals Commissions**

#### **Art. 29**

##### *Assessment of Individual Disputes*

The assessment basis in proceedings before the Supreme Court as an administrative court or the appeals commissions shall be:

- a) Administrative matters of very minor importance: 1,000 francs;
- b) Administrative matters of minor importance: 10,000 francs;
- c) Administrative matters of increased significance: 50,000 francs;
- d) Administrative matters of moderate significance: 100,000 francs;
- e) Administrative matters of significantly greater importance: 500,000 francs;

- f) Administrative matters of high importance: 1,000,000 Swiss francs;
- g) Administrative matters of very high importance: over 1,000,000 Swiss francs.

### **III. Fees Art. 30**

#### *Calculation*

- 1) Unless otherwise specified below, the fee shall be determined in accordance with the assessment criteria set forth in the fee schedule in the appendix.
- 2) Twice the fee specified in paragraph 1 shall be charged for the following submissions:
  - a) Appeals or reviews in civil court appeal proceedings;
  - b) Appeals in the second or third instance in non-contentious matters;
  - c) Applications for the authorization of forced administration or forced sale of real property, as well as appeals in the second or third instance in enforcement matters;
  - d) Appeals in the second or third instance in matters of legal preservation and legal relief.
- 3) In the case of appeals in debt collection proceedings and enforcement proceedings, the following must be filed:
  - a) up to a value in dispute of 5,000 francs, one times the fee specified in paragraph 1;
  - b) up to a value in dispute of 50,000 Swiss francs, two and a half times the fee under paragraph 1;
  - c) for a value in dispute of 50,000 Swiss francs or more, six times the fee under paragraph 1. Art. 31

#### *Probate Proceedings*

- 1) In probate proceedings, the fee is:
  - a) in the case of transfer of the estate to the spouse, registered partner, parents, descendants, or adopted children of the decedent: 2‰ of the net estate;
  - b) in the case of devolution to siblings of the decedent or their descendants: 3‰ of the net estate;
  - c) in the case of transfer to other blood relatives of the decedent: 5‰ of the net estate;
  - d) in the case of a bequest to other persons: 10‰ of the net estate;
  - e) in any case, however, at least 100 francs.

2) Church and charitable public institutions are treated as descendants of the decedent.

Art. 32

*Enforcement proceedings*

The fee for enforcement proceedings shall be levied regardless of whether a decision is made on only one or on several enforcement applications.

Art. 33

*Insolvency proceedings*

1) For the conduct of insolvency proceedings, the fee is 5‰ of the debtor's liabilities affected by the proceedings if a reorganization plan is confirmed; otherwise, it is 2‰ of the liquidation proceeds of the insolvency estate, but not less than 200 francs.

2) A reasonable fee shall also be charged if the proceedings are discontinued before the assets are realized or if the petition to open insolvency proceedings is withdrawn or dismissed.

Art. 34

*Criminal Proceedings*

1) In criminal proceedings at first instance initiated at the request of the public prosecutor's office, the fees, taking into account the scope and effort involved in the criminal proceedings, are:

a) in proceedings before a single judge for misdemeanors and certain offenses under §§ 317 ff. StPO: 100 to 5,000 francs;

b) in proceedings before a single judge pursuant to §§ 312 et seq. StPO: 250 to 10,000 francs;

c) in proceedings before the Criminal Court: 500 to 20,000 francs.

2) The fees specified in paragraph 1 cover all expenses for service of process, summonses, travel expenses, and per diem allowances for court officials and the public prosecutor; however, they do not cover the costs listed in § 301(1)(2), (3), (4), (5), and (7) of the Code of Criminal Procedure, nor any other out-of-pocket expenses that may arise from criminal proceedings.

3) In private and subsidiary prosecution proceedings, the private prosecutor shall be required to pay the fees established for the civil proceedings in dispute.

4) In criminal appellate proceedings, the fees shall amount to up to 1,000 Swiss francs, taking into account the scope and effort involved.

Art. 35

*Proceedings before the State Court*

- 1) For appeals to the State Court, twice the fee applicable to contentious civil proceedings shall be collected.
- 2) For a motion to grant suspensive effect or a request for an order of provisional measures, twice the fee applicable to proceedings for the preservation of rights or the lifting of a stay of execution shall be collected. Art. 36

*Proceedings before the Supreme Court as an Administrative Court and the Appeals Commissions*

For appeals to the Supreme Court acting as an administrative court or to the appeals commissions, a fee equal to three times the fee applicable to non-contentious proceedings shall be charged.

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Art. 37

*Fees for Other Judicial Acts and Decisions*

- 1) The following fees shall be charged for other judicial acts or decisions:
  - a) for the execution of public documents, a fee equal to 1% of the value of the declaration or legal transaction to be recorded, with a minimum of 100 francs and a maximum of 10,000 francs;
  - b) for the drafting of a judicial will, a fee of 500 francs, and for the judicial safekeeping of a testamentary disposition, an administrative fee of 100 francs;
  - c) for the recording of bill protests, a fee of 1% of the protested bill amount, but not exceeding 1,000 francs;
  - d) for the judicial custody or deposit of a movable item, a custody fee of 1% of the value of the item in custody, with a minimum of 50 francs and a maximum of 15,000 francs; if the costs of custody exceed 15,000 francs, a fee corresponding to the actual costs shall be paid, whereby the portion of the fee exceeding 15,000 francs may also be assessed retroactively if the actual costs cannot be determined in advance;
  - e) For official certifications of any kind, 20 francs per certification, regardless of the number of copies. This does not apply to certifications of finality in

criminal proceedings that are concluded in a manner other than by dismissal pursuant to § 22b StPO or by a conviction;

f) 10 francs for the certification of a signature;

g) for the certification of copies, 5 francs per page;

h) For criminal record certificates: 20 francs per certificate;

i) 20 francs for an extract from the attachment register;

k) for the notarization of a power of attorney under § 284b(2) of the Austrian Civil Code (ABGB) and each additional notarization, a fee of 150 francs;

l) for the creation of a power of attorney under Section 284b(3) of the Austrian Civil Code (ABGB) and for each amendment, a fee of 500 francs;

m) for the registration of a power of attorney for healthcare, including its entry into effect, a guardianship order, or an amendment or revocation of a power of attorney for healthcare or guardianship order in the Central Register of Representation (§ 284e ABGB), an administrative fee of 100 francs;

n) 50 francs for the issuance of a certificate confirming the entry into effect of a power of attorney (§ 284f(2) ABGB);

o) for the drafting of a living will pursuant to Art. 6 PatVG, a fee of 500 francs;

p) for the registration of a living will in the Central Living Will Registry (Art. 14 PatVG), an administrative fee of 100 Swiss francs;

q) for copies (copies, photocopies, printouts) 1 franc per page or part thereof.

2) The fee prescribed for debt collection proceedings shall be levied:

a) for the issuance of a summons pursuant to §§ 593a et seq. ZPO;

b) for the issuance of a transfer or assumption order pursuant to § 567 ZPO;

c) for the authorization of a judicial termination;

d) for the authorization of a description for attachment.

3) Twice the fee prescribed for debt collection proceedings shall be levied:

a) for the issuance of a bill of exchange or check payment order;

b) for the issuance of a payment order pursuant to § 548 of the German Code of Civil Procedure (ZPO).

#### **IV. Appeals Art.**

##### *38 Appeal*



1) A written appeal may be filed against decisions pursuant to Art. 5(2) and (3) and Art. 17(2) within two weeks of service or pronouncement. The appeal has no suspensive effect. Decisions on appeals are final.

2) The handling of appeals against decisions pursuant to Art. 5(2) and Art. 17(2) is the responsibility of:

a) in the ordinary courts, to the respective president;

b) in the case of the State Court or the Appeals Commissions, to the senate responsible for hearing the case. If a member of the senate is disqualified from hearing the case due to a prior decision on fees, the remaining members of the senate shall decide on the appeal.

3) Appeals against decisions under Article 5(3)(a) are heard by the High Court; appeals against decisions under Article 5(3)(b) are heard by the panel of the respective court or the respective appeals commission responsible for adjudicating the case. If a member of the panel is disqualified due to a prior decision on fees in the matter, the remaining members of the panel shall decide on the appeal.

## **V. Statute of**

### **Limitations**

Art. 39

#### *Principle*

1) The State's claim for payment of fees and the claim for reimbursement of incorrectly calculated fees are subject to a five-year statute of limitations.

2) The limitation periods begin to run at the end of the year in which the fee claim arose and the person liable for payment has been determined, but no earlier than the final conclusion of the proceedings.

3) The statute of limitations is interrupted by a demand for payment, the filing of an application for deferment or remission, and by any collection action.

## **VI. Transitional and Final Provisions**

Art. 40

#### *Repeal of Previous Law*

The Act of May 30, 1974, on Court Fees (Court Fees Act, GGG), LGBL 1974 No. 42, as amended, is repealed.

Art. 41

## Court Fees Act (GGG)

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### *Transitional Provision*

The previous law shall apply to proceedings pending at the time this Act enters into force.

### Art. 42

#### *Entry into Force*

This law shall enter into force on January 1, 2018, 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*

Crown Prince

signed *Adrian Hasler*,

Head of the Princely

Government **Annex**

(Art. 30, para. 1)

### **Schedule of Fees**

(Amounts in Swiss  
francs)

| Bemessungs-<br>grundlage         | Zivilgerichtliches Verfahren |                                  | Ausserstreit-<br>verfahren | Exekutions-<br>verfahren | Rechtssiche-<br>rungs- und<br>Rechtsöff-<br>nungsverfahren |
|----------------------------------|------------------------------|----------------------------------|----------------------------|--------------------------|------------------------------------------------------------|
|                                  | Streitiges                   | Schulden-<br>triebverfah-<br>ren |                            |                          |                                                            |
| bis 100                          | 120                          | 10                               | 30                         | 10                       | 30                                                         |
| über 100 bis<br>500              |                              | 20                               |                            | 20                       |                                                            |
| über 500 bis<br>1 000            |                              | 30                               |                            | 30                       |                                                            |
| über 1 000 bis<br>5 000          | 300                          | 50                               | 100                        | 50                       | 50                                                         |
| über 5 000 bis<br>10 000         | 500                          |                                  |                            |                          | 100                                                        |
| über 10 000<br>bis 50 000        | 850                          | 90                               | 210                        | 90                       | 200                                                        |
| über 50 000<br>bis 100 000       | 2 000                        |                                  | 510                        | 170                      | 400                                                        |
| über 100 000<br>bis 500 000      | 4 000                        | 170                              | 1 000                      | 850                      | 900                                                        |
| über 500 000<br>bis 1 000 000    | 5 500                        | 340                              | 1 900                      | 1 700                    | 1 700                                                      |
| über 1 000 000<br>bis 2 000 000  | 7 200                        | 850                              | 4 500                      | 3 400                    | 3 400                                                      |
| über 2 000 000<br>bis 3 000 000  | 9 000                        |                                  |                            |                          | 5 100                                                      |
| über 3 000 000<br>bis 4 000 000  | 10 500                       |                                  |                            |                          |                                                            |
| über 4 000 000<br>bis 5 000 000  | 12 200                       |                                  |                            |                          | 7 000                                                      |
| über 5 000 000<br>bis 6 000 000  | 14 000                       |                                  |                            |                          |                                                            |
| über 6 000 000<br>bis 8 000 000  | 16 000                       |                                  |                            |                          | 8 500                                                      |
| über 8 000 000<br>bis 10 000 000 | 17 300                       |                                  |                            |                          |                                                            |
| über<br>10 000 000               | 19 000                       |                                  |                            |                          |                                                            |

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### **XIII. Judicial Organization Act (GOG)**

of October 24, 2007

on the Organization of the Ordinary Courts

#### **I. General Provisions**

##### **Art. 1**

###### *Courts*

1) Ordinary jurisdiction is exercised by the following courts:

- a) the Princely District Court in the first instance;
- b) the Princely High Court of Appeal in the second instance;
- c) the Princely Supreme Court of Justice in the third instance.

1a) Notwithstanding paragraph 1, the Supreme Court also acts as the administrative court of last resort in administrative matters.

2) The seat of the courts is Vaduz.

3) Jurisdiction and remedies in the ordinary courts are governed by the special rules of procedure.

##### **Art. 2**

###### *Collegial Courts*

1) Collegial courts are the Criminal Court, the Juvenile Court, the High Court, and the Supreme Court.

2) In the Criminal and Juvenile Court, the majority of the judges must be Liechtenstein nationals.

3) For proceedings of longer duration, the presiding judge of a collegiate court may call upon associate judges. These participate in the proceedings without taking part in the deliberations or voting. If a judge is unable to attend, an associate judge takes his or her place.

4) The judges of the respective collegiate court may be appointed as supplementary judges.

##### **Art. 3**

###### *Definitions*

The terms used in this law to designate persons, professions, and functions shall be understood to include members of both the male and female genders.

#### **II. Courts**

##### **A. District Court**

##### **Art. 4**

*Judges of the Regional Court*

- 1) Judges of the Regional Court are the full-time regional judges and the part-time judges of the Criminal and Juvenile Courts, as well as their deputies.
- 2) The State Parliament determines, upon the recommendation of the government, the total number of full-time regional judges.

Art. 5

*Trials in the First Instance*

The Regional Court administers justice through:

- a) the district judges sitting as sole judges;
- b) the criminal court or its presiding judge;
- c) repealed
- d) the juvenile court or its presiding judge;
- e) the judicial

officers. Art. 6

*Sole Judge*

Every district judge serves as a single judge and presides over a court division responsible for handling the cases assigned to it in accordance with the distribution of cases.

Art. 7

*Criminal Court*

- 1) The Criminal Court consists of:
  - a) a district judge as presiding judge;
  - b) a district judge as deputy presiding judge;
  - c) a district judge as an associate judge;
  - d) three criminal judges and one deputy for each criminal judge.
- 2) The Criminal Court shall decide as a panel composed of its presiding judge, one associate judge, and three criminal judges.

Art. 8

Repealed Art.

*9 Juvenile*

*Court*

- 1) The Juvenile Court consists of:
  - a) a district judge as presiding judge;
  - b) a district judge as deputy to the presiding judge;

c) two juvenile judges and one deputy for each juvenile judge.

2) The Juvenile Court shall decide as a panel consisting of its presiding judge and two juvenile judges. The Juvenile Court shall be considered properly constituted only if one of the juvenile judges is of the same gender as the defendant.

Art. 10

*Judicial Officer*

The status, responsibilities, and duties of the judicial officer are governed by the provisions of the Judicial Officers Act.

Art. 11

*Collegium of District Judges*

1) The College of Regional Court Judges consists of the President of the Regional Court as chair and the full-time regional court judges.

2) Repealed

3) The College of Regional Court Judges holds discussions to promote uniform jurisprudence at the Regional Court.

4) The College of Regional Judges appoints from among its members, for a term of five years, one regional judge as a member of the Conference of Court Presidents and another regional judge as an alternate member.

5) Upon the recommendation of the President of the Regional Court, the College of Regional Judges may invite judicial officers, the administrative director, and other persons to participate in the deliberations of the College of Regional Judges.

Art. 12

*Decision-Making*

1) Decisions of the College of Regional Judges are made by a simple majority of the regional judges present. Decisions are valid only if at least two-thirds of the regional judges are present.

2) In the event of a tie, the President of the Regional Court shall have the casting vote. Art. 13

*President of the Regional Court and Presidium*

1) The President of the Regional Court and his first and second deputies are appointed from among the regional judges for a term of five years. The appointment procedure is governed by the Judges Appointment Act.

2) The President of the Regional Court presides over the Regional Court and represents it externally. If both the President of the Regional Court and his deputies are unable to perform their duties, they shall be represented by the regional judges appointed to this court in the order of their appointment.

3) The Presidium of the Regional Court consists of the President of the Regional Court and his two Vice Presidents.

Art. 14

*Principles Governing the Allocation of Cases*

1) In the allocation of cases, care must be taken to ensure an even workload for the individual district judges and judicial officers.

2) The allocation of cases includes all legal matters and other statutory duties falling within the jurisdiction of the District Court.

3) The allocation of cases must include provisions regarding the composition of the presiding bench, its deputy, and the associate judges, as well as the use of supplementary judges in collegial courts of first instance. It governs the substitution of district judges and judicial officers.

4) In the event of a change in the allocation of cases, cases in which oral proceedings, including direct examinations of witnesses, parties, or experts, have already taken place shall, as far as possible, remain with the district judge who has presided over them to date.

Art. 15

*Decision on the Allocation of Cases*

1) The Presiding Judge of the Regional Court shall draft a case allocation plan for the following year by October 30 of the current fiscal year. The draft case allocation plan shall be served on the district judges. They are entitled to file written objections to the draft with the Presiding Judge of the District Court within two weeks. The objections must include a statement of reasons and a motion for amendment and shall be brought to the attention of the district judges by the Presiding Judge of the District Court.

2) The allocation of cases is decided by the Presiding Judge of the Regional Court by December 1 of each year. If a decision on the allocation of cases is not reached in time, the previous allocation remains in effect until the new one takes effect.

3) Any regional court judge may file an appeal against the decision on the allocation of cases with the President of the Higher Regional Court within ten days of the decision being made. The appeal, which has no suspensive effect, must include a statement of reasons and a motion for amendment. The other regional court judges and judicial officers may submit a statement regarding the appeal. No further appeal is available against the decision of the President of the Higher Regional Court.

Art. 16

*Amendment of the Case Allocation*

1) To the extent necessary for the proper conduct of business, the Presidium of the Regional Court may amend the allocation of cases, in particular if:

- a) changes have occurred in the staffing of district judges or judicial officers;
- b) this is necessary due to the absence of a district judge or a judicial officer;
- c) a regional court judge is unable to complete his or her duties within a reasonable time due to the volume of work.

2) Furthermore, the allocation of cases must be changed if the President of the Higher Regional Court upholds an appeal against the allocation of cases decided by the Presidium of the Regional Court.

3) Art. 15(3) applies *mutatis mutandis*.

Art. 17

*Implementation of the allocation of cases*

1) The President of the Regional Court compiles the approved case allocation into a summary. This summary must be updated if any changes are made.

2) The overview of the allocation of cases shall contain, in a simple and clear format:

- a) the individual case categories;
- b) the numbers of the court divisions;
- c) the names of the regional court judges;
- d) the offices to which the parties must submit oral submissions, as well as the times designated for such submissions.

3) The president of the regional court shall publish the case allocation overview and any subsequent amendments in an appropriate manner.

**B. Higher Regional Court**

Art. 18

*Judges of the High Court*



1) The judges of the Higher Regional Court are the full-time presiding judges of the senates, the full-time higher regional court judges, and the part-time associate judges.

2) The State Parliament shall determine, upon the recommendation of the government, the total number of full-time positions for full-time presiding judges of the senate and full-time judges of the High Court. Art. 19

*Adjudicating Bodies of the High Court*

1) The High Court administers justice through its senates or through the presiding judges of the senates.

2) Each senate consists of a presiding judge, a judge, and an associate judge.

3) The senates shall decide in a composition consisting of a presiding judge, a senior judge, and an associate judge.

4) The presiding judges, as well as the associate judges and the lay judges, shall substitute for one another. If all presiding judges are disqualified, biased, or unable to serve, they shall be substituted by the associate judges in the order of their appointment; if all of the associate judges are also disqualified, biased, or unable to serve, they shall be substituted by the lay judges in the order of their appointment. In the same manner, the senior judges shall be represented by the associate judges in the event of disqualification, bias, or inability to serve. Further details are governed by the division of duties.

Art. 20

*President of the High Court*

1) The President of the High Court and his first and second deputies shall be appointed from among the presiding judges of the senates for a term of five years. Appointments shall be made in accordance with the Judges Appointment Act.

2) The President of the High Court presides over the High Court and represents it externally. If both the President of the High Court and his deputies are prevented from performing their duties, they shall be represented by the High Court Justices appointed to this court in the order of their appointment.

3) The President of the High Court holds discussions with the other presiding judges of the High Court to promote uniform jurisprudence within the High Court.

Art. 21

*Allocation of Cases*

- 1) The President of the High Court prepares a draft of the allocation of duties, summarizes the approved allocation of duties in an overview, and publicly announces this and any subsequent changes in an appropriate manner.
- 2) The presiding judges of the High Court shall decide on the allocation of cases for the following fiscal year by December 1 of the current fiscal year.
- 3) Any Senate chairperson may file an appeal with the Supreme Court against the decision on the allocation of cases within ten days.
- 4) In all other respects, Art. 14, Art. 15(2) and (3), Art. 16, and Art. 17(2) shall apply *mutatis mutandis*.

### **C. Supreme Court**

#### **Art. 22**

##### *Judges of the Supreme Court*

- 1) The judges of the Supreme Court are the full-time presiding judges of the senates and the part-time senior judges.
- 2) The State Parliament shall determine, upon the proposal of the Government, the total number of full-time Senate Chairpersons of the Supreme Court.

#### **Art. 23**

##### *Adjudicating Bodies of the Supreme Court*

- 1) The Supreme Court administers justice through its senates or through the presiding judges of the senates.
- 2) Each chamber consists of a chamber president and two judges of the Supreme Court.
- 3) The senates shall sit with one presiding judge and two judges of the Supreme Court.
- 4) The presiding judges of the senates substitute for one another. If all presiding judges of the senates are disqualified, biased, or unable to serve, they are substituted by the presiding judges of the High Court in the order of their appointment. The justices of the Supreme Court substitute for one another; if all justices of the Supreme Court are disqualified, biased, or unable to serve, they are substituted by the justices and associate justices of the High Court. Further details are governed by the allocation of duties.
- 5) For the adjudication of appeals against the decision on the allocation of duties by the presiding judges of the High Court, a panel consisting of two full-time presiding judges of the Supreme Court and one senior judge shall be formed.

Art. 24

*President of the Supreme Court*

- 1) The President of the Supreme Court and his or her deputy shall be appointed from among the presiding judges of the senates for a term of five years. The appointments shall be made in accordance with the Judges Appointment Act.
- 2) The President of the Supreme Court presides over the Supreme Court and represents it externally. If both the President of the Supreme Court and his or her deputy are unable to perform their duties, they shall be represented by the most senior presiding judge of the High Court.
- 3) The President of the Supreme Court consults with the presiding judges of the senates to promote uniform jurisprudence at the Supreme Court.

Art. 25

*Distribution of Duties*

- 1) The Chief Justice of the Supreme Court prepares a draft of the case allocation plan, compiles the approved allocation plan into a summary, and publishes this summary and any subsequent amendments in an appropriate manner.
- 2) The presiding judges of the senates shall decide on the allocation of cases for the following fiscal year by December 1 of the current fiscal year.
- 3) If an agreement is not reached in a timely manner, the President of the Supreme Court shall make the final decision on the allocation of cases.
- 4) In all other respects, Art. 14, Art. 16(1), and Art. 17(2) shall apply mutatis mutandis.

**D. Rules of**

**Procedure, Art. 26**

*Rules of Procedure*

- 1) Upon the recommendation of the Conference of Court Presidents, the government shall issue rules of procedure for the ordinary courts by ordinance.
- 2) The Rules of Procedure shall regulate the necessary framework conditions required for the conduct of business of the ordinary courts. In particular, they shall cover:
  - a) the maintenance of the various registers;
  - b) the handling and preparation of case files;

- c) the publication of decisions;
- d) the safekeeping of court files;
- e) the organization of court offices;
- f) the issuance of notices and announcements.

### **III. Judicial Administration**

#### **A. Bodies**

##### **Art. 27**

###### *Bodies of the Judicial Administration*

- 1) The bodies of the judicial administration are:
  - a) the Conference of Court Presidents;
  - b) the Chair of the Conference of Court Presidents;
  - c) the presidents of the courts.
- 2) The bodies of the judicial administration must strictly ensure that there is no interference with judicial independence.
- 3) The bodies of the judicial administration are supported by the state administration in the performance of their duties.
- 4) The government and the state parliament exercise oversight of the judicial administration in accordance with the state constitution.

##### **Art. 28**

###### *Conference of Court Presidents*

- 1) The Conference of Court Presidents consists of:
  - a) the presidents of the Supreme Court, the High Court, and the Regional Court as voting members;
  - b) a full-time district judge appointed by the College of District Judges as a voting member;
  - c) the Administrative Director as an advisory member and as the recording secretary.
- 2) In the event of an inability to attend, the deputies of the court presidents shall take their seats. If the regional court judge is unable to attend, he or she shall be represented by the deputy appointed by the College of Regional Court Judges.
- 3) The Conference of Court Presidents has a quorum if every court is represented at the meeting. Decisions are made by a simple majority vote. In the event of a tie, the president of the district court, as chair, has the casting vote.
- 4) Resolutions by circulation are permitted. They are legally valid only if unanimous.

Art. 29

*Duties*

- 1) The Conference of Court Presidents is responsible for coordinating judicial administration matters concerning the Supreme Court, the High Court, and the Regional Court.
- 2) The Conference of Court Presidents is responsible for the following tasks:
  - a) the drafting of rules of procedure for the courts;
  - b) supporting cross-departmental projects within the courts;
  - c) Issuing guidelines on administrative matters affecting all courts;
  - d) developing the basic framework for the courts' IT systems;
  - e) the secondment of judges to international bodies;
  - f) assessing the suitability of judges during their probationary period.
- 3) The Conference of Court Presidents has the authority to issue instructions to the ordinary courts within the scope of its responsibilities.
- 4) The tasks required for assessing the suitability of judges during the probationary period may be delegated to the President of the Supreme Court, who in such cases must submit a reasoned assessment proposal to the Conference of Court Presidents in a timely manner.

Art. 30

*Chairmanship of the Conference of Court Presidents*

- 1) The Regional Court President is responsible for the management of the Conference of Court Presidents.
- 2) He handles the Conference's external affairs, in particular with the State Parliament and the Government.

Art. 31

*Presiding Judges*

- 1) The court presidents manage the judicial administrative affairs of the courts they preside over, unless the law provides for a different jurisdiction.
- 2) They shall assist one another in the performance of judicial administrative duties, coordinate their actions, and observe the same principles and rules in doing so.
- 3) The presiding judges of the courts must submit an annual report on the administration of justice in the courts under their jurisdiction to the government, for the attention of the

State Parliament. The report serves as a basis for the government and the State Parliament to exercise general supervision and to determine the number of full-time judges.

4) Judicial administrative duties are performed by the vice presidents when the presidents are unable to do so.

### **B. Administrative Director**

Art. 32

#### *Position*

1) The Administrative Director and his or her deputy are appointed by the government upon the recommendation of the Conference of Court Presidents.

2) The Administrative Director reports to the Chair of the Conference of Court Presidents.

3) The Administrative Director assists the court presidents in carrying out judicial administrative tasks.

Art. 33

#### *Duties*

1) The Administrative Director is responsible for the following judicial administrative tasks:

a) preparing and implementing the business of the Conference of Court Presidents in accordance with the Chairperson's instructions;

b) supervising accounting;

c) responsibility for documentation, registration, and archiving;

d) managing IT operations;

e) ensuring the uniform application of the administrative guidelines issued by the Conference of Court Presidents;

f) organizing continuing education for non-judicial staff, with the exception of judicial clerks and judicial officers;

g) procurement;

h) managing the regional court registry.

2) The Conference of Court Presidents may assign additional judicial administrative tasks to the administrative director.

### **C. Court Clerks' Offices**

Art. 34

#### *Organization*

1) A court registry shall be established at each court.

2) The registries of the High Court and the Supreme Court are headed by the presidents of those courts. The registry of the Regional Court is headed by the administrative director.

3) Court registries may be divided into departments responsible for handling all the affairs of the court registry (Art. 35) for a specific single judge or judicial officer, or for a group of judges or judicial officers.

Art. 35

*Duties*

1) The individual divisions of the court registries shall carry out the official duties of the judge to whom they are assigned.

2) The divisions are responsible for drafting court decisions, summonses, and other documents; registering cases; taking minutes during court proceedings; maintaining case files; and performing other administrative tasks of the court divisions.

Art. 36

*Drafting of Judicial Documents*

1) The written copies of judgments, orders, and settlements, as well as certifications of finality and enforceability, are signed by non-judicial employees of the court clerks' offices in all courts with the notation "Certified true copy."

2) Copies produced by means of automated data processing require neither a signature nor certification.

**D. Central Services and Library**

Art. 37

*Central Services*

1) A Central Services Department shall be established at the Regional Court under the direction of the Administrative Director.

2) Central Services shall perform those administrative tasks that are not assigned to the court registries pursuant to Articles 35 and 36.

Art. 38

*Library*

1) A specialized library shall be established at the Regional Court for all courts. The Regional Court President shall be responsible for managing the library.

2) The President of the Regional Court shall draw up rules of use, which must be approved by the Conference of Court Presidents.

#### **D. Research Service at the Supreme Court**

Art. 38a

##### *Research Department*

1) A Research Service shall be established at the Supreme Court, to be headed by the Chief Justice.

2) The Research Department is responsible for:

- a) assisting the judges in drafting decisions and assisting the President and his deputies in all other tasks;
- b) the final editing and publication of decisions, including their anonymization;
- c) performing other tasks assigned to it by the Rules of Procedure.

#### **E. Accounting and Archiving**

Art. 39

##### *Accounting*

The accounting of the courts shall be organized in accordance with the provisions of the Financial Budget Act and the ordinances issued thereunder, as well as in accordance with the recognized principles of public sector accounting and financial reporting.

Art. 40

##### *Archiving*

1) All files generated by the courts shall be stored in the joint court archive, sorted by year and in ascending order of file number, after the case has been finally resolved. The files may be destroyed no earlier than 35 years after the final decision in the case becomes final. Files intended for destruction shall be offered to the State Archives, unless the State Archives is designated as the court archive.

2) Documents submitted by the parties or by third parties shall be returned ex officio upon final disposition of the case; in the event of a stay or interruption of proceedings, they shall be returned to the depositor upon request against a receipt. The receipt shall be kept on file.

#### **IV. Civil Service Law, Supervision, and Audit**



## **A. Civil Service Law**

### **Art. 41**

#### *Service Law for Judges*

- 1) The service law governing judges is based on the provisions of the Judges' Service Act.
- 2) The President of the court at which the judges serve is responsible for matters pertaining to their service. Petitions regarding service law must be submitted to him.

### **Art. 42**

#### *Employment Regulations for Non-Judicial Employees*

- 1) Non-judicial employees within the meaning of this Act are judicial officers, judicial officer trainees, court interns, the administrative director, the staff of the court registries and the Central Services Department, as well as the staff of the research department.
- 2) The service regulations for non-judicial employees are governed by the provisions of the State Personnel Act. This is subject to any conflicting statutory provisions.
- 3) The following authorities are responsible for matters of service law concerning non-judicial employees:
  - a) the President of the Regional Court for judicial officers, judicial officer candidates, court interns, and the administrative director;
  - b) the President of the Higher Regional Court for non-judicial employees of the Higher Regional Court;
  - c) the President of the Supreme Court for non-judicial employees of the Supreme Court;
  - d) the administrative director for the remaining non-judicial staff of the Regional Court (Central Services Division, Regional Court Registry).
- 4) Requests regarding civil service matters shall be submitted to the offices specified in paragraph 3.
- 5) The offices referred to in paragraph 3 shall prepare matters falling within the jurisdiction of the government or the Office of Personnel and Organization and shall submit the necessary applications through the Office of Personnel and Organization. Art. 43

#### *Maintenance of Personnel Files*

1) The presiding judges maintain the personnel files of the judges, judicial officers, judicial officer trainees, court interns, and research staff working at the court they preside over. The administrative director maintains the personnel files of the remaining non-judicial employees. To the extent that these files pertain to remuneration and other financial entitlements, they are maintained by the Office of Personnel and Organization.

2) The court presidents and the administrative director may inspect the personnel files of non-judicial employees for whom they are responsible under Art. 42(3) and request copies of documents from the personnel files.

Art. 44

*Measures*

1) Measures under service and disciplinary law applicable to judges are governed by the Judges' Service Act.

2) With regard to non-judicial employees, the measures provided for in the State Personnel Act may be taken in the event of a breach of statutory and service-related duties. The procedural and jurisdictional provisions of the State Personnel Act apply.

Art. 45

*Appeals*

1) An appeal against decisions in matters of civil service law made by the authorities referred to in Article 42(3) may be filed with the government within 14 days of service.

2) Repealed

3) An appeal may be filed with the Administrative Court against decisions and orders of the Government within 14 days of service.

4) An appeal to the Administrative Court may only be directed against unlawful conduct or disposition, or against findings of fact that are inconsistent with the record or incomplete.

**B. Supervisory**

Authority Art. 46

*Competence*

Supervisory authority rests with:

- a) the President of the Regional Court with respect to the judges serving at the Regional Court, the judicial officers, the judicial officer candidates, and the court interns;
- b) the President of the Higher Regional Court with respect to the President of the Regional Court and the judges serving at the Higher Regional Court;
- c) the President of the Supreme Court with respect to the President of the Higher Regional Court and the judges serving at the Supreme Court;
- d) a service senate consisting of three judges of the Supreme Court for the President of the Supreme Court.

Art. 47

*Content*

1) The subject of administrative supervision includes, in particular:

- a) the monitoring of case loads, processing and issuance deadlines, record-keeping, and the monitoring of prolonged procedural delays;
- b) continuing education in the administration of justice;
- c) the management of judicial administration affairs.

2) In exercising administrative supervision, strict care must be taken to ensure that there is no interference with judicial independence.

Art. 48

*Complaints Regarding Supervisory Oversight*

1) Complaints regarding the denial or delay of the administration of justice may be filed:

- a) to the President of the Regional Court, insofar as they concern judges or judicial officers serving at the Regional Court, candidates for judgeship or judicial officer positions, court interns, and other non-judicial employees of the Regional Court;
- b) to the President of the Higher Regional Court, insofar as they concern the President of the Regional Court, the judges serving at the Higher Regional Court, or the non-judicial employees of the Higher Regional Court;
- c) to the President of the Supreme Court, insofar as they concern the President of the Higher Regional Court, the judges serving at the Supreme Court, or the non-judicial employees of the Supreme Court;

d) to a service senate consisting of three judges of the Supreme Court, on behalf of the President of the Supreme Court.

2) All complaints that are not manifestly unfounded shall be communicated to the relevant court or judge with a request to remedy the situation within a specified period and to report thereon, or to state the obstacles preventing such action.

Art. 49

*Procedure*

1) Any person who considers themselves aggrieved by the conduct of a judicial body or a judicial officer may file a disciplinary complaint.

2) Disciplinary complaints must be submitted in writing to the competent authority pursuant to Art. 48(1).

Art. 49a

*Motion to Set a Deadline*

1) If a court is slow in performing a procedural act, such as scheduling or conducting a hearing or trial, obtaining an expert opinion, or issuing a decision, a party may at any time file with that court a motion addressed to the judicial authority responsible for disciplinary supervision pursuant to Art. 46, requesting that the authority set a reasonable deadline for the court to perform the procedural act; except in the case provided for in paragraph 2, the court shall immediately submit this motion, together with its opinion, to the judicial authority responsible for disciplinary supervision pursuant to Art. 46.

2) If the court performs all procedural acts specified in the request within four weeks of its receipt and notifies the party thereof, the request shall be deemed withdrawn unless the party declares within fourteen days of service of the notification that it maintains its request.

3) The judicial authority responsible for disciplinary matters under Article 46 shall rule on the application referred to in paragraph 1 with particular urgency; if there is no delay on the part of the court, the application shall be dismissed. The decision is final.

Art. 50

*Measures*

- 1) The competent supervisory body shall periodically and thoroughly examine the activities of the judicial bodies subject to its supervision. Where special circumstances so require, extraordinary investigations may be conducted.
- 2) Based on the results of the investigation, the competent supervisory body shall issue the orders falling within its jurisdiction and request the competent body to take any other necessary measures.
- 3) No ordinary legal remedy is admissible against decisions and orders issued by the supervisory bodies in the exercise of their supervisory authority.

### **C. Revision**

#### **Art. 51**

##### *Subject Matter and Duties*

- 1) The workload, efficiency, and operational effectiveness of the courts, as well as their organizational structure and operational procedures, shall generally be reviewed by experts every five years. To the extent that the review concerns the proper conduct of business by the courts or individual court divisions, the expert must be qualified to serve as a judge.
- 2) The investigation is ordered by the government after consultation with the presiding judge of the competent court. When conducting investigative actions, strict care must be taken to ensure that there is no interference with judicial independence.
- 3) The experts must report in writing to the presiding judges on the results of the investigation and any recommendations for the appropriate fulfillment of duties. The presiding judges shall solicit the opinions of the parties concerned. They shall submit their comments on the findings and recommendations of the experts to the government.
- 4) The experts have the right to inspect the court files. They are bound by confidentiality.
- 5) The State Parliament and the government may order a special investigation pursuant to paragraph 1 in the event of specific occurrences or extraordinary situations.

### **V. General Procedural Principles**

#### **A. Deliberation and Voting**

#### **Art. 52**

##### *Court Hearings*

- 1) The deliberations and votes of the judges are not public.

2) The court must be in full session. The court clerk, who must be sworn in, participates in the hearings and deliberations.

3) The court decides by open vote with a majority of votes. Abstentions are not permitted.

**Art. 53**

*Presidency and Conduct*

1) The chairperson presides over the deliberations and the voting. The rapporteur presents the motions.

2) A vote is preceded by a discussion. The rapporteur casts his or her vote first, followed by the other members in order of age, with the older members voting before the younger ones; the chairperson votes last.

3) A vote must always be taken first on the court's jurisdiction, the need for additional evidence, and other preliminary matters. If there are multiple points of contention, a separate vote must be taken on each one.

4) Special provisions in procedural laws are reserved. Art. 54

*Result of Deliberation and Voting*

1) The Senate shall decide on any disagreements regarding the accuracy of the result announced by the presiding judge.

2) The result of the vote and the deliberations shall be recorded in a separate protocol.

**Art. 55**

*Revotation*

1) As long as a decision has not been announced orally or handed over to the court clerk's office for drafting, the court may reconsider the deliberations and vote.

2) It shall decide on the reconsideration in its original composition.

**B. Recusal and Disqualification of Judges and Other Court Officials**

**Art. 56**

*Recusal*

Judges, judicial officers, court clerks, bailiffs, and non-judicial notaries may not perform their duties if they:

a) have a personal interest in the matter;

b) are or were married to a party or a person involved in the proceedings, live or lived in a registered partnership, are or were in a de facto cohabitation, or are related by blood or marriage up to the fourth degree. Adoption, step-parent, and guardianship relationships are treated as equivalent to natural parent-child relationships;

c) are representatives, agents, employees, or officers of a party to the proceedings;

d) have acted in the matter as a judge, judicial officer, clerk, or court reporter at a lower court, legal representative of a party or a party to the proceedings, investigating judge, prosecutor, expert witness, or witness, or are a witness in the proceedings.

Art. 57

#### *Recusal*

Judges, judicial officers, clerks, bailiffs, and non-judicial notaries may request their own recusal or be challenged by the parties and participants in the proceedings if:

a) there exists a close friendship, a personal enmity, or a special relationship of duty or dependence with a party or a party to the proceedings;

b) they are in a legal dispute with a party, the public prosecutor, or a party to the proceedings, or could be biased in the matter for other reasons.

