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ACT

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Civil Code

Parliament has agreed on the following act of the Czech Republic:

PART FIRST**GENERAL PROVISIONS****TITLE I****SCOPE OF REGULATION AND ITS BASIC PRINCIPLES****Volume 1****Private Law****§ 1**

(1) The provisions of the legal system governing the reciprocal rights and duties of persons constitute, in their totality, private law. The application of private law is independent of the application of public law.

(2) Unless expressly prohibited by law, persons may negotiate rights and obligations in derogation of the law; arrangements that violate good morals, public policy or the law relating to the status of persons, including the right to protection of personality, are prohibited.

§ 2

(1) Any provision of private law may be interpreted only in conformity with the Charter of Fundamental Rights and Freedoms and the constitutional order in general, with the principles on which this Act rests, and with a continuing regard for the values it protects. If the interpretation of an individual provision merely by its terms conflicts with this command, it must yield to it.

(2) No meaning can be given to a statutory provision other than that which arises from the actual meaning of the words in their context and from the clear intention of the legislature; but no one may invoke the words of a statute against its meaning.

(3) The interpretation and application of a statute shall not be contrary to good morals and shall not lead to cruelty or wantonness offensive to ordinary human sensibilities.

§ 3

(1) Private law protects the dignity and liberty of the individual and his natural right to take care of his own happiness and the happiness of his family or those close to him in a way that does

not cause unreasonable harm to others.

(2) Private law rests, in particular, on the principles that

- a)** everyone has the right to the protection of his life and health, as well as his liberty, honour, dignity and privacy,
- b)** family, parenthood and marriage enjoy special legal protection,
- c)** no one may suffer unjustifiable harm for lack of age, intelligence, or dependence on his position; nor may anyone take unjustified advantage of his own incapacity to the detriment of others,
- d)** the promise made shall bind, and the covenants are to be performed,
- e)** property rights are protected by law, and only the law can determine how property rights arise and cease, and
- f)** no one can be denied what is rightfully his.

(3) Private law also flows from other generally recognized principles of justice and law.

§ 4

(1) It is presumed that every self-governing person has the reason of an average person and the ability to use it with ordinary care and caution, and that everyone may reasonably expect this of him in the course of legal dealings.

(2) Where a rule of law makes a particular consequence dependent on one's knowledge, it is to be taken to mean the knowledge which a person having knowledge of the case would reasonably acquire, taking into account the circumstances which must have been apparent to him in his position. This applies by analogy where the law links a particular consequence to the existence of a doubt.

§ 5

(1) Whoever, in public or in dealings with another person, declares himself to be a member of a particular profession or condition, thereby shows that he is capable of acting with the knowledge and care which is inherent in his profession or condition. If he acts without such professional care, it is to his detriment.

(2) The nature or validity of a legal act cannot be questioned against the will of the party concerned merely because it is done by one who is not authorized to act or who is prohibited from acting.

§ 6

(1) Everyone has a duty to act honestly in legal dealings.

(2) No one may profit from his dishonest or unlawful act. Nor may anyone profit from an unlawful condition which he has caused or over which he has control.

§ 7

It is presumed that one who has acted in a certain way has acted honestly and in good faith.

§ 8

Obvious abuse of law does not enjoy legal protection.

Volume 2

Application of the rules of civil law

§ 9

(1) The Civil Code regulates the personal status of persons.

(2) Private rights and obligations of a personal and proprietary nature are governed by the Civil