### **C. Recusal and Challenge Proceedings**

Art. 58

#### *Duty to Disclose*

1) Any judge, judicial officer, court clerk, bailiff, or non-judicial notary must refrain from performing any judicial acts from the moment they become aware of a ground for recusal.

2) If the challenge to a judicial officer is manifestly unfounded and suggests an intent to delay the proceedings, a hearing that has already begun shall continue. However, the final decision may not be rendered before the rejection of the challenge has become final. If the challenge is upheld, the judicial acts performed by the challenged judicial officer are void and, to the extent necessary, must be set aside.

3) As soon as a judicial officer becomes aware of a ground for recusal or disqualification, he or she is obligated to notify the presiding judge in a timely manner; if the presiding judge is personally involved, the deputy presiding judge must be notified.

Art. 59

*Procedural Rules*

1) Summonses to the parties must be served no later than ten days before the court date. They shall contain the name of the single judge or the names of the judges of the collegiate court, as well as the clerk and the court reporter.

2) All invitations and summonses to collegiate court proceedings are generally issued by the presiding judge of the relevant court. All other invitations and summonses are issued by the competent single judge or the competent judicial officer.

3) The right to challenge a judicial officer is forfeited if it is not asserted in writing with the competent court at least five days after service of the summons or notification of the composition of the court.

Art. 60

*Decision*

1) Subject to paragraph 2, the decision on exclusion or recusal shall be made by:

- a) in the case of judicial officers of the Regional Court, the Higher Regional Court, or the Supreme Court, the respective presiding judge;
- b) in the case of the president of the Regional Court, the president of the Higher Regional Court;
- c) in the case of the President of the Higher Regional Court, the President of the Supreme Court;
- d) in the case of the President of the Supreme Court, his or her deputy.

2) In collegial courts, the presiding judge decides on the exclusion or recusal of judicial officers. If the presiding judge is personally involved, the bench decides.

3) Decisions regarding the recusal or challenge of judicial officers are final.

4) If the challenge is granted or a judge is recused, his or her deputy shall take his or her place. If, even under the deputy arrangement, it is no longer possible to have a regular composition of the court, a replacement appointment must be made immediately. The procedure is governed by the provisions of the Judges Appointment Act.



5) The appointment of replacements for judicial officers, clerks, court reporters, bailiffs, and non-judicial notaries shall be made by the presiding judge of the competent court.

Art. 61

*Recusal of Other Court Officials*

The provisions governing the recusal and challenge of judges, judicial officers, court clerks, bailiffs, and non-judicial notaries apply mutatis mutandis to all other court officials.

**D. EEA law**

Art. 62

*Interpretation of the EEA Agreement*

1) If, in pending proceedings, a court considers it necessary to obtain an opinion from the EFTA Court on the interpretation of the Agreement on the European Economic Area, it may order that the proceedings be stayed until the opinion is received.

2) The court may at any time lift the stay it has ordered, either upon application or on its own initiative.

**Va. Security in the Courthouse and During Court Proceedings Held Off-Site**

Art. 62a

*Prohibition on Bringing Weapons into the Courthouse*

1) No one may enter the courthouse with a weapon; any object that is particularly dangerous and capable of threatening life or limb shall be considered a weapon.

2) Anyone who, contrary to paragraph 1, is carrying a weapon must, upon entering the courthouse, store it in a locker designated for this purpose or, if no such locker is available, hand it over to an inspection authority (Art. 62c, para. 1).

3) Before the weapon is stored in a locker or handed over (para. 2), the owner must be informed of the conditions governing the release of a weapon (Art. 62f).

Art. 62b

*Exceptions to the Prohibition on Carrying Weapons*

Article 62a shall not apply to police officers who are authorized to carry a specific weapon in accordance with police legislation or who are required to bring a specific weapon into the courthouse pursuant to a court order.

Art. 62c

*Security check*

1) Persons entering or remaining in the courthouse must, upon request by a security officer, submit to a search to determine whether they are carrying a weapon (security check). Security officers are persons commissioned by security companies (Art. 62i) to conduct security checks.

2) Security checks may be conducted in particular using technical aids such as walk-through metal detectors and handheld metal detectors; while taking the greatest possible care to respect the dignity of the person concerned, it is also permissible to request that the person present the items they are carrying and to conduct a manual search of their clothing; such a search of clothing may only be conducted by persons of the same sex.

3) The instructions of the control authorities serving the purpose of security checks and the enforcement of the prohibition on carrying weapons must be followed.

Art. 62d

*Exceptions to Security Screening*

1) Subject to paragraphs 2 and 3, judges, public prosecutors, non-judicial employees, police officers, as well as attorneys and legal clerks admitted to practice in Liechtenstein, shall not be subject to security screening under Art. 62c if they identify themselves—where necessary—with their service ID or an official photo ID and declare that they are carrying no weapon or only a weapon that they have been authorized to carry (Art. 62b); if they enter the courthouse through the main entrance equipped with a metal detector, they must nevertheless pass through it if there is no other passageway designated for them adjacent to it.

2) If, despite the declaration made by a person referred to in paragraph 1 pursuant to paragraph 1, a security officer has reasonable grounds to suspect that the person is in fact carrying a weapon without authorization, the person shall, as an exception, also be subjected to a security check pursuant to Art. 62c.

3) If special circumstances exist, the supervisory authorities may be instructed to subject every person within the group of persons referred to in paragraph 1 to a security check pursuant to Article 62c. This order must be limited in time as required; it must be issued by the president of the regional court.

Art. 62e

*Coercive Powers of the Control Authorities*

1) Persons who unjustifiably refuse to undergo a security check or to surrender or hand over a weapon found in their possession (Art. 62a) shall be removed from the courthouse by the security authority. Under the same conditions, persons who have evaded a security check shall also be removed from the courthouse.

2) The security personnel are authorized, in the event of non-compliance with their instructions under paragraph 1, to threaten the use of direct coercive force and, if the threat proves ineffective, to enforce their instructions using appropriate direct coercive force while showing the greatest possible consideration for the person concerned.

Art. 62f

*Return of Surrendered Weapons*

1) A weapon surrendered pursuant to Art. 62a shall be returned to the owner upon request, if possible upon leaving the courthouse. The same applies to a weapon stored in a locker if the cooperation of a supervisory authority is required to open it.

2) If the weapon in question is one for which the owner must meet the requirements under Article 38 of the Weapons Act, it may only be released if those requirements are met. Otherwise, the State Police must be notified, and the weapon must be retained until their arrival and their instructions awaited.

3) Weapons for which release is not requested within six months of their surrender shall be deemed forfeited. Forfeited weapons shall be destroyed; however, if their value clearly exceeds 1,000 Swiss francs, they shall be sold by private sale. If the owner or lawful possessor submits a request for the return of the item in a timely manner prior to its sale or destruction, the weapon shall be returned to him, subject to paragraph 2.

4) The sale or destruction shall be ordered by the president of the district court. If the person surrendering the weapon provided their name and address at the time of surrender, they shall be notified in a timely manner prior to the sale or destruction and requested to collect the weapon. Any proceeds from the sale shall be returned to the owner if the owner requests this within three years of the forfeiture taking effect.

5) The possessor must be informed in writing of the legal consequences set forth in this provision upon surrender of the weapon.

Art. 62g

*Consequences of Default*

Anyone who has been removed from the courthouse because they wrongfully refused to undergo a security check or to surrender or hand over a weapon (Art. 62e), and who, as a result, has failed to perform a procedural act necessary for the prosecution or defense of a case or has failed to fulfill an obligation in court, shall generally be considered to be absent without excuse.

Art. 62h

*Prohibition on Carrying Weapons During Court Proceedings Held Off-Site*

Articles 62a through 62g shall apply mutatis mutandis to persons who are present during or are required to participate in court proceedings taking place outside the courthouse.

Art. 62i

*Entrustment to Security Companies*

1) The government is authorized to contractually delegate the performance of security checks to companies suitable for this purpose (security companies).

2) When delegating such tasks, care must be taken to ensure that the selected companies provide a guarantee of proper performance of their duties, in particular based on their relevant authority, technical, financial, and economic capacity, as well as their reliability.

Art. 62k

*Powers and duties of the supervisory bodies*

1) Persons entrusted with conducting security inspections of security companies (Art. 62i) are authorized and obligated to:

- a) to conduct security checks using the means and restrictions specified in Article 62c, taking the greatest possible care to avoid causing distress to the persons concerned and ensuring that court proceedings are not disrupted or the reputation of the administration of justice is not damaged;
- b) if a locker is available, to assist, where necessary, in the storage of a weapon in a locker and in opening it; otherwise, to temporarily take a weapon handed over to them into custody and to return it to its owner upon leaving the courthouse; Article 62f remains reserved;
- c) in the cases provided for in Art. 62e, to expel persons from the courthouse, to threaten them with the use of direct coercive force if necessary, and, if such a threat proves ineffective, to enforce their instructions through appropriate direct coercive force while showing the greatest possible consideration for the person concerned;
- d) to notify the state police if:
  - 1. entry into the courthouse is forced by means of violence or dangerous threats, or an order to leave the courthouse is resisted in this manner; or
  - 2. a weapon is seized pursuant to Art. 62f;
- e) report cases under Art. 62d(2) to the president of the district court;
- f) upon request, identify oneself to persons who are to undergo a security check by providing one's first and last name and identifying oneself as an authorized representative of the security company.

Art. 62l

#### *House Rules*

- 1) The President of the Regional Court must issue a set of house rules in the exercise of his authority over the parts of the courthouse dedicated to court operations. These rules must be made public by posting them for public inspection in the courthouse and by making them available on the Internet.
- 2) In any case, the house rules must include a reference to the prohibition on weapons under Art. 62a and to the permissibility of security checks in accordance with the provisions of Art. 62c et seq.

### **VI. Transitional and Final Provisions**

Art. 63

#### *Pending Proceedings and Current Deadlines*

- 1) The new law applies to proceedings pending at the time this Act enters into force if the previous law is not more favorable to the parties in its overall effect.
- 2) Time limits that began to run prior to the entry into force of this Act shall be calculated in accordance with the previous law.

Art. 64

*Continuation of Offices*

- 1) The President of the High Court, the President of the Supreme Court, and their deputies shall continue to hold office until the expiration of the term for which they were appointed under the previous law.
- 2) The Presiding Judge of the Regional Court and his or her deputies, appointed under the previous law, shall continue to hold their offices for a term of five years after the entry into force of this Act, unless they waive such continuation in writing within a period of 14 days following the entry into force of this Act.

Art. 65

*Repeal of Previous Law*

The following are repealed:

- a) The Court Organization Act of April 7, 1922, LGBI. 1922 No. 16;
- b) The Act of July 12, 1934, Amending the Court Organization Act, LGBI. 1934 No. 8;
- c) The Act of November 28, 1972, amending the Court Organization Act, LGBI. 1973 No. 1;
- d) Law of October 24, 1990, amending the Court Organization Act, LGBI. 1990 No. 76;
- e) Law of December 14, 2000, amending the Court Organization Act, LGBI. 2001 No. 30;
- f) Law of April 18, 2002, amending the Law on the Organization of the Courts, LGBI. 2002 No. 70;
- g) Law of November 26, 2003, amending the Law on the Organization of the Courts, LGBI. 2004 No. 31.

Art. 66

*Entry into Force*

This Act shall enter into force simultaneously with the Constitutional Act of October 24, 2007, amending the Constitution of October 5, 1921.

Act of December 3, 2020, on the Suspension of the Expiration of Time  
Limits on Days Equivalent to Sundays

**XIV. Act on the Suspension of Time Limits (FAHG)**

Art. 1

*Suspension of the Expiration of Time Limits*

To the extent that, pursuant to statutory provisions, the expiration of a time limit is suspended by a day equivalent to a Sunday, this suspension also applies on Saturdays and the following days:

- a) January 1 (New Year's Day);
- b) January 2 (Berchtold's Day);
- c) January 6 (Epiphany);
- d) February 2 (Candlemas);
- e) Shrove Tuesday;
- f) March 19 (St. Joseph);
- g) Good Friday;
- h) Easter Monday;
- i) May 1 (Labor Day);
- k) Ascension Day;
- l) Whit Monday;
- m) Corpus Christi;
- n) August 15 (Assumption of Mary, National Holiday);
- o) September 8 (Birth of the Virgin Mary);
- p) November 1 (All Saints' Day);
- q) December 8 (Immaculate Conception);
- r) December 24 (Christmas Eve);
- s) December 25 (Christmas);
- t) December 26 (St. Stephen's Day);
- u) December 31 (New Year's Eve).

FAHG

Art. 2

*Repeal of Previous Legislation*

The Act of July 17, 1964, on the suspension of the expiration of time limits on Saturdays and Good Friday, LGBI. 1964 No. 29, is repealed.

Statute of Limitations Suspension Act

~~(FAHG)~~

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Art. 3

*Transitional Provision*

The new law shall apply to proceedings pending at the time this law enters into force.

Art. 4

*Entry into force*

This Act shall enter into force on March 1, 2021, provided that the referendum period expires without being exercised; otherwise, it shall enter into force on the day following its promulgation.



## **XV. Insolvency Code (IO)**

of July 17, 1973

### **on Insolvency Proceedings**

#### **I. Jurisdiction in Insolvency Proceedings**

##### **Art. 1**

##### **Jurisdiction, Procedural Provisions**

- 1) The Regional Court in Vaduz has jurisdiction over insolvency proceedings.
- 2) Unless otherwise provided in this Act, the provisions of the Civil Procedure Code and the Jurisdiction Act, as well as their implementing laws, shall apply mutatis mutandis to the proceedings. The provisions regarding the suspension of proceedings, litigation costs, and court recesses shall not apply.
- 3) Judicial decisions may be rendered without an oral hearing. The District Court may, on its own motion, seek clarifications, conduct investigations, and take evidence.
- 4) The provisions of the Enforcement Code (Art. 38) apply to oral hearings.
- 4a) If, in addition to publication in the Official Gazette, special service is required, the effects of service shall take effect upon publication in the Official Gazette, even if service has not been effected.
- 5) In insolvency proceedings involving an unusually large number of creditors, special service on the creditors may be omitted if publication in the Official Gazette ensures sufficient public notice of the essential content of the document to be served. Decisions must be served on creditors who request them.
- 6) Court orders are enforceable.
- 7) The provisions of the Banking Act, the Securities Firms Act, and the Restructuring and Resolution Act apply to the restructuring and liquidation of banks and securities firms; the provisions of the Insurance Supervision Act apply to the restructuring and liquidation of insurance companies. Unless otherwise specified therein, the provisions of this Act apply supplementarily.

##### **Art. 2**

##### **Time Limits, Default**

- 1) The time limits specified in this Act are not extendable.

2) Motions, statements, and objections for which a hearing has been scheduled may not be raised subsequently by persons who failed to appear despite having been duly summoned.

3) There shall be no reinstatement of the previous status due to failure to meet a deadline or attend a hearing.

#### Art. 3 Appeals

1) The deadline for filing an appeal is 14 days. New facts and evidence may be presented in appeals.

2) Unless otherwise provided by this Act, orders and decisions of the Regional Court may be challenged by appeal.

3) The Regional Court may itself grant an appeal, except in the cases listed in § 490 of the Code of Civil Procedure, if the order or decision can be amended without prejudice to any party.

#### Art. 4 Insolvency

##### Administrator

1) The Regional Court shall appoint an insolvency administrator ex officio, who shall be designated as the estate administrator upon the opening of bankruptcy proceedings and the opening of a reorganization proceeding without self-administration, and as the reorganization administrator in a reorganization proceeding with self-administration. The insolvency administrator must be a person of good character, reliable, and knowledgeable in business matters and may not be a close relative of the debtor. If the insolvency administrator is a legal entity or a company, the shareholders and former shareholders who left the company in the year prior to the opening of the insolvency proceedings are considered close relatives of the debtor. The same applies to the close relatives of the persons referred to in the preceding sentence.

1a) In selecting the insolvency administrator, the court must take into account the existence of an adequate office organization, any special knowledge—particularly in business administration, insolvency law, tax law, and labor law—as well as professional experience.

2) The insolvency administrator must pledge to perform his duties with due diligence. He receives a certificate of appointment.

3) In relation to third parties, the insolvency administrator is authorized to perform all legal transactions and acts necessary to fulfill the obligations of his

office, unless the Regional Court has ordered a restriction of his powers in a specific case and has notified the third party thereof.

4) The insolvency administrator must exercise the care required by the nature of his duties (§ 1299 ABGB). He must safeguard the common interests over the special interests of individual parties. He is liable to all parties for financial losses he causes them through the breach of his duties.

5) The Regional Court may at any time request reports and explanations from the insolvency administrator, either orally or in writing, inspect the accounts and documents, and order that he seek instructions on specific matters.

6) The Regional Court may remove the insolvency administrator for good cause. The insolvency administrator must be heard beforehand.

7) The insolvency administrator is entitled to reimbursement of his out-of-pocket expenses and to remuneration for his services. If the insolvency administrator is an attorney or legal agent and conducts litigation or enforcement proceedings on behalf of the insolvency estate, he is entitled to remuneration in accordance with the applicable rates.

IO

#### Art. 4a Creditors'

##### Committee

1) The Regional Court shall, without delay, appoint a creditors' committee consisting of three to seven members, either on its own initiative or at the request of the first or any subsequent creditors' meeting convened to consider this matter, if the nature or particular scope of the debtor's business so warrants, as well as in the case of a planned sale or lease pursuant to Art. 71(5). The appointment of the creditors' committee and the names of its members shall be published in the Official Gazette.

2) Natural and legal persons who are not creditors, as well as appropriate state or municipal agencies, may also be appointed as members of the creditors' committee. Each member may, at their own risk and expense, have themselves represented in the performance of their duties.

3) The Regional Court shall remove members of the creditors' committee ex officio or upon the request of the first or a subsequent creditors' meeting convened to consider this matter for good cause, in particular if they fail to fulfill their obligations or fail to do so in a timely manner.

4) If a member of the creditors' committee refuses to assume the position, is removed from office, or otherwise ceases to serve, the Regional Court shall appoint another person as a member of the creditors' committee.

Art. 4b

Duties, Liability, and Convening of the Creditors' Committee

1) The creditors' committee has the duty to supervise and assist the insolvency administrator. The members of the creditors' committee are liable to all parties for financial losses caused by conduct in breach of their duties and may be compelled by the Regional Court to fulfill their duties through administrative fines.

2) The creditors' committee must be convened in writing by the regional court or the insolvency administrator; in the cases specified in Section 71(5), the debtor must also be notified, with the indication that he is free to attend the meeting. Any member of the creditors' committee may request a meeting, stating the reasons; the creditors' committee must be convened in particular if requested by a majority of all members of the creditors' committee. A resolution requires a number of votes equal to the majority of all members of the creditors' committee. Voting may take place in writing. No one may vote on a matter in which they have a personal interest.

3) Any member of the creditors' committee whose opinion is not adopted may draft a minority report and submit it to the Regional Court.

4) The members of the creditors' committee are not entitled to remuneration, but they are entitled to reimbursement of their necessary expenses. However, if they are entrusted with special tasks by order of the Regional Court or by resolution of the creditors' committee, they may be granted special remuneration with the approval of the Regional Court.

5) As long as a creditors' committee has not been appointed, the obligations assigned to the creditors' committee shall fall to the Regional Court. If the consent of the creditors' committee is required, the Regional Court may seek the resolution of the creditors' meeting.

Art. 5

Scope of the Proceedings

1) The insolvency proceedings extend to all of the debtor's assets that are subject to enforcement or form the subject matter of an action to set aside a transaction, which belong to the debtor at the time the insolvency proceedings are opened or which the debtor

acquires during the insolvency proceedings (insolvency estate). Unless international treaties preclude it, the foreign authority must be requested by the insolvency administrator or the court to surrender the debtor's movable assets located abroad.

2) The debtor is obligated, in consultation with the insolvency administrator, to cooperate in the realization of foreign assets to which the effects of the insolvency proceedings extend. Art. 60 applies *mutatis mutandis*.

3) The movable assets of a debtor located in Switzerland, against whose assets insolvency proceedings have been opened abroad, shall be surrendered to the foreign insolvency authority upon its request, unless insolvency proceedings are opened in Switzerland. The assets may be handed over only after the rights of separation and exclusion acquired up to the receipt of the request have been satisfied. The handover shall be refused to the extent that the foreign state does not observe reciprocity.

#### Art. 6

##### Application for the Opening of Proceedings by the Debtor

1) Insolvency proceedings shall be opened upon the debtor's application if the assets are likely to be sufficient to cover the costs of the insolvency proceedings. The notice of suspension of payments filed by the debtor with the regional court shall be deemed an application.

2) If, in the case of legal entities or estates, the petition is not filed by all persons authorized to represent them, insolvency proceedings shall be opened only if insolvency or over-indebtedness (Art. 8 and 9) is *prima facie* established.

3) If the requirements for opening insolvency proceedings (Art. 8 and 9) are met, the application must be filed without undue delay, but no later than 60 days after the onset of insolvency. This obligation applies to natural persons and, in the case of legal entities and estates, to the persons authorized to represent them. The application is not deemed to have been unduly delayed if the opening of restructuring proceedings under self-administration has been diligently pursued.

4) In the event of insolvency caused by a natural disaster (flood, avalanche, snow pressure, landslide, rockfall, hurricane, earthquake, epidemic, pandemic, or similar disaster of comparable magnitude), the period specified in paragraph 3 is extended to 120 days.

5) Insolvency creditors may assert claims for damages due to a reduction in the insolvency distribution ratio resulting from a breach of the obligation under paragraph 3 only after the termination of the insolvency proceedings has become final.

#### Art. 7

##### Application for the Opening of Proceedings by a Creditor

1) Insolvency proceedings shall be opened upon a creditor's application if the creditor establishes the existence of his or her insolvency claim—even if not yet due—and the debtor's insolvency or over-indebtedness (Art. 8 and 9), and if the debtor's assets are likely to be sufficient to cover the costs of the insolvency proceedings.

2) It is not necessary to demonstrate the debtor's insolvency or over-indebtedness if the petition is filed within 14 days of the announcement of the nullity or the declaration of invalidity of a reorganization plan.

3) It is not necessary to demonstrate that the debtor's assets are likely to be sufficient to cover the costs of the insolvency proceedings if the creditor demonstrates the existence of a likely sufficient claim for avoidance or provides a reasonable advance on costs. Reimbursement of this advance may only be claimed as a claim against the estate.

4) The petition must be served on the debtor. This must be followed by a notice regarding the opening of reorganization proceedings upon timely submission of a reorganization plan.

#### Art. 8 Insolvency

1) The opening of insolvency proceedings requires that the debtor be insolvent.

2) Insolvency is presumed, in particular, if the debtor suspends payments.

#### Art. 9 Over-indebtedness

- 1) Insolvency proceedings may also be opened against the assets of legal entities and estates in cases of over-indebtedness.
- 2) The provisions of this Act relating to insolvency shall apply *mutatis mutandis* to over-indebtedness in such cases.

#### Art. 10

##### Court Decision, Appeals

- 1) Upon a creditor's petition to open insolvency proceedings, the Regional Court shall hear the debtor and, if necessary, also informants, provided this is possible in a timely manner. Without first hearing these persons and the petitioner, the petition shall be dismissed only if it is manifestly unfounded, in particular if the *prima facie* case within the meaning of Art. 7 is manifestly not established.
- 2) Decisions of the Regional Court opening insolvency proceedings or dismissing a petition to open insolvency proceedings must be reasoned. They may be challenged by any person whose rights are affected thereby.
- 3) Orders dismissing an application to open insolvency proceedings due to a lack of assets sufficient to cover costs must include a reference to this fact and to the debtor's insolvency in the ruling. They must be published in the Official Gazette.
- 4) Appeals against orders opening insolvency proceedings do not have suspensive effect.

#### Section 10a Duty to

##### Provide Information

The Financial Market Authority (FMA) must be notified immediately of any decisions by the Regional Court opening insolvency proceedings against a participant in a system within the meaning of the Finality Act.

#### Art. 11

##### Edict

- 1) The opening of insolvency proceedings shall be made public by edict. The edict shall be published in the Official Gazette on the day of the opening of the insolvency proceedings.
- 2) The edict must contain:
  - a) the name of the Regional Court;

- b) the name (business name), occupation, and place of residence of the debtor and the registered office of the debtor's business;
  - c) the name and address of the insolvency administrator, the type of insolvency proceedings opened, and whether the debtor is entitled to self-administration;
  - d) a call to the insolvency creditors to file their claims and the legal basis therefor within a specified period, and a brief explanation of the consequences of failing to meet the filing deadline;
  - e) The date and time of the general examination hearing and a request to the insolvency creditors to bring documentation substantiating their claims to the hearing;
  - f) the request to those entitled to separation of property and to creditors with a claim to income from an employment relationship or to other recurring benefits serving as income replacement to assert their rights to separation of property or to separate their claims within the filing period;
  - g) the media designated for further publications.
- 3) As a rule, the filing period shall be set at 30 to 60 days after the opening of the insolvency proceedings, and the general examination hearing shall be scheduled for 14 days after the expiration of the filing period.

#### Art. 12 Notes

The Regional Court shall ensure that the opening of insolvency proceedings is noted in the land register with respect to the debtor's real property and claims, as well as in the commercial register, the attachment register, the retention-of-title register, and in all registers in which intellectual property rights are recorded, specifying the date of the opening of the insolvency proceedings. Art. 13

#### Protective Measures

Simultaneously with the opening of insolvency proceedings, the Regional Court shall take all measures necessary to secure the insolvency estate, in particular by notifying PTT offices, postal check offices, railways, airports, banks, credit institutions, and custodial institutions that dispositions regarding shipments, deposits, credit balances, and the like may be executed only with the consent of the Regional Court.

#### Art. 13a

#### Notification of Employees



The insolvency administrator must immediately notify the debtor's employees of the opening of insolvency proceedings if they have not already been notified by the Regional Court or if the opening of insolvency proceedings is not generally known.

Art. 14

Publication of the Dismissal

1) If an appeal against the order opening insolvency proceedings is upheld with final and binding effect, the termination of the insolvency proceedings must be published in the same manner as the opening of the insolvency proceedings. All offices, agencies, and persons who have been notified of the opening of the insolvency proceedings or informed in accordance with the preceding article shall be notified of the termination of the insolvency proceedings.

2) At the same time, steps must be taken to ensure that the notes regarding the opening of insolvency proceedings made pursuant to Art. 12 and any notice published in the Official Gazette are deleted, and all measures restricting the debtor's free disposal of assets are lifted.

II. Effects of the Opening of Insolvency Proceedings

Art. 15

Commencement of Effects

The legal effects of the opening of insolvency proceedings take effect on the day following the publication of the insolvency notice in the Official Gazette.

Art. 16

Effect of the Opening

1) Upon the opening of insolvency proceedings, the debtor is deprived of the right to freely dispose of the insolvency estate.

2) Legal acts of the debtor after the opening of insolvency proceedings that concern the insolvency estate are ineffective against the insolvency creditors. The other party must return any consideration received to the extent that the insolvency estate would be enriched thereby.

3) Payment of a debt to the debtor after the commencement of insolvency proceedings does not discharge the obligor, unless the payment has been contributed to the insolvency estate or unless the obligor was unaware of the commencement of the insolvency proceedings at the time of payment and such lack of awareness was not due to a failure to exercise due care.

Art. 17

Acquisition in Insolvency Proceedings, Inter Vivos Transfers

- 1) The insolvency administrator may, in place of the debtor, accept inheritances subject to the benefit of inventory.
- 2) If he does not accept an inheritance or refuses a bequest or the acceptance of a gratuitous inter vivos gift, the right is excluded from the insolvency estate.

Art. 18

Mainten-  
ance

- 1) Whatever the debtor acquires through his own efforts or whatever is gifted to him gratuitously during the insolvency proceedings shall be left to him to the extent necessary for his maintenance and that of those who have a statutory claim for maintenance against him.
- 2) The debtor has no claim to maintenance from the insolvency estate. However, the court may grant the debtor and his family the necessary maintenance.
- 3) If the debtor resides in a dwelling belonging to the insolvency estate, the provisions of Art. 67 of the Enforcement Code shall apply mutatis mutandis to the transfer and vacating of the debtor's dwelling.
- 4) Maintenance claims arising under the law may be asserted in insolvency proceedings for the period following the commencement of such proceedings only to the extent that the debtor is liable as the heir of the person obligated to pay maintenance.

Art. 19

Effect on Legal Disputes

- 1) Legal disputes aimed at asserting or securing claims to assets belonging to the insolvency estate may neither be initiated nor continued against the debtor after the commencement of insolvency proceedings.
- 2) Legal disputes concerning claims for separation and claims for the separation of property not belonging to the insolvency estate may be brought and continued even after the opening of insolvency proceedings, but only against the insolvency administrator.
- 3) Legal disputes concerning claims that do not relate at all to the assets forming part of the insolvency estate, in particular claims for personal

performance by the debtor, may also be brought or continued against the debtor or by the debtor during the insolvency proceedings.

#### Art. 20 Stay of

##### Proceedings

1) All pending legal disputes in which the debtor is the plaintiff or defendant, with the exception of the disputes specified in Art. 19(3), are stayed by the commencement of insolvency proceedings. The stay applies to the debtor's co-litigants only if they form a single party to the dispute with the debtor (Section 14 of the Code of Civil Procedure).

2) Proceedings may be initiated by the insolvency administrator, the debtor's co-defendants, or the opposing party.

3) In legal disputes concerning claims subject to filing in the insolvency proceedings, the proceedings may not be initiated before the conclusion of the examination hearing. In lieu of the insolvency administrator, insolvency creditors who contested the claim at the examination hearing may also initiate the proceedings.

#### Art. 21

##### Refusal to Join a Legal Dispute

1) If the insolvency administrator refuses to intervene in a legal dispute in which the debtor is the plaintiff or in which a claim for the separation of property not belonging to the insolvency estate is asserted against the debtor, the claim or the property claimed by the plaintiff seeking separation shall be excluded from the insolvency estate.

2) It shall be deemed a refusal by the insolvency administrator if he does not declare his intention to join the legal dispute within a period determined by the trial court.

3) In this case, the proceedings may be initiated by the debtor, his co-litigants, and the opposing party.

4) The provisions of this and the two preceding articles apply mutatis mutandis to arbitration proceedings (Sections 594 et seq. of the Code of Civil Procedure).

#### Art. 22

##### Interruption of the Statute of Limitations

1) The filing of a claim in the insolvency proceedings interrupts the statute of limitations for the filed claim. The statute of limitations for the claim against the debtor begins anew upon the expiration of the day on which the order terminating the insolvency proceedings becomes final.

2) If a claim is contested at the examination hearing, the statute of limitations shall be suspended from the date of filing until the expiration of the period designated for asserting the claim.

#### Art. 23 Rights of Separation

1) After the opening of insolvency proceedings, no judicial lien or right of satisfaction may be acquired with respect to property belonging to the insolvency estate on the basis of a claim against the debtor.

2) Rights of retention shall be treated as liens in the insolvency proceedings.

3) Unless otherwise provided in this Act, the provisions applicable to creditors with a right of separation shall also apply to personal creditors who have acquired certain assets of the debtor, in particular accounts receivable, to secure their claims.

#### Effect on Rights of Separation and Exclusion Art. 24

Rights of separation and rights to claim separate property that do not form part of the insolvency estate are not affected by the commencement of insolvency proceedings. Art. 25

1) Rights of separation newly acquired through enforcement in the 60 days prior to the opening of insolvency proceedings, with the exception of rights of separation acquired for public levies, shall expire upon the opening of insolvency proceedings; however, they shall be revived if the insolvency proceedings are terminated pursuant to Art. 164. In the case of the compulsory creation of a lien pursuant to Art. 139 of the Enforcement Code, the date of the entry in the land register noting the initiation of the auction proceedings shall be decisive.

2) If the sale has been requested solely on the basis of such a right of separation, the sale proceedings shall be discontinued upon the request of the insolvency administrator. The period specified in Art. 175(2) of the Enforcement Code for the extinction of the lien is suspended in favor of this right of separation from

its revival until the end of the day on which the decision to terminate the insolvency proceedings becomes final.

3) If proceeds have been realized from a sale conducted before or after the opening of the insolvency proceedings, the portion attributable to such a right of separation shall be included in the insolvency estate.

#### Art. 25a Receivership

The receivership of a business, a real property, or a share in real property terminates at the end of the calendar month in progress at the time the insolvency proceedings are opened. If the proceedings are opened after the 15th day of the month, the receivership terminates only at the end of the following calendar month.

#### Art. 26 Land Registry Entries

Land registry entries may also be approved and executed after the opening of insolvency proceedings if the priority of the entry is determined by a date preceding the opening of the insolvency proceedings.

#### Art. 27

##### Indeterminate and Old Claims

1) Claims that do not relate to a monetary payment or whose monetary amount is indeterminate or not denominated in domestic currency must be asserted at their estimated value in domestic currency as of the date of the commencement of insolvency proceedings.

2) Matured claims shall be deemed due in the insolvency proceedings.

3) Overdue claims for which no interest is due may be asserted only to the extent that, when statutory interest is added for the period from the opening of the insolvency proceedings until the due date, the total amount equals the full amount of the claim.

#### Art. 28

##### Claims for Recurring Payments

1) Claims for the payment of annual pensions, alimony, or other recurring payments of a fixed duration shall be aggregated after deducting the interim interest specified in Art. 27(3).

2) Claims of the type described in paragraph 1 of indefinite duration shall be asserted at their estimated value as of the date of the commencement of the insolvency proceedings.

Art. 29

Conditional Claims

A person holding a conditional claim may file a claim for security for payment in the event that the suspensive condition is fulfilled or the resolute condition is not fulfilled; however, if the condition is resolute and the person provides security in the event that the condition is fulfilled, the person may file a claim for payment.

Art. 30

Rights of Co-Debtors and Sureties

1) Joint and several co-debtors and sureties of the debtor may, in insolvency proceedings, request reimbursement of payments they made on the claim before or after the opening of the insolvency proceedings, to the extent that they have a right of recourse against the debtor.

2) With regard to any payments they may be required to make in the future as a result of their liability, they reserve the right to file their claims in the insolvency proceedings in the event that the claim is not asserted by the creditor in the insolvency proceedings.

3) After the commencement of the insolvency proceedings, the debtor's co-obligors may settle the claim with the creditor or with a successor in interest who may seek recourse against them.

Art. 31

Rights of Creditors Against Joint Obligors

1) If several persons are jointly and severally liable to the creditor for the same claim, the creditor may, until the claim is fully satisfied, assert the entire amount of the claim outstanding at the time of the commencement of the insolvency proceedings against any debtor who is subject to such proceedings.

2) If a surplus remains after the creditor has been fully satisfied, the right of recourse applies up to the amount of such surplus in accordance with the general statutory provisions.

Set-off Art.

- 1) Claims that were already set-offable at the time of the commencement of the insolvency proceedings need not be asserted in the insolvency proceedings.
- 2) Set-off is not precluded by the fact that the creditor's or debtor's claim was still conditional or pending at the time of the commencement of the insolvency proceedings, or that the creditor's claim was not for a monetary payment. The creditor's claim shall be calculated for the purposes of set-off in accordance with Articles 27 and 28. If the creditor's claim is conditional, the Regional Court may make the admissibility of set-off contingent upon the provision of security.

Art. 33

- 1) Set-off is not permitted if an insolvency creditor became a debtor of the insolvency estate only after the commencement of the insolvency proceedings, or if the claim against the debtor, with respect to whose assets the insolvency proceedings were commenced, was acquired only after the commencement of the proceedings. The same applies if the debtor acquired the counterclaim before the commencement of the insolvency proceedings but, at the time of acquisition, was aware of or should have been aware of the insolvency of the debtor against whose assets the insolvency proceedings were subsequently commenced.
- 2) However, set-off is permissible if the debtor acquired the counterclaim more than six months prior to the opening of the insolvency proceedings or if the debtor was obligated to assume the claim and, at the time of assuming this obligation, neither knew nor was required to know of the debtor's insolvency.
- 3) Furthermore, claims arising after the opening of insolvency proceedings pursuant to Articles 34 through 38 or revived pursuant to Article 71(2) of the Legal Security Act may also be set off.
- 4) Claims arising from contracts may also be set off:
  - a) that have been terminated due to the opening of insolvency proceedings, pursuant to:
    1. derivative transactions listed in Annex II to Regulation (EU) No. 575/2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No. 648/2012, including derivative instruments for the transfer of credit risks;

2. derivative transactions not covered by subparagraph (a), provided they are traded on a regulated market or in a multilateral trading facility (MTF) or were concluded under a master agreement, as well as spot transactions;

3. Repurchase agreements pursuant to Article 4(1)(83) of Regulation (EU) No. 575/2013;

4. Securities lending transactions;

5. Financial collateral pursuant to Art. 392 et seq. of the Property Law; and

b) where it has been agreed that, upon the opening of insolvency proceedings under this Act concerning the assets of a contracting party, such transactions shall be terminated or may be terminated by the other contracting party, and all mutual claims arising therefrom shall be set off.

#### Art. 34

##### Performance of Bilateral Legal Transactions

1) If a bilateral contract has not yet been performed or has not been fully performed by the debtor and the other party at the time of the opening of insolvency proceedings, the insolvency administrator may either perform the contract in place of the debtor and demand performance from the other party, or withdraw from the contract.

2) The insolvency administrator must make a decision on this matter no later than within a period to be determined by the regional court upon application by the other party; otherwise, it shall be presumed that the insolvency administrator withdraws from the transaction. In the event of withdrawal, the other party may, as an insolvency creditor, demand compensation for the damage caused to it.

3) If the other party is obligated to perform in advance, it may refuse to perform until the consideration has been provided or secured, provided that it was not required to be aware of the debtor's poor financial circumstances at the time the contract was concluded.

4) If the obligations owed are divisible and the creditor has already partially performed the obligation incumbent upon him at the time of the opening of the insolvency proceedings, he is an insolvency creditor with respect to the portion of his claim corresponding to the partial performance.

#### Art. 35 Fixed-Date

##### Transactions

1) If the delivery of goods having a market or exchange price was stipulated to take place at a precisely determined time or within a precisely determined period, and



If the time or the expiration of the deadline occurs only after the commencement of insolvency proceedings, performance cannot be demanded; instead, only damages for non-performance may be claimed.

2) The amount of damages consists of the difference between the purchase price and the market or exchange price prevailing at the place of performance or at the relevant trading venue for transactions concluded on the second business day following the commencement of insolvency proceedings with the stipulated performance date.

Lease

Agreements Art.

36

If the debtor has taken possession of an item, the insolvency administrator may, without prejudice to the claim for compensation for the damage caused, terminate the contract in compliance with the statutory or the agreed shorter notice period.

Art. 37

1) If the debtor has leased a property, the insolvency administrator steps into the contract. An advance payment of rent not evident from the land register may be set off against the insolvency administrator, without prejudice to the claim for compensation for the resulting damage, only for the period during which the lease would have lasted in the event of immediate termination in compliance with the agreed notice period or, in the absence thereof, the statutory notice period.

2) Any sale of the leased property during the insolvency proceedings shall have the effect of a necessary sale on the lease.

Art. 38

Employment

Contracts

1) If the debtor is an employer, the insolvency administrator shall exercise the rights and obligations of the employer. If the employment relationship has already commenced, it may be terminated by the employee without notice, with the opening of the insolvency proceedings constituting good cause, and by the insolvency administrator in compliance with the statutory or lawfully agreed notice period, taking into account the statutory restrictions on termination, if:

a) the debtor has neither operated nor is operating a business within one month of the opening of the insolvency proceedings; or

b) the company or individual business divisions had already been closed at the time of the opening of the insolvency proceedings, within one month of the publication of the order to be issued by the Regional Court and published in the Official Gazette, confirming that the company or individual business divisions had been closed.

1a) If the closure of only a division of the enterprise, rather than the entire enterprise, was ordered, approved, or determined, the right to termination without notice and the right to terminate pursuant to paragraph 1 shall apply only to the employees or only with respect to the employees who are employed in the affected division of the enterprise.

1b) If the employment relationship is terminated pursuant to paragraph 1, the employee may claim compensation for the resulting damage as a claim in insolvency proceedings.

2) If the employment relationship is terminated by the insolvency administrator before the expiration of the fixed term for which it was entered into, or if a longer notice period was agreed upon in the contract, the employee may claim compensation for the damage caused to him or her as an insolvency creditor.

3) Provisions set forth in special laws regarding the effect of the commencement of insolvency proceedings on the employment relationship remain unaffected. Art. 39 Mandatory Legal Provisions

1) The parties to a contract may not invoke any agreements that exclude or limit the application of Articles 34 through 38 in advance.

2) It is not permitted to agree on a right of withdrawal or termination of the contract in the event of the opening of insolvency proceedings, except in the case of contracts under Article 33(4) and in the case of partnership agreements that provide for the withdrawal of a partner in the event of his or her insolvency.

Art. 40

#### Orders and Applications

1) An order placed by the debtor expires upon the opening of insolvency proceedings.

2) Requests that have not yet been accepted by the debtor prior to the commencement of insolvency proceedings remain in effect, unless the circumstances indicate a different intention on the part of the requester.

3) The insolvency administrator is not bound by requests made by the debtor that have not yet been accepted prior to the commencement of insolvency proceedings.

### III. Claims in Insolvency Proceedings

#### Art. 41

##### Claims for separation

1) Claims to assets forming part of the insolvency estate (Art. 5) are estate claims or insolvency claims.

2) If the insolvency estate contains assets that do not belong to the debtor, either in whole or in part, the right in rem or personal right to separation shall be assessed in accordance with general legal principles.

3) If such assets have been sold after the commencement of insolvency proceedings, the entitled party may demand the exclusion of the consideration already paid from the estate; if, however, the consideration has not yet been paid, the entitled party may demand the assignment of the right to the outstanding consideration.

4) If the debtor or the insolvency administrator is to be reimbursed for expenses incurred in connection with the assets to be set aside or for the purpose of obtaining the consideration, such expenses shall be reimbursed by the person entitled to set-off on a simultaneous basis. However, that person retains any further claims for reimbursement.

#### Art. 42 Right of

##### Recourse

The seller or purchasing agent may reclaim goods that have been shipped to the debtor from another location and have not yet been paid for in full by the debtor, unless they had already arrived at the place of delivery and come into the custody of the debtor or another person acting on his behalf prior to the opening of the insolvency proceedings (right of recourse).

#### Estate claims Art. 43

Estate claims are:

- a) the costs of the insolvency proceedings, including advances made by the petitioner or any other creditor;
- b) the expenses associated with the preservation, administration, and management of the insolvency estate, in particular taxes

, levies, fees, customs duties, and social security contributions, if and to the extent that the circumstances giving rise to the obligation to pay such amounts occur during the insolvency proceedings;

c) without prejudice to subparagraph (e), claims arising from legal acts of the insolvency administrator;

d) without prejudice to subparagraph (e) and Article 34(4), claims for the performance of bilateral contracts to which the insolvency administrator has been substituted;

e) employees' claims for ongoing remuneration for the period following the opening of the insolvency proceedings;

f) claims for termination if:

1. the employment relationship was entered into prior to the opening of the insolvency proceedings and is subsequently terminated—but not pursuant to Article 38—by the insolvency administrator or, if the termination is attributable to a legal act or other conduct of the insolvency administrator, in particular the non-payment of remuneration, by the employee;

2. the employment relationship is newly entered into by the insolvency administrator during the insolvency proceedings;

g) claims arising from unjust enrichment against the insolvency estate;

h) the costs of a simple funeral for the debtor. Art. 44

1) If claims against the estate cannot be satisfied in full, they shall be paid in the following order:

- a) cash outlays falling under Article 43(a) that have been advanced by the insolvency administrator;

- b) the remaining costs of the proceedings under Art. 43(a);

- c) the claims of employees under Article 43(e) and (f); and

- d) the remaining estate claims.

2) Within the same groups, claims against the estate must be satisfied on a pro rata basis.

3) Payments already made cannot be reclaimed. Claims for separation

Art. 45

- 1) Creditors who have claims to separate satisfaction from specific assets of the debtor (separate satisfaction creditors) exclude the insolvency creditors from payment from these assets (special funds) to the extent of their claims.
- 2) Any remainder of the separate estates after the claims of the creditors with a right to separate satisfaction have been satisfied shall be transferred to the general insolvency estate. If several pledges secure the same claim, the proceeds therefrom shall be used to satisfy the claim in proportion to their value.
- 3) Separate creditors who also have a personal claim against the debtor may simultaneously assert their claim as insolvency creditors.

Art. 46

- 1) The costs of the special administration, realization, and distribution of the separate estate shall be deducted from the proceeds of the use and sale of any property belonging to the separate estate before the claims of the creditors with priority over the separate estate are satisfied.
- 2) The provisions of the Enforcement Code shall apply to the priority of claims to be satisfied from the separate estates in all dispositions made in insolvency proceedings.

Art. 47

Joint Insolvency Estate

To the extent that the insolvency assets are not used to satisfy the claims of the estate and the claims of creditors with a right of separation (Art. 45), they constitute the joint insolvency estate, from which the insolvency claims are to be satisfied in proportion to their amounts.

Art. 48 Insolvency

claims

- 1) Insolvency claims are claims of creditors who have property rights against the debtor at the time of the commencement of the insolvency proceedings (insolvency creditors).
- 2) Insolvency claims also include:
  - a) maintenance claims arising by operation of law for the period following the commencement of insolvency proceedings, to the extent that the debtor is liable as the heir of the person obligated to pay maintenance (Art. 18(4)); and
  - b) claims arising from the termination of the employment relationship pursuant to Art. 38(1b).

Art. 49

Repealed Art.

50 Repealed

Art. 51

Repealed Art.

52

Incidental expenses and claims for reimbursement

- 1) Incidental fees incurred up to the opening of insolvency proceedings rank on a par with the claims.
- 2) Claims for reimbursement of a debt paid on behalf of the debtor have the same priority as the debt paid.

Art. 53

Claims of the Debtor's Spouse

- 1) The debtor's spouse may invoke the provision of § 1226 ABGB regarding proof of the transfer of the marital property only if the document evidencing receipt of the marital property was issued either at the time of receipt or no later than two years prior to the commencement of insolvency proceedings.
- 2) The date of a private document regarding the receipt of the marital property does not in itself constitute such proof.

Art. 54

Excluded Claims

The following may not be asserted as insolvency claims:

- a) interest accruing on insolvency claims since the commencement of the insolvency proceedings, as well as costs incurred by individual creditors as a result of their participation in the insolvency proceedings;
- b) Fines for criminal offenses of any kind;
- c) claims arising from promises of gifts.

#### IV. Determination of the Insolvency

Estate: Inventory and Valuation

Art. 55

- 1) The insolvency administrator shall determine the status of the insolvency estate, ensure the collection and preservation of assets, and ascertain the debts, in particular by examining the claims filed, and

conduct legal proceedings that concern the insolvency estate in whole or in part. The insolvency estate shall be taken into custody and administered in accordance with the provisions of this Act and used for the collective satisfaction of the insolvency creditors.

2) The insolvency administrator must prepare an inventory and a balance sheet of the insolvency estate and have them appraised in accordance with the provisions of the Enforcement Code.

Art. 56

1) Items for which it is doubtful whether they belong to the estate shall be included in the inventory; claims asserted by third parties shall be noted.

2) Any person in possession of property belonging to the estate of the insolvency must, as soon as they become aware of the opening of the insolvency proceedings, notify the insolvency administrator thereof and facilitate the inventory and valuation, subject to liability for any damage caused by their fault.

3) Any person who has acquired book claims against the debtor in the year preceding the opening of the insolvency proceedings is obligated, upon request by the insolvency administrator, to provide a list of these claims and to furnish statements of account regarding the amounts received in respect thereof.

4) The Regional Court may issue the orders necessary for the implementation of these measures.

Art. 57

1) If the debtor has acquired an inheritance prior to the opening of insolvency proceedings and has not yet taken possession of it by the date of the opening of insolvency proceedings, only that portion of the estate which is due to the debtor following the outcome of the probate proceedings shall be included in the inventory of the insolvency estate.

2) If insolvency proceedings are also opened with respect to the inheritance, such proceedings shall be conducted as separate insolvency proceedings.

3) The foregoing provisions shall also apply to inheritances that accrue to the debtor only during the insolvency proceedings.

Art. 58

Obligations of the Debtor

The debtor is obligated to provide the insolvency administrator with all information necessary for the administration of the estate.

Art. 59

Inventory of Assets and Balance Sheet

- 1) If the debtor has not yet submitted a detailed statement of assets prior to the opening of insolvency proceedings, the regional court shall order the debtor to submit such a statement without delay.
- 2) The balance sheet to be submitted by the debtor pursuant to a court order shall be examined and corrected by the insolvency administrator.
- 3) The debtor must sign the statement of assets and the balance sheet in his own hand and, upon order of the Regional Court, confirm before the court with his signature that his statements regarding assets and liabilities are correct and complete and that he has not concealed any of his assets. The recording of the statement of assets shall be carried out in accordance with the provisions of the Enforcement Code.
- 4) If the debtor is a legal entity or an estate, the district court shall determine which of the persons authorized to represent the entity or estate are to submit and sign the inventory of assets.

Art. 59a

Contents of the inventory of assets

- 1) The inventory of assets must include individual assets and liabilities, stating their amount or value. For receivables, the debtor's identity must be specified; for liabilities, the creditor's identity; and for both, the basis of the claim, the due date, and any existing security must be indicated. For receivables, it must also be stated whether and to what extent they are likely to be collectible. If a receivable or liability is disputed, this must be indicated. For liabilities that grant the creditor a right to separate satisfaction, the amount of the presumed loss must be stated. If a creditor or debtor is a close relative of the insolvent debtor, this must be noted; the same applies if a creditor or debtor is an employee of the insolvent debtor or has a partnership or other joint venture relationship with the insolvent debtor; the partnership or joint venture relationship must be precisely described. The address must be provided for all creditors and debtors.



2) The debtor must include in the statement of assets a declaration stating whether any division of assets took place between the debtor and his or her close relatives within the two years preceding the filing of the petition, and whether, and if so, what dispositions of assets the debtor made in favor of his or her close relatives within the two years preceding the filing of the petition. Dispositions made without consideration are not taken into account to the extent that they are exempt from avoidance under Art. 70.

#### Art. 60

##### Measures Against the Debtor

1) The Regional Court may have the debtor brought before it by force if he fails to comply with summonses, and may take him into custody if he persistently and without sufficient cause fails to fulfill any of the obligations specified in the preceding article, or if this is necessary to secure the insolvency estate or to prevent acts that could harm the creditors.

2) Detention shall be enforced in accordance with the provisions of Articles 265 and 266 of the Enforcement Code. The total duration of detention imposed after the opening of insolvency proceedings may not exceed six months. The costs of enforcement and maintenance shall be included in the costs of the insolvency proceedings (Art. 43(a)).

#### Art. 61

##### Assertion of Claims

1) Insolvency creditors must file their claims, even if a legal dispute is pending regarding them, in accordance with the provisions of the following article.

2) Repealed

#### Art. 62

##### Content of the Filing

1) Creditors must file their claims against the insolvency estate in writing and specify the claimed priority.

2) Creditors with a right of separation who also assert their claims as insolvency creditors must set forth the facts, specifying the subject matter of the separation, and indicate the amount up to which their claims are expected to be covered by the right of separation.

3) A detailed record must be kept of all claims and lawsuits to ensure that no creditor is overlooked during the classification and distribution of assets. The parties involved may inspect the record and the supporting documents for the claims.

4) Creditors may be represented by creditor protection associations. Art. 63

#### Examination Hearing

1) The insolvency administrator and the debtor must appear at the examination hearing. The debtor's books of account and records must be brought to the hearing, to the extent practicable.

2) The filed claims shall be examined according to their priority; where claims have the same priority, they shall be examined in the order in which they were filed.

3) The insolvency administrator must issue a specific statement regarding the accuracy and priority of each filed claim; the insolvency administrator may not make any reservations when issuing this statement.

4) The debtor may contest the accuracy, but not the priority, of filed claims.

5) Insolvency creditors whose claims are confirmed may dispute the accuracy and priority of filed claims.

6) As long as the examination hearing has not been closed, the creditor may claim a different priority for his filed claim.

7) Other motions to extend or amend the filed claim shall be permitted if they do not complicate the examination hearing.

8) Claims filed after the filing deadline shall, to the extent practicable, be included in the proceedings.

#### Art. 64

#### Late Filings

1) A special examination hearing must be scheduled for claims that were filed after the filing deadline and were not addressed at the general examination hearing. Section 63(1) applies. Claims filed later than 14 days before the hearing to examine the final account shall not be considered.

2) The Regional Court shall summon the creditors to this special examination hearing by publication in the Official Gazette or by individual summons. The costs associated with this summons and the insolvency administrator's statement shall be imposed on the creditors who missed the filing deadline, taking into account, in a reasonable manner, the amount of the filed claims.

3) Creditors whose claims are to be considered only at a special verification hearing may not contest claims verified earlier or their priority.

#### Art. 65 Register of Claims

1) The outcome of the verification hearing shall be entered in the register of claims.

2) The register shall be deemed part of the minutes to be taken at the verification hearing. Creditors may request certified extracts.

#### Art. 66

##### Determination of the Claim

1) A claim is deemed established in the insolvency proceedings if it has been acknowledged by the insolvency administrator and has not been contested by any entitled insolvency creditor.

2) Any objection raised by the debtor must be noted in the register of claims; however, it has no legal effect on the insolvency proceedings.

3) Repealed

#### Art. 67

##### Disputed Claims

1) If the validity or the claimed priority of the claim is disputed, the creditor must, upon court order, file a claim against the insolvency estate within a period to be determined by the court, which must be at least one month; failure to do so will result in exclusion as a creditor. The validity of the claim and the claimed priority shall be decided in ordinary litigation proceedings.

2) If an enforceable claim is contested, the contesting party must assert its objection by filing a lawsuit.

3) If the matter does not fall within the ordinary course of legal proceedings, the competent authority shall decide on the validity of the claim. The Regional Court shall decide on the claimed priority.

4) Insolvency creditors whose claims remain in dispute regarding their validity or the claimed priority and who were not present at the examination hearing shall be notified by the Regional Court of the extent to which their claims have been contested.

#### Art. 68

##### Effect of the Court's Decision

1) Final decisions regarding the validity and priority of disputed claims are effective against all insolvency creditors.

2) The costs of the litigation shall be treated as estate costs to the extent that the insolvency administrator participated in the dispute. However, the trial court may order the insolvency administrator to reimburse the costs of the litigation to the insolvency estate if he or she contested the claim or conducted the proceedings maliciously.

3) If the insolvency administrator did not participate in the litigation, the disputing creditors are entitled to reimbursement of the costs from the insolvency estate to the extent that the conduct of the litigation has conferred a benefit on the insolvency estate.

#### Art. 69

##### Pending Legal Disputes, Proceedings

The provisions of Articles 67 and 68 also apply to the continuation and resolution of legal proceedings against the debtor that were pending and suspended prior to the commencement of the insolvency proceedings.

#### V. Right of

##### Avoidance, Art. 70

##### Right of the Insolvency Administrator to Challenge

1) Legal acts performed prior to the commencement of insolvency proceedings and affecting the debtor's assets may be challenged in accordance with the provisions of the Legal Security Regulations (Articles 64 through 75) and declared ineffective vis-à-vis the insolvency creditors. The right of avoidance is exercised by the insolvency administrator.

2) The time limits for avoidance under Art. 65(1) and 66(1) of the Legal Security Ordinance are calculated from the date of the opening of the insolvency proceedings.

3) Claims for avoidance brought by insolvency creditors outside the insolvency proceedings, as well as enforcement proceedings based on titles obtained by insolvency creditors for their claims for avoidance, may be pursued during the insolvency proceedings only by the insolvency administrator. The creditor shall be reimbursed in advance for the litigation costs from the proceeds of such claims that are included in the insolvency estate.

4) If legal disputes regarding creditors' avoidance actions are still pending, they are suspended upon the opening of the insolvency proceedings. The insolvency administrator may step into the legal dispute in place of the creditor or refuse to do so. The provision of Art. 21(2) applies to such a refusal.

5) If the insolvency administrator refuses to join the litigation, the proceedings may be initiated and continued by the parties only at their own expense.

6) The provisions of paragraphs 1 and 5 do not apply to avoidance actions to which creditors with a right to separate satisfaction are entitled under Articles 64 through 75 of the Legal Security Code to safeguard their right to separate satisfaction and to contest the claim of another creditor with a right to separate satisfaction to the same asset.

VI. Dispositions of the Estate Assets Art.

71

Management by the Insolvency Administrator

1) The insolvency administrator shall realize the assets belonging to the insolvency estate and invest cash profitably. He must obtain the opinion of the creditors' committee on all important measures and, to the extent possible in a timely manner, also hear the debtor, in particular where the matter concerns the voluntary sale of movable property not necessitated by the continuation of the business, or the judicial enforcement of claims whose recovery is doubtful, the filing of avoidance actions and participation in avoidance proceedings pending at the time of the opening of the insolvency proceedings, or the taking out of loans and credits.

2) The insolvency administrator must notify the Regional Court at least eight days in advance of the following transactions, together with the opinion of the creditors' committee:

- a) the conclusion of settlements;
  - b) the acknowledgment of disputed claims for separation, exclusion, and set-off, as well as disputed claims against the estate;
  - c) the filing of actions to set aside transactions and the participation in such proceedings that are pending at the time of the commencement of insolvency proceedings;
  - d) the performance or rescission of bilateral contracts that have not yet been performed, or have not been fully performed, by the debtor and the other party at the time of the commencement of insolvency proceedings.
- 3) No notification is required if the value does not exceed 100,000 Swiss francs.
- 4) The insolvency administrator must notify the Office of Economic Affairs if he does not recognize an employee's filed estate claims.
- 5) The sale or lease of the debtor's business or of the debtor's share in a business, as well as the sale of the entire inventory or of substantial parts thereof, requires the consent of the creditors' committee and the district court. The intended sale or lease must be published in the Official Gazette. Approval is subject to the condition that at least 14 days have elapsed since the publication of the notice of the intended sale or lease, or, if postponing approval would cause the object of the sale to lose considerable value, eight days have elapsed.
- 6) The insolvency administrator must give the debtor an opportunity to comment on the matters specified in paragraphs 2 and 5 and must report the outcome or any obstacles preventing such a comment to the creditors' committee and the regional court. The Regional Court shall give the debtor an opportunity to comment, insofar as this is possible in a timely manner and still appropriate, whether in addition to the comments made to the insolvency administrator or in cases where no comments were made to the insolvency administrator. Judicial sale

Art. 72

- 1) Unless a more advantageous method of realization exists, the assets belonging to the insolvency estate shall be sold by the court upon application by the insolvency administrator.
- 2) The provisions of the Enforcement Code shall apply *mutatis mutandis* to such sales, subject to the following exceptions:
- a) The insolvency administrator is deemed to be a creditor pursuing enforcement;

b) the provisions of Art. 131(c) and Art. 203(1) of the Enforcement Ordinance, pursuant to which a new auction may not be requested before six months have elapsed since the suspension, do not apply;

c) compliance with the interim deadlines specified in Art. 91(1) and Art. 110(2) of the Enforcement Code for conducting the appraisal and the auction is not required;

d) the provisions of Article 92(1) of the Enforcement Code regarding the omission of a valuation apply if a valuation was conducted during the course of the proceedings.

3) The insolvency administrator may intervene as a creditor in any enforcement proceedings currently pending against the debtor.

4) Upon application by the insolvency administrator, the Regional Court may order that the sale of claims whose collection is unlikely to be successful and the sale of items of negligible value be refrained from, and that such claims and items be left at the debtor's disposal.

#### Art. 73

1) If an item belonging to the debtor is encumbered by a lien, the insolvency administrator may at any time redeem it by paying the lien debt and, in the case of real property, may assume the lien by paying the lien debt. This provision applies *mutatis mutandis* to other rights of separation.

2) Property subject to a right of separation may be realized without the consent of the entitled party only in accordance with the provisions of the Enforcement Code. Other forms of realization are permissible with the approval of the Regional Court if it is established that the creditor with a right of separation who has not consented to such realization can be fully satisfied from the proceeds.

3) If such property is in the custody of creditors with rights of separation whose claims are due, the Regional Court may, upon application by the insolvency administrator and after hearing the creditors with rights of separation, set a reasonable deadline within which they must realize the property. If the property is not realized within this deadline, the Regional Court may order its surrender for realization. No appeal may be filed against this order. The provisions of Art. 72(b), (c), and (d) apply.

4) The provisions of paragraph 3 also apply to creditors who are authorized to satisfy their claims from the collateral without judicial intervention; however, institutions to which this authority is granted on the basis of their statutes established by law or approved by the state are only obligated to provide the information requested by the insolvency administrator.

Art. 74 Accounting

1) The insolvency administrator shall, upon each order of the Regional Court, but no later than upon the termination of his duties, render an account to the Regional Court and, if necessary, submit a report explaining the account.

2) The Regional Court shall review the statement of accounts and, if necessary, direct the insolvency administrator to correct or supplement it. It may call upon experts or individual members of the creditors' committee to assist in the review.

3) A hearing on the statement of accounts must be scheduled; this hearing must be announced in the official gazette, and the insolvency administrator, the members of the creditors' committee, the debtor, and all insolvency creditors must be summoned to attend, with the instruction that they may inspect the statement of accounts and raise any objections at the hearing or in advance by written submission.

Art. 75

Approval or Objection

1) The account shall be approved by the Regional Court if, based on the results of the examination, there are no objections to it and no objections have been raised.

2) Otherwise, the Regional Court shall decide, with no right of appeal.

3) The decision must be published in the Official Gazette and served on the insolvency administrator and the debtor. Creditors are notified only if objections have been upheld. Otherwise, only those creditors whose objections have been rejected are to be notified.

VII. Distribution of the Insolvency

Estate Art. 76

Satisfaction of the estate creditors

The estate creditors shall be satisfied as soon as possible without delay once their claims have been established and have become due.



Art. 76a Insufficiency of the  
Estate

- 1) If the insolvency estate is insufficient to satisfy the estate claims, the insolvency administrator must immediately notify the Regional Court and suspend the satisfaction of the estate creditors. However, he may perform such legal acts as are necessary for the administration and realization of the estate. Any estate claims arising therefrom must be satisfied without delay.
- 2) The Regional Court shall publish the insufficiency of the estate in the Official Gazette. From that point on, a judicial right of lien or satisfaction may be acquired with respect to the assets belonging to the estate only on the basis of estate claims pursuant to the third sentence of paragraph 1.
- 3) After the realization of assets, the insolvency administrator must submit a draft distribution plan to the Regional Court in accordance with Article 44. After the distribution has been carried out, the Regional Court must terminate the insolvency proceedings.
- 4) If the estate claims can be satisfied again due to changed circumstances, the insolvency administrator must notify the Regional Court thereof without delay. From the date of the notice of the estate's sufficiency to be published in the Official Gazette by the Regional Court, the insolvency administrator must proceed again in accordance with Art. 76. The second sentence of paragraph 2 no longer applies.

Claims of the Insolvency  
Administrator Art. 77

- 1) Upon termination of his duties, or in the event of any other loss, the insolvency administrator must file his claims for remuneration and reimbursement of out-of-pocket expenses no later than at the hearing held to review the final account. The Regional Court may at any time order the insolvency administrator to file his claims.
- 2) The Regional Court shall decide on the insolvency administrator's claims after hearing the creditors' committee and the debtor; the decision shall be served on the insolvency administrator, the debtor, and all members of the creditors' committee. They may challenge the decision by filing an appeal; the Higher Regional Court shall render a final decision.
- 3) The Regional Court may grant advances on the insolvency administrator's claims after consulting the creditors' committee.

4) The costs of the insolvency administrator that he is entitled to claim in connection with the judicial sale of assets and the distribution of the proceeds in enforcement proceedings shall be determined therein.

Art. 78

1) The total remuneration of the insolvency administrator amounts to 4 to 20 percent of the proceeds of the insolvency estate, calculated after deducting claims subject to separation and exclusion. In determining this, the results achieved for the insolvency creditors (dividend rate) and the status of the proceedings at the time the insolvency administration is concluded must be taken into account. These percentages may be increased up to double if the duties performed in accordance with the administrator's obligations involved extraordinary efforts, were of an unusual scope, or were accompanied by exceptional success. These percentages must be reduced by up to half if the method of calculation results in an unreasonably high total remuneration.

2) Any agreements between the insolvency administrator and the debtor or the creditors regarding the amount of cash disbursements or the remuneration for the administrator's services are invalid.

Art. 79

Satisfaction of Insolvency Creditors

1) Satisfaction of the insolvency creditors may not begin until after the general examination meeting.

2) Distributions to the insolvency creditors must take place as often as sufficient estate assets are available.

3) The distribution must be carried out by the insolvency administrator with the consent of the regional court.

Art. 80 Draft

Distribution

1) The insolvency administrator must submit a draft distribution plan. This plan must list all claims in order of priority, as well as the assets available for distribution and the amounts allocated to each individual claim.

2) The Regional Court shall publish the draft distribution plan and the distribution ratio provided therein in the Official Gazette and notify the debtor and the insolvency creditors thereof, adding that they may file objections within 14 days. At the same time, they and

to notify the insolvency administrator and the members of the creditors' committee of the hearing at which any objections will be considered.

3) The draft distribution plan must be approved by the Regional Court if, based on the results of the review, there are no objections to it and if no objections have been raised or have been withdrawn at the hearing. Otherwise, the Regional Court shall decide, with no right of appeal.

4) The decision must be published in the Official Gazette and served on the insolvency administrator and the debtor. Notice to the insolvency creditors is given only if objections have been upheld. Otherwise, notice must be given only to those insolvency creditors whose objections have been rejected. Art. 81

#### Calculation of Shortfall

1) Insolvency creditors who have acquired certain assets of the debtor, in particular book claims, to secure their claims, or who are entitled to a lien on immovable property of the debtor located outside the country for their claim, shall be taken into account in the amount of the presumed shortfall.

2) The amount of the presumed shortfall must be substantiated by the expiration of the deadline set for filing objections.

3) In calculating the shortfall, interest and costs incurred after the opening of the insolvency proceedings shall not be taken into account.

#### Art. 82

#### Payment to the Court

1) Amounts attributable to disputed claims as well as to claims that are directed solely at the provision of security or that, pursuant to Art. 81(1), are to be satisfied only upon default, shall be deposited by the insolvency administrator with the district court.

2) The same applies to contributions attributable to conditional claims, unless the condition is a condition subsequent and the creditor provides security.

#### Art. 83

#### Execution of the Distribution

The insolvency administrator must provide the regional court with proof of the execution of each distribution.

#### Final distribution

Art. 84

- 1) Once the insolvency estate has been fully liquidated and final decisions have been made on all claims, the final distribution shall be carried out after the insolvency administrator's claims have been determined and the final account has been approved.
- 2) The final distribution may only take place on the basis of a draft distribution plan within the meaning of Art. 80, paras. 2 and 3.
- 3) The provisions of Articles 80 through 83 shall apply to the final distribution and the proceedings.

Art. 85

- 1) The final distribution may not be postponed on the grounds that it has not yet been determined whether and to what extent security deposits will revert to the insolvency estate to cover claims.
- 2) If the occurrence of a condition is so unlikely that the conditional claim currently has no value, the court shall refrain from ordering payment of the amount attributable to the claim.
- 3) Creditors who, pursuant to Art. 81(1), are to be satisfied only to the extent of the shortfall in their claims shall be taken into account in the final distribution only if the amount of their shortfall has been substantiated to the insolvency administrator before the expiration of the deadline set for objections and has been approved by the Regional Court. Art. 86

Insolvency Assets Discovered Later

- 1) If, after the final distribution has been carried out, amounts deposited with the Regional Court become available for the insolvency estate, or if amounts previously paid are returned to the insolvency estate, they shall be distributed by the insolvency administrator in accordance with the draft final distribution, subject to the approval of the Regional Court. Proof thereof must be submitted to the Regional Court.
- 2) The same applies if, after the final distribution or after the termination of the insolvency proceedings, assets are identified that belong to the insolvency estate.
- 3) The Regional Court may refrain from a subsequent distribution after hearing the insolvency administrator and the creditors and leave the available amount to the debtor if this appears appropriate in view of the insignificance of the amount and the costs of a subsequent distribution. If the costs are disproportionate to the value of the identified asset, the hearing may be omitted.

Art. 87

Dismissal of the Insolvency Proceedings

- 1) Once the final distribution has been verified, the insolvency proceedings shall be terminated by the district court.
- 2) The provisions of Art. 14 apply mutatis mutandis to the termination of the insolvency proceedings.

VIII. Continuation, Closure, and Reopening of the Business Art. 88

Continuation of the business

- 1) The insolvency administrator shall continue the business until the reporting hearing, unless it is evident that continuing the business will result in an increase in the losses suffered by the insolvency creditors. As long as the business is continued, it may be sold only as a whole and only if the sale is clearly in the common interest of the insolvency creditors.
- 2) The insolvency administrator may close or reopen a business or individual business units only with the approval of the regional court. Before rendering a decision on this matter, the court must hear the creditors' committee and, if possible in a timely manner, the debtor as well. Court decisions regarding the closure and reopening must be published in the official gazette.
- 3) If a business or individual business units cannot be continued, the court shall, after hearing the creditors' committee and upon the proposal of the insolvency administrator, determine the method of liquidation of the business or individual business units that is most favorable to the parties involved; in doing so, it must always be examined whether another method of realization, in particular the sale of the entire enterprise or individual divisions, is more advantageous than the liquidation of the assets.

Art. 89 Report

Hearing

If the enterprise has not yet been closed at the time of the opening of the insolvency proceedings, the Regional Court shall schedule a creditors' meeting at which a decision on the further course of action (continuation or closure of the enterprise, reorganization plan) is to be made. This meeting may be

the general examination meeting. It must take place no later than 90 days after the opening of the insolvency proceedings and must be published in the Official Gazette.

Art. 90

Content of the Reporting Meeting

1) At the reporting meeting, the insolvency administrator must report on whether the conditions for the immediate closure of the entire enterprise or individual business units, or for its continuation, are met, as well as whether a reorganization plan is in the common interest of the insolvency creditors and whether its fulfillment is likely to be possible.

2) If the conditions for continuation are met, the court shall, after hearing the insolvency creditors, issue an order declaring the continuation; furthermore, if a reorganization plan, the fulfillment of which is reasonably expected to be possible, is in the common interest of the insolvency creditors, the court shall, upon the debtor's application, grant the debtor a period of time to file a reorganization plan. No appeal is permitted against these orders. The deadline may not exceed 14 days. During this period, the enterprise may not be liquidated. The orders must be published in the Official Gazette.

Art. 90a Proposal for a

Reorganization Plan

1) If the application for a reorganization plan is timely and admissible, the Regional Court shall order a hearing on the reorganization plan to be held within a maximum of six weeks. The enterprise may not be liquidated until the proposed reorganization plan is not accepted within 90 days, or if it no longer serves the common interest of the insolvency creditors, or if the conditions for continuation are no longer met.

2) Accordingly, the liquidation of the company shall be suspended only if the proposed reorganization plan does not conflict with the debtor's financial circumstances and, in light of the proceedings to date—in particular the vote on the most recently submitted proposed reorganization plan—it is reasonable to expect that it will be accepted by the creditors.

Art. 90b

Closure and Reopening of the Business

1) The Regional Court may order or approve the closure of a business (Art. 88(2)) only if it is established that an increase in the losses suffered by the insolvency creditors cannot otherwise be avoided. If the debtor credibly demonstrates that the conditions for averting the detriment threatening the insolvency creditors will be met within 14 days, in particular provided that one or more persons expressly undertake in written statements submitted to the court to be liable to the insolvency creditors to a sufficient extent, both in terms of amount and time, for the loss they may suffer as a result of the continuation of operations, and there are no concerns regarding compliance with these obligations, the decision shall be suspended until the expiration of this period.

2) The Regional Court may order or approve the reopening of a business only if an increase in losses is likely to be avoidable in such a case; paragraph 1 shall apply *mutatis mutandis*.

3) The Regional Court must order or approve the closure of a business at least one year after the opening of insolvency proceedings if a proposed reorganization plan has not been accepted within that period. At the request of the insolvency administrator, the deadline may be extended by no more than one year if the closure is contrary to the collective interests of the creditors or if there are other equally compelling reasons. The period may also be extended multiple times, but by no more than a total of two years.

#### Art. 91

##### Claims for Separation and Exclusion

1) The satisfaction of a claim for separation or exclusion that could jeopardize the continuation of the business may not be demanded before the expiration of six months from the opening of the insolvency proceedings; this does not apply if satisfaction is indispensable to avert serious personal or economic disadvantages to the entitled party and enforcement against other assets of the debtor has not led to or is not likely to lead to full satisfaction of the creditor.

2) Upon application by the insolvency administrator or at the request of the insolvency court, the enforcement court shall initiate enforcement proceedings regarding a claim for separation or exclusion, except for the establishment of a judicial

The enforcement of a lien or right of satisfaction shall be suspended to the extent and for as long as the entitled party cannot demand performance. The time limit set forth in Section 175(2) of the Enforcement Code shall be extended by the duration of the suspension. Once the suspension period has expired, the suspended enforcement proceedings may be resumed only upon application by the entitled party.

#### Section 92 Eviction

##### Proceedings

1) Upon application by the insolvency administrator, enforcement proceedings for the eviction from a leased property in which the business is operated, due to non-payment of rent during the period prior to the opening of insolvency proceedings, shall be postponed until:

- a) the business is closed;
- b) the debtor withdraws the reorganization plan or the court rejects the application;
- c) the reorganization plan is rejected at the reorganization plan hearing and the hearing is not extended;
- d) the reorganization plan is denied confirmation; or
- e) the landlord's claim is revived pursuant to Section 113.

2) If the claim is satisfied in full and on time in the amount specified in the restructuring plan, the eviction proceedings shall be discontinued upon request. The tenancy shall be deemed to continue.

#### Art. 93

##### Performance of Bilateral Legal Transactions

The period to be determined by the Regional Court pursuant to Art. 34(2) may, in the event of the continuation of a business, end no earlier than three days after the reporting hearing.

#### Art. 94 Employment

##### Contracts

1) If the employment relationship has already commenced and a business is being operated at the time of the opening of insolvency proceedings, the employment relationship may be terminated pursuant to Art. 38 within one month of:

- a) publication in the Official Gazette of the order or decision ordering or approving the closure of the enterprise or a division of the enterprise; or
- b) the report hearing, unless the court has decided at that hearing to continue the business.

2) If the closure ordered or approved is not of the entire company but only of a division, the right to



dissolution and the right to terminate pursuant to paragraph 1 apply only to the employees or, respectively, only with respect to the employees employed in the affected division of the company.

3) If the court has decided at the reporting hearing to continue the business, the insolvency administrator may terminate the employment of only those employees employed in the divisions to be restricted within one month of the reporting hearing pursuant to paragraph 1. The terminated employee is entitled to termination without notice pursuant to Art. 38(1).

4) After the opening of insolvency proceedings, termination without notice is invalid if it is based solely on the fact that the employee's remuneration to which they were entitled prior to the opening of insolvency proceedings was unduly reduced or withheld.

#### Art. 95

##### Termination of Contracts by the Debtor's Contractual Partners

1) If the termination of the contract could jeopardize the continuation of the business, the debtor's contractual partners may terminate contracts concluded with the debtor only for good cause until the expiration of six months after the commencement of insolvency proceedings. The following shall not constitute good cause:

- a) a deterioration in the debtor's financial situation; or
- b) the debtor's default in fulfilling claims that became due prior to the commencement of the insolvency proceedings.

2) The restrictions in paragraph 1 do not apply:

- a) if termination of the contract is essential to avert serious personal or economic disadvantages to the other party;
- b) in the case of claims for the disbursement of loans; and
- c) in the case of employment contracts.

#### Art. 95a

##### Mandatory Provisions

The parties to the contract may not invoke agreements that exclude or limit the application of Articles 93 through 95 in advance.

#### IX. Reorganization

##### Plan Art. 96

##### Application for the Adoption of a Reorganization Plan

1) The debtor may apply for the adoption of a reorganization plan either at the same time as the application to open insolvency proceedings or thereafter until the insolvency proceedings are terminated. The application must specify how the creditors are to be satisfied or secured.

2) The regional court may suspend the liquidation of the insolvency estate until a decision is made on the application for the conclusion of a reorganization plan.

3) If the application for a reorganization plan is rejected by the Regional Court as inadmissible, if the reorganization plan is rejected by the creditors, withdrawn by the debtor, or not confirmed by the Regional Court, the insolvency proceedings shall continue.

#### Art. 97

##### Content and Inadmissibility of the Reorganization Plan

1) Insolvency creditors must be offered payment of their claims within a maximum of two years from the date of acceptance of the reorganization plan. They must be treated equally in the reorganization plan. The payment must amount to at least 20% of the claims.

2) The petition is inadmissible:

a) as long as the debtor remains at large;

b) as long as the debtor refuses to submit and sign a statement of assets pursuant to Art. 59;

c) if, after becoming insolvent, the debtor has been convicted of fraudulent bankruptcy (§ 156 StGB);

d) if the debtor proposes the reorganization plan in bad faith, in particular if the application is clearly intended to delay proceedings;

e) if fulfillment of the reorganization plan will obviously not be possible; or

f) if the content of the proposal violates Articles 105 through 107 or mandatory legal provisions.

#### Art. 98

##### Eligibility to Vote

1) Established insolvency claims confer the right to participate in the voting. For claims of creditors with a right of separation, a voting right is granted only to the extent that the creditor so requests, and only for the portion of the claim that is not expected to be covered by other means of enforcement.

2) Insolvency creditors whose claims have not yet been verified, are disputed, or are conditional, as well as creditors with claims subject to separate satisfaction under paragraph 1, shall initially participate in the vote. If it turns out that the result of the vote differs depending on whether and to what extent the vote cast by the creditor is counted or not, the court shall, after a preliminary review and hearing of the parties, decide whether and to what extent the vote of that creditor is to be counted. An appeal against the decision is not permitted, but the decision may be amended upon request in a subsequent vote.

3) Insolvency creditors who acquired the claim by way of a contractual assignment only after the commencement of insolvency proceedings are not entitled to voting rights, unless they assumed the claim on the basis of a contractual relationship entered into prior to the commencement of the insolvency proceedings.

4) Multiple insolvency creditors who are jointly entitled to a claim or whose claims constituted a single claim prior to the commencement of insolvency proceedings are entitled to only one vote. This provision applies *mutatis mutandis* if a lien exists on the insolvency creditor's claim. The multiple persons must agree on the exercise of the voting right.

5) A creditor who has filed multiple claims is entitled to only one vote. For a claim that he acquired after the opening of the insolvency proceedings through a legal assignment based on a contractual relationship entered into prior to the opening of the insolvency proceedings, he is also entitled to the vote of the creditor to whom the claim belonged prior to the opening of the insolvency proceedings.

#### Art. 99 Reorganization Plan

##### Hearing

1) The meeting to deliberate and vote on the reorganization plan may not take place before the examination meeting. It must be combined with the meeting for the presentation of accounts (Art. 74(3)).

2) The meeting must be announced in the Official Gazette. The debtor, the insolvency administrator, the members of the creditors' committee, and the other voting insolvency creditors must be specifically summoned. At the same time, each insolvency creditor must be served with a copy of the application for the adoption of a reorganization plan,

which the debtor must provide, and the essential content of the reorganization plan must be published in the Official Gazette.

3) The debtor must appear in person at the hearing. The debtor may be represented by an authorized representative only if the debtor is unable to attend for compelling reasons and the court deems the absence justified. Otherwise, the petition to establish a reorganization plan shall be deemed withdrawn.

Art. 100

Special Provisions Regarding Accounting

1) The insolvency administrator must submit an account to the regional court no later than 14 days before the reorganization plan hearing and supplement the account at the reorganization plan hearing.

2) For the period until the confirmation of the reorganization plan becomes final, the insolvency administrator is required to submit a further supplementary account only if the debtor requests this at the reorganization plan hearing or if the Regional Court demands it within four weeks of the confirmation becoming final. The court shall rule on this supplementary statement of accounts only if the debtor raises objections within 14 days. A hearing on the supplementary statement of accounts may be omitted.

Art. 101

Report of the Insolvency Administrator

Before the vote begins, the insolvency administrator must report on the debtor's financial situation and past management, as well as on the causes of the deterioration of the debtor's assets and the expected results of the insolvency proceedings.

Art. 102

Requirements for the Approval of the Reorganization Plan

1) For the reorganization plan to be approved, a majority of the voting insolvency creditors present at the meeting must vote in favor of the proposal, and the total amount of the claims held by the voting insolvency creditors who approve the plan must exceed half of the total amount of the claims held by the voting insolvency creditors present at the meeting. The approval of the reorganization plan and its essential content must be published in the Official Gazette.

2) The debtor's close relatives and legal successors who acquired their claims no earlier than six months prior to the commencement of the insolvency proceedings

are only counted in the calculation of the majority of insolvency creditors and their claims in the calculation of the total amount of claims if they vote against the proposal. If they acquired the claim after the debtor's insolvency from a person who is not a close relative of the debtor, this provision does not apply.

Art. 103

Amendment of the Reorganization Plan

If the debtor amends the reorganization plan at the hearing or submits a new proposal, the Regional Court shall, unless all voting insolvency creditors are present, permit a vote on the matter only if the amended or new proposal is not less favorable to the insolvency creditors.

Art. 104

Extension of the Reorganization Plan Hearing

1) The reorganization plan hearing may be extended:

- a) if the court has not permitted a vote on the amended or new admissible proposal presented at the meeting;
- b) if only one of the required majorities is achieved; or
- c) if it is expected that the extension of the meeting will lead to the adoption of the proposal.

2) The Regional Court shall immediately set a new meeting date, announce it orally, and publish it in the official gazette. If a vote is to be taken at the new meeting on an amended or new proposal, this must be noted in the notice published in the official gazette, and the proposal's essential content must be specified.

3) In the event of a new meeting, the creditors are not bound by their statements made at the first meeting.

Art. 105

Rights of Persons Entitled to Separation, Separate Creditors, and Estate Creditors

1) The claims of persons entitled to separation, creditors with rights of separation, and general creditors shall not be affected by the reorganization plan.

2) If the reorganization plan is confirmed, secured claims are limited to the value of the asset subject to rights of separation.

3) Creditors whose claims are partially covered by rights of separation participate in the reorganization plan proceedings with the shortfall (Art. 81(3)); however, as long as the plan is not finally determined, they must be taken into account in the fulfillment of the reorganization plan based on the presumed shortfall.

Art. 106

Rights of Insolvency Creditors

1) Amounts attributable to disputed claims must be secured to the same extent and under the same conditions as those established in the reorganization plan for the payment of undisputed claims, if the deadline for filing a lawsuit has not yet expired or if the lawsuit has been filed by the date of the reorganization plan hearing.

2) A security deposit of this amount must also be posted if the claim has been contested only by the debtor. The amount of the security deposit is released if the creditor has not filed a lawsuit regarding the contested claim or resumed proceedings already pending within the time limit set by the Regional Court.

3) After the expiration of the time limits set forth in paragraphs 1 and 2, the claim may no longer be asserted.

Art. 107

Rights of Creditors Against Joint Obligors

The rights of insolvency creditors against guarantors or co-debtors of the debtor, as well as against parties liable for recourse, may not be restricted by the reorganization plan without the express consent of the entitled parties.

Art. 108

Special Preferential Treatment

1) Any agreement between the debtor or other persons and a creditor whereby the latter is granted special advantages prior to the conclusion of the reorganization plan or during the period between the conclusion of the plan and the entry into force of the confirmation order is void.

2) Any payments made pursuant to an invalid agreement or pursuant to a contractual relationship entered into to conceal such an agreement may be reclaimed within three years, without prejudice to further claims for compensation.

Art. 109

Court Confirmation of the Reorganization Plan

- 1) The reorganization plan must be confirmed by the Regional Court.
- 2) Approval shall not be granted until:
  - a) the insolvency administrator's remuneration has been determined by the court and paid or secured;
  - b) all other due and determined claims against the estate have been paid, and the claims against the estate asserted before a court or administrative authority, of which the insolvency administrator has been notified, have been secured; and
  - c) the conditions for confirmation set forth in the reorganization plan have been fulfilled.
- 3) The insolvency administrator shall report on the fulfillment of the requirements set forth in paragraph 2 upon request by the Regional Court.
- 4) The order confirming the plan must set forth the essential provisions of the reorganization plan; it must be published in the Official Gazette and served on all insolvency creditors and the other parties involved.

#### Art. 110

##### Termination of the Insolvency Proceedings

- 1) If the reorganization plan is confirmed, a decision must also be made regarding the account submitted by the insolvency administrator (Art. 75).
- 2) The insolvency proceedings are terminated upon the confirmation becoming final. This must be published in the Official Gazette concurrently with the confirmation becoming final.
- 3) Unless the reorganization plan provides otherwise, the debtor regains the right to freely dispose of his or her assets.
- 4) Creditors of the estate may assert their unsecured claims against the debtor's assets that remain freely available or are acquired after the termination of the insolvency proceedings.
- 5) In addition, Article 14 applies to the termination of insolvency proceedings.

##### Article 111

##### Denial of Confirmation

Confirmation shall be denied if:

- a) there is a reason why the petition for the adoption of a reorganization plan is inadmissible;

b) the provisions governing the proceedings and the conclusion of the reorganization plan have not been observed, unless these deficiencies can be remedied subsequently or are not material under the circumstances;

c) the reorganization plan was brought about by favoring a creditor in violation of Art. 108.

#### Art. 112

##### Legal Effects of the Reorganization Plan

1) Upon final confirmation of the reorganization plan, the debtor is released from the obligation to subsequently compensate its creditors for the losses they have suffered or to subsequently pay for the preferential treatment otherwise granted, regardless of whether they participated in the insolvency proceedings or in the vote on the reorganization plan, voted against the reorganization plan, or were not granted a voting right at all.

2) Similarly, the debtor is released from liability toward guarantors and other parties entitled to recourse.

3) The claims referred to in Art. 54(a) may no longer be asserted after the restructuring plan has been finalized.

#### Art. 113

##### Default

1) The debt relief and other benefits granted by the reorganization plan shall lapse for those creditors with respect to whom the debtor defaults on the performance of the reorganization plan.

2) Claims that were not fully satisfied with the amount specified in the reorganization plan at the time the default occurred shall be deemed to have been discharged to the extent corresponding to the ratio of the amount paid to the amount payable under the reorganization plan. The rights granted to creditors by the reorganization plan vis-à-vis the debtor or third parties remain unaffected.

3) Default shall be deemed to have occurred only if the debtor has failed to pay a due obligation despite a written demand addressed to him by the creditor granting a grace period of at least 14 days.

4) The restructuring plan may not deviate from paragraphs 1 through 3 to the detriment of the debtor.



5) If the creditor asserts the rights to which he is entitled in the event of the debtor's default, proof that the debtor is in default is not required for the enforcement order to be granted.

#### Art. 114

#### Preliminary Determination of the Amount of Disputed Claims and the Shortfall in Partially Secured Claims

1) If the existence or amount of an insolvency claim, or in the case of a partially secured claim, the amount of the shortfall is disputed and no decision has been made pursuant to Art. 98, the Regional Court shall, upon application by the debtor or the creditor, provisionally determine the presumed amount of the disputed claim or the shortfall. No appeal is admissible against this decision.

2) The legal consequences provided for in the event of a delay in the fulfillment of the reorganization plan may not apply to the debtor in any event if he:

a) has secured disputed claims, pending the final determination of the existence or amount of the claim, by making a deposit with the court in an amount corresponding to a decision made by the Regional Court pursuant to paragraph 1 or Article 98; or

b) has settled partially secured claims to the extent corresponding to a decision rendered by the Regional Court pursuant to paragraph 1 or Article 98, pending final determination of the amount of the loss.

3) After the amount of the disputed claim or the shortfall has been finally determined, the debtor, who until then has taken the claim into account in the fulfillment of the reorganization plan to the lesser extent resulting from the Regional Court's decision, must pay the remaining amount.

4) A default in the fulfillment of the reorganization plan shall not be presumed until the debtor has failed to pay the shortfall despite a written demand addressed to him by the creditor granting a grace period of at least 14 days. However, if it is finally determined that the debtor has overpaid, the debtor is entitled to the excess amount only to the extent that the creditor has received more through the payments made by the debtor than the total amount of the claim to which the creditor is entitled under the reorganization plan, even if that claim is not yet due. Art. 115

#### Nullity of the Reorganization Plan

1) If a debtor is convicted of fraudulent insolvency (§ 156 StGB) and the conviction becomes final within two years of the confirmation of the reorganization plan, the debt reduction granted in the reorganization plan and any other benefits are revoked for all creditors, without this resulting in the loss of the rights granted to them by the reorganization plan vis-à-vis the debtor or third parties.

2) The Regional Court shall, either ex officio or upon the application of an insolvency creditor, declare the reorganization plan null and void. The order shall be published in the Official Gazette. If there are assets sufficient to cover costs or if a reasonable advance on costs is provided, the insolvency proceedings shall be resumed upon the application of an insolvency creditor.

3) The provisions of Articles 11 through 13 regarding the publication and registration of the opening of insolvency proceedings, as well as regarding protective measures, shall apply to the resumption of the insolvency proceedings.

Art. 116

Procedure upon Reopening of Insolvency Proceedings

1) Creditors whose claims arose between the termination and the resumption of the insolvency proceedings shall also participate in the resumed insolvency proceedings.

2) Insolvency creditors for whom the reorganization plan was effective shall participate in the resumed insolvency proceedings with the outstanding portion of their original claims.

3) The insolvency proceedings shall be repeated to the extent necessary. Claims that have already been verified shall not be verified again.

4) For the contestation of legal acts performed between the termination and the resumption of the insolvency proceedings, as well as for set-off claims arising during this period, the date of the first criminal court judgment containing the debtor's conviction shall be deemed the date of insolvency, provided that insolvency has not occurred in the meantime.

5) The time limit for asserting the right of avoidance in court is suspended for the period from the confirmation of the reorganization plan until the resumption of the insolvency proceedings.

Art. 117

Declaration of Invalidity of the Reorganization Plan

1) If the reorganization plan was brought about through fraudulent acts or through the improper granting of special advantages to individual creditors without the requirements of Art. 115 being met, any insolvency creditor may, within three years after the confirmation of the reorganization plan becomes final, file a lawsuit to claim payment of the shortfall or to have the otherwise granted benefit declared invalid, without losing the rights granted to him by the reorganization plan vis-à-vis the debtor or third parties.

2) This claim is available only to insolvency creditors who did not participate in the fraudulent acts or in the impermissible agreements and who, through no fault of their own, were unable to assert the facts justifying the action in the confirmation proceedings.

Art. 118

New Insolvency Proceedings

1) If new insolvency proceedings are opened before the reorganization plan has been fully implemented, without the conditions of Art. 115 being met, the former insolvency creditors are not obligated to refund what they received in good faith.

2) However, their claims shall be deemed fully satisfied if they have been settled in the amount specified in the reorganization plan; otherwise, the claim shall be deemed satisfied only to the extent corresponding to the ratio of the amount paid to the amount payable under the reorganization plan.

X. Reorganization

Proceedings Art. 118a

Scope of Application

If the debtor is a natural person operating a business, a legal entity, a partnership, or an estate, the provisions of this chapter as well as those of Chapters I through IX, XIV, and XV shall apply.

Art. 119

Application

1) The insolvency proceedings shall be designated as reorganization proceedings if the debtor:

a) the opening thereof; and

b) applies for the adoption of a reorganization plan following the submission of an admissible reorganization plan, and this application is not rejected by the Regional Court at the same time as the opening of the insolvency proceedings.

2) Reorganization proceedings may also be opened in the event of imminent insolvency, but not during bankruptcy proceedings concerning the debtor's assets.

3) The designation must be changed to bankruptcy proceedings if:

a) the insolvency administrator (liquidator) has indicated that the estate is insufficient to satisfy the claims against the estate;

b) the debtor withdraws the reorganization plan application or the regional court dismisses the application;

c) the reorganization plan is rejected at the reorganization plan hearing and the hearing is not extended; or

d) the reorganization plan has been denied confirmation by the Regional Court.

4) The change in designation to bankruptcy proceedings must be published in the Official Gazette. No appeal is admissible against the designation or its change; however, the designation may be corrected by the court upon application or ex officio.

#### Art. 120

##### Scheduling of the Reorganization Plan Hearing

1) At the time of commencement, the court shall, as a rule, schedule the reorganization plan hearing for 60 to 90 days. It may be combined with the examination hearing.

2) The enterprise shall not be liquidated unless the proposed reorganization plan is accepted within 90 days of the opening of the proceedings.

#### XI. Reorganization Proceedings with Self-

##### Administration Art. 121

##### Requirements

1) In reorganization proceedings, the debtor is entitled to administer the insolvency estate under the supervision of an insolvency administrator (reorganization administrator) in accordance with the provisions of this chapter (self-administration) if, prior to the opening of the proceedings, the debtor has submitted the following documents:

a) a reorganization plan offering the insolvency creditors payment of at least 20% of their claims within a maximum of two years from the date of acceptance of the reorganization plan;

- b) a detailed inventory of assets, including a current and complete overview of the assets and liabilities;
  - c) a comparison of projected revenues and expenses for the next 90 days, showing how the funds necessary for the continuation of the business and the payment of claims against the estate are to be raised and used (financial plan); and
  - d) a list of the creditors to be notified.
- 2) The application must contain the following information:
- a) how the funds necessary to fulfill the reorganization plan are to be raised;
  - b) the number of employees and the corporate bodies established within the company; and
  - c) the reorganization measures necessary to implement the restructuring plan, in particular financing measures.
- 3) If the debtor is required under the provisions of personal and corporate law to prepare financial statements, he must submit them. If he has been operating his business for more than three years, submission of the statements for the last three years is sufficient.
- 4) The debtor must sign the statement of assets and liabilities in his own hand and, at the same time, agree to sign it before the court, thereby confirming that his information regarding assets and liabilities is accurate and complete and that he has not concealed any of his assets.
- 5) If the application lacks the information required by law or if not all required documents are attached, the petition shall be returned for correction. If the application is not corrected within the prescribed time limit, reorganization proceedings or bankruptcy shall be opened.

Art. 122

#### Revocation of Self-Administration

- 1) The court shall withdraw self-administration from the debtor and appoint a trustee in lieu of the reorganization administrator if:
- a) If circumstances are known that give reason to believe that self-administration will result in disadvantages for the creditors, in particular if the debtor violates obligations to cooperate or provide information, restricts the disposal of assets, or otherwise acts contrary to the interests of the creditors; if the requirements of Art.

121 are not met or are no longer met, the financial plan cannot be adhered to, or the debtor fails to satisfy the estate's claims on time;

b) the requirements of Art. 119(3) are met;

c) the reorganization plan has not been accepted by the creditors within 90 days of the opening of the proceedings; or

d) the debtor so requests.

2) The revocation of self-administration must be published in the Official Gazette; the legal effects take effect at the beginning of the day following the publication.

#### Art. 123

##### Scope of Self-Administration

1) Under self-administration, the debtor is entitled to continue operating its business and to perform all legal acts under the supervision of the reorganization administrator. However, the debtor is not permitted to sell or encumber real property, create rights of separation, enter into guarantees, or make gratuitous dispositions. The debtor must also refrain from taking any action if the restructuring administrator objects to it.

2) Legal acts performed by the debtor in violation of paragraph 1 are ineffective against the creditors if the third party knew or should have known that the restructuring administrator had objected to the act.

#### Art. 124

##### Limitations on Self-Administration

1) The following are reserved to the reorganization administrator:

a) the avoidance of legal acts pursuant to Art. 70, whereby the assets lost by the debtor as a result of the avoidable act must be paid to the reorganization administrator and used to satisfy the creditors;

b) the verification of claims pursuant to Art. 63; and

c) the realization of assets.

2) To the extent that the debtor is not authorized to perform legal acts, the reorganization administrator shall act in the debtor's stead. The reorganization administrator requires the debtor's consent for liquidation.

#### Art. 125

##### Special Provisions

1) In the case of self-administration by the debtor, the following applies:

a) Without prejudice to Art. 43, claims against the estate also include claims arising from legal acts of the debtor to which he is entitled under Art. 123.

b) The debtor may use the available funds for his own needs only to the extent necessary for his maintenance and that of those who have a legal claim to maintenance against him.

c) An inventory pursuant to Articles 55 through 57 need not be prepared.

2) In a self-administered reorganization proceeding, the debtor may, with the consent of the reorganization administrator pursuant to Article 38, terminate the employment of employees working in affected areas within one month of the publication of the opening order in the Official Gazette if the continuation of the employment relationship could jeopardize the conclusion or feasibility of the reorganization plan or the continuation of the business. The terminated employee is entitled to termination without notice pursuant to Art. 38(1).

Art. 126

Duties and Powers of the Reorganization Administrator

1) The restructuring administrator must begin reviewing the debtor's financial situation immediately upon appointment and monitor the debtor's business operations as well as the expenses related to the debtor's livelihood.

2) The restructuring administrator must, no later than the creditors' meeting—which generally must take place within one month of the opening of the restructuring proceedings—report on the debtor's financial situation and indicate whether:

a) the financial plan can be adhered to;

b) the reorganization plan is feasible; and

c) There are grounds for revoking self-administration.

3) Copies of the restructuring administrator's written reports must be sent to the members of the creditors' committee and, if necessary, to the creditors.

4) The reorganization administrator is obligated to render accounts only to the extent that he not only supervises actions but also performs them himself. If he is not obligated to render accounts and no meeting to approve the final accounts is held, the meeting to approve the reorganization plan shall be decisive for the time limits set forth in Art. 64(1) and Art. 77(1).

XII. Bankruptcy

Proceedings Art. 127

Definition and Scope of Application

1) If the requirements of Art. 119 are not met, the insolvency proceedings are referred to as bankruptcy proceedings. The provisions of Chapters I through IX, as well as XIV and XV, apply to bankruptcy proceedings.

2) The insolvency estate (bankruptcy estate) shall be used by the insolvency administrator (estate administrator), if no reorganization plan is adopted, for the collective satisfaction of the insolvency creditors (bankruptcy creditors).

XIII. Special Provisions for Natural Persons Art.

128

Title and Scope of Application

1) If the debtor is a natural person, the provisions of Chapters I through X, as well as XIV and XV, shall apply unless otherwise provided in this chapter.

2) If the debtor does not operate a business, the proceedings shall be designated as debt settlement proceedings.

Art. 129

Application by the Debtor

1) If there is a lack of assets reasonably expected to cover the costs of the insolvency proceedings, the petition to open insolvency proceedings shall not be dismissed on this ground if the debtor:

a) submits a detailed inventory of assets, has signed the inventory in his own hand, and at the same time agrees to confirm before the Regional Court with his signature that his statements regarding the assets and liabilities are correct and complete and that he has not concealed any of his assets;

b) submits an admissible payment plan, requests its approval, and certifies that he will comply with the payment plan; and

c) certifies that his or her income is likely to cover the costs of the proceedings.

2) The certifications under paragraph 1 must be in written form.

3) The court may grant the debtor a period of time to submit the statement of assets and the payment plan.

4) As long as the conditions set forth in paragraph 1 are met, Article 164(2) shall not apply.

Art. 130

Costs of Proceedings



1) To the extent that the costs of proceedings initiated under Art. 129, once they have been determined and become due, cannot be paid from the estate, the State shall bear them provisionally. The same applies to the costs of proceedings in which the existence of the requirements under Art. 129 is determined.

2) The payments made by the state shall be reimbursed to the state directly:

a) from the insolvency estate; and

b) in the skimming procedure, from the amounts the trustee obtains through the assignment of the debtor's claims to income from an employment relationship or to other recurring benefits serving as income replacement, and from other payments by the debtor or third parties received by the trustee.

3) The payments under paragraph 2 shall be treated in the same manner as the underlying claims.

4) The debtor shall be ordered to reimburse the amounts provisionally paid by the state and not yet reimbursed, to the extent and as soon as he is able to do so without impairing his necessary maintenance. Three years after the termination or discontinuation of the skimming proceedings, the obligation to reimburse may no longer be imposed.

#### Art. 130a Statement of Assets

1) The inventory of assets shall include the individual assets and liabilities, stating their amount or value:

a) For receivables, the debtor's identity, the basis of the debt, the due date, and any existing collateral must be specified. Included among the claims, in particular, are income from employment or other recurring payments serving as income replacement, the amount of which over the last three months (including special payments), as well as the amounts to be deducted for the determination of the exempt amount pursuant to Art. 211 of the Enforcement Code, maintenance obligations, and the circumstances relevant for the aggregation, increase, and reduction of the exempt amount. It must also be stated whether and to what extent the claims are likely to be collectible. If a claim is disputed, this must be indicated.

b) For liabilities, the creditor's name, the basis of the debt, the due date, and any existing collateral must be specified. Liabilities must include, in particular, current obligations such as housing costs, alimony obligations, and insurance premiums. For liabilities that grant the creditor a right to separate satisfaction, the amount of the presumed loss must be stated. If the debt is disputed, this must be noted.

c) The address must be provided for all creditors and debtors. If a creditor or debtor is a close relative of the debtor, this must be noted.

2) In the statement of assets, the debtor must also indicate whether a division of assets took place between him and his close relatives within the five years prior to filing the petition, and further whether and what dispositions of assets he made in favor of his close relatives within the five years prior to filing the petition. Dispositions made without consideration shall not be taken into account to the extent that they are exempt from avoidance under Art. 70.

3) The debtor must, to the extent reasonable, provide evidence of the information specified in paragraph 1. Art. 131

#### Self-administration

1) In debt settlement proceedings, the debtor is entitled to administer the insolvency estate (self-administration), unless the court decides otherwise.

2) The court must remove the debtor's right to self-administration and appoint an insolvency administrator if:

a) the debtor's financial circumstances are not manageable, particularly due to the number of creditors and the amount of liabilities;

b) circumstances are known that give reason to believe that self-administration will result in disadvantages for the creditors; or

c) the debtor has not submitted an accurate inventory of assets. Art. 132

#### Scope of Self-Administration – Debtor's Right of Disposal

1) In the case of self-administration by the debtor, the following applies:

a) The debtor is entitled to accept all shipments pursuant to Art. 13.

b) The provisions governing the performance of legal transactions apply, with the proviso that the debtor takes the place of the insolvency administrator.

- c) Dispositions by the debtor regarding assets of the insolvency estate are effective only if the regional court consents. Art. 16(2) applies *mutatis mutandis*.
  - d) Liabilities incurred by the debtor after the commencement of insolvency proceedings shall be satisfied from the insolvency estate only if the regional court approves the liability. This also applies in the case of subparagraph (b).
  - e) The debtor is not entitled to receive the attachable portion of income from employment or other recurring payments serving as income replacement. Nor may the debtor dispose of such funds.
- 2) The consent under paragraph 1, subparagraphs c and d, may be granted generally for certain types of legal acts.

Art. 133

#### Determination of Claims

- 1) In the case of self-administration, the debtor must, at the examination hearing, make a specific declaration regarding the accuracy of each filed claim; the debtor may not make any reservations when making these declarations. The court must note the declarations made by the debtor in the register of claims. If the debtor does not make a declaration regarding a claim, the claim is deemed to have been acknowledged.
- 2) A claim is deemed established in the insolvency proceedings if it has been acknowledged by the debtor and has not been contested by any entitled insolvency creditor.

Art. 134

#### Appointment of an Insolvency Administrator

- 1) An insolvency administrator shall not be appointed if the debtor is entitled to self-administration.
- 2) The court may, on its own initiative or at the request of an insolvency creditor or the debtor, appoint an insolvency administrator with a scope of authority limited to specific activities involving particular difficulties.
- 3) The duties assigned to the insolvency administrator under this Act shall be performed by the court if no insolvency administrator has been appointed and the debtor is not authorized to do so.

Art. 135

#### Rental and Other Rights of Use to Apartments

The Regional Court shall grant the debtor full disposal of the rights of tenancy and other rights of use of dwellings if they concern living quarters that are indispensable for the debtor and the family members living with him in the same household.

#### Art. 136

##### Income from an employment relationship

1) Rights of separation or exclusion acquired prior to the commencement of insolvency proceedings through the assignment or pledging of a claim to income from an employment relationship or to other recurring benefits serving as income replacement shall expire two years after the end of the calendar month in which the insolvency proceedings were commenced.

2) Only for the period specified in paragraph 1 may the third-party debtor set off against the claim to income from an employment relationship or to other recurring benefits serving as income replacement a claim to which he is entitled against the debtor. Articles 32 and 33 remain unaffected.

3) Rights of separation acquired prior to the opening of insolvency proceedings through enforcement to satisfy a claim for income from an employment relationship or for other recurring benefits serving as income replacement shall expire at the end of the calendar month in progress at the time of the opening of the insolvency proceedings. If the insolvency proceedings are opened after the 15th day of the month, the right of separation shall expire only at the end of the following calendar month.

4) The rights of separation and exclusion under paragraphs 1 and 3 are revived if:

- a) the insolvency proceedings under Art. 87 or 164 are terminated;
- b) the secured claim is revived;
- c) the skimming proceedings are terminated prematurely; or
- d) discharge of residual debt is not granted or is revoked.

5) Rights of separation and exclusion under paragraphs 1 and 3 that were acquired in favor of a claim excluded from the discharge of residual debt are also revived upon the granting of the discharge of residual debt.

6) The court must notify the third-party debtor of the date of extinction and, upon the creditor's request, of the revival of the rights under paragraphs 1 and 3. Art.

Assertion of rights of separation or exclusion regarding income from an employment relationship

1) Persons entitled to separation of property and creditors with a right of separation of property with respect to a claim to income from an employment relationship or to other recurring payments serving as income replacement must assert their rights of separation of property or right of separation of property in writing or orally on the record before the Regional Court. In doing so, the amount of the claim underlying the right of set-off or separation and the facts on which this claim and the right of set-off or separation are based must be stated, and the evidence that can be produced to substantiate the asserted claim and the right of set-off or separation must be identified.

2) Rights of separation and exclusion with respect to a claim for income from an employment relationship or other recurring benefits serving as income replacement expire if they have not been asserted by the time of the vote on a payment plan. If the payment plan hearing must be extended due to the assertion of such a right, Art. 64(2) applies *mutatis mutandis* with respect to costs.

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Art. 137a

Special Provisions Regarding the Reorganization Plan

If the debtor does not operate a business, the following applies:

- a) The debtor may request a payment period of more than two years under the reorganization plan; however, this payment period may not exceed five years.
- b) If the reorganization plan quota is to be paid in installments with a term exceeding one year, default shall be deemed to have occurred only if the debtor has failed to pay a debt that has been due for at least six weeks, despite a written demand for payment sent to the debtor by the creditor granting a grace period of at least 14 days.

Art. 138

Application for the Conclusion of a Payment Plan

1) The debtor may apply for the establishment of a payment plan either at the same time as the application to open insolvency proceedings or thereafter until the insolvency proceedings are terminated. Unless otherwise ordered, the provisions regarding the reorganization plan shall apply in this regard.

2) The hearing to deliberate and decide on the payment plan may not take place before the debtor's assets have been realized. The items listed in Art. 170(1)(g) of the Enforcement Regulations shall be realized only after the payment plan has been rejected or its confirmation denied. The hearing may be combined with the distribution hearing.

Art. 139

Content and Inadmissibility of the Payment Plan

1) The debtor must offer the insolvency creditors a repayment rate that corresponds to his or her income situation over the next five years. The repayment period may not exceed seven years. If the debtor is not expected to receive any attachable income during this period, or if such income exceeds the non-attachable amount only slightly, he or she is not required to propose a repayment plan.

2) The application for approval of a payment plan is inadmissible if:

- a) the debtor has absconded;
- b) the debtor has failed to submit the statement of assets despite being ordered to do so, or has failed to sign it before the district court;
- c) the content of the payment plan violates Articles 105 through 108 or mandatory legal provisions; or
- d) a garnishment proceeding was initiated less than ten years ago. Art. 140

Refusal to Approve the Payment Plan

Confirmation of the payment plan shall be refused if:

- a) there is a reason why the application for approval of the payment plan is inadmissible (Art. 139(2));
- b) the provisions governing the proceedings and the approval of the payment plan have not been observed, unless these deficiencies can be remedied subsequently or are not material under the circumstances; or
- c) the payment plan was established by favoring a creditor in violation of Art. 108.

Art. 141

Termination of the Insolvency Proceedings – Nullity of the Payment Plan

1) The insolvency proceedings are terminated upon the confirmation of the payment plan becoming final. This must be published in the Official Gazette concurrently with the confirmation becoming final.

2) If the debtor fails to pay the estate claims within a period to be set by the court, which may not exceed three years, the payment plan is void. The payment plan becomes void only if the debtor has failed to pay the estate claims despite a demand granting a grace period of at least four weeks. The demand must include a reference to this legal consequence.

Art. 142

#### Consideration of Unfiled Claims

1) Insolvency creditors who did not file their claims during the vote on the payment plan are entitled to the distribution amount payable under the payment plan only to the extent that it corresponds to the debtor's income and financial situation.

2) The Regional Court shall, upon application, make a preliminary determination as to whether the share to be paid on the subsequently discovered claim corresponds to the debtor's income and financial situation (Art. 114).

3) Enforcement may take place in favor of an insolvency creditor who has not filed a claim only to the extent that a decision pursuant to paragraph 2 has been issued. The creditor must also attach to the application for enforcement a copy of the order under paragraph 2, together with confirmation of its enforceability, or demonstrate that he has filed the claim. Any enforcement granted contrary to the first sentence shall be discontinued ex officio or upon application without hearing the parties.

Art. 143

#### Amendment of the Payment Plan

1) If the debtor's income and financial situation changes through no fault of his own, such that he cannot meet the due obligations under the payment plan, and if this has not been taken into account in the payment plan, the debtor may, within 14 days of receiving a reminder from the creditor, apply anew for a vote on a payment plan and the initiation of a skimming procedure. In this regard, the following applies:

a) The period provided for in Art. 139(1) for assessing the appropriateness of the payment plan's installment amount shall be reduced by half of the period of the payment plan that has elapsed.

b) Half of the period of the payment plan to date shall be credited toward the duration of the skimming proceedings.

2) The claims shall only be revived if the payment plan is not confirmed and the application to initiate the skimming proceedings is dismissed.

Art. 144

Debtor's Petition for the Initiation of a Skimming-Off Procedure with Residual Debt Discharge

1) The debtor may apply for the initiation of the debt collection proceedings with residual debt discharge either at the same time as the application for the opening of insolvency proceedings or thereafter until the insolvency proceedings are terminated, at the latest with the application for the adoption of a payment plan.

2) The debtor must attach to the application a declaration stating that he assigns the attachable portion of his claims to income from an employment relationship or to other recurring payments serving as income replacement for a period of five years following the entry into force of the order initiating the skimming proceedings to a trustee to be appointed by the court. If the debtor has previously assigned or pledged these claims to a third party, this must be indicated in the declaration.

Art. 145

Decision of the Regional Court

1) A decision on the application to conduct the skimming procedure shall not be made until an admissible payment plan has not been accepted by the insolvency creditors, even though the provisions applicable to the procedure have been observed. Applications for the conduct of the skimming procedure, on which the decision was suspended pursuant to the first sentence, shall be deemed not to have been filed upon the decision confirming the payment plan becoming final.

2) Immediately prior to the decision, a hearing must be held, which must be announced in the Official Gazette and to which the insolvency administrator, the members of the creditors' committee, the insolvency creditors, and the debtor must be summoned. At the hearing, the court must report whether there are any obstacles to the commencement of proceedings under Art. 146(1)(a), (g), and (h). This hearing shall be combined with the hearing for the deliberation and decision on the payment plan.



3) The decision must be published in the Official Gazette and served on the insolvency administrator, the members of the creditors' committee, the insolvency creditors, and the debtor.

4) The insolvency proceedings are terminated upon the entry into force of the order initiating the liquidation proceedings. This must be published in the Official Gazette at the same time as the entry into force of the order initiating the liquidation proceedings. In all other respects, Article 14 applies to the termination of the insolvency proceedings.

#### Art. 146

##### Barriers to Initiation

- 1) The application to conduct the skimming proceedings shall be dismissed only if:
  - a) the debtor has been finally convicted of a criminal offense under §§ 156, 158, 162, or 292a of the Criminal Code and this conviction has neither been expunged nor is subject to restricted disclosure from the criminal record;
  - b) the debtor has intentionally or through gross negligence violated disclosure or cooperation obligations under this Act during the insolvency proceedings;
  - c) the debtor has not engaged in appropriate gainful employment during the insolvency proceedings or, if unemployed, has not sought such employment or has refused a reasonable job;
  - d) the debtor is a member of the governing body of a legal entity or was a member in the five years prior to the opening of the insolvency proceedings and, in the insolvency proceedings of the legal entity, intentionally or through gross negligence violated the duty to provide information or cooperate under this Act;
  - e) the debtor, within three years prior to the petition for the opening of insolvency proceedings, intentionally or through gross negligence thwarted or diminished the satisfaction of the insolvency creditors by incurring disproportionate liabilities or squandering assets;
  - f) the debtor, intentionally or through gross negligence, provided incorrect or incomplete written information regarding his financial circumstances or the financial circumstances of the legal entity he represents as an officer, in order to obtain the payment underlying an insolvency claim, and the creditor did not intentionally contribute to this;
  - g) the payment plan under Art. 140(c) has been denied; or

h) a skimming procedure was initiated less than 20 years prior to the application to open insolvency proceedings.

2) The court shall dismiss the initiation of the skimming proceedings only upon the application of an insolvency creditor. The insolvency creditor must substantiate the grounds for dismissal.

Art. 147

Initiation of Skimming Proceedings

1) If there are no obstacles to initiation and the costs of the skimming proceedings are likely to be covered by the amounts due to the trustee, the court shall initiate the skimming proceedings.

2) At the same time, the court shall appoint a trustee for the duration of the skimming proceedings, to whom the attachable portion of the debtor's claims to income from an employment relationship or to other recurring payments serving as income replacement shall be transferred in accordance with the declaration of assignment (Art. 144(2)).

Art. 148

Legal Status of the Trustee

1) The trustee must notify the third-party debtor of the assignment. The trustee must keep the amounts received through the assignment and any other payments made by the debtor or third parties separate from his own assets, invest them profitably, and distribute them to the creditors within eight weeks of the expiration of the assignment declaration. In doing so, the estate's claims, the costs of the skimming procedure, and, following this, the claims of the insolvency creditors must be satisfied in accordance with the provisions applicable to the insolvency proceedings. Distributions must take place earlier if there are sufficient distributable assets available, and in any case if a distribution rate of at least 10% can be achieved.

2) Upon application by the creditors' meeting, the court may additionally assign the trustee the task of verifying, through appropriate investigations, whether the debtor is fulfilling his obligations. The costs incurred thereby must be expected to be covered or advanced. The trustee must immediately notify the insolvency creditors if he discovers a breach of these obligations.

3) The trustee must render an annual account to the court and, upon request by the debtor, to the debtor as well, after the expiration of the assignment declaration and upon termination of his duties.

4) Unless otherwise provided, the provisions applicable to the insolvency administrator under Art. 4 shall apply *mutatis mutandis* to the trustee. Art. 149  
Modification of the Exempt Amount of Income from Employment

1) Upon application by the debtor, the trustee, or an insolvency creditor, the insolvency court shall aggregate the debtor's claims to income from an employment relationship or to other recurring payments serving as income replacement and shall increase or redetermine the exempt amount pursuant to Art. 214 of the Enforcement Code.

2) The order referred to in paragraph 1 shall be published in the Official Gazette and served on the trustee, the third-party debtor, and the debtor.

Art. 150

Equal Treatment of Insolvency Creditors

1) Enforcement actions by individual insolvency creditors against the debtor's assets are not permitted during the skimming proceedings.

2) Any agreement between the debtor or other persons and an insolvency creditor that grants the latter special advantages is void. Any payments made pursuant to an invalid agreement or pursuant to a contractual relationship entered into to conceal such an agreement may, without prejudice to further claims for compensation, be reclaimed within three years after the conclusion or discontinuation of the distribution proceedings.

3) The third-party debtor may set off a claim against the debtor only to the extent that he would be entitled to set-off if the insolvency proceedings were to continue pursuant to Articles 32 and 33.

Art. 151

Consideration of Unfiled Claims During the Skimming Proceedings

Insolvency creditors who have not filed their claims shall be taken into account in distributions only if their claims are established and the insolvency creditors have notified the trustee thereof.

Art. 152

Commencement of Insolvency Proceedings During the Skimming Proceedings

If insolvency proceedings are opened during the skimming-off proceedings, the assets covered by the skimming-off proceedings do not form part of the insolvency estate. These assets are also exempt from execution to the extent that the debtor surrenders them to the trustee. Upon the debtor's request, enforcement proceedings shall be suspended if the debtor agrees that the property subject to enforcement shall be surrendered to the trustee.

Art. 153

Persons Entitled to Exclusion and Separation

1) As long as the loss associated with a right of exclusion or separation regarding claims that will become due in the future has not been determined, the insolvency creditor must send the trustee a statement of the outstanding claim 14 days before the end of the calendar year; otherwise, the creditor will not be included in this distribution.

2) After the right of exclusion or separation has expired, the trustee shall not take the insolvency creditor's claim into account until he receives a statement of the default. The third-party debtor must notify the insolvency creditor and the trustee of the premature expiration of the right of exclusion or separation pursuant to Art. 137.

Art. 154

Obligations of the Debtor

1) The debtor is obligated, during the period of legal validity of the declaration of assignment:

- a) engage in appropriate gainful employment or, if unemployed, to seek such employment and not to refuse any reasonable work;
- b) to surrender any assets acquired by reason of death, in anticipation of a future inheritance, through a gratuitous gift, or as winnings from gambling;
- c) to notify the court and the trustee immediately of any change of residence or of the third-party debtor;
- d) not to conceal any income covered by the assignment declaration or any assets covered by subparagraph (b), or to refrain from acquiring such assets;
- e) to provide the court and the trustee, upon request, with information regarding his gainful employment or his efforts to secure such employment, as well as regarding his income and assets;

f) to provide the court and the trustee, at the times specified by the court and at least once a year, with information regarding his efforts to secure gainful employment if he has no income, income that is exempt from attachment, or income that does not exceed the exempt allowance; if the debtor fails to provide the information, the court shall grant the debtor a grace period of two weeks to provide the information;

g) to make payments to satisfy creditors only to the trustee;

h) not to grant any special advantages to creditors in insolvency proceedings (Art. 150(2)); and

i) not to incur new debts that he cannot pay when due.

2) To the extent that the debtor engages in self-employment, it is incumbent upon him to place the creditors in a position as if he were engaged in appropriate salaried employment. However, he may not retain more than he would have if he had income from an employment relationship equal to the profit from his self-employment.

Art. 155

#### Provision of Information Regarding the Fulfilment of Obligations

1) If there is a significant reduction in the amounts received as a result of the assignment, the trustee must request the debtor to report on his employment situation.

2) If the debtor has not provided the trustee with information upon request in accordance with paragraph 1 or Article 154(1)(c), (e), and (f), the court shall hear the debtor upon notification by the trustee. The debtor must provide information regarding the fulfillment of his obligations.

3) If the debtor, having been duly summoned, fails to appear for questioning without a valid excuse or refuses to provide the required information, the proceedings shall be terminated ex officio prior to completion, regardless of whether the conditions set forth in Art. 156(1)(b) are met. The summons must include a reference to this legal consequence. If the debtor has provided information regarding the fulfillment of his obligations, the court shall forward a copy of the minutes to the trustee.

Art. 156

#### Premature Termination of the Skimming Proceedings

1) Upon the request of an insolvency creditor, the court must terminate the skimming proceedings prematurely if the debtor:

- a) has been convicted of a criminal offense under Sections 156, 158, 162, or 292a of the Criminal Code, and this conviction has neither been expunged nor is subject to the restricted disclosure provision of the criminal record, or has violated the obligation under Article 154(1)(i); or
- b) has breached one of his obligations and thereby impaired the satisfaction of the insolvency creditors; this does not apply if the debtor is not at fault.

2) The application under paragraph 1 may only be filed within one year of the date on which the insolvency creditor became aware of the conviction or the breach of obligations. It shall be dismissed if the requirements of subparagraph b are not substantiated.

3) Before a decision is made on the application under paragraph 1(b), the trustee and the debtor must be heard. The debtor must provide information regarding the fulfillment of his obligations. If the debtor, having been duly summoned, fails to appear for his hearing without sufficient excuse or refuses to provide the information, the proceedings shall be terminated prematurely. The summons must include a reference to this legal consequence.

4) The court shall terminate the skimming proceedings prematurely ex officio upon the death of the debtor.

5) The order for the premature termination of the proceedings must be published in the Official Gazette.

6) Upon the decision becoming final, the effectiveness of the declaration of assignment, the office of the trustee, and the restriction of the rights of the insolvency creditors shall cease.

#### Art. 157

##### Resumption of Insolvency Proceedings

If the distribution proceedings are terminated prematurely and sufficient assets are available or an appropriate advance on costs is provided, the insolvency proceedings shall be resumed upon the request of an insolvency creditor.

#### Art. 158

Termination of the Skimming Proceedings – Decision on Discharge of Remaining Debts

1) Upon expiration of the term of the assignment agreement, the court must declare the distribution proceedings—which have not been discontinued—to be terminated and, at the same time, rule that the debtor is discharged from the obligations to the insolvency creditors that were not fulfilled in the proceedings (discharge of residual debt). If a petition for early termination has been filed by an insolvency creditor, the court must stay the decision until this order becomes final and may only render a decision once the petition for early termination filed by an insolvency creditor has been definitively dismissed.

2) The order terminating the skimming proceedings and granting discharge of residual debt must be published in the Official Gazette.

Art. 159

#### Effect of Discharge of Remaining Debts

1) If discharge of residual debt is granted, it is effective against all insolvency creditors. This also applies to creditors who have not filed their claims and to claims under Art. 54(a).

2) The rights of insolvency creditors against the debtor's guarantors or co-debtors, as well as against parties liable for recourse, are not affected by the discharge of residual debt. However, the debtor is released from liability toward the guarantors and other parties entitled to recourse in the same manner as toward the insolvency creditors.

3) If an insolvency creditor is satisfied even though he is not entitled to satisfaction due to the discharge of residual debt, this does not give rise to an obligation to return what was received.

Art. 160

#### Excluded Claims

The following are not affected by the granting of residual debt discharge:

- a) the debtor's liabilities arising from an intentional tort or an intentional criminal omission; and
- b) liabilities that were not taken into account solely due to the debtor's fault.

Art. 161

#### Revocation of the discharge of residual debt

1) At the request of an insolvency creditor, the court must revoke the discharge of remaining debts if it subsequently becomes apparent that the

debtor has intentionally breached one of his obligations and thereby significantly impaired the satisfaction of the insolvency creditors.

2) The motion may be filed only within two years after the decision on discharge of residual debt becomes final. It shall be dismissed if it is not demonstrated that the requirements of paragraph 1 are met and that the insolvency creditor had no knowledge of them until the end of the term of the assignment declaration.

3) The trustee and the debtor must be heard before a decision is made on the application.

4) The decision revoking the discharge of remaining debts must be published in the Official Gazette.

Art. 162

#### Debt Counseling Services

1) Counseling and support for natural persons in proceedings under this chapter may be provided by the Office of Social Services or by private debt counseling agencies if:

- a) the counseling and support are necessary;
- b) the debt counseling agencies are suitable for this purpose; and
- c) the debt counseling agencies provide such counseling and support through personal, material, or financial means.

2) For the purpose specified in paragraph 1, the Office of Social Services may enter into service agreements with private debt counseling agencies, which require the approval of the government. The service agreements shall regulate, in particular:

- a) the principles of service provision;
  - b) the range of services or the services to be provided (type, quantity, quality);
  - c) the form and amount of payment for services;
  - d) the performance review;
  - e) the professional requirements that the specialized staff must meet;
  - f) the data that must be submitted to the Office of Social Services.
- 3) Private debt counseling agencies may be eligible for funding. The granting of funding may be made contingent upon the conclusion of a service agreement. Funding for private debt counseling agencies covers only expenses not covered by other funding sources.



4) The government shall regulate the details by ordinance. Art. 163

#### Supervision of Private Debt Counseling Agencies

1) Supervision of private debt counseling agencies is the responsibility of the Office of Social Services.

2) As part of its supervisory duties, the Office of Social Services regularly verifies whether:

a) the requirements for the delegation of tasks and eligibility for funding continue to be met; and

b) the provisions of this Act and the service agreement are being complied with.

3) Private debt counseling agencies must, upon request, provide the supervisory authorities at any time with:

a) provide the information necessary for the exercise of supervision;

b) grant access to their premises; and

c) make the necessary documents available.

4) If the Social Services Office becomes aware of violations under Art. 162 or this article, it shall take the measures necessary to restore the lawful state of affairs.

5) The Office of Social Services may terminate service agreements with private school counseling centers if:

a) it is determined during the course of supervisory activities that deficiencies exist, that the requirements for the delegation of tasks are no longer met, or that individual provisions of a service agreement are not being complied with; and

b) these deficiencies or irregularities are not remedied despite a warning.

#### XIV. Other Termination of Insolvency Proceedings Art.

164

#### Other Termination of Insolvency Proceedings

1) If it becomes apparent during the course of the insolvency proceedings that only one insolvency creditor is participating in the proceedings, the insolvency proceedings shall be terminated after the creditors of the estate have been satisfied. This does not apply to insolvency proceedings against legal entities and estates.

2) If it becomes apparent during the course of the insolvency proceedings that the assets are insufficient to cover the costs of the proceedings, the proceedings shall be terminated.

The proceedings shall not be terminated if an appropriate advance on costs is provided (Art. 7(3)).

3) The insolvency proceedings shall be terminated if, after the expiration of the filing period, all estate creditors and all insolvency creditors who have filed claims consent to the termination.

4) The express consent of a creditor is not required if his claim has been satisfied or secured and, in the case of disputed claims, the period for filing a lawsuit has expired and the lawsuit has not been filed by the date on which the termination of the insolvency proceedings is requested at the latest.

5) The provisions of Art. 14 apply *mutatis mutandis* to the termination of insolvency proceedings pursuant to the preceding paragraphs.

#### XV. Effects of the Termination of Insolvency

##### Proceedings Art. 165

##### Debtor's Rights Following Termination of Insolvency Proceedings

1) Upon the final decision of the Regional Court that the insolvency proceedings are terminated, the debtor regains the right to freely dispose of his or her assets.

2) If insolvency proceedings against a legal entity are terminated because its assets are insufficient to cover the costs of the proceedings (Art. 164(2)), the legal entity shall be struck from the register *ex officio*.

##### Art. 166

##### Creditors' Rights Following the Dismissal of Insolvency Proceedings

1) Insolvency creditors may, regardless of whether they have filed their claims in the insolvency proceedings, assert their unadjusted claims against the debtor's assets that remain at the debtor's free disposal or that are acquired after the proceedings are terminated.

2) If a claim has been established in the insolvency proceedings and has not been expressly contested by the debtor, enforcement may be carried out against the debtor's assets remaining at his free disposal or acquired after the termination of the proceedings on the basis of this claim, based on the entry made by the regional court in the register of claims or on another enforcement title, in the same manner as on the basis of a judgment.

3) Paragraphs 1 and 2 do not affect the legal consequences of a legally confirmed reorganization plan.

## **XVI. Estate Settlement Act (NVG)**

of April 15, 1936

### **Art. 1**

This Act applies to:

- a) debt restructuring moratoriums within the meaning of the Insurance Supervision Act; and
- b) debt restructuring moratoriums and debt restructuring agreements within the meaning of the Banking Act. Art. 1a

A debtor who wishes to obtain the legal benefit of a composition agreement must submit a draft of the composition agreement to the district court, acting as the composition authority, together with a balance sheet showing his financial situation and a list of his business records, if he is required to maintain such records.

### **Art. 2**

After hearing the debtor, the district court shall decide whether to accept the petition. In doing so, the debtor's financial situation, the state of his accounting, his business conduct, and the causes of his failure to fulfill his obligations shall be taken into consideration.

NVG

The decision of the District Court may be appealed to the Higher Court within 14 days of its notification.

### **Art. 3**

1) If the District Court grants the petition, it shall grant the debtor a two-month deferment (debt deferment) and simultaneously appoint an administrator, whose reasonable remuneration, to be borne by the debtor, shall be determined by the District Court. The administrator shall supervise the debtor's actions and, in particular, perform the duties specified in Art. 6 et seq.

2) The moratorium may be extended by a maximum of two months upon the administrator's request.

### **Art. 4**

The granting of the deferment shall be made public by edict and shall be reported to the Office of Justice (Art. 558 SR).

### **Art. 4a**

The granting of a deferment pursuant to Art. 3 shall, provided that the person concerned is

If the debtor is a participant in a system within the meaning of the Finality Act, the Financial Market Authority (FMA) must be notified immediately.

Art. 5

During the deferral, enforcement proceedings against the debtor may neither be initiated nor continued, and the running of any statute of limitations or forfeiture period that may be interrupted by enforcement is suspended.

Art. 6

1) The debtor is permitted to continue conducting business under the supervision of the administrator. However, following the public announcement of the deferral, the debtor may no longer validly dispose of or encumber real property, create liens, assume guarantees, or make gratuitous dispositions.

2) If the debtor performs an act that is invalid under paragraph 1 or acts contrary to the administrator's instructions, the latter report this to the district court. The district court may revoke the deferment after hearing the debtor. Articles 16 and 17 apply.

Art. 7

Immediately upon his appointment, the trustee shall take an inventory of all the debtor's assets and appraise the individual assets.

Art. 8

1) The trustee shall, by public notice, call upon the creditors to file their claims within twenty days, under penalty of being deprived of the right to vote in the negotiations regarding the estate settlement agreement if they fail to do so.

2) In the same notice, the trustee shall convene a meeting of creditors to consider the petition for bankruptcy, to be held no sooner than one month from the date of the notice, adding that the files may be inspected for ten days prior to the meeting.

Art. 8a

1) Claims that do not relate to a monetary payment, or whose monetary amount is undetermined or not denominated in domestic currency, shall be asserted at their estimated value in domestic currency as of the date of the opening of these proceedings.

2) Matured claims shall be deemed due in these proceedings.

3) Overdue claims that do not bear interest may be asserted only in the amount

that, when statutory interest is added for the period from the opening of these proceedings until maturity, equals the full amount of the claim.

Art. 8b

1) Claims for the payment of annual annuities, maintenance payments, or other recurring benefits of a fixed duration shall be aggregated after deducting the interim interest specified in Art. 8a(3).

2) Claims of the type specified in paragraph 1 that are of indefinite duration shall be asserted at their estimated value as of the date of the opening of proceedings.

Art. 8c

A party holding a conditional claim may request security for payment in the event that the suspensive condition is fulfilled or the resolutive condition is not fulfilled; however, if the condition is resolutive and the party provides security in the event that the condition is fulfilled, the party may demand payment.

Art. 9

The trustee shall obtain a statement from the debtor regarding the claims filed.

Art. 9a

1) Claims that were already set off at the time of the commencement of proceedings need not be asserted.

2) Set-off is not precluded by the fact that the creditor's or debtor's claim was still conditional or pending at the time of the commencement of proceedings, or that the creditor's claim was not for a monetary payment. For the purposes of set-off, the creditor's claim shall be calculated in accordance with Articles 8a and 8b. If the creditor's claim is conditional, the Regional Court may make the admissibility of the set-off contingent upon the provision of security.

Section 9b

1) Set-off is impermissible if a creditor became a party to the debtor's obligation only after the commencement of proceedings or if the claim against the debtor was acquired only after the commencement of proceedings. The same applies if the party to the debtor's obligation acquired the counterclaim before the commencement of proceedings but was aware of, or should have been aware of, the

the debtor's insolvency.

2) However, set-off is permitted if the debtor's obligor acquired the counterclaim more than six months before the commencement of the proceedings, or if the obligor was obligated to assume the claim

and, at the time of entering into that obligation, neither knew nor had any reason to know of the debtor's insolvency.

3) Claims arising from contracts may also be set off:

a) that have been terminated due to the opening of the proceedings, as well as:

1. derivative transactions listed in Annex II to Regulation (EU) No. 575/2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No. 648/2012, including derivative instruments for the transfer of credit risks;

2. derivative transactions not covered by subparagraph (a), provided they are traded on a regulated market or in a multilateral trading facility (MTF) or were concluded under a master agreement, as well as spot transactions;

3. Repurchase agreements pursuant to Article 4(1)(83) of Regulation (EU) No. 575/2013;

4. Securities lending transactions;

5. Financial collateral pursuant to Art. 392 et seq. of the Law of Property; and

b) where it has been agreed that they shall be terminated upon the commencement of proceedings concerning the assets of one contracting party, or may be terminated by the other contracting party, and that all mutual claims arising therefrom shall be set off.

Art. 10

1) At the creditors' meeting, the trustee presides over the proceedings; he reports on the debtor's financial situation.

2) The creditors' meeting is free to appoint another trustee by a two-thirds majority of the votes of the creditors present, representing at the same time two-thirds of the claims.

3) The debtor is required to attend the meeting to provide information upon request.

4) The draft composition agreement shall be submitted to the assembled creditors for approval by signature.

5) Declarations of consent may also be submitted within the ten days following the meeting.

Art. 11

A creditor who has not consented to the composition agreement does not thereby forfeit his or her rights against co-debtors, sureties, and guarantors.

Art. 12

1) A creditor who has consented to the estate settlement agreement does not forfeit his rights against the aforementioned persons, provided that he has notified them of the time and place of the creditors' meeting at least ten days in advance and has offered to assign his claim to them in exchange for payment.

2) The creditor may also, without prejudice to his rights, authorize co-debtors, sureties, and guarantors to decide on his behalf whether to accede to the composition agreement.

Art. 13

1) Ten days after the creditors' meeting, the trustee shall submit all documents to the estate authority, together with his opinion as to whether the estate agreement should be accepted and confirmed.

2) The authority shall promptly render its decision following a public hearing.

3) The date of the hearing shall be publicly announced, along with a notice to the creditors that they may raise their objections to the composition agreement at the hearing.

Art. 14

1) The composition agreement shall be deemed accepted if two-thirds of the creditors have approved it and the claims they represent amount to two-thirds of the total amount of claims.

2) The creditors referred to in Article 3, paragraphs 2, 3, and 4 of the Bankruptcy Code, as amended by this Act, shall not be included in this calculation, either as individuals or with respect to their claims; however, claims secured by a lien shall be included to the extent that, in the administrator's estimation, they are unsecured.

3) The estate authority shall decide whether and to what extent conditional claims, claims with an uncertain maturity date, and disputed claims are to be included. This does not prejudice the court's decision on the validity of the claims.

Art. 15

The confirmation of a composition agreement accepted by the creditors

by the estate authority shall only take place if the following conditions are met:

1. if the debtor has not committed any dishonest or grossly negligent acts to the detriment of his creditors;
2. if the amount offered is in proper proportion to the debtor's assets and amounts to at least 40 percent of the claims in the composition. In this context, the debtor's inheritance rights may also be taken into account.
3. if the execution of the composition agreement and the full satisfaction of the registered privileged creditors are sufficiently ensured, unless the latter waive this right.

Art. 16

The decision of the District Court regarding the estate may be appealed to the Higher Court within 14 days of its issuance.

Art. 17

1) Once the decision has become final, it shall be made public and communicated to the Office of Justice.

2) Upon public announcement of the decision, the effects of the deferral shall cease.

Art. 18

If the composition agreement is rejected or the deferral revoked, any creditor may assert their claims in accordance with the provisions in force.

Art. 19

If the bankruptcy authority confirms the composition agreement, it shall set a deadline for those whose claims are disputed to assert them  
period within which to assert their claims; after the expiration of this period, the claim may no longer be asserted.

Art. 20

The confirmed composition agreement is legally binding on all creditors; the only exception is secured creditors for the amount of the claim covered by the security.

Art. 21

As a result of the composition agreement, any attachments not judicially approved at least two months prior to the composition moratorium shall lapse with respect to all assets.

Art. 22



Upon order of the composition authority, the debtor shall deposit the amounts attributable to disputed claims with the Savings Bank of the Principality of Liechtenstein until the conclusion of the proceedings.

Art. 23

Any promise by which the debtor assures a creditor of more than what is due to him under the composition agreement is void.

Art. 24

1) A creditor with respect to whom the terms of the composition agreement are not fulfilled may, without prejudice to the rights granted to him or her under that agreement, petition the composition authority to set aside the composition with respect to his or her claim.

2) Article 16 applies *mutatis mutandis*. Article 25

1) Any creditor may request the estate authority to rescind an estate agreement that was concluded in bad faith.

2) Articles 16, 17, and 18 apply *mutatis mutandis*.

Art. 26

1) If a debtor against whom bankruptcy proceedings have been opened proposes a composition agreement, the bankruptcy administration shall review the proposal for the creditors' meeting.

2) Articles 10 through 16 and 19 through 25 apply *mutatis mutandis*, provided that the bankruptcy administration acts in place of the trustee.

Art. 27

This Act is hereby declared urgent and shall enter into force on the date of its promulgation.

Law of December 16, 1987, on the

## **XVII. Fees for Attorneys and Legal Agents (RATG)**

Subject Matter of the

Schedule Art. 1

1) Attorneys and legal agents are entitled to remuneration in accordance with the following provisions in civil court proceedings and in arbitration proceedings pursuant to §§ 594 et seq. of the Code of Civil Procedure, as well as in criminal proceedings involving a private prosecution and for the representation of private parties.

2) Unless otherwise specified below, the provisions of this Act apply both to the relationship between the attorney or legal agent and the party they represent, and to the determination of costs to be reimbursed by the opposing party, including cases where the attorney or legal agent is entitled to reimbursement of costs from the opposing party in their own capacity. Limitation on the Application of the Schedule

Art. 2

1) This fee schedule does not affect the right to freely negotiate terms.

2) Even if a higher fee deviating from the schedule has not been agreed upon, the attorney or legal agent may assert a claim against the client for a higher fee than provided for in the schedule, justified by special circumstances or by a special demand initiated by the client.

3) The acceptance of fees by the attorney in the context of a criminal defense is not unlawful within the meaning of § 165(2) StGB, provided that the fee is not obviously unreasonably high and does not obviously serve an improper defense.

Basis for Calculation

Art. 3

The amount determining the application of a specific tariff rate (basis of assessment) is, in civil proceedings including security proceedings (Art. 270 et seq. of the Enforcement Code), based on the value of the subject matter of the dispute; in enforcement proceedings, it is based on the value of the claim including incidental fees (Art. 14); in insolvency proceedings for a creditor based on the amount of the filed claim including incidental fees, and in non-contentious proceedings based on the value of the subject matter to which the performance relates.

Art. 4

- 1) The date on which the lawsuit is filed or the petition initiating the proceedings is submitted is decisive for calculating the tax base.
- 2) Appreciation, fruits, interest, damages, and costs claimed as incidental claims are not taken into account in the valuation.

Art. 5

- 1) If a monetary claim is asserted, the amount of money sought shall serve as the basis for assessment.
- 2) If only a portion of a monetary claim is sought, only the portion claimed is decisive. If a surplus is claimed resulting from the set-off of claims to which both parties are entitled against each other, the amount of the claimed surplus is decisive.

Art. 6

Claims in foreign currency shall be valued at the foreign exchange selling rate at the time of the conclusion of the transaction; if no such transaction takes place, at the time of performance of the service to be remunerated.

Art. 7

If the plaintiff offers to accept a specific sum of money in lieu of the subject matter in question, or if the plaintiff makes an alternative claim for the award of a sum of money, the sum of money specified in the complaint or in the pleading initiating the proceedings shall serve as the basis for calculation.

Art. 8

- 1) In all other cases where the subject matter of the dispute does not consist of a monetary amount, the plaintiff must specify this value in the complaint or in the pleading initiating the proceedings. This applies in particular to actions seeking the performance of work or other personal services, actions for tolerance or abstention, and actions seeking the issuance of declarations of intent.
- 2) When assessing the subject matter of the dispute, any consideration owed by the plaintiff shall not be deducted.
- 3) In disputes under Art. 20 EO, the value of the separated items forms the basis for assessment.
- 4) If the defendant considers the plaintiff's valuation of the subject matter of the dispute to be too high or too low, the defendant may, at the latest at the first oral hearing,

At the hearing scheduled for a specific date, the parties may challenge the valuation. In the absence of an agreement between the parties, the court shall, to the extent possible, resolve the matter without further investigation and without unduly delaying the proceedings or incurring costs, by assessing the amounts claimed by the

amounts claimed by the parties. This decision is not subject to appeal.

Art. 9

1) If, in the course of proceedings, the value of a subject matter of the dispute that is not in the form of money changes to such an extent that the valuation made by the plaintiff pursuant to Art. 8 clearly no longer corresponds to the current value, the court shall, in the absence of an agreement between the parties, re-determine the basis for assessment upon the request of a party pursuant to Art. 8. In proceedings before the appellate court, this request may be made in the appeal brief or in the response to the appeal. If the request is made in the response to the appeal, the appellate court may seek a statement from the appellant.

2) If the basis for assessment under paragraph 1 was changed during the course of a proceeding, the amount in dispute applicable at the time of the decision or settlement regarding the obligation to reimburse costs shall be decisive in determining the costs of the entire proceeding preceding such determination of costs.

3) Paragraph 2 also applies in appellate proceedings; however, with respect to the costs of lower courts, it applies only if those costs are determined by the higher court. If the decisions of lower courts in the chain of instances have been set aside in whole or in part, the most recently determined value in dispute shall serve as the basis for the new decision on the merits, including when determining the costs of those courts whose decisions have been set aside.

4) Paragraph 3 also applies if the conversion rate applicable for valuation under Article 6 has changed during the proceedings.

Art. 10

1) Claims for maintenance or pension contributions shall be assessed at twice the annual amount; claims for the payment of pensions in cases of bodily injury or due to the killing of a person shall be assessed at three times the annual amount. If the claim is asserted for a shorter period, the total amount of the benefits claimed for that period shall serve as the basis for assessment.

- 2) If an increase or reduction of the amounts specified in paragraph 1 is requested, the  
the double of the annual amount of the requested increase or reduction; in the case  
of pensions due to bodily injury or the killing of a person, the triple of the annual  
amount of the requested increase or reduction.
- 3) The claim for provisional maintenance shall be assessed at the single annual  
amount.

Art. 11 The subject matter shall be valued:

1. in disputes concerning actions for protection of possession: CHF 3,000;
2. in disputes arising from a tenancy agreement concerning an apartment, CHF 1,500;
3. in disputes arising from a lease agreement concerning commercial premises: CHF 3,000;
4. in disputes arising from or concerning the existence of a limited real right: CHF 3,000;
5. in matrimonial and family law proceedings, as well as in proceedings concerning registered partnerships, excluding any associated claims of a property-law nature, the value of which must be added, in the amount of CHF 3,000;
6. in disputes concerning the paternity of a child born out of wedlock, excluding any associated claims of a financial nature, the value of which must be added, at CHF 1,500;
7. in matters of the commercial register, unless the application specifies a different value, at the statutory share capital;
8. in criminal cases involving a private prosecution:
  - a) in proceedings for misdemeanors, CHF 1,000;
  - b) in proceedings for misdemeanors, at CHF 5,000;
9. in criminal matters for the representation of private parties:
  - a) in proceedings for minor offenses, a fine of CHF 1,000;
  - b) in proceedings for misdemeanors, a fine of CHF 5,000;
  - c) in proceedings for felonies, CHF 20,000.

In applications for the determination of costs and in appeals regarding costs, the  
basis for assessment shall be the amount whose award or denial is sought.

If the amount of costs awarded or disallowed does not exceed

100 francs, the appellant is entitled only to reimbursement of court fees and out-of-pocket expenses from the opposing party.

Art. 13

1) Where multiple claims are asserted in the same action, the values of the matters in dispute shall be aggregated. The same applies to the joinder of multiple legal disputes and to the joinder of a claim and a counterclaim for joint hearing.

2) If multiple claims raised in the same action are heard separately, the corresponding partial value shall be decisive for each of the separate hearings during the period of separation.

3) Any change in the value of the matter in dispute resulting from an amendment to the complaint, a narrowing of the relief sought, or a partial settlement of the dispute must be taken into account for proceedings following the change in value and, if the change is effected by a statement from a party, also for the relevant pleading. If the value in dispute is changed during a hearing, the change must be taken into account as of the hour of the hearing at which the change occurs.

4) If the proceedings are limited to incidental fees, the value in dispute shall be 1,000 francs, but never more than half of the original value in dispute.

Art. 14

1) In enforcement proceedings, the basis for assessment

a) for the enforcing creditor or other entitled party, the value of the claim to principal, including incidental fees incurred up to the time of the application for a writ of execution or for renewed enforcement and not yet adjusted;

b) for the obligor, the value of the claim affected by his application;

c) for the third-party debtor, the value of the attached claim, if this is lower than the claim of the enforcing creditor, otherwise the value specified in subparagraph (a);

d) for the bidder and for the purchaser, the value of the highest bid achieved.

2) Incidental fees that have not yet been adjusted shall be taken into account only if the party, when listing the costs, has specified the amount of these incidental fees individually and calculated their total sum.

Increase in remuneration in the case of multiple persons Art. 15

A lawyer or legal agent is entitled to an increase in their remuneration if they represent multiple parties or are opposing multiple parties in a legal matter (Art. 1).

The increase amounts to:

a) 10% if there are two persons on one side only who are represented by or opposed to the attorney or legal agent;

b) 5% for each additional person represented by him and for each additional person opposing him,

but never more than a total of 50% of the total fees, including the flat rate. Travel expenses, compensation for lost time, and other out-of-pocket expenses are not included in the total fees.

Expenses

Art. 16

Expenses for court, stamp, and postage fees, as well as other expenses, shall be reimbursed separately, unless otherwise provided in Art. 23.

Handling of Multiple Matters During a Trip Art. 17

When conducting multiple business matters during a trip, travel expenses shall be allocated to the individual business matters in proportion to the basis of assessment.

Lists of Expenses Art.

18

A lawyer or legal agent is not entitled to compensation for preparing a statement of costs or a bill of fees for the party he or she represents.

Remuneration in the case of joint work by several attorneys and legal agents

Art. 19

For services jointly entrusted by a party to several attorneys and legal agents, each attorney and legal agent is fully entitled to the fees set forth in the fee schedule from the party they represent for their services.

Authorized Agent for Service

of Process Art. 20

## Fee Schedule for Attorneys and Legal Agents

(RATG)

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The attorney and legal agent appointed as an agent for service is entitled only to reimbursement of expenses for the transmission of documents and to remuneration for the drafting and dispatch of letters.

Review by the Court; Remuneration Exceeding the Schedule Art.

21

1) The court's authority to review the necessity and appropriateness of individual services remains unaffected. If, in a specific case, the scope or nature of the services provided by the attorney or legal agent significantly exceeds the average, the remuneration therefor

shall be set at a reasonable level, irrespective of the schedule, taking into account, in particular, the time and effort expended.

2) Even in cases where the court determines the remuneration for services of the same or a similar nature that are not subject to the schedule, the rates set forth in the schedule may only be reduced if the attorney or legal agent does not demand a higher remuneration.

Separate Pleadings, Art.

22

In civil proceedings and enforcement proceedings, pleadings are remunerated separately only if they cannot be combined with other pleadings or if the court deems their separate filing necessary or appropriate.

Flat Rate for Ancillary Services

Art. 23

1) Ancillary services include the drafting and processing of simple correspondence (reminder letters, brief reports, other short communications, invitations, acknowledgments of receipt, and the like), of other types of letters with the exception of those constituting legal opinions or contractual documents, as well as meetings of all kinds.

2) When remuneration is paid for services falling under tariff items 1, 2, 3, 4, or 7, a flat rate shall apply in lieu of all ancillary services falling under tariff items 5, 6, and 8.

3) However, the attorney or legal agent may, instead of the flat rate, bill the party they represent for the individual ancillary services listed in paragraphs 1 and 2.



4) The flat rate is 50 francs for a value in dispute up to and including 15,000 francs %, and 40% of the amount of earnings for cases involving a dispute value exceeding 15,000 Swiss francs, excluding travel expenses, compensation for lost time, and other out-of-pocket expenses.

5) The flat rate does not include ancillary services in connection with out-of-court oral or written negotiations that were performed before or during court proceedings to avoid a legal dispute or to bring about a settlement, provided they have involved a significant expenditure of time and effort. They are to be remunerated according to the applicable tariff item for each individual service. The same applies to ancillary services if the case has been concluded before the main service corresponding to the ancillary services was performed.

6) For services falling under tariff item 3, Section A, Part II; Section B, Part II; Section C, Part II; or tariff item 4, Section I, Parts 4 and 5, as well as Section II, the portion of the flat rate attributable to such services shall be awarded twice if the attorney or legal agent performs the services at a location outside the country or instructs another attorney or legal agent to perform such services and does not claim reimbursement of travel expenses or compensation for lost time, or if the court does not grant him such a claim because he could have been represented by a lawyer or legal agent based at the place of the court.

RATG

Art. 24

The Government is authorized to establish the fee rates (fee items) for the remuneration of attorneys and legal agents in a regulation.

Transitional and Final Provisions Art.

25

1) This Act shall enter into force on the date of its promulgation.

2) It shall apply to services rendered by attorneys and legal agents after the entry into force of this Act, unless the amount of remuneration has been agreed upon with the party.

Regulation of June 30, 1992, on the

## **XVIII. Fee Schedules for Attorneys and Legal Agents (RATV)**

Pursuant to Article 24 of the Act of December 16, 1987, on the Fee Schedule for Attorneys and Legal Agents, LGBI. 1988 No. 91, the Government hereby decrees:  
Article 1

Fee Item 1

I. In all proceedings for the following pleadings:

- a) mere notifications and communications to the court;
- b) requests to the court and other authorities for the provision of information, confirmations, certificates, copies, or transcripts, for access to files, or for the return of attachments;
- c) Requests and statements concerning deadlines, court hearings, service of process, and similar procedural matters;
- d) Motions for determination of costs;
- e) Revocation or termination of powers of attorney;
- f) Withdrawal of motions or appeals, declarations of waiver;
- g) Repealed.

II. In civil proceedings:

- a) Motions to appoint a guardian ad litem for the opposing party;
- b) Declarations of intervention by the intervenor;
- c) Applications for a change in the basis of assessment pursuant to Articles 8 and 9 of the Act of December 16, 1987, on the Fee Schedule for Attorneys and Legal Agents, and comments thereon;
- d) Withdrawal of lawsuits;
- e) Objections to payment orders in debt collection proceedings and appeals against a court order;
- f) Motions to resume suspended or interrupted proceedings, motions to schedule a hearing for oral argument;
- g) Motions for correction of judgments or orders;
- h) Notices of appeal that merely contain a waiver of the oral appeal hearing or a motion to order such a hearing without further details;

i) Motions for the imposition of a security deposit for costs in appeal proceedings.

III. In enforcement proceedings:

a) Motions for the enforcement of execution against movable tangible property pursuant to Art. 9(2) of the Enforcement Code;

b) Motions for a new enforcement proceeding or for the scheduling of a new auction;

c) Declarations merely consenting to a proposal, and declarations regarding the assumption of debt pursuant to Art. 112(2) of the Enforcement Code;

d) Designation of buyers pursuant to Art. 201(2) of the Enforcement Code;

e) Statements by the third-party debtor regarding the existence and amount of the attached claim;

f) Motions to dismiss pursuant to Art. 21(1)(f) or Art. 131(c) of the Enforcement Ordinance;

g) Motions pursuant to Art. 29 or 31 of the Enforcement Ordinance, including motions to supplement or clarify the inventory of assets, as well as suggestions pursuant to Art. 29(3) of the Enforcement Ordinance.

IV. In insolvency proceedings, claims filed, provided they do not fall under tariff item 3:

For an assessment basis: up to and including CHF 500: CHF 17. Over

CHF 500 up to and including CHF 1,000: CHF 25.

Over CHF 1,000 up to and including CHF 1,500: CHF 32

Over CHF 1,500 up to and including CHF 2,500: CHF 37

Over CHF 2,500 up to and including CHF 5,000: CHF 40

Over CHF 5,000 up to and including CHF 10,000: CHF 49

Over CHF 10,000 up to and including CHF 15,000: CHF 64

Over CHF 15,000 up to and including CHF 25,000: CHF 72

Over CHF 25,000 up to and including CHF 50,000: CHF 80

Over \$50,000 up to and including \$75,000: \$96

Over CHF 75,000 up to and including CHF 100,000: CHF 119

Over \$100,000 up to and including \$140,000: \$159

over CHF 140,000 up to and including CHF 500,000

## Fee Schedule for the Remuneration of Attorneys and Legal Agents (RATV)

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for each additional CHF 20,000 or part thereof, an additional CHF 17; above CHF 500,000 up to and including CHF 5,000,000 plus 0.1‰ of the amount exceeding CHF 500,000, and for amounts over CHF 5,000,000 plus 0.05‰ of the amount exceeding CHF 5,000,000, but never more than CHF 1,426 in total.

### Rate Item 2

#### I. For the following pleadings:

##### 1. In civil proceedings:

- a) Demand proceedings, applications for payment orders in debt collection proceedings, and applications for the issuance of a writ of execution;
- b) Actions for payment of outstanding balances, loan claims, claims for payment of the purchase price of movable property or compensation for work and services, claims for payment of default interest, claims arising from agency agreements, claims arising from bills of exchange, recourse claims under check law, divorce proceedings (pursuant to Articles 75 and 92 of the Marriage Act), and applications for the lifting of garnishment;
- c) Responses to complaints and objections against payment orders, provided that such pleadings are limited to a mere denial of the facts alleged in the complaint and to a motion to dismiss the complaint or to revoke the payment order;
- d) Notices of termination and motions pursuant to § 567 of the Code of Civil Procedure, as well as objections thereto, provided that such pleadings are limited to the assertion or denial of the grounds for termination and do not contain a statement of facts;
- e) other pleadings not listed in tariff items 1 or 3.

##### 2. In enforcement proceedings:

for all pleadings not listed in tariff items 1 or 3.

##### 3. In legal aid proceedings:

- a) short applications for entries in the land register or public records;
- b) Applications to initiate proceedings to invalidate documents;
- c) Applications for payment and applications for enforcement.

##### 4. In insolvency proceedings:

Applications to open insolvency proceedings, as well as all other pleadings filed by a creditor not listed under tariff items 1 or 3:

For an assessment basis: up to and including CHF 500: CHF 80

Over CHF 500 up to and including CHF 1,000:

CHF 119. Over CHF 500 up to and including CHF 1,000: CHF 119. Over CHF 1,000 up to and including CHF 1,500: CHF 159.

Over CHF 1,500 up to and including CHF 2,500: CHF 175

Over CHF 2,500 up to and including CHF 5,000: CHF 198

Over CHF 5,000 up to and including CHF 10,000: CHF 238

Over CHF 10,000 up to and including CHF 15,000: CHF 317

Over CHF 15,000 up to and including CHF 25,000: CHF 357

Over CHF 25,000 up to and including CHF 50,000: CHF 396

Over CHF 50,000 up to and including CHF 75,000: CHF 476

Over CHF 75,000 up to and including CHF 100,000: CHF 594

Over CHF 100,000 up to and including CHF 140,000: CHF 792

Over CHF 140,000 up to and including CHF 500,000

For each additional CHF 20,000 or part thereof: CHF 80. more Over CHF 500,000 up to and including CHF 5,000,000

plus 0.5‰ of the amount exceeding CHF

500,000, up to and including CHF 5,000,000

in addition, 0.25‰ of the amount exceeding CHF 5,000,000, but never more than CHF 7,128 in total.

II. For the following court sessions:

1. In civil proceedings:

a) initial hearings, even if one of the procedural acts listed in § 250(1) of the Civil Procedure Code is performed;

b) hearings that are adjourned before a hearing has taken place;

c) hearings that, before the facts of the case have been discussed, result in a default judgment, a judgment of admission, or a judgment of waiver, or in the conclusion of a settlement;

d) hearings ordered solely for the purpose of concluding a settlement;

e) Hearings before the requested judge in which the taking of evidence was not carried out due to the failure of the persons to be examined to appear;

f) Hearings for the lifting of a stay of execution, if the opposing party does not appear or the claim is not contested.

2. In enforcement proceedings:

a) Hearings at which the parties are merely heard outside of the proceedings and which do not serve the purpose of taking evidence, unless they fall under tariff item 3;

b) Hearings at which an affidavit of insolvency is to be taken.

3. In legal aid proceedings:

Hearings at which the parties are merely heard and which do not serve the purpose of taking evidence, unless they fall under tariff item 3.

4. In insolvency proceedings:

Hearings in which the attorney acts as the creditor's representative: For the first hour of each hearing, the remuneration set forth in Section I, but never more than CHF 7,128; for each additional hour, even if

For each hour of a day session that has begun, half of this remuneration, but never more than CHF 3,564.

*Notes on Tariff Item 2:*

1. Where several enforcement applications are combined, with the exception of an application for the safekeeping of seized property, an increase of 10% of the remuneration applicable to the first application is payable for each additional application.

2. For the time spent waiting for a hearing specified in Tariff Item 2, after a half-hour waiting period until the official act is performed, a quarter of the fee under Tariff Item 2 is payable for each additional half-hour, even if only partially completed, but never more than CHF 40.00 per half-hour.

3. If the attorney has appeared at a hearing specified in Schedule Item 2, the cancellation of which he was not notified of in a timely manner or which was not held due to a lack of service of process, half of the fee under Schedule Item 2 is due, but never more than CHF 80.

*Tariff Item*

3 A.

I. For the following pleadings:

1. In civil proceedings:

a) Lawsuits, insofar as they do not fall under fee item 2;

b) Answers to complaints and objections to payment orders, insofar as they do not fall under tariff item 2;

c) Terminations and motions pursuant to § 567 of the Code of Civil Procedure, as well as objections thereto, insofar as they are not covered by tariff item 2;

d) preparatory pleadings that are admissible under § 257 of the Code of Civil Procedure or ordered by the court;

e) Motions to preserve evidence.

2. In enforcement proceedings:

Applications for enforcement based on files and documents drawn up abroad, and objections to such enforcement orders.

3. In legal aid proceedings:

All pleadings, insofar as they do not fall under tariff items 1 or 2.

4. In insolvency proceedings:

a) Applications for the opening of reorganization proceedings;

b) pleadings in which a right of separation or a right of exclusion is asserted.

5. In all proceedings:

a) Applications for preliminary injunctions, statements by the opposing party regarding such applications, and objections to a preliminary injunction that has been granted;

b) Cost appeals:

For an assessment basis:

up to and including CHF 500: CHF 159

Over CHF 500 up to and including CHF 1,000:

CHF 238 Over CHF 1,000 up to and including

CHF 1,500: CHF 317

Over CHF 1,500 up to and including CHF 2,500: CHF 349

Over CHF 2,500 up to and including CHF 5,000: CHF 396

Over CHF 5,000 up to and including CHF 10,000: CHF 476

Over CHF 10,000 up to and including CHF 15,000: CHF 634

Over CHF 15,000 up to and including CHF 25,000: CHF 713

Over CHF 25,000 up to and including CHF 50,000: CHF 792

Over CHF 50,000 up to and including CHF 75,000: CHF 951

Over CHF 75,000 up to and including CHF 100,000: CHF 1,188

Over CHF 100,000 up to and including CHF 140,000: CHF 1,584

Over CHF 140,000 up to and including CHF 500,000

For every additional CHF 20,000 or part thereof: CHF 159 more Over CHF 500,000 up to and including CHF 5,000,000

plus 1% of the amount exceeding CHF 500,000

## Fee Schedule for the Remuneration of Attorneys and Legal Agents (RATV)

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over CHF 5,000,000

plus 0.5% of the amount exceeding CHF 5,000,000, but never more than CHF 43,200 in total.

II. For the following court sessions:

1. In civil proceedings:

for all court sessions, unless they fall under tariff item 2.

2. In enforcement proceedings and legal aid proceedings:

a) Hearings involving the taking of evidence;

b) hearings in which multiple parties or participants not represented by the same attorney are present, or in which conflicting motions are being heard:

for the first hour of each hearing, the remuneration set forth in Section I. For each additional hour of a hearing, even if only partially used, half of this remuneration.

B.

I. For appeals, notices of appeal (unless they fall under Tariff Item 1), submissions, and appeals (unless they fall under Section A

or C, and complaints:

For an assessment basis:

up to and including CHF 500: CHF 198

over CHF 500 up to and including CHF 1,000:

CHF 297. over CHF 1,000 up to and including CHF

1,500: CHF 396.

Over CHF 1,500 up to and including CHF 2,500: CHF 436

Over CHF 2,500 up to and including CHF 5,000: CHF 495

Over CHF 5,000 up to and including CHF 10,000: CHF 594

Over CHF 10,000 up to and including CHF 15,000: CHF 792

Over \$15,000 up to and including \$25,000: \$891

Over \$25,000 up to and including \$50,000: \$990

Over \$50,000 up to and including \$75,000: \$1,188

Over CHF 75,000 up to and including CHF 100,000: CHF 1,485

Over CHF 100,000 up to and including CHF 140,000: CHF 1,980

Over CHF 140,000 up to and including CHF 500,000

For each additional CHF 20,000 or part thereof: CHF 198. More than CHF 500,000 up to and including CHF 5,000,000

plus 1.25% of the amount exceeding CHF 500,000



over CHF 5,000,000

plus 0.625‰ of the amount exceeding CHF 5,000,000, but never more than CHF 54,000 in total.

II. For oral proceedings concerning an appeal, a petition, or a complaint:

For the first hour of each hearing, the remuneration set forth in Section I; for each additional hour of a hearing, even if only partially completed, half of this remuneration.

C.

I. For appeals, responses to appeals, and appeals to the Supreme Court:

For an assessment basis:

up to and including CHF 500: CHF 238

Over CHF 500 up to and including CHF 1,000:

CHF 357. Over CHF 1,000 up to and including

CHF 1,500: CHF 476.

Over CHF 1,500 up to and including CHF 2,500: CHF 524

Over CHF 2,500 up to and including CHF 5,000: CHF 594

Over CHF 5,000 up to and including CHF 10,000: CHF 713

Over CHF 10,000 up to and including CHF 15,000: CHF 951

Over CHF 15,000 up to and including CHF 25,000: CHF 1,070

Over CHF 25,000 up to and including CHF 50,000: CHF 1,188

Over CHF 50,000 up to and including CHF 75,000: CHF 1,426

Over CHF 75,000 up to and including CHF 100,000: CHF 1,782

Over CHF 100,000 up to and including CHF 140,000: CHF 2,376

Over CHF 140,000 up to and including CHF 500,000

For each additional Fr. 20,000 or part thereof: Fr. 238. More than Fr. 500,000 up to and including Fr. 5,000,000

plus 1.5‰ of the amount exceeding CHF

500,000, up to and including CHF 5,000,000

In addition, 0.75‰ of the amount exceeding CHF 5,000,000, but never more than CHF 64,800 in total.

II. For oral proceedings on appeals:

For the first hour of each hearing, the remuneration set forth in Section I; for each additional hour of a hearing, even if only partially completed, half

of this remuneration.

*Notes on Tariff Item 3:*

1. Where several enforcement applications are combined, with the exception of an application for the custody of seized property, an increase of 10% of the remuneration applicable to the first application is payable for each additional application.
2. For the time spent waiting for a hearing specified in Tariff Item 3, after a half-hour waiting period until the official act is performed, a quarter of the remuneration under Tariff Item 2 is payable for each additional half-hour, even if only partially used, but never more than CHF 80. for the half-hour. The time spent in court deliberation is to be included in the waiting time.
3. If the attorney has appeared at a hearing specified in Schedule Item 3, the cancellation of which he was not notified of in a timely manner or which was not held due to the lack of a summons, half of the fee under Schedule Item 2 shall be payable, but never more than CHF 160.
4. When an application for a preliminary injunction is combined with a complaint, an application for a payment order, or an application for enforcement, the fee for applications seeking permission for separate residence in matrimonial matters or in proceedings concerning registered partnerships is increased by 10%, and for other applications by 25% of the fee applicable to the pleading.

*Fee Item 4*

I. In criminal proceedings involving a private prosecution:

1. For indictments:

- a) for misdemeanors: CHF 150
- b) for misdemeanors: CHF 375

2. For motions to introduce evidence and for all other submissions, insofar as they do not fall under item 3 of this fee schedule or under fee schedule item 1, which sets the fee , but half that amount for very brief motions. 3.

a) For notices of appeal:

one-quarter of the fee set for indictments;

b) For appeals (other than appeals regarding costs), for objections, for motions for reinstatement, and for motions for retrial:

twice the fee set for indictments;

c) For briefs in appeals and for briefs in appeals for review, as well as for counter-briefs thereto:

three times the fee set for indictments;

d) For appeals regarding costs:

the fee set forth in Schedule Item 2, but never more than the fee set for indictments; the value of the matter shall be calculated in accordance with Article 12 of the Act of December 16, 1987, on the Schedule of Fees for Attorneys and Legal Agents.

4. For main hearings or for participation in a judicial inspection or in any other taking of evidence outside the main hearing, as well as in a judicial seizure:

for the first half-hour, double the fee; for each additional half-hour, even if only partially used, single the fee set for indictments.

5. For proceedings in the court of second instance:

for the first half-hour, three times the fee; for each additional half-hour, even if only partially used, one and a half times the fee set for indictments.

II. For the representation of private parties:

a) in cases of misdemeanors:

the remuneration specified in Section I, item 1(a) and items 2 through 5;

b) in cases of misdemeanors:

the remuneration specified in Section I, item 1(b) and items 2 through 5;

c) in cases of felonies:

twice the remuneration specified in Section I, Item 1(b), as well as, accordingly, the remuneration specified in Section I, Items 2 through 5.

*Notes on Tariff Item 4:*

1. For the time spent waiting for a hearing or for the performance of any other official act, after a half-hour waiting period until the start of the hearing or official act, a fee of CHF 17 is payable for each additional half-hour, even if only partially completed, in criminal matters pursuant to Section I, Item 1(a) and Section II(a) of this fee schedule, and for each additional half-hour, even if only partially completed, in criminal matters pursuant to Section I(1)(b) and Section II(b) of this fee schedule, an amount of CHF 33. The time spent by the court in deliberation shall be included in the waiting time.

2. If the attorney has appeared at a hearing or other official proceeding of which he was not notified in a timely manner, or which was not held due to the lack of a notice of service, a fee of CHF 33.00 is payable in criminal matters pursuant to Section I, Item 1(a) and Section II(a) of this fee schedule, and

## Fee Schedule for the Remuneration of Attorneys and Legal Agents (RATV)

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pursuant to Section I, Item 1, Letter b, and Section II, Letter b, of this fee schedule, an amount of CHF 66.

3. If a defendant charged with a misdemeanor is found guilty only of a minor offense, only remuneration pursuant to Section I, Item 1, Letter a of this fee schedule is payable in the cost reimbursement proceedings.

### Rate Item 5

For the drafting and processing of simple correspondence (reminder letters, short reports and other brief communications, invitations, acknowledgments of receipt, and the like):

For an assessment basis: up to and including CHF 1,000: CHF 8; over

CHF 1,000 up to and including CHF 2,500: CHF 10;

Over CHF 2,500 up to and including CHF 5,000: CHF 12

Over CHF 5,000 up to and including CHF 10,000: CHF 17

Over CHF 10,000 up to and including CHF 25,000: CHF 33

Over CHF 25,000 up to and including CHF 50,000: CHF 50

For each additional CHF 20,000 or part thereof, an additional CHF 17, but never more than CHF 100. Rate Item 6

For the drafting and processing of other types of letters, with the exception of those constituting legal opinions or contractual documents:

twice the fee set forth in Tariff Item 5, but never more than CHF 330.

*Note regarding rate items 5 and 6:*

In addition, half of the fee specified in these fee items is payable as compensation for information obtained from the files or from the party.

### Rate Item 7

1) For the performance of tasks outside the law office that are typically handled by a staff member of the attorney, in particular for inquiries in the land registry or otherwise at a court or other authority, for the filing of an enforcement petition, for participation in the execution of enforcement (security

) proceedings and the like, for the entire time spent carrying out such business:

for each half-hour, even if only partially used, the same remuneration as under tariff item 6, but never more than CHF 220 per half-hour.

In addition, reimbursement for the use of public transportation or reimbursement for a motor vehicle may be charged.

2) If a matter of the type described in paragraph 1 was handled by an attorney or a law clerk, double the remuneration under paragraph 1 is due, but not exceeding an amount of CHF 440. per half-hour, provided that the handling of the matter by the attorney or the law clerk was necessary in the specific case.

3) Pursuant to paragraph 2, compensation shall also be paid for work performed outside the law office that does not fall under any other fee item and is regularly carried out by an attorney or a law clerk, such as reviewing files at government agencies, serving as a legal assistant, conducting an out-of-court inspection for informational purposes, and similar tasks. Fee Item 8

1) For meetings of any kind, including those conducted by telephone, the following shall be charged for each half-hour, even if only partially used:

For a fee base:

up to and including CHF 1,000: CHF 30

Over CHF 1,000 up to and including CHF 2,500: CHF 45

Over CHF 2,500 up to and including CHF 5,000: CHF 53

Over CHF 5,000 up to and including CHF 10,000: CHF 75

Over CHF 10,000 up to and including CHF 25,000: CHF 135

Over CHF 25,000

For each additional CHF 20,000 or part thereof, an additional CHF 15, but never more than CHF 600 per half-hour.

2) For meetings lasting less than 10 minutes, the fee is 1/10 of the fee specified in paragraph 1, but never more than CHF 240.

*Note on Tariff Item 8:*

Very brief telephone communications, excluding legal advice, shall be remunerated in accordance with Tariff Item 5.

Rate Item 9

When conducting business in court proceedings outside the location where the attorney's office is situated, the following travel expenses and compensation for time

if the location where the business is conducted is more than five kilometers from the location of the lawyer's office:

1. as travel expenses

a) the cost of travel by public transportation (rail, streetcar, bus, ship, airplane, and the like); a lawyer or a trainee lawyer is entitled, for distances traveled by rail, ship, or airplane, to reimbursement at the highest rate applicable to another employee of the lawyer for the next lower class actually traveled;

b) if public transportation cannot be used at all or without significant loss of time, the reimbursement for a motor vehicle;

c) in all other cases, a travel allowance of CHF 17 for each hour, even if only partially used;

2. as meal expenses, if the absence from the lawyer's place of residence lasts at least three hours, for each day on which this condition is met, an amount corresponding to the local customary cost of the main meals normally falling within the period of absence;

3. as lodging expenses, if an overnight stay outside the lawyer's place of residence is necessary, for each night, an amount corresponding to the local customary cost of reasonable lodging;

4. as compensation for lost time, provided the matter does not fall under Tariff Item 7, for each hour, even if only partially used, spent traveling to or from the place where the business is conducted or at that place, in addition to the time required for the conduct of the business itself, an amount of CHF 75. *Note on Tariff Item 9:*

If the contractor uses his own motor vehicle, the same compensation shall be payable as under item 1 of this tariff item.

Art. 2

1) The Regulation of February 3, 1988, on the Fee Schedules for Attorneys and Legal Agents, LGBI. 1988 No. 10, as amended by the announcement of May 10, 1988, LGBI. 1988 No. 13, is hereby repealed.

2) This Regulation shall enter into force on the date of its publication.

3) It applies to services provided by attorneys and legal agents after the entry into force of this Regulation, unless the

amount of remuneration has been agreed upon with the party.

RATV

## **XIX. Legal Security Ordinance (RSO)**

of February 9, 1923

I hereby approve the following resolutions adopted by the State Parliament in its session of December 20, 1922, pursuant to Articles 2, 27, and 114 of the Constitution:

### **1. Main Section**

#### **Enforcement Security**

##### **1. Section**

#### **General Provisions**

Articles 1 through

14 Repealed

##### **2. Section**

#### **Precautionary Measures and Court**

#### **Orders (Seizure and Preliminary**

#### **Injunctions) Art. 15 to 36**

Repealed

##### **3. Section**

#### **Special Security Measures for Contracts of Sale**

Art. 37 to 41

Repealed

##### **4. Section**

#### **Enforcement until Security Is Provided**

Art. 42–48

Repealed

##### **5. Section**

#### **The Legal Release Proceedings**

Art. 49

#### *Admissibility*

1) A creditor against whose claim in debt collection or legal summons proceedings an objection has been raised against the payment order or a counterclaim has been filed against the legal summons may have the objection or counterclaim judicially set aside by the district court (judicial relief) if

a) his claim asserted in the debt collection or summons proceedings is based on a public document or on an acknowledgment of debt confirmed by the debtor's signature



or his legal representative, agent, or predecessor in title, and in both cases

b) the claim concerns the performance or surrender of money or any item of property, or the granting of a registered right.

2) The following, in particular, are considered documents within the meaning of the preceding paragraph:

a) all documents deemed public under domestic or foreign law, provided they are submitted in the original or as a certified copy;

b) private acknowledgments of debt that expressly or otherwise conclusively contain a signed acknowledgment of debt (e.g., acknowledgment in a letter, simple promissory note, debt obligation, signed current account statements, sales contracts, surety bonds, checks, insurance policies), regardless of whether such acknowledgment of debt occurred domestically or abroad.

3) The provisions of Art. 44(2)(b) and (c) shall be observed *mutatis mutandis* in debt enforcement proceedings.

Art. 50

*Proceedings – General Principles*

1) The debt enforcement proceedings shall be initiated and conducted by the District Court within the shortest possible time, generally not exceeding five days.

2) The creditor may, before the district court

a) either file the application for enforcement separately after service of the objection or defense, either orally for the record or in writing in accordance with the provisions governing lawsuits, or

b) submit it simultaneously with the application for a payment order or a writ of execution in the event that an objection or a defense is filed; in both cases, the original documents or certified copies must be attached to the application at the same time.

3) In this proceeding, the judge summons the parties to a hearing within a short, reasonable period; the creditor is not required to appear, and the debtor is summoned under the warning that, in the event of an unexcused failure to appear, a decision will be rendered immediately based on the record. No other consequences of default apply.

4) In the debt enforcement proceedings, the creditor may prove his claim only by means of documents, while the debtor must immediately substantiate his objections to the

application for relief from the stay of execution and against the debt must be substantiated immediately by documents or by witnesses brought to the hearing; other means of substantiation are not permitted.

Art. 51

*The Decision on the Request for Resumption of Enforcement*

1) The Regional Court shall decide on the application for the lifting of the stay by means of a decision (order), which must be served on the parties in accordance with the provisions applicable to lawsuits and must contain, in addition to the ruling, a statement of reasons and legal instructions.

2) The legal instructions must include:

a) upon the granting of a judgment of enforcement against the defendant, a note stating that the defendant may, within the non-extendable period of fourteen days from service, file an action in ordinary litigation to have the claim (action for a declaratory judgment), but that, in the event of failure to do so, subject to reinstatement pursuant to the Code of Civil Procedure, enforcement may be sought against the debtor until the creditor is satisfied on the basis of the decision granting relief from the stay;

b) if the application for the lifting of the stay is dismissed, a note to the creditor that he must assert his rights against the obligor in ordinary litigation proceedings.

3) The decision on the release of the judgment shall also rule on the costs raised by the parties.

4) No appeal is admissible against a decision granting the application for the lifting of the stay of execution, except for an action for annulment; an appeal against a decision dismissing the application is admissible within fourteen days of service.

Art. 52

*Effect of the Decision on the Release of the Judgment*

1) A creditor to whom relief from the stay of execution has been granted may, on the basis of the decision granting relief from the stay of execution, immediately demand enforcement in accordance with the provisions of Section 4 of this Part (Art. 42 et seq.) until his claim, including incidental costs and the costs of the relief from the stay of execution awarded, has been secured.

2) The effect of the order granting relief from attachment applies only to the debt collection or enforcement proceedings in which such relief was granted.

3) Six months after the decision to lift the stay of enforcement has been served on the creditor, the creditor may no longer file a motion for security based on that decision.

Art. 53

*Action for Denial*

1) If a judgment has been rendered against the debtor, the debtor may, within fourteen days of service of the judgment, file an action with the district court to set aside the claim asserted by the creditor.

2) Repealed

3) The burden of proof in the action for revocation remains the same as if the creditor had brought the action himself.

4) The relief sought is a declaration of the total or partial non-existence of the claim or of its current unenforceability, and the revocation of the release from attachment.

5) The relevant provisions of the Code of Civil Procedure apply to the award of costs in the action to deny the claim, and if the creditor loses, the procedural and party costs of the enforcement proceedings shall also be imposed on him.

2. Main Section

**Affidavit and Rules of Appeal**

1. Section

**Affidavit (Oath of Disclosure)**

Art. 54

*Admissibility and Content*

1) Repealed

2) Repealed

3) Before filing an action to set aside a transaction, the debtor must, at the creditor's request in the cases covered by Articles 65 through 67, with respect to a legal act designated by the creditor as voidable, take an oath that he was unaware of the facts giving rise to the voidability.

4) Repealed

5) Repealed

6) Repealed

7) Repealed

Art. 55

*Affidavit of Administration or Receivership*

1) Any person obligated

a) to render an account of an administration involving income or expenditures must provide the entitled party with a statement containing an orderly compilation of the income or expenditures and, to the extent that receipts are customarily provided, must submit such receipts;

b) to surrender a collection of items or to provide information regarding the contents of such a collection, shall submit a list of the contents to the entitled party.

2) The foregoing obligations may be enforced by means of a legal notice or a lawsuit.

3) If there is reason to believe

a) that the information contained in the statement regarding income or expenses was not provided with the necessary care, the obligor must, upon request and after the enforcement order becomes final, take an oath of disclosure stating that, to the best of his knowledge, he has reported the income or expenses as completely as he was able to;

b) if the inventory has not been drawn up with the necessary care, the obligor must, upon request and after the enforcement order has become final, take an oath of disclosure stating that, to the best of his knowledge, he has declared the assets as completely as he was able to do so.

4) The Regional Court may modify the wording of the oath as appropriate to the circumstances.

5) In matters of minor importance, there is no obligation to take the oath of disclosure.

Art. 56

Repealed

Art. 57–63

Repealed

2. Section: **Rules on**

**Contestation Art. 64**

*Purpose – Power to Challenge*

- 1) The legal acts mentioned hereafter (Art. 65 to 68) that concern a debtor's assets may, in accordance with the following provisions, be challenged for the purpose of satisfying a creditor and declared invalid vis-à-vis the creditor.
- 2) Any creditor with an enforceable claim is entitled to challenge the judgment (right to challenge), regardless of when the claim arose, provided that enforcement has not resulted in full satisfaction of the creditor or, at the time enforcement is authorized, it can be assumed that it will not result in such satisfaction.
- 3) The challenge may be asserted by means of a lawsuit (counterclaim) or a defense, by means of a payment order or a legal notice.
- 4) If the party against whom the action is brought proves that the creditor bringing the action himself intended the voidable legal act, consented to it, or subsequently approved it with knowledge of the voidable circumstances, the action to set aside the act shall be dismissed.

Art. 65

*Contestation of gratuitous dispositions and dispositions treated as such*

- 1) The following legal acts performed within one year prior to the authorization of enforcement are voidable:
  - a) voluntary dispositions (e.g., waiving a right not yet acquired, renouncing an inheritance), which the debtor was not legally obligated to make, and all completed gifts, provided that these legal acts do not constitute the fulfillment of a legal obligation or customary occasional gifts (e.g., Christmas, New Year's, birthday, engagement, or wedding gifts), provided they do not exceed the customary amount, or dispositions of a reasonable amount made for charitable purposes or to fulfill a moral obligation (e.g., taking out adequate life insurance for one's wife and children) or considerations of propriety;
  - b) the acquisition of the debtor's property without consideration or on equivalent terms pursuant to an official order (e.g., in enforcement and administrative coercive proceedings), provided that the consideration was paid from the debtor's funds;

c) Legal transactions in which the debtor, at the time of performance, accepted consideration that is disproportionate to his own performance, in particular contracts of sale, exchange, or supply, provided that the other party to the transaction recognized or should have recognized a disproportion between performance and consideration or some other dissipation of assets detrimental to the creditor;

d) Legal transactions through which the debtor has acquired a life annuity or a usufruct for himself or a third party;

e) the securing or setting aside of the marital property, provided that the debtor was not obligated to do so either by a contract concluded upon entering into the marriage or upon the establishment of the marital property, nor by law in the event of the dissolution of the marital union; furthermore, the securing or payment of the widow's allowance or widow's pension.

2) The burden of proof regarding the existence of the facts and circumstances justifying the claim for avoidance rests with the creditor seeking avoidance.

Art. 66

*Contestation due to Over-indebtedness*

1) The following legal acts are also voidable, provided that the debtor performed them within the last year prior to the granting of the enforcement order and was already overindebted at the time of their performance:

a) The creation of a lien or rights having the same legal effect as a lien to secure existing obligations, the fulfillment of which the debtor was not previously obligated to ensure by law or by legal transaction;

b) Repayment of a monetary debt by means other than cash or other customary means of payment;

c) The payment of a debt that has not yet become due.

2) However, the transaction is not voidable if the beneficiary proves that he was unaware of the debtor's financial situation.

3) In particular, avoidance is excluded if financial collateral was provided as security pursuant to Art. 392 of the Law of Property and the debtor had previously:

a) had already undertaken to top up the financial collateral in the event of changes in the value of the financial collateral or in the amount of the secured obligation; or

b) had the right granted to replace a financial security with a financial security of equal value.

Art. 67

*General Right of Avoidance*

1) Finally, regardless of the time of their execution, all legal acts are voidable which the debtor has performed with the intention, recognizable to the other party at the time of their execution, of disadvantaging his creditors or favoring individual creditors to the detriment of others.

2) It is sufficient if, based on the actual circumstances of the individual case (e.g., B. close kinship or other personal relationship between the debtor and the third party, rumors circulating about the debtor) to recognize the debtor's intent to disadvantage his creditors or to favor certain ones to the detriment of others.

3) The burden of proof for all facts of the case (legal act, intent to disadvantage or favor, and the recognizability thereof) rests with the challenging creditor.

Art. 68

*Challenge of Omissions*

1) Omissions by the debtor through which he loses a right, or through which pecuniary claims against him are established, maintained, or secured, shall also be regarded as legal acts within the meaning of the preceding articles.

2) The same applies with respect to omissions

a) the acceptance of an inheritance, or

b) challenging a violation of the right to a compulsory share, or

c) finally, contesting an impermissible disinheritance.

Art. 69

*Enforcement and Challenge*

1) A challenge is not precluded by the fact that an enforcement order has been obtained for the challengeable act or that it has been effected by enforcement.

2) If the legal act is declared invalid, the enforceability of the enforcement order against the creditor also ceases.

Art. 70

*Parties Subject to Voidance*

A challenge may be directed against those persons who have entered into the voidable legal transactions with the debtor, or who have been satisfied by the debtor in a voidable manner, or who have received a financial advantage through the debtor's omission in a voidable manner; furthermore, against their heirs and against third parties acting in bad faith.

Art. 71

*Scope of Performance*

1) Any person who has acquired the debtor's assets through a voidable legal transaction is obligated to return them in accordance with the following paragraphs.

2) Claim. With regard to reimbursement of consideration or a claim that has been reinstated as a result of the avoidance, the opposing party acting in bad faith may only seek recourse against their debtor; otherwise, the consideration must be reimbursed by the creditor bringing the action to set aside, to the extent that it is still in the debtor's possession or has enriched the debtor; beyond that, a claim may only be asserted as a claim against the debtor.

3) Set-off. A counterclaim against the debtor may not be set off against the claim for rescission, except for the assertion of claims in accordance with the preceding paragraph.

4) If the voidable legal act consisted in the discharge of a debt, the debt shall be reinstated upon the return of the amount received, subject to the protection of guarantors and pledgers acting in good faith.

5) The recipient of a gift in good faith is obligated to make restitution only up to the amount of his enrichment, except in cases where his acquisition would also be voidable as a transaction for consideration.

6) If bona fide third parties have acquired unavoidable rights in property that is to be returned, the person in whose possession the encumbrance occurred is obligated to compensate the creditor for damages if his acquisition was voidable. The preceding paragraph applies.

7) Multiple Voidable Transactions. Even if the same legal act is challenged by several creditors, the liabilities imposed on the party against whom the challenge is brought may in no case exceed the limit specified in this article.

Art. 72

*Action for Voidance*



- 1) If a challenge is brought by means of a lawsuit, the complaint must specify the extent to which and the manner in which the defendant is to perform or tolerate something for the purpose of satisfying the creditor.
- 2) Even before filing a lawsuit, or at the same time as filing it, the party entitled to bring an action for rescission may apply to the regional court for a note to be entered in the land register regarding the lawsuit to be filed or already filed, where the enforcement of the right of rescission requires entries in the register.
- 3) This annotation has the effect that the judgment on the action to set aside is also effective against persons who have acquired rights after the entry in the land register.
- 4) If a request for the registration of a claim for rescission was made prior to the filing of the action, the creditor must file the claim for rescission within fourteen days of service of the notice of registration; otherwise, the registration must be deleted by order at the request of the opposing party and at the creditor's expense.
- 5) An exception to the preceding paragraph applies in the case of Art. 74.

Art. 73

*Challenge Prior to Enforcement (Plea)*

- 1) The action to set aside may be brought by way of a defense before the creditor's claim has become enforceable.
- 2) Likewise, the challenge may also take place in proceedings for the distribution of proceeds obtained through enforcement, even before the claim of the challenging creditor has become enforceable.

Art. 74

*Time Limit for Challenge – Extension*

- 1) The action to contest (counterclaim) is barred by the statute of limitations five years after the contestable legal act was performed.
- 2) The claim for avoidance may also be asserted against the opposing party by way of a defense within the permissible period for avoidance.
- 3) As a general rule, a voidable legal act is deemed to have been performed at the time it became effective for the creditors.
- 4) Extension. If, before the creditor's claim has become enforceable or before it becomes apparent that enforcement against the debtor's assets has not led or will not lead to the creditor's full satisfaction,

, the creditor notifies the person against whom a voidable legal act was performed, or that person's heirs or third parties, of his or her intention to challenge the act by serving a written pleading, the period for challenging the act/period for contesting the transaction shall be calculated retroactively from the time of service, provided that it can be assumed that the enforcement against the debtor's assets would not have led to the creditor's full satisfaction even at the time of such service, and the contestation has taken place within five years from that time.

Art. 75

*Provisions under International Law*

1) The law of the debtor's domicile or registered office governs the voidability of legal acts; in the absence of a domicile, the law of the place where the debtor was present at the time the acts were performed governs the question of whether and which legal acts are voidable.

2) Furthermore, a challenge is permissible only if it is also permissible under the law governing the transaction.

3) If the law governing the challenge at the place of residence (registered office) or place of stay differs from that governing the acquisition transaction with respect to the conditions for the challenge or time limits, the provisions that are more favorable to the party against whom the challenge is brought shall apply.

4) A challenge before a local court must be dismissed if it concerns claims of a creditor arising abroad for which, pursuant to Art. 44, enforcement must be refused until security is provided or for which enforcement is otherwise precluded under local law.

5) Outside the scope of the action to set aside, the setting aside of a legal transaction and, in particular, the defense of a sham transaction shall be assessed in accordance with the law of the place to which this legal transaction is subject under international law pursuant to Liechtenstein law.

3. Main Section

**Special Security Measures in Non-Contentious Proceedings**

1. Section

**Provisional Land Registry Entries**

Art. 76

*General*

Security entries in the land register (notices of priority) are permitted in accordance with the provisions on property rights, this Act, and other laws.

2. Section

**Security Interests in Probate Proceedings**

Articles 77

through 80

Repealed

3. Section

**Public Notarization, Official Certification, and Enforceable Documents**

*A. Public Notarization and Official Certification*

Art. 81

*Application – Jurisdiction*

1) Unless expressly provided otherwise, the provisions of Chapters III and IIIa of the Notary Act apply mutatis mutandis to public notarial acts and official certifications under this Act.

1a) The provisions of the Notary Act apply to the execution of notarial deeds and notarial certification.

2) The district judge and the judicial officer are competent to perform public notarizations. In matters concerning the commercial register and the land register, the head of the Office of Justice and his or her deputy have exclusive jurisdiction; the government may delegate this authority to other employees of the Office of Justice.

3) The Head of the Office of Justice and his or her deputy have exclusive authority to certify a person's authority to sign on behalf of a legal entity entered in or filed with the Commercial Register. The government may delegate this authority to other employees of the Office of Justice.

4) Subject to special provisions, the following are responsible for the official certification of signatures or handwritten marks, extracts from books, copies, and the like:

a) the Regional Court;

b) the Head of the Office of Justice and his or her deputy; the Government may delegate this authority to other employees of the Office of Justice;

c) two municipal employees authorized by the municipality; and

d) in matters of public law, the head of government or the secretary of government.

5) A certifying officer must recuse themselves if:

- a) she herself is a party to the legal transaction, or is or was married to a party, lives or lived in a registered partnership, is or was in a de facto relationship, or is related by blood or marriage up to the fourth degree. Adoption, step-parent, and guardianship relationships are treated as equivalent to natural parent-child relationships;
  - b) a disposition is made for her own benefit or for the benefit of one of the persons mentioned in subparagraph (a);
  - c) she is a representative, agent, employee, or organ of a party.
- 6) Failure to comply with the duty to recuse oneself renders the public certification null and void.
- 7) Paragraph 3 of Article 77 applies *mutatis mutandis*.

#### Article 81a

##### *Electronic Notarial Signature*

- 1) For the electronic signing of documents and certifications, the certifying officer must use a qualified electronic signature in accordance with Article 3(12) of Regulation (EU) No. 910/2014, which is reserved for the creation of electronic documents (electronic certification signature).
- 2) The government shall provide notaries with a qualified certificate for the electronic notarization signature referred to in paragraph 1.
- 3) The government may regulate the details by ordinance.

##### *Procedur*

##### *e Art. 82*

##### *Document*

s

- 1) The documents to be authenticated may be drafted and brought by the parties themselves, or their drafting may be entrusted to the notary.
- 2) The notary must, in particular, ensure that the identity and legal capacity of the persons appearing before him or her, or their representatives, are established.
- 3) Authorized representatives must present a power of attorney specific to the transaction in question, and this presentation must be noted in the document itself.
- 4) The parties' intentions must be clearly and completely set forth in the document.

5) The notary must ensure compliance with any legally prescribed formalities and that the transaction being notarized is accurately represented.

Art. 83

*Signature*

1) The public document must be signed by the parties involved in their own handwriting.

2) If a party is unable to sign, the notary must note this fact in the document, stating the reason, and call upon a witness.

3) Repealed.

Art. 84

*Foreign Language*

1) If the public document must be drawn up in a foreign language or if a party involved does not understand the German language, the notary shall call in a translator if he or she does not speak that language or if a party so requests.

2) The translator shall sign the document, which shall state the reason for his or her involvement, and thereby certify that the translation was performed conscientiously.

3) The translator may also act as a witness.

Art. 85

*Contents of the Deed*

1) Unless otherwise provided by this Act or other laws, the document must, to avoid nullity of the certification, contain:

a) the place and date of execution;

b) a sufficiently clear identification of the parties, their representatives, and any other persons involved in the execution (name, occupation, place of residence, and, if applicable, place of origin);

c) the statements of the parties or their representatives.

2) If the statement refers to a document and that document is attached to the deed and bears the official seal of the notary, it forms part of the deed.

3) The notary shall certify on the document that it contains the intentions of the parties as communicated to him or her and that these have been brought to the attention of the parties involved.

4) Furthermore, the notary shall affix his or her seal or stamp in addition to his or her signature; however, the omission of the seal or stamp shall not render the notarization invalid.

Art. 86

*Recording*

1) The Regional Court and the Office of Justice shall enter an excerpt of the document into a record.

2) Repealed

3) With regard to founding documents, in particular the articles of association of a company within the meaning of the provisions of the law of persons and companies, an extract of the document or a clear reference to it in the minutes shall suffice. The Government may issue further regulations by ordinance. Art. 87

*Certifications*

1) The certification of a signature or a handwritten mark shall only take place if the signature is executed or acknowledged in the presence of the certifying officers or if the authenticity of the signature is otherwise conclusively established for the certifying officer.

2) However, the notary may not certify the authenticity of a signature that was not executed or acknowledged in the notary's presence based solely on the testimony of a third party.

3) Certification is effected by means of a note to be placed next to or below the signature, which must include: the name of the person who executed the signature; a statement of the facts on the basis of which the certifying officer has ascertained the authenticity of the signature; the date and place of certification; and the signature and, if applicable, the seal of the certifying officer.

Art. 87a

*Authorization to Certify and Certification in Absentia*

1) A signature may be filed with the Regional Court or the Office of Justice along with a power of certification, by which the principal authorizes the notaries of the Regional Court or the Office of Justice to certify the principal's future signatures in his or her absence.

- 2) The notaries must compare each signature of the principal to be certified with the principal's filed signature. If the notary doubts the authenticity of the signature, certification must be refused.
- 3) The signature and the certification authorization must be renewed whenever any information listed on the authorization changes, but no later than after five years.
- 4) The government may regulate the details by ordinance.

Art. 88

*Provisions under International Law*

- 1) Foreign public documents shall also be deemed public documents under domestic law if they have been issued in accordance with the law of the place of execution, unless specific statutory exceptions apply.
- 2) A confirmation that the document is a public document under the law of the place of issuance may be required by the courts or administrative authorities if doubts arise.

*B. Enforceable documents*

Art. 89

*Requirements*

- 1) The parties may have a public document drawn up by the Regional Court regarding a legal transaction that is enforceable within the meaning of the following provisions.
- 2) The parties are also free to draw up deeds and have them provided with an enforcement clause by the Regional Court.
- 3) Documents issued by these authorities shall be deemed public documents before all authorities, provided their content is legally permissible and their form does not appear to be objectionable.
- 4) Unless otherwise provided in this section, the provisions governing public documents shall apply *mutatis mutandis*.

Art. 90

*General Content*

The document must contain:

- a) a specific, precisely defined subject matter of the obligation, specifying the time and place of performance of the contract,
- b) its legal basis, insofar as it must be specified under the provisions of private law,

- c) the precise identification of the parties involved,
- d) the obligor's consent to enforceability,
- e) the signatures of the parties and the district

judge. Art. 91

*Subject Matter of the Obligation*

- 1) The obligation must contain a claim for a declaratory judgment, performance, or legal arrangement that is subject to the parties' power of disposition.
- 2) The deed must specify not only the principal debt but also all related ancillary obligations (such as interest, default interest, and contractual penalties) in a manner that leaves no room for doubt, if the latter are to be enforceable.
- 3) The provisions of this Act apply to the content of documents intended for entry in the land register or other public registers, unless other laws, such as the law of property, provide for a deviation.
- 4) If specific movable property is the subject matter of the legal transaction, it must be described in a manner that ensures its identifiability.

Art. 92

*The Legal Basis*

Any ground that gives rise to a claim that can be more precisely determined in the sense described above (e.g., sale, loan, gift) may serve as such a ground.

Art. 93

*Parties*

- 1) The persons participating in the execution of the document must be precisely identified by their first and last names, status, and place of residence.
- 2) The identification of a person (company) declared to be entitled in the document must be made in such a way that confusion with other persons is ruled out.
- 3) Powers of attorney on the basis of which such a document is to be drawn up must, if they are not already public documents, be notarized, which must be noted by the court in the document; furthermore, the powers of attorney must comply with any applicable special provisions.
- 4) The creditor's participation in the execution of the document is not required if only a unilateral acknowledgment of debt is to be issued.

Art. 94

*Time, Place, and Nature of the Obligation*



- 1) The time of performance, forbearance, or omission must be specified by indicating a specific calendar day and year, or determined in such a way that the calendar day can be ascertained with certainty from the circumstances.
- 2) The document must specify the place of performance or fulfillment, if such a place has been agreed upon.
- 3) Such instruments may stipulate any type of obligation that the parties are legally entitled to create on their own initiative.

Art. 95

*Enforceability Clause*

- 1) The document must contain a specific and unambiguous declaration by the obligor that the document is to be enforceable immediately or from a specified date with respect to the acknowledged debt.
- 2) The enforceable nature of a claim is unambiguous when expressed in the document by phrases such as: “subject to enforcement,” “to avoid enforcement,” and other similar expressions.
- 3) The effect of the enforceability clause varies depending on whether it pertains to a claim that was already due at the time the document was drawn up, or whether that claim was conditional, subject to a time limit, subject to a condition, or dependent on consideration at that time.
- 4) If the document provides for the immediate delivery of money or other fungible items or other specific objects without any ancillary provision (condition, time limit, or requirement) or consideration being attached to it, enforcement may be demanded in the same manner as for a court settlement.
- 5) In all other cases, however, the entitled party may demand enforcement based on public documents only if he proves, by means of a public document or an enforceable title, that he has fulfilled the ancillary conditions or rendered the consideration; however, provisional enforceability shall be granted at the court’s discretion on the basis of such a document, or, if the other requirements are met, a security order or an official order may be obtained without the provision of security or the demonstration of a risk of loss on the part of the entitled party, or the procedure for the lifting of the stay of enforcement may be initiated.

Art. 96

*Position of the Obligor*

- 1) If enforcement has been granted on the basis of an enforceable instrument, the obligor shall have at his disposal the legal remedies and appeals available in enforcement proceedings.
- 2) If enforcement until security has been provided has been granted, the obligee must file a lawsuit with the court to establish his claim within fourteen days of service of the notice of enforcement until security has been provided.
- 3) If a security order or an official order has been issued or if the lifting of the stay of execution has been granted, the creditor or debtor must proceed in accordance with the relevant provisions.

Art. 97

*Treatment in the Land Register*

- 1) If an enforceable document contains a valid disposition regarding a parcel of land or a right attached thereto, it may, provided it otherwise contains the necessary land registry details, be used as a land registry-compliant (registrable) document for entry in the land registry.
- 2) In any case, such a document may serve as the basis for a land registry annotation or note in accordance with the provisions governing property rights.
- 3) If enforceability has been agreed upon for a claim pursuant to Art. 95(5), this may be noted in the land register entry.

Art. 98

*General Provision*

- 1) If an application is filed with the district court or an administrative authority based on a document executed pursuant to this Part, the legal validity of the agreement and its scope must be examined in every case.
- 2) Repealed
- 3) Appeals against the District Court shall be filed with and heard by the Higher Court in accordance with the provisions of the Act on Non-Contentious Proceedings.

Section 4

**Prohibitions on Holding Office and Notifications of Office**

*A. Prohibitions on Holding Office*

Art. 99

*I. Application and Fines*

- 1) Any possessor (owner, tenant, lessee, etc.) of a property may request the municipal council to issue an official order in the form of a prohibition of access, including for disturbances of possession or actions (e.g., walking, driving) on a property, against unspecified persons or groups of persons.
- 2) A disqualification from office within the meaning of this section is not permissible if it is sought solely against a specific, identified individual.
- 3) A fine of 1 to 100 francs may be imposed for a culpable violation of such a prohibition on holding office.

## *II. Procedure*

### *Art. 100*

#### *Application for a Prohibition*

- 1) The application for a prohibition must be filed with the municipal council of the municipality in which the property or a major portion thereof is located.
- 2) The application, which may be submitted in writing or orally, must, in addition to the general requirements for a written submission, contain:
  - a) the land registry designation of the property for which an official prohibition is to be issued, as well as, where applicable, its name and the names of the adjacent property owners;
  - b) the facts and grounds for the request; and
  - c) a detailed description of the content of the official prohibition to be issued;
  - d) the rights admitted by the applicant regarding walking, driving, watering, grazing, etc., as well as the name and place of residence of the entitled party.
- 3) The written application must be submitted in two copies; if the property is located on municipal boundaries, it must be submitted in as many copies as there are municipalities involved.

### *Art. 101*

#### *Review and Publication of the Application*

- 1) The municipal council shall have the application reviewed from all relevant perspectives, including consultation of the land register, and shall issue the necessary instructions for its completion.
- 2) The application, after any necessary additions have been made, shall be
  - a) by the mayor of the municipality in which the property is located and, if it concerns multiple municipalities, by all mayors, if necessary

b) also at the request of the applicant or at the discretion of other municipal heads deemed relevant by the municipal council  
for the municipality's information and for publication on the municipality's website.

3) The heads of the municipalities must officially notify the adjacent landowners of the application for a prohibition.

4) The municipal council may publish excerpts from the request for a prohibition in the official gazettes.

Art. 102

*Objections*

1) Within 14 days of publication on the municipality's website or in the official gazettes, objections to the issuance of an official prohibition may be filed with the municipal council by

a) the mayor of the municipality in question on behalf of the municipality due to existing public footpaths, roads, watering places, or thoroughfares and similar public rights of way, regardless of whether a relevant entry exists in the land register or not,

b) anyone who claims to have rights or ownership of the property that conflict with the proposed prohibition, regardless of whether a corresponding entry in the land register exists or not.

2) If such objections are submitted in writing or are raised orally with the relevant municipal head, an official note must be made of this. The heads of the other municipalities must notify the competent municipal council thereof.

3) The applicant may challenge objections received in a timely manner by means of a legal notice or through legal action.

4) The expiration of the objection period without action having been taken has the effect that rights of way, passage, watering, grazing or similar rights to the property in question may be asserted against the applicant by subsequent objectors under the provisions of private law only by means of an action for declaratory judgment, provided that the third party can demonstrate that they had no knowledge of the notice or that, despite having knowledge, they were unable to file the objection in a timely manner due to an insurmountable or unavoidable obstacle.

5) In the case of the preceding paragraph, however, the prohibition on registration remains effective against the third party until their right has been finally established.

Art. 103

*Issuance of the Ban on Holding Office*

- 1) The ban on holding office shall be issued by the municipal council under penalty of law, subject to objections and the rights recognized by the applicant, which must be listed in the ban.
- 2) The prohibition shall be made public by the municipal council through publication on the municipality's website and may be announced in other appropriate ways, in particular through publication in the official gazettes.
- 3) Whenever possible, the prohibition shall be made known to the public in part, with a reference to the penalty, at a conspicuous location on the property in question or by means of a warning sign. Art. 104

*Enforcement of Fines*

- 1) The administrative fine threatened in the prohibition shall be imposed by the District Court, upon application by the petitioner or his or her legal successor, against the person who culpably violates the prohibition, by means of a penalty order.
- 2) The penalty imposed shall not be entered in the criminal record and may not be mentioned in any subsequent criminal proceedings.
- 3) The administrative fine may be imposed repeatedly against the same offender.
- 4) Repealed

Art. 105

*Supplementary Provisions – Costs*

- 1) To the extent that the preceding articles do not provide otherwise or do not regulate certain matters, the provisions of the Act on Non-Contentious Proceedings (in particular regarding preliminary proceedings) shall apply supplementarily.
- 2) The costs incurred by the issuance of a disqualification order shall be borne by the petitioner.
- 3) An appeal against a prohibition from office may not be filed by third parties; in all other respects, the appeal proceedings shall be governed by the non-contentious proceedings.

*B. Official Notifications*

Art. 106

Repealed

Art. 107

*II. By the District Court*

1) A declaration of intent to be made in accordance with the provisions of civil law shall also be deemed to have been received if it was effected through the Regional Court in accordance with the provisions of the Service of Process Act.

2) If the person making the declaration is unaware of the identity of the person to whom the declaration is to be made, provided such ignorance is not due to negligence, or if the whereabouts of that person are unknown, service may be effected by public notice (Art. 28 of the Service of Process Act).

3) The declarant shall bear the costs and fees, without prejudice to any claim for reimbursement to which he or she may be entitled.

4) Art. 77(3) applies *mutatis mutandis*.

4. Main Section

**Exercise of Rights, Self-Defense, and Self-Help**

Art. 108

*A. Exercise of Rights and Self-Defense*

1) The exercise of a right is impermissible if its sole purpose is to cause harm to another.

2) An act necessitated by self-defense is not unlawful.

3) Self-defense is the defense necessary to avert a present unlawful attack against oneself or another.

4) A person who damages or destroys another's property to avert an imminent danger to oneself or another caused by that property does not act unlawfully if the damage or destruction is necessary to avert the danger and the damage is not disproportionate to the danger (state of necessity).

5) If the person who caused the danger is at fault, they are liable for damages.

6) In particular, the owner of a thing is not entitled to prohibit another person from acting upon the thing if such action is necessary to avert an imminent danger and the impending damage is disproportionately greater than the damage that would result to the owner from such action.

7) The owner may demand compensation for the damage incurred. Art.

109

*B. Self-help*

- 1) Anyone who, for the purpose of self-help, removes, destroys, or damages an item, or who, for the purpose of self-help, apprehends a debtor suspected of fleeing or overcomes the debtor's resistance—which the debtor is obligated to tolerate—is not acting unlawfully if assistance from the authorities (Art. 25) cannot be obtained in time and there is a risk that, without immediate intervention, the enforcement of the claim will be thwarted or significantly impeded.
- 2) Self-help must not go beyond what is necessary to avert the danger (proportionality).
- 3) In the event of the seizure of property, unless enforcement has been obtained for the purpose of securing the claim or for compulsory execution, an application for a security order or an official order must be filed.
- 4) In the event of the arrest of the obligated party, unless he is released, an application must be made to secure the person of the obligated party (Art. 24) by bringing him before the regional court.
- 5) If an order within the meaning of the third and fourth paragraphs is delayed or denied, the seized property must be returned and the obligated party released without delay.
- 6) Anyone who performs one of the acts described in the first paragraph under the mistaken belief that the conditions necessary to exclude unlawfulness are met is liable to the other party for damages, even if the mistake is not based on negligence.

Art. 110

*Scope of Application*

- 1) The foregoing provisions on self-defense and self-help do not affect similar measures provided for in other laws, such as self-seizure, in property law, in tenancy and leasehold law, the removal of items from another's property, or the cutting of roots and overhanging branches.
- 2) The provisions on the exercise of rights and self-defense apply to all areas of private law.

5. Main Section

**Final and Transitional Provisions**

*1. Application to Enforcement Proceedings*

Art. 111

*In general*

Repealed Art.

112

*Repeal and Replacement of Previous Laws on Enforcement Law*

Repealed Art.

113

*II. Application to legal aid proceedings*

Repealed Art.

114

*III. Application to administrative enforcement proceedings*

Repealed Art.

115

*IV. Application to insolvency law*

1) The provisions of the voidability rules also apply if a creditor has not been fully satisfied in bankruptcy proceedings.

2) The insolvency trustee is entitled to challenge transactions on behalf of the insolvency estate, and if no such trustee exists or the trustee refuses to challenge, any creditor is entitled to do so in accordance with the first paragraph.

3) For a period of two months prior to the date of commencement of the insolvency proceedings, notwithstanding other avenues for avoidance, all judicially approved liens shall lapse, and the creditor in question may only obtain satisfaction in accordance with the insolvency proceedings. Article 136(3) of the Insolvency Code remains reserved.

*V. Criminal Law Provisions*

Art. 116

*Obstruction of Justice*

1) Anyone who destroys their own property in whole or in part or takes it away from another person, thereby intentionally obstructing the exercise of a right or a right of usufruct, usufructuary right, right of use, or right of retention, shall be punished by the District Court for a misdemeanor with a fine of up to 50,000 Swiss francs or, if the fine cannot be collected, with imprisonment for up to six months.

2) A person who commits the act with the consent of or for the benefit of the owner shall be punished in the same manner.



3) The offense is prosecuted only upon complaint; if it is directed against relatives or in-laws in the direct line, adoptive or foster parents, adoptive or foster children, spouses, registered partners, siblings and their spouses or registered partners, as well as fiancés, the complaint may be withdrawn. The deadline for filing a complaint is three months from the time the offense is discovered and, in all cases, no later than one year from the commission of the obstruction of justice.

4) These provisions do not apply to tenants and leaseholders. Art.

117

*Obstruction of Enforcement*

Repealed

Art. 118

*Reckless incurring of debt*

Repealed

Art. 119

*Transitional and Final Provisions*

1) The foregoing provisions apply to acts committed prior to the entry into force of this Act only to the extent that such acts would be subject to a more severe penalty.

2) The second paragraph of Section 183 of the General Criminal Code is hereby repealed.

3) The general provisions of the Criminal Code and its supplementary laws regarding misdemeanors, as well as the provisions of the Code of Criminal Procedure and its supplementary laws governing proceedings for misdemeanors, shall apply mutatis mutandis.

Art. 120

*Penalty for Disobedience*

Repealed

Art. 121

*VI. Temporal Application*

Repealed

Art. 122

*VII. Repeal or Amendment of Existing Laws and Regulations*

1) All provisions that conflict with this law are repealed, in particular:

- a) Sections 275 through 297 of the General Code of Civil Procedure of May 1, 1781, introduced in this country by ordinance of February 18, 1812, and all subsequent enactments relating to these provisions;
  - b) the Act of July 5, 1883, LGBL. 1883 No. 1, concerning the adoption of § 389 of the West Galician Code of Civil Procedure;
  - c) the Ordinance of September 20, 1846, on the procedure for the execution of movable property to which third parties claim ownership or other rights;
  - d) those provisions of the General Civil Code and the Criminal Code that conflict with the provisions of this Act, in particular Articles 37 through 40, 108 through 110, and 116 through 119;
  - e) the Austrian Court Decree of November 5, 1819, No. 1621 (and all related amendments), which is also applicable in Liechtenstein, concerning the inventory of movable property brought in by tenants and leaseholders for the purpose of attachment;
  - f) the Act on the Prevention of Foreclosures of July 25, 1892, LGBL. 1892 No. 3;
  - g) Articles 5 through 8 of the Act concerning the Settlement of Abandoned Property of Foreigners of December 4, 1911, LGBL. 1911 No. 6; these are replaced by Articles 77 through 80 of this Act;
  - h) the Ordinance of June 22, 1843;
  - i) the Act of October 17, 1921, LGBL. 1921 No. 20, concerning the amendment and supplementation of provisions on enforcement proceedings;
  - k) the Act of October 16, 1891, LGBL. 1891 No. 9, concerning the enforcement of foreign civil court judgments;
  - l) the Act of August 16, 1892, LGBL. 1892 No. 4, amending and supplementing provisions of enforcement proceedings;
  - m) the Act of July 13, 1897, LGBL. 1897 No. 4, concerning Austrian enforcement orders enforceable in the Principality of Liechtenstein;
  - n) the Act of October 9, 1865, LGBL. 1865 No. 5, concerning debt collection in the Principality of Liechtenstein;
  - o) the Act of April 15, 1884, LGBL. 1884 No. 2, concerning amendments to the Bankruptcy Code.
- 2) Repealed
  - 3) Repealed
  - 4) Repealed

5) Repealed

6) Repealed

7) Repealed

8) Repealed

Art. 123

*VIII. Costs and Fees*

1) With regard to the provision on the bearing of costs, which also includes administrative costs and fees, the relevant statutory provisions apply.

2) Repealed

3) Repealed

4) When drawing up public documents, in addition to the stamp duty, the certifying officers shall collect the following fees for the State Treasury:

a) for the certification of signatures, copies, and extracts, 1 to 50 francs;

b) for the execution of other documents, 1 to 100 francs, depending on the value and significance of the document.

5) Repealed

6) Repealed

7) Repealed

8) Repealed

Art. 124

*IX. Referendum Clause and Implementation*

1) This Act is declared non-urgent and shall enter into force on the date of its promulgation.

2) The government is charged with its implementation.

Vaduz, February 9, 1923

## **XX. Service of Process Act (ZustG)**

of October 22, 2008

on the service of official documents

### **I. General Provisions**

#### **Art. 1**

##### *Subject Matter*

This Act governs the service of documents to be transmitted by authorities in the enforcement of laws, as well as the service of documents from foreign authorities to be carried out by them.

#### **Art. 2**

##### *Definitions; Terms*

1) For the purposes of this Act, the following terms shall have the following meanings:

a) "Recipient": the person named by the authority in the service order (Art. 5) into whose possession the document to be served is to be delivered;

b) "Document": a record, regardless of its technical form, in particular an official written decision;

c) "Delivery address": a specific delivery location within the country (letter d) or an electronic delivery address (letter e);

d) "Delivery point":

1. the residence or other accommodation, the place of business, the registered office, the business premises, the office, or the workplace of the recipient;

2. in the case of service in connection with an official act, the location thereof;

3. a location specified by the recipient to the authority for service in a pending proceeding or in a proceeding made pending at the same time, or a location entered in an official register;

4. a facility operated by a service provider or an authority for the storage of documents to be served, provided that a corresponding agreement exists with the recipient;

e) "electronic service address": an electronic address provided by the recipient to the authority for service in a pending proceeding or a proceeding made pending at the same time;

- f) "delivery service": any provider of universal services under the Postal Services and Parcel Delivery Services Act that has been entrusted with the performance of deliveries under this Act;
  - g) "proof of delivery": the certification by the delivery agent of a delivery transaction, in particular the place, time, and manner of delivery.
- 2) The terms referring to persons used in this Act shall be understood to include persons of both the male and female genders.

#### Art. 3

##### *Execution of Service*

- 1) Unless the provisions applicable to the proceedings provide for another form of service, service shall be effected by a delivery service, by organs of the authority, or, where this is in the interest of expediency, simplicity, and speed, by organs of the municipalities.
- 2) Service by officials of the authority or the municipalities may be ordered in particular if:
- a) no delivery service is available for the place of delivery;
  - b) service by a delivery service would result in late delivery or the proof of delivery would not be available in time;
  - c) the recipient or their delivery address is not precisely known and must first be determined by the delivery agent;
  - d) the document must be served at a time when a delivery service does not make deliveries;
  - e) the document is to be served in connection with another official act or to a detainee (prisoner).
- 3) Authorities and municipal bodies may only effect service within their local jurisdiction.

#### Art. 4

##### *Status of the Process Server*

The person responsible for service (the server) acts, with regard to ensuring the legality of the service, as an agent of the authority whose document is to be served.

#### Art. 5

##### *Service Order*

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Service must be ordered by the authority whose document is to be served. The service order must identify the recipient as clearly as possible and contain the other information necessary for service.

#### Art. 6

##### *Repeated Service*

Once a document has been served, the subsequent service of the same document has no legal effect.

#### Art. 7

##### *Remedying Defects in Service*

If defects occur in the service procedure, service shall nevertheless be deemed to have taken effect at the time the document actually reached the recipient.

#### Art. 8

##### *Change of Service Address*

1) Parties, interested parties, and their representatives, as well as authorized representatives for service, who change their previous address for service during proceedings of which they are aware, must notify the authority immediately.

2) If this notification is not provided, and unless the rules of procedure provide otherwise, service shall be effected without an attempt at delivery by deposit with the authority (Art. 25), provided that no other address for service is known to the authority or can be ascertained by simple means.

3) Paragraph 2 applies mutatis mutandis if a document cannot be served on a legal entity, a partnership, a sole proprietorship, or their representative within the meaning of Art. 16(3) at the service address entered in an official register.

##### *Authorized Representative for Service*

#### Art. 9

##### *a) Granting of Power of Attorney for Service*

1) Unless otherwise provided in the procedural rules, parties and interested parties may expressly authorize other natural or legal persons or partnerships to receive documents on their behalf from the authority (authorization to receive service).

2) A power of attorney for service cannot be validly granted to a natural or legal person or a partnership that does not have a place of business in the country.

Art. 10

*b) Effects of the power of attorney for service*

1) If an authorized representative for service has been appointed, the authority must, unless otherwise provided by law, designate that person as the recipient. If this is not done, service is deemed to have been effected at the time the document was actually received by the authorized representative.

2) If several parties, interested parties, or their representatives have a common authorized representative for service, service of a single copy of the document to that representative shall be deemed to have been effected on all parties or interested parties. If a party, an interested party, or their representative has several authorized representatives for service, service shall be deemed to have been effected as soon as it has been made to one of them.

3) If a submission is filed jointly by several parties or interested parties and no authorized representative for service is designated, the person named first shall be deemed the joint authorized representative for service.

Art. 11

*c) Duties of the Agent for Service*

An agent for service appointed by an individual must forward to that individual, without delay, any documents addressed to them and delivered to the agent. Likewise, unless otherwise agreed, the joint authorized representative must forward the received documents to the persons for whom he has accepted service without delay and must allow them to inspect the documents in his custody as well as to make further copies thereof.

Art. 12

*d) Designation of an Agent for Service in Special Cases*

1) Parties and interested parties who do not have a designated address for service within the country may be required by the authority to designate an authorized representative for service (Art. 9) within a period of at least 14 days for specific or all proceedings pending or to be initiated before that authority. If the party or interested party fails to comply with this order within the specified time limit, service shall be effected without an attempt at service by deposit with the authority (Art. 25); this legal consequence must be indicated in the order.

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2) Service by deposit with the authority is no longer permissible as soon as the party or interested party:

- a) has designated an authorized representative for service; or
- b) has a designated delivery address within the country and has notified the authority of this address.

### Art. 13

#### *Special Cases of Service*

1) Service abroad shall be effected in accordance with existing international agreements or, where applicable, by the means permitted by the laws or other legal provisions of the state in which service is to be effected, or by international practice, and, if necessary, through diplomatic channels.

2) For service on foreigners or international organizations entitled to privileges and immunities under international law, the government's assistance must be sought, regardless of their place of residence or seat.

3) For service of process on persons abroad who are not among the recipients listed in paragraph 2, the government may, by regulation, authorize service through a courier service using the return receipts customary in international postal traffic to those countries where service pursuant to paragraph 1 is not possible or is fraught with difficulties.

4) If confirmation of successful service is not received within a reasonable time, service may be effected, upon request or ex officio, by public notice (Art. 28) or by the appointment of a curator. The same applies if an attempt at service abroad has been unsuccessful or if the request for service is unlikely to succeed due to an obvious refusal of legal assistance by the foreign authority.

### Art. 14

#### *Service of Foreign Documents Within the Country*

1) Service of documents from foreign authorities within Liechtenstein shall be effected in accordance with existing international agreements or international practice; in the absence thereof, in accordance with this Act. However, a request to follow a specific procedure deviating therefrom may be granted if such service is compatible with the fundamental values of the Liechtenstein legal system.



2) The service of a foreign document in a foreign language that is not accompanied by a certified German translation is permissible only if the recipient is willing to accept it; this is presumed to be the case if the recipient does not declare to the authority that served the document within 14 days that he or she is not willing to accept it; this period begins to run upon service and cannot be extended. The recipient must be informed of this right.

3) If the declaration under paragraph 2 is late or inadmissible, it shall be rejected; otherwise, the authority must certify that the service of the foreign-language document is to be regarded as not having taken effect due to the recipient's unwillingness to accept it.

Art. 15

*Time of Service*

1) On Saturdays, Sundays, and public holidays, service of process may only be effected—unless performed by a delivery service—upon the order of a public authority. The service must be urgent due to the risk of a deadline expiring, the loss of a right, or a similarly compelling reason. The order must be clearly indicated on the document to be served.

2) The order under paragraph 1 is issued upon request or ex officio and cannot be challenged by an appeal.

3) The foregoing provisions shall also apply if service is to be effected at night.

**II. Physical Service**

Art. 16

*Service on the recipient*

1) The document shall be served on the recipient at the place of delivery. However, if, pursuant to an order by an authority, service is to be made on a person other than the recipient, that person shall take the place of the recipient.

2) In the case of service by agents of a service agency or a municipality, service may also be made to a person authorized by the relevant service agency or municipality to receive such documents, provided this is not excluded by a note on the document.

3) If the recipient is not a natural person, the document must be served on the representative within the meaning of Art. 239 PGR or another representative authorized to receive it, in particular the managing director or a signatory.

4) If the recipient is a professional party representative, the document may be served on any member of the representative's staff; however, a delivery service may not serve the document on certain members of the representative's staff, or may serve it only on specific members of the representative's staff, if the party representative has requested this in writing from the relevant delivery service. The authority must exclude clerical staff of the party representative from service by means of a note on the document and the proof of service, due to their interest in the matter or based on a prior written statement submitted to the authority by the party representative; service may not be effected upon them.

#### Art. 17

##### *Service on Recipients in an Institution*

If the recipient is subject to institutional rules and, pursuant to statutory provisions, documents may be handed over to him only by the head of the institution or by a person designated by the head of the institution or by the investigating judge, the document shall be handed over by the server to the head of the institution or to the person designated by him for the purpose of effecting service.

#### Art. 18

##### *Substitute Service*

1) If the document cannot be served on the recipient and a substitute recipient is available, service may be made on that person (substitute service).

2) An alternate recipient may be any person with legal capacity (Art. 10 et seq. PGR) who lives in the same household as the recipient or is the recipient's employee or employer.

3) Delivery services may not deliver to certain substitute recipients, or may only deliver to specific substitute recipients, if the recipient has requested this in writing from the relevant delivery service.

4) The authority must exclude persons from substitute service by means of a note on the document and the proof of service due to their interest in the matter or based on a written statement by the recipient; service may not be made to them.

5) Substitute service shall be deemed ineffective if the recipient or their representative, within the meaning of Art. 16(3), demonstrates to the authority that

he or she could not have become aware of the service within three business days; however, the service becomes effective on the day following the removal of the obstacle.

6) With respect to professional representatives of parties, legal entities, partnerships, and sole proprietorships, service becomes effective regardless of the time at which the recipient or their representative within the meaning of Art. 16(3) becomes aware of it.

Art. 19

*Deposit*

1) If the document cannot be served at the place of delivery, it shall be deposited, in the case of service by a delivery service, at its competent office, and in all other cases at the competent municipal administration or at the serving authority.

2) The recipient must be notified in writing of the deposit. The notification must be placed in the drop-off box designated for the drop-off location. It must specify the location of the deposit, indicate the start and duration of the pickup period, and explain the effect of the deposit.

3) The document on file must be made available for pickup for at least 14 days. This period begins on the day the document is first made available for pickup. Documents on file are deemed to have been served on the first day of this period. They are not deemed served if the recipient or their representative, within the meaning of Art. 16(3), demonstrates to the authority that they were unable to become aware of the service within three business days; however, service becomes effective on the day following the removal of the obstacle within the collection period on which the deposited document could be collected.

4) Service effected by deposit is valid even if the notice referred to in paragraph 2 has been damaged or stolen.

5) Repealed

Art. 20

*Forwarding*

1) The document shall be forwarded to another delivery point within the country if it:

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a) is to be served by agents of a delivery service and forwarding is provided for under the regulations governing the transport of such documents;

b) is to be served by an agency of the authority or municipality, and the other place of service is known to the authority or municipality or can be determined using simple means.

2) Documents that are excluded from forwarding by a note affixed to them shall not be forwarded.

### Art. 21

#### *Return to the Authority*

1) Documents that cannot be served nor forwarded, or that have been served by deposit but not collected, shall be returned to the authority.

2) The reason for the return must be noted on the document.

3) In the case of deposit, a copy of the notification pursuant to Art. 19(2) must also be transmitted. Art. 24(3) and (4) apply *mutatis mutandis*.

### Art. 22

#### *Refusal to Accept*

1) If the recipient or a substitute recipient living in the same household as the recipient refuses acceptance without a legal basis, the document shall be placed in the delivery facility designated for the delivery point or, if this is not possible, deposited in accordance with Art. 19 without the written notification provided for therein.

2) The document shall thereby be deemed to have been served.

3) If the delivery agent is denied access to the delivery location, the recipient denies being present, or has someone else deny their presence, this shall be deemed a refusal to accept.

### Art. 23

#### *Service to the Addressee in Person*

1) Documents to be served personally on the addressee may only be served on the addressee or on a representative authorized to accept such documents, or, in matters relating to the operation of a business, on an authorized signatory (joint authorized signatory) of the addressee.

2) If service is effected abroad by the authorities of the state of service, compliance with the provisions of that state's law governing the service of such documents shall suffice. This shall not apply if the application of such provisions would be incompatible with the fundamental principles of the Liechtenstein legal system.

Art. 24

*Proof of Service*

1) Service shall be certified by the server on the proof of service (delivery receipt, return receipt).

2) The person accepting the document must confirm receipt on the proof of service by signing it, adding the date, and, if he or she is not the addressee, indicating his or her relationship to the addressee. If the recipient refuses to confirm receipt, the server must note the fact of the refusal, the date, and, if applicable, the recipient's relationship to the addressee on the proof of service. The proof of service must be forwarded to the authority without delay.

3) The transmission of the proof of delivery may be replaced by the electronic transmission of a copy, unless the authority has excluded this by means of a corresponding note on the proof of delivery. The original of the proof of delivery must be retained for at least three months after transmission and forwarded to the authority without delay upon its request.

4) If the technical requirements are met, the certification of service may also be performed electronically. In this case, the recipient must sign on a technical device. The data pertaining to the certification of service must be transmitted to the authority without delay.

Art. 25

*Deposit without an Attempt at Service*

1) If the authority has ordered, pursuant to a statutory provision, that a document be deposited without a prior attempt at service, it must be made available for immediate pickup at the competent office of the delivery service in the case of service by a delivery service, and in all other cases at the competent municipal administration or at the serving authority.

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2) The deposit shall be certified by the competent office of the delivery service or by the municipal administration on the proof of delivery, and by the delivering authority in another manner as well.

3) The authority must notify the recipient of the deposit and request that the recipient provide an alternative delivery address or designate an authorized representative (Art. 9) within 14 days. This notification may also be made by public notice (Art. 28).

4) The deposited document must be held for pickup for at least 14 days. This period begins on the day the document is first made available for pickup. Deposited documents are deemed served on the first day of this period.

### Art. 26

#### *Direct Service*

1) The following may be delivered to the recipient:

- a) documents ready for dispatch directly at the authority;
- b) documents that the authority has forwarded to another agency, directly at that agency.

2) Delivery must be certified by the authority or the agency; Art. 24, paras. 2–4 apply *mutatis mutandis*.

### Art. 27

#### *Service at the Place of Encounter*

1) Service may be effected on the addressee at any place where he is found, provided that he:

- a) is ready to accept the document; or
- b) does not have a distribution point within the country.

2) Service must be certified; Art. 24, paras. 2–4 apply *mutatis mutandis*.

### Art. 28

#### *Service by Public Notice*

1) Service on persons whose address is unknown, or on a group of persons unknown to the authority, may be effected by publication in the Official Gazette stating that a document to be served is ready for collection, provided that the matter does not involve criminal proceedings, no authorized representative for service has been appointed, and the procedure under Art. 8 does not apply.

2) If the recipient does not appear to receive the document (Art. 26), service shall be deemed to have been effected 14 days after publication in the Official Gazette, unless otherwise provided by law. This legal consequence must be indicated in the publication.

Art. 29

*Service Without Proof of Service*

1) If service without proof of service has been ordered, the document is served by placing it in the designated delivery facility or, if this is not possible, by depositing it in accordance with Art. 19 without the written notification provided for therein.

2) Service is deemed to have been effected on the third business day following delivery to the service agency. In case of doubt, the authority must determine the fact and the time of service ex officio. Service is not deemed to have been effected if the recipient or their representative, as defined in Art. 16(3), demonstrates to the authority that they were unable to become aware of the service within three business days; however, service becomes effective on the day following the removal of the obstacle.

3) With respect to professional representatives of parties, legal entities, partnerships, and sole proprietorships, service becomes effective regardless of the time at which the recipient or their representative within the meaning of Art. 16(3) becomes aware of it.

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**IIa. Electronic Service**

Art. 30

*Scope of Application*

Unless otherwise provided by the rules applicable to the proceedings, electronic service shall be effected in accordance with the provisions of this chapter.

Art. 30a

*Registration of the qualified electronic service address*

1) Any person may apply to the competent authorities for the registration of an electronic service address in the Central Register of Persons (ZPR) for service by electronic retrieval (qualified electronic service address).

2) An application under paragraph 1 may be submitted using an electronic identity (eID).

3) The Government shall regulate the details, in particular the competent authorities under paragraph 1, by ordinance.

Art. 30b

*Service with proof of service by electronic retrieval*

1) In the case of service with proof of service by electronic retrieval, the authority shall make the document to be served available for retrieval electronically.

2) Once the document is available for retrieval, the authority must immediately send an electronic notification to the qualified electronic delivery address. The electronic notification must contain, in particular, the following information:

- a) the date of dispatch;
- b) the web address where the document to be served is available for retrieval;
- c) a note stating that the document must be retrieved by entering the password stored in the eID registry or by using the eIDA;
- d) the end of the retrieval period; and
- e) a notice of the time at which the service becomes effective.

3) Service is deemed to have been effected upon retrieval of the document. If the document is not retrieved within 48 hours of the notification being sent, a second electronic notification must be issued. If the document is not retrieved within a further 24 hours, service is deemed to have been effected.

4) The authority must ensure that documents held for pickup can only be retrieved by persons who are authorized to do so and who have verified their identity and the authenticity of the communication using the password stored with the qualified electronic delivery address or using the eIDA. The recipient and, unless excluded by the authority, a person authorized to receive the document are entitled to collect it. The authority must record all data regarding the notifications under paragraphs 2 and 3 and the collection of the document; the entirety of this data constitutes the proof of delivery.

Art. 30c

*Delivery without proof of delivery via electronic retrieval*



1) Service without proof of delivery via electronic retrieval may be effected to an electronic service address or a qualified electronic service address. The provisions of Art. 30b apply mutatis mutandis.

2) The data logged pursuant to Art. 30b(4), last sentence, shall not be considered proof of delivery.

Art. 30d

*Service without proof of service to an electronic service address*

1) Deliveries without proof of delivery may also be made to an electronic delivery address.

2) The document is deemed to have been served at the time of receipt by the recipient. If there is any doubt as to whether or when the document was received by the recipient, the authority shall determine the fact and time of receipt ex officio.

### **III. Final Provisions Art. 31**

*Implementing Regulations*

The government shall issue the regulations necessary for the implementation of this Act, in particular regarding:

- a) the service agencies and bodies;
- b) the forms of service;
- c) the format of the documents to be served;
- d) the forms to be used for service;
- e) the technical requirements necessary for the electronic transmission of a copy of the proof of service, as well as for the storage and transmission of data relating to the certification of service;
- f) the establishment and operation of electronic service. Art. 32

*Changes to Designations; Repeal of Previous Provisions*

1) The following shall be replaced, in the grammatically correct form:

- a) in Art. 13, para. 2 of the Local Publications Act, the phrase "by mail" with the phrase "by a delivery service";
- b) in Art. 11, para. 2 of the Municipalities Act, the phrase "by public notice" with the phrase "by publication on the authority's website";

## Service of Process

### ~~Act (ZustG)~~

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c) in Art. 15 of the Marriage Act, the phrase "at the domicile of both spouses" by the phrase "by publication on the authority's website";

d) in Article 48quater(1) of the Unemployment Insurance Act, the phrase "on the court notice board" is replaced by the phrase "by publication on the court's website";

e) in Article 15(1) of the Finality Act, the phrase "the posting of the edict on the court bulletin board" shall be replaced by the phrase "the publication of the edict on the court's website";

f) in Article 18(1) of the Lawyers Act, Article 20 of the Act on Fees for Lawyers and Legal Agents, and Article 52(1) of the Mutual Legal Assistance Act, the term "document" shall be replaced by the term "document";

g) in Section 15(2) of the Lawyers Act, Section 11(2) of the Trustees Act, Section 16(2) of the Patent Attorneys Act, and Section 10(2) of the Act on Auditors and Audit Firms, the phrase "documents, image, sound, or data carriers" is replaced by the phrase "documents, image, sound, or data carriers (documents)";

h) in Art. 7(4), Art. 12(2), Art. 32(2), and Art. 63 of the Land Improvement Act, the phrase "by messenger against a receipt or by registered letter" or "by messenger or registered letter against a receipt" shall be replaced by the phrase "in accordance with the Service of Process Act with proof of service";

i) in Art. 5(1) of the Act on the Promotion of Potato Seed Production, the phrase "by registered letter or personally by the local bailiff against a receipt" is replaced by the phrase "in accordance with the Delivery Act with proof of delivery";

2) Article 26 of the Trade Act and Article 22 of the Road Transport Act are repealed.

### Art. 33

#### *Entry into Force*

This Act shall enter into force on January 1, 2009, provided that the referendum period expires without being exercised; otherwise, it shall enter into force on the date of its promulgation.

## **XXI. Delivery Ordinance (ZustV)**

of December 16, 2008

on the Service of Official Documents

Pursuant to Art. 31 of the Act of October 22, 2008, on the Service of Official Documents (Service Act; ZustG), LGBI. 2008 No. 3311, the Government decrees:

### **I. Physical Service**

#### **Art. 1**

##### *Proof of Service*

1) Every proof of service (delivery receipt, return receipt) must contain the following minimum information:

- a) Reference number of the document to be served;
  - b) Date of delivery;
  - c) Place of delivery;
  - d) Identification of the delivery person;
  - e) Name, signature, and capacity of the recipient (recipient, representative of the recipient, alternate recipient).
- 2) Special circumstances, such as refusal to sign for receipt, must be noted separately by the delivery agent on the proof of delivery.
- 3) Systems for the electronic transmission of proof of service and for the electronic certification of service pursuant to Article 24, paragraphs 3 and 4, of the Act may be used only with the approval of the government.

ZustV

#### **Art. 2**

##### *Notification of Deposit*

- 1) The form set forth in the Annex shall be used for the notice of deposit pursuant to Article 19(2) of the Act. In the form, the applicable information shall be entered in the fields marked with "<>".
- 2) The notice of deposit must be placed in the drop-off box designated for the drop-off location or, if this is not possible, left at the drop-off location or affixed to the entrance door (apartment, house, or garage door).

#### **Art. 3**

##### *Notification of the Authority*

The bodies entrusted with carrying out the service shall immediately inform the serving authority of any circumstances relevant to service that are known to them or become known to them during an attempt at service; this includes, in particular, a prolonged absence of the recipient or a change in the service address.

## **II. Electronic Service**

### **Art. 3a**

#### *Registration of the qualified electronic delivery address*

- 1) The application for registration or modification of a qualified electronic delivery address pursuant to Art. 30a of the Act must be submitted to the Office of Information Technology using the online application form.
- 2) The registration of a qualified electronic delivery address may also take place as part of the initial activation of a business pursuant to Art. 13a of the E-Government Ordinance.

### **Art. 3b**

#### *Establishment and operation of the electronic delivery service*

- 1) An electronic delivery service shall be established for the electronic delivery of official documents pursuant to Articles 30b and 30c of the Act.
- 2) The government shall designate an operator for the electronic delivery service.
- 3) The operator must meet the technical and organizational requirements necessary for the proper operation of the delivery service. For this purpose, the operator must submit the following documents:
  - a) a security and operational concept that specifies, in particular, how delivery with proof of delivery via electronic retrieval pursuant to Article 30b of the Act is ensured;
  - b) a sample of the contract the operator intends to conclude with its customers;
  - c) information regarding the design of barrier-free access to the delivery service and multilingual support.
- 4) The operator must provide annual proof of compliance with data protection legislation and data security requirements.
- 5) The operator must support the technical interfaces and formats specified by the Office of Information Technology.
- 6) It must make available:

a) electronically delivered documents to authorized persons and authorities for a period of 12 months;

b) additional service data to authorized authorities for 24 months. Art. 3c

*Service by public notice in the absence of an electronic service address* Article 28 of the Act applies mutatis mutandis to the service of official documents on businesses if:

a) there is an obligation to communicate electronically (Art. 5 E-GovG); and

b) electronic service pursuant to Art. 30 et seq. of the Act is not possible due to the lack of an electronic service address in the Central Register of Persons (ZPR).

### **III. Final Provision**

Art. 4

*Entry into force*

This Ordinance shall enter into force on January 1, 2009.

## **XXII. Judicial Appointments Act (RBG)**

of November 26, 2003

### **I. General Provisions Art. 1**

#### **Subject Matter**

1) This Act regulates the organizational requirements and the procedure for the appointment of judges in accordance with Articles 11, 95, 96, 102, and 105 of the State Constitution.

2) For the purposes of this Act, “judges” means:

- a) the judges of the ordinary courts (Regional Court, Higher Regional Court, and Supreme Court);
- b) the judges of the Supreme Court acting as the Administrative Court;
- c) the judges of the Constitutional

Court. Art. 2

#### **Definitions**

The terms used in this Act to designate persons and functions shall be understood to include members of both the male and female genders.

### **II. The Judicial Selection Committee**

#### **Art. 3**

#### **Composition**

1) A special committee for the selection of judges (the Committee) is appointed to select candidates eligible for appointment to a vacant judicial position. The Committee is chaired by the Sovereign.

2) The Committee consists of:

- a) the Ruler;
- b) one representative from each electoral group represented in the State Parliament; these representatives are appointed by the State Parliament after each State Parliament election for the duration of the State Parliament’s term;
- c) the member of the government responsible for the administration of justice;
- d) a number of additional members corresponding to the number of State Parliament representatives; these are appointed to the Committee by the Sovereign for the term of the State Parliament following each State Parliament election.

#### **Art. 4**

#### **Duties**

1) The committee is responsible for evaluating and selecting eligible candidates for judicial appointment in accordance with Articles 11, 96, 102, and 105 of the State Constitution and the provisions of this Act.

2) The committee may adopt rules of procedure to further implement the statutory provisions governing the appointment of judges. These rules shall be published in the State Gazette.

Art. 5

Repealed

Art. 6

Confidentiality of Deliberations

1) The committee's deliberations on individual judicial candidates shall be confidential.

2) The members of the State Parliament delegated to the committee may report confidentially to the State Parliament on the committee's deliberations in a closed session regarding the handling of this matter. Likewise, the member of the Government responsible for the administration of justice may report confidentially to the Government on the deliberations.

Art. 7

Compensation for Committee Members

1) The Governor and the member of the government responsible for the administration of justice do not receive separate compensation for their work on the committee.

2) The compensation of the members of the State Parliament delegated to the committee is determined by applying mutatis mutandis Article 2 of the Act on the Remuneration of Members of the State Parliament and on Contributions to the Voter Groups Represented in the State Parliament.

3) Compensation for members of the committee appointed by the Prince is provided in accordance with the provisions of the Act on the Remuneration of Members of the Government and Commissions, as well as Part-Time Judges and Ad Hoc Judges, as they apply mutatis mutandis to members of commissions.

III. Initiation of the Selection Process and Procedures Within the Body Art. 8

Convening and Meetings

- 1) The committee shall be convened by the chairperson as needed.
- 2) The committee is also convened at the request of the government, which notifies the committee in a timely manner whenever judicial positions are to be filled.
- 3) The meetings of the committee shall be scheduled in such a way that sufficient time is available for the assessment of the individual candidates and that the judicial posts can be filled in a timely manner even if a consultation procedure between the committee and the State Parliament is required, or if a popular election of judges takes place.

Art. 9

Public Announcement

- 1) Judicial positions must in all cases be publicly advertised. The advertisements are issued by the government.
- 2) The government shall notify the committee of the results of the public announcement. The notification shall include a list of applicants and the application documents.
- 3) Candidates who do not meet the requirements specified in the call for applications may be specifically highlighted by the government in its communication to the committee.
- 4) Repealed

Art. 10

Deliberat

ion

- 1) The committee shall deliberate on the candidates identified through the public call for applications and may invite candidates for interviews.
- 2) In its deliberations, selection, and decision-making regarding the proposal of candidates to the State Parliament, the committee shall adhere to the criteria prescribed by law for the appointment of judges and, in accordance with the call for applications, to the principle of qualification. In addition, the committee must also assess a candidate's personal suitability for the judicial position. The committee may commission an external assessment to evaluate a candidate's suitability.
- 3) Prior to making a decision pursuant to Art. 11, the committee must consult with the president of the court at which the judicial position is to be filled. Exceptions to this are urgent cases and routine matters within the meaning of Art. 11(2).

Art. 11

Voting and Decision on the Proposal



1) The committee's decision regarding the selection of candidates for specific judicial posts to be proposed to the State Parliament for approval by election is made by a simple majority vote. The committee has a quorum if at least three-quarters of its members are present. In the event of a tie, the Prince, as chair, has the casting vote. Candidates may only be proposed to the State Parliament by the committee with the Prince's consent.

2) In urgent cases or when dealing with routine matters, circular resolutions may be adopted. For a circular resolution to be valid, the written consent of all committee members to the adoption of the resolution by circular means is required. Paragraph 1 applies to the adoption of the resolution itself.

Art. 12

Proposal to the State Parliament

Upon completion of a selection process, the committee shall notify the State Parliament of its proposal in writing, justify its decision, and provide information on the qualifications of the proposed candidate. This report is public. The committee may also propose more than one suitable candidate to the State Parliament for a vacant judicial position.

IV. Election of Judges by the State

Parliament Art. 13

Procedure for the Election of Proposed Candidates

- 1) The State Parliament elects the judges to be appointed from among the candidates proposed by the committee by a simple majority vote.
- 2) The State Parliament notifies the sovereign and the council of the election results.
- 3) The candidates proposed by the committee and elected by the State Parliament shall be appointed as judges by the Prince.

Art. 14

Procedure in the Event of Rejection of All Proposed Candidates

- 1) If the State Parliament rejects the candidates proposed by the committee pursuant to Art. 12, it shall immediately notify the committee of its decision.
- 2) The notification to the committee shall include the voting results. The notification shall be accompanied by an excerpt from the minutes of the relevant discussions in the public session of the State Parliament.

3) If no agreement can be reached between the committee and the State Parliament on a new candidate within four weeks, the State Parliament shall propose an opposing candidate and schedule a referendum (Art. 96, para. 2 LV).

#### V. Popular Election of

##### Judges Art. 15

##### Ordering a popular election

1) If the State Parliament and the committee cannot reach an agreement, the State Parliament shall notify the government thereof for the purpose of immediately holding a popular election. The government shall publish the order for the popular election in the official gazettes.

2) The government shall set the date for the popular election in an official announcement in such a way that there is sufficient time for the public to submit nominations, yet the election can still be held as soon as possible. In any case, the popular election must take place no later than four months after the official announcement.

##### Art. 16

##### Candidates

1) The candidates standing for election are:

- a) a candidate nominated by the committee;
- b) an opposing candidate nominated by the State Parliament;
- c) any candidates nominated for election by the people.

2) The submission of nominations by the people is governed by Art. 86a of the Law on the Exercise of Political Rights by the People in Matters of State.

##### Art. 17

##### Conduct of the Popular Election and Appointment

1) The candidates standing for election are presented to eligible voters by the government in an informational brochure. The brochure must include a description of the judicial position to be filled, the statutory criteria for judicial appointment, the terms of the call for applications, and information regarding the qualifications of the individual candidates that are relevant to the performance of the judicial office in question.

2) The candidate who receives an absolute majority of the valid votes cast is deemed elected.

3) If there are more than two candidates and none of the candidates achieves an absolute majority in the first round of voting, a second round of voting shall be held between the two candidates who received the most votes in the first round, in accordance with Art. 113(2) of the Constitution.

4) The candidate elected by the people shall be appointed as a judge by the Prince.

VI. Final Provision Art.

18

Entry into Force

1) This law shall enter into force on the day of its promulgation.

2) After this law enters into force, the committee for the appointment of judges shall be constituted for the first time.

3) The new procedure for appointing judges shall apply for the first time upon the expiration of the current terms of office for the individual courts.

Signed, *Hans-Adam*

Signed, *Otmar Hasler*

Princely Head of Government

### **XXIII. Act on the Compensation of the Government**

and Commissions, as well as Part-Time Judges and Ad Hoc Judges

of December 17, 1981

#### **I. General Provisions Art. 1**

##### **Subject Matter and Definitions**

1) This Act governs the remuneration of:

a) of members of the government and their deputies; subject to the provisions of the Salary Act;

b) of members of commissions appointed by the State Parliament or the Government;

c) part-time judges and ad hoc judges of the following courts:

1. State Constitutional Court;

2. Repealed

3. Supreme Court;

4. High Court;

5. Criminal Court;

6. Juvenile Court.

2) The terms used in this Act to designate persons, professions, and functions shall be understood to include both males and females.

#### **II. Members of the**

##### **Government Art. 2**

##### **Government**

1) Members of the Government are entitled to reimbursement of expenses incurred as a result of their participation in meetings and conferences abroad.

2) Deputies for members of the Government are entitled to the same travel expense reimbursement and the same attendance allowance for participation in Government meetings as members of the State Parliament.

#### **IIa. Members of Commissions**

#### **Art. 3**

##### **Principle**

- 1) Members of commissions appointed by the State Parliament or the government are entitled to an attendance allowance for participating in meetings (Art. 4) and reimbursement of travel expenses (Art. 6).
- 2) The presidents and chairs of commissions receive an annual lump-sum allowance of between 1,000 and 20,000 Swiss francs, to be determined by the government, for preparatory and drafting work; half of this amount is paid in arrears at the middle of the year and the other half at the end of the year.
- 2a) Time-consuming preparatory and drafting work is compensated with an hourly rate of 80 francs. Presidents and chairs do not receive hourly compensation.
- 3) Special expenses shall be reimbursed in accordance with the actual costs incurred.
- 4) Compensation provided for in other laws remains reserved. Art. 4

#### Meeting Allowances

- 1) Meeting allowances amount to 280 francs for a full day and 180 francs for a half-day.
- 2) A half-day is calculated as up to four hours, and a full day as up to eight hours. Only one meeting allowance may be claimed for multiple meetings held on the same day.
- 3) State and municipal employees who are appointed by the government to a commission within the scope of their duties are not entitled to attendance fees or compensation under Art. 3.

#### Art. 5 Special

##### Allowances

- 1) The government is authorized to pay compensation to commission members residing abroad that deviates from Art. 4.
- 2) The State Parliament may set compensation for members of commissions it has appointed that differs from Articles 3 and 4.

#### Art. 6 Travel

##### Expenses

The persons referred to in Art. 3 are entitled to travel expense reimbursement to be determined by the Government in accordance with the Expense Regulation.

#### IIb. Part-time judges and ad hoc judges

Art. 6a

Principle

1) Part-time judges and ad hoc judges of the courts referred to in Art. 1(1)(c) are entitled to:

- a) a sitting allowance for attending a session (Art. 6b);
- b) a flat fee per case for the resolution of a legal matter (Art. 6c);
- c) reimbursement of expenses (Art. 6d).

2) Repealed

Art. 6b

Attendance

fees

1) The attendance fees are as follows:

a) for judges with a certificate of training within the meaning of Art. 5 of the Attorney Act:

- 1. at the Criminal Court and the Juvenile Court: 800 francs for a full day and 480 francs for a half day;
- 2. at the High Court: 1,000 francs for a full day and 600 francs for a half-day;
- 3. at the Supreme Court: 1,200 francs for a full day and 720 francs for a half-day;
- 4. at the State Court: 1,400 francs for a full day and 840 francs for a half-day;
- b) for all other judges: 280 francs for a full day and 180 francs for a half-day.

2) In all other respects, Art. 4(2) applies *mutatis mutandis*.

Art. 6c

Case-based flat fees

1) The flat fees per case are:

- a) at the Criminal Court and the Juvenile Court: 700 francs;
- b) at the High Court: 1,400 francs;
- c) at the Supreme Court: 2,100 francs;
- d) at the State Court: 2,800 francs.

2) For cases that are straightforward to handle, one-third of the flat-rate fees specified in paragraph 1 shall be paid, and for decisions in presidential matters, generally half of such fees shall be paid.

3) In cases that are difficult to resolve, up to twice—or, with an internal written justification from the respective president, up to three times—the flat-rate fee specified in paragraph 1 may be paid. Notwithstanding the foregoing, the State Parliament may, upon a justified request from a president, set a separate flat-rate fee for the resolution of a case that is exceptionally difficult to resolve.

4) The flat-rate fees take into account:

- a) review of case files;
- b) the preparation of hearings;
- c) the presentation of the case;
- d) the drafting of decisions, including preliminary and interim decisions as well as decisions on measures following the final hearing;
- e) keywording and the drafting of headnotes for final, legally binding decisions.

5) The classification of cases into simple, average, and difficult is set forth in the regulations pursuant to Art. 6f(1)(b).

Art. 6d

Reimbursement  
of Expenses

1) Part-time judges and ad hoc judges are entitled, in accordance with the provisions applicable to state employees, to reimbursement of expenses for:

- a) meals away from home, lodging, and business travel;
- b) business use of private telephones;
- c) use of office supplies;
- d) Photocopies and postage costs;
- e) Entertainment expenses.

2) Full-time judges who also serve as part-time judges or ad hoc judges are not entitled to reimbursement of expenses under paragraph 1.

3) Repealed

4) For special expenses, the State Parliament may, upon the government's proposal, establish a separate reimbursement.

Art. 6e

Repealed

Art. 6f

#### Budgeting and Oversight

- 1) The presidents of the respective courts are responsible for:
  - a) budgeting for compensation;
  - b) the issuance of regulations regarding the classification of cases as simple, average, or difficult to handle. These regulations shall be brought to the attention of the government as well as the State Parliament's Finance Committee;
  - c) classifying a completed case as simple, average, or difficult, and issuing a corresponding decision at the request of the judge concerned;
  - d) verifying the accuracy and completeness of the compensation claim forms and compliance with the regulations by signing them and forwarding them to the Office of Personnel and Organization;
  - e) monitoring the budget and supplementary appropriations approved by the State Parliament and fulfilling other obligations in accordance with the provisions of the Budget Act.
- 2) In the event of a conflict of interest, the duties specified in paragraph 1(c) and (d) shall be performed by the deputy of the respective chairperson.

#### Art. 6g

##### Settlement and Payment of Compensation

- 1) Settlements regarding compensation must be submitted to the Office of Personnel and Organization:
  - a) for meeting allowances, case-based lump sums, and reimbursement of expenses: at least quarterly;
  - b) for presidential lump sums: at the end of each year or, for judges under Art. 6e(4), upon termination of service.
- 2) Compensation is paid to the eligible person after the Office of Personnel and Organization has verified the respective statement.

#### Art. 6h Appeals

- 1) A written appeal may be filed against decisions of a president pursuant to Art. 6f(1)(c) within 14 days of service.
- 2) The decision on appeals under paragraph 1 rests with:
  - a) in the case of single judges of the District Court, to a panel consisting of three District Court judges;



- b) at the High Court, a panel consisting of three presiding judges;
- c) in all other cases, to the respective court or panel.

3) Decisions pursuant to paragraph 2 are final.

III. Final and Transitional Provisions Art. 7

Repeal of Laws

Upon the entry into force of this Act, the Act on Daily Allowances and Travel Expenses, as amended by the Act of November 21, 1961, LGBl. 1962 No. 1, and the Act of May 23, 1969, LGBl. 1969 No. 31, is repealed.

Art. 8

Transitional

Provisions

Compensation incurred in 1981 shall be governed by the previous law.

Art. 9 Entry

into Force

This Act shall enter into force on January 1,

1982. Signed, *Franz Josef*

Signed, *Hans Brunhart*

Princely Head of Government

Convention on the

**XXIV. Taking of Evidence Abroad in Civil or Commercial Matters**

Concluded in The Hague on March 18, 1970 Approval by

the Landtag: September 17, 2008

Entry into force for the Principality of Liechtenstein: January 11,

2009 The signatory states to this Convention

Desiring to facilitate the transmission and execution of requests for judicial assistance and to promote the harmonization of the various procedures applied in this regard,

with the intention of making mutual judicial cooperation in civil or commercial matters more effective,

have decided to conclude a convention for this purpose and have agreed upon the following provisions:

Chapter I Requests

for Legal Assistance

Art. 1

In civil or commercial matters, the judicial authority of a Contracting State may, in accordance with its domestic law, request the competent authority of another Contracting State to take evidence or perform another judicial act.

No request may be made for the taking of evidence that is not intended for use in judicial proceedings already pending or to be instituted.

The term “other judicial act” does not include the service of judicial documents or measures of preservation or enforcement. Art. 2

Each Contracting State shall designate a Central Authority to receive requests for legal assistance originating from a judicial authority of another Contracting State and to forward them to the competent authority for execution. Each State shall establish the Central Authority in accordance with its law.

Requests for mutual legal assistance shall be transmitted to the Central Authority of the requested State without the involvement of any other authority of that State.

Art. 3

A request for mutual legal assistance shall contain the following information:

- a) the requesting authority and, if known, the requested authority;
- b) the names and addresses of the parties and, where applicable, their representatives;
- c) the nature and subject matter of the case, as well as a concise statement of the facts;
- d) the taking of evidence or other judicial act to be performed.

The request for mutual legal assistance shall also include, as appropriate:

- e) the names and addresses of the persons to be examined;
- f) the questions to be put to the persons to be examined, or the facts on which they are to be examined;
- g) the documents or other items to be examined;
- h) a request that the examination be conducted under oath or affirmation, and, where applicable, the formula to be used;
- i) a request to observe a specific form in accordance with Article 9.

The request for mutual legal assistance shall also include, where applicable, the explanations necessary for the application of Article 11.

No certification or similar formality may be required. Art. 4

The request for mutual legal assistance must be drafted in the language of the requested authority or accompanied by a translation into that language.

However, unless it has made the reservation under Article 33, each Contracting State must accept a request for mutual legal assistance that is drafted in French or English or is accompanied by a translation into one of these languages. A

Contracting State with more than one official language which, for reasons of its domestic law, cannot accept requests for mutual legal assistance in one of those languages for its entire territory must, by means of a declaration, specify the language in which a request for mutual legal assistance must be drafted or into which it must be translated, depending on the part of its territory in which it is to be executed. If this declaration is not complied with without sufficient reason, the requesting State shall bear the costs of a translation into the required language. In addition to the languages provided for in paragraphs 1 through 3, each Contracting State may, by means of a declaration, specify one or more additional languages in which a request for mutual legal assistance may be transmitted to its Central Authority.

AusBe

The translation accompanying a request for mutual legal assistance must be certified by a diplomatic or consular representative, a sworn translator, or another person authorized for that purpose in either of the two States. Art. 5

If the Central Authority considers that the request does not comply with the Convention, it shall immediately inform the authority of the requesting State that transmitted the request for mutual legal assistance to it, specifying the objections to the request.

Art. 6

If the requested authority lacks jurisdiction, the request for mutual legal assistance shall be forwarded ex officio without delay to the authority competent under the laws of its State.

Art. 7

Upon request, the requesting authority shall be notified of the time and place of the action to be taken so that the parties concerned and, where appropriate, their representatives may be present. Upon request by the requesting authority, this notification shall be sent directly to the parties or their representatives.

Art. 8

Any Contracting State may declare that members of the requesting judicial authority of another Contracting State may be present during the execution of a request for mutual legal assistance. Prior authorization from the competent authority designated by the declaring State may be required for this purpose.

Art. 9

The judicial authority shall execute a request for mutual legal assistance in accordance with the procedures provided for by its law.

However, a request by the requesting authority to proceed in a specific manner shall be granted, unless such a manner is incompatible with the law of the requested State or its observance is impossible under the judicial practice of the requested State or due to practical difficulties.

The request for mutual legal assistance must be executed promptly. Art. 10

In executing a request for mutual legal assistance, the requested authority shall apply appropriate coercive measures in the cases and to the extent provided for by the law

of the requested State for the execution of a request from domestic authorities or a request made for the same purpose by a party to the proceedings. Art. 11

A request for mutual legal assistance shall not be executed to the extent that the person concerned invokes a right to refuse to testify or a prohibition on testifying

a) which is provided for under the law of the requested State or

b) is provided for under the law of the requesting State and specified in the request for mutual legal assistance or, if necessary, confirmed by the requesting authority at the request of the requested authority.

Each Contracting State may declare that it also recognizes rights to refuse to testify and prohibitions on testifying that exist under the law of States other than the requesting or requested State, to the extent specified in the declaration.

#### Art. 12

The execution of a request for mutual legal assistance may be refused only to the extent that

(a) the execution of the request does not fall within the jurisdiction of the requested State; or

(b) the requested State considers that the execution of the request would be likely to prejudice its sovereignty or its security.

Execution may not be refused solely on the ground that the requested State, under its law, claims exclusive jurisdiction of its courts over the matter or does not have a procedure corresponding to that for which the request is made.

#### Art. 13

The requested authority shall forward the documents evidencing the execution of a request for mutual legal assistance to the requesting authority by the same means used by the latter to transmit the request.

If the request for mutual legal assistance is not executed in whole or in part, the requesting authority shall be notified thereof without delay by the same means, stating the reasons for the non-execution.

#### Art. 14

No reimbursement of fees or expenses of any kind may be demanded for the execution of a request for mutual legal assistance.

The requested State is, however, entitled to require the requesting State to reimburse the compensation paid to experts and interpreters, as well as the expenses incurred as a result of complying with a special form at the request of the requesting State pursuant to Article 9(2).

A requested authority, under whose law the parties are responsible for taking evidence and which cannot execute the request for mutual legal assistance itself, may entrust the execution to a person suitable for this purpose after obtaining the consent of the requesting authority. When seeking such consent, the requested authority shall indicate the approximate amount of the costs that would be incurred by this method of execution. By giving its consent, the requesting authority undertakes to reimburse the costs incurred. If consent is not given, the requesting authority shall not be obliged to reimburse the costs.

## Chapter II

### Taking of Evidence by Diplomatic or Consular Agents and by Agents

#### Art. 15

In civil or commercial matters, a diplomatic or consular agent of a Contracting State may, within the territory of another Contracting State and in the district where he exercises his functions, take evidence without the use of compulsion for proceedings pending before a court of the State he represents, provided that only nationals of that State are involved.

Each Contracting State may declare that such evidence may be taken only after obtaining authorization granted by the competent authority designated by the declaring State upon a request made by the representative or in his name.

#### Art. 16

A diplomatic or consular agent of a Contracting State may also, in the territory of another Contracting State and within the district in which he exercises his functions, take evidence without the use of coercion for proceedings pending before a court of a State he represents, provided that nationals of the receiving State or of a third State are involved,

a) if a competent authority designated by the receiving State has granted its authorization generally or in a specific case, and

b) if the representative complies with the conditions set forth by the competent authority in the authorization.

Any Contracting State may declare that evidence may be taken under this provision without its prior authorization.

Art. 17

In civil or commercial matters, any person duly appointed for this purpose may, in the territory of a Contracting State, take evidence without the use of coercion for proceedings pending before a court of another Contracting State,

a) provided that a competent authority designated by the State in which the evidence is to be taken has granted its authorization generally or in a specific case, and

b) if the person complies with the conditions set by the competent authority in the authorization.

Any State Party may declare that evidence may be taken under this provision without its prior authorization.

Art. 18

Each Contracting State may declare that a diplomatic or consular agent or an official authorized to take evidence under Articles 15, 16, or 17 may apply to a competent authority designated by that State to obtain the assistance required for the taking of such evidence through coercive measures. In its declaration, the State may specify the conditions it deems appropriate.

If the competent authority grants the request, it shall apply the appropriate coercive measures provided for under its law.

Art. 19

When granting approval under Articles 15, 16, or 17, or granting a request under Article 18, the competent authority may impose conditions it deems appropriate, particularly regarding the time and place of the taking of evidence. It may also require that it be notified in a timely manner of the time and place; in such a case, a representative of the authority is authorized to participate in the taking of evidence.

Art. 20

Persons affected by a hearing of evidence provided for in this chapter may consult a legal advisor.

Art. 21

If a diplomatic or consular representative or an agent is authorized under Articles 15, 16, or 17 to take evidence,

- a) it may take all evidence, provided that this is not incompatible with the law of the State in which the evidence is to be taken or contrary to the authorization granted under the aforementioned articles, and may also administer an oath or receive an affirmation under the same conditions;
- b) any summons to appear or to participate in the taking of evidence shall be drawn up in the language of the place where the evidence is to be taken or accompanied by a translation into that language, unless the person concerned by the taking of evidence is a national of the State in which the proceedings are pending;
- c) the summons shall state that the person may consult a legal advisor and, in a State that has not made the declaration under Article 18, that the person is not obliged to appear or otherwise participate in the taking of evidence;
- d) the evidence may be taken in any of the forms provided for by the law of the court before which the proceedings are pending, unless the law of the State in which the evidence is taken prohibits such a form;
- e) the person concerned by the taking of evidence may invoke the rights to refuse to testify or the prohibitions on testimony provided for in Article 11. Article 22

The fact that evidence could not be taken under this Chapter due to a person's refusal to cooperate does not preclude a subsequent request for mutual legal assistance under Chapter I concerning the same matter.

Chapter III

General Provisions Art. 23

Any State Party may, at the time of signature, ratification, or accession, declare that it will not comply with requests for mutual legal assistance relating to proceedings known in common law countries as "pre-trial discovery of documents."

Art. 24



Each Contracting State may designate, in addition to the Central Authority, other authorities whose jurisdiction it shall define. Requests for mutual legal assistance may, however, always be transmitted to the Central Authority.

States may designate more than one Central Authority. Art. 25

Each Contracting State in which there are multiple legal systems may designate the authorities of one of those systems as having exclusive jurisdiction to execute requests for mutual legal assistance under this Convention.

Art. 26

Each Contracting State may, if its constitutional law so requires, require the requesting State to reimburse the costs incurred in executing a request for legal assistance, including the service of the summons, the compensation of the person examined, and the preparation of a record of the taking of evidence.

If a State has availed itself of the provisions of paragraph 1, any other Contracting State may require that State to reimburse the corresponding costs.

Art. 27

This Convention shall not prevent a Contracting State from

- a) to declare that requests for mutual legal assistance may be transmitted to its judicial authorities by means other than those provided for in Article 2;
- b) to permit, in accordance with its domestic law or practice, that acts to which this Convention applies be performed under less restrictive conditions;
- c) to permit, in accordance with its domestic law or practice, methods of taking evidence other than those provided for in this Convention.

Art. 28

This Convention does not preclude Contracting States from agreeing to derogate from the following provisions:

- a) Art. 2 regarding the method of transmission for requests for mutual legal assistance;
- b) Art. 4 regarding the use of languages;
- c) Art. 8 regarding the presence of members of the judicial authority during the execution of requests for mutual legal assistance;

- d) Art. 11 regarding the right to refuse to testify and prohibitions on testimony;
- e) Art. 13 regarding the transmission of documents relating to the execution of requests;
- f) Art. 14 regarding the regulation of costs;
- g) the provisions of Chapter II,

Article 29

This Convention shall, as between the States which have ratified it, replace Articles 8 through 16 of the Conventions on Civil Procedure signed at The Hague on July 17, 1905, and March 1, 1954, insofar as those States are parties to those Conventions.

Art. 30

This Convention shall not affect the application of Article 23 of the 1905 Convention or the application of Article 24 of the 1954 Convention.

Art. 31

Supplementary agreements to the 1905 and 1954 Conventions concluded by Contracting States shall also apply to this Convention, unless the States concerned agree otherwise.

Art. 32

Notwithstanding Articles 29 and 31, this Convention shall not affect any conventions to which the Contracting States are or may become parties and which contain provisions relating to matters governed by this Convention.

Art. 33

Any State may, at the time of signature, ratification, or accession, exclude the application of Article 4, paragraph 2, and Chapter II in whole or in part. No other reservation is permitted.

Any State Party may withdraw a reservation it has made at any time; the reservation shall cease to have effect on the sixtieth day following the notification of the withdrawal.

If a State has made a reservation, any other State affected thereby may apply the same treatment to the State that made the reservation.

Art. 34

Any State may withdraw or modify a declaration at any time. Art. 35

Each Contracting State shall, upon depositing its instrument of ratification or accession or at a later date, notify the Ministry of Foreign Affairs of the Netherlands of the authorities designated in accordance with Articles 2, 8, 24, and 25.

It shall, where applicable, notify in the same manner:

- a) the names of the authorities to which diplomatic or consular representatives must apply pursuant to Article 16, and those that may grant authorizations or provide assistance pursuant to Articles 15, 16, and 18;
- b) the designation of the authorities that may grant the agents the authorization provided for in Article 17 or provide the assistance provided for in Article 18;
- c) the declarations under Articles 4, 8, 11, 15, 16, 17, 18, 23, and 27;
- d) any withdrawal or amendment of the aforementioned designations of authorities and declarations;
- e) any withdrawal of a reservation.

Art. 36

Any difficulties arising between Contracting States in the application of this Convention shall be settled through diplomatic channels.

Art. 37

This Convention shall be open for signature by the States represented at the Eleventh Session of the Hague Conference on Private International Law.

Ratification is required; the instruments of ratification shall be deposited with the Ministry of Foreign Affairs of the Netherlands.

Art. 38

This Convention shall enter into force on the sixtieth day following the deposit of the third instrument of ratification in accordance with Article 37, paragraph 2.

The Convention shall enter into force for each signatory State that ratifies it subsequently on the sixtieth day following the deposit of its instrument of ratification.

Art. 39

Any State not represented at the Eleventh Session of the Hague Conference on Private International Law which is a Member of the Conference or of the United Nations or of any of its specialized agencies, or a Party to the Statute of the International Court of Justice, may accede to this Convention after it has entered into force in accordance with Article 38, paragraph 1.

The instrument of accession shall be deposited with the Ministry of Foreign Affairs of the Netherlands.

This Convention shall enter into force for the acceding State on the sixtieth day following the deposit of its instrument of accession.

Accession shall have effect only in relations between the acceding State and those Contracting States which declare that they accept such accession. Such a declaration shall be deposited with the Ministry of Foreign Affairs of the Netherlands; that Ministry shall transmit a certified copy of such declaration to each of the Contracting States through diplomatic channels.

The Convention shall enter into force between the acceding State and a State that has declared its acceptance of the accession on the sixtieth day following the deposit of the declaration of acceptance.

Art. 40

Any State may, at the time of signature, ratification, or accession, declare that this Convention shall apply to all or any of the territories for whose international relations it is responsible. Such a declaration shall take effect as soon as the Convention enters into force for the State that has made it.

Any subsequent extension of this kind shall be notified to the Ministry of Foreign Affairs of the Netherlands.

The Convention shall enter into force for the territories to which it is extended on the sixtieth day following the notification referred to in paragraph 2.

Art. 41

This Convention shall remain in force for a period of five years, calculated from the date of its entry into force pursuant to Article 38, paragraph 1, and shall also apply to States that ratify it or accede to it at a later date.

Unless terminated, the Agreement shall be automatically extended for successive periods of five years.

Notice of termination shall be given to the Ministry of Foreign Affairs of the Netherlands no later than six months before the expiration of the five-year period.

It may be limited to specific territories to which the Convention applies.

Termination shall apply only to the State that has notified it. For the other Contracting States, the Agreement shall remain in force.

Art. 42

The Ministry of Foreign Affairs of the Netherlands shall notify the States referred to in Article 37, as well as the States that have acceded pursuant to Article 39,

- a) of every signature and ratification in accordance with Article 37;
- b) the date on which this Convention enters into force pursuant to Article 38, paragraph 1;
- c) any accession under Article 39 and the date on which it takes effect;
- d) any extension under Article 40 and the date on which it takes effect;
- e) any designation of an authority, any reservation, and any declaration under Articles 33 and 35;
- f) any denunciation pursuant to Article 41(3).

In witness whereof, the undersigned, being duly authorized thereto, have signed this Convention.

Done at The Hague on 18 March 1970 in the English and French languages, both texts being equally authentic, in a single original, which shall be deposited in the archives of the Government of the Netherlands and of which a certified copy shall be transmitted through diplomatic channels to each State represented at the Eleventh Session of the Hague Conference on Private International Law.

(Signatures follow)

Declarations of the Principality of Liechtenstein

**Declaration regarding Article 2:**

"Pursuant to Article 35(1) of the Convention, the Principality of Liechtenstein designates the following authority as the Central Authority within the meaning of Article 2 of the Convention:

Princely District Court

Spaniagasse 1

9490 Vaduz

Principality of Liechtenstein"

**Declaration regarding Article 4:**

"Pursuant to Articles 33 and 35 of the Convention, the Principality of Liechtenstein declares, with regard to Article 4(2) and (3), that requests for mutual legal assistance and their attachments must be drafted in German or accompanied by a translation into that language. The confirmation of execution shall be drafted in German." **Declaration regarding Article 8:**

"Pursuant to Article 35(2) of the Convention, the Principality of Liechtenstein declares that members of the requesting judicial authorities who are involved in the proceedings of a

Contracting State, may be present during the execution of the request for mutual legal assistance, provided they have obtained prior authorization from the authorities responsible for its execution."

**Declaration on Article 11:**

"Pursuant to Article 11 of the Convention, the Principality of Liechtenstein recognizes the rights to refuse to testify and the prohibitions on testifying to which a person is entitled under the law of their home state."

**Declaration regarding Articles 15 to 17:**

"Pursuant to Article 35 of the Convention, the Principality of Liechtenstein declares that the taking of evidence within the meaning of Articles 15, 16, and 17 requires prior authorization by the Government of the Principality of Liechtenstein."

**Declaration regarding Article 18:**

"The Principality of Liechtenstein shall not provide any assistance through coercive measures to diplomatic or consular representatives or agents acting in accordance with Articles 15, 16, and 17 of the Convention."

**Declaration regarding Article 23:**

"Pursuant to Article 23 of the Convention, the Principality of Liechtenstein declares that requests for mutual legal assistance relating to 'pre-trial discovery of documents' proceedings will not be granted."

Scope of Application of the Convention as of February 1, 2009

| <b>Contracting States</b> | <b>Deposit of instruments of ratification, acceptance, approval, or accession, and declarations of succession</b> |
|---------------------------|-------------------------------------------------------------------------------------------------------------------|
| Argentina                 | May 8, 1987                                                                                                       |
| Australia                 | October 23, 1992                                                                                                  |
| Barbados                  | March 5, 1981                                                                                                     |
| Belarus                   | August 7, 2001                                                                                                    |
| Bosnia and Herzegovina    | June 16, 2008                                                                                                     |
| Bulgaria                  | November 23, 1999                                                                                                 |
| China                     | December 8, 1997                                                                                                  |
| Hong Kong                 | June 16, 1997                                                                                                     |

|               |                   |
|---------------|-------------------|
| Macau         | December 16, 1999 |
| Denmark       | June 20, 1972     |
| Germany       | April 27, 1979    |
| Estonia       | February 2, 1996  |
| Finland       | April 7, 1976     |
| France        | August 7, 1974    |
| Greece        | January 18, 2005  |
| India         | February 7, 2007  |
| Iceland       | November 10, 2008 |
| Israel        | July 19, 1979     |
| Italy         | June 22, 1982     |
| Kuwait        | May 8, 2002       |
| Latvia        | March 28, 1995    |
| Liechtenstein | November 12, 2008 |
| Lithuania     | August 2, 2000    |
| Luxembourg    | July 26, 1977     |
| Mexico        | July 27, 1989     |
| Monaco        | January 17, 1986  |
| Netherlands   | April 8, 1981     |
| Aruba         | May 28, 1986      |
| Norway        | August 3, 1972    |
| Poland        | February 13, 1996 |
| Portugal      | March 12, 1975    |
| Romania       | August 21, 2003   |
| Russia        | May 1, 2001       |
| Sweden        | May 2, 1975       |

## Taking of Evidence Abroad in Civil or Commercial Matters

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|                                                                                                       |                    |
|-------------------------------------------------------------------------------------------------------|--------------------|
| Switzerland                                                                                           | November 2, 1994   |
| Seychelles                                                                                            | January 7, 2004    |
| Singapore                                                                                             | October 27, 1978   |
| Slovakia                                                                                              | April 26, 1993     |
| Slovenia                                                                                              | September 18, 2000 |
| Spain                                                                                                 | May 22, 1987       |
| Sri Lanka                                                                                             | August 31, 2000    |
| South Africa                                                                                          | July 8, 1997       |
| Czech Republic                                                                                        | January 28, 1993   |
| Turkey                                                                                                | August 13, 2004    |
| Ukraine                                                                                               | February 1, 2001   |
| Hungary                                                                                               | July 13, 2004      |
| Venezuela                                                                                             | November 1, 1993   |
| United States                                                                                         | August 8, 1972     |
| U.S. Virgin Islands                                                                                   | February 9, 1973   |
| Virgin Islands                                                                                        |                    |
| Guam                                                                                                  | February 9, 1973   |
| Puerto Rico                                                                                           | February 9, 1973   |
| United Kingdom                                                                                        | July 16, 1976      |
| Akrotiri and Dhekelia                                                                                 | June 25, 1979      |
| Anguilla                                                                                              | July 3, 1986       |
| Falkland Islands and Dependencies<br>territories (South Georgia<br>and the South Sandwich<br>Islands) | November 26, 1979  |
| Gibraltar                                                                                             | November 21, 1978  |
| Guernsey                                                                                              | November 19, 1985  |



|                |                    |
|----------------|--------------------|
| Isle of Man    | April 16, 1980     |
| Jersey         | January 6, 1987    |
| Cayman Islands | September 16, 1980 |
| Cyprus         | January 13, 1983   |

**Reservations and Declarations:**

Reservations and declarations are not published in the Liechtenstein State Gazette, with the exception of those of the Principality of Liechtenstein. The French and English texts can be viewed on the Hague Conference website: [http://hcch.e-vision.nl/index\\_fr.php](http://hcch.e-vision.nl/index_fr.php) or obtained from the Office of Foreign Affairs.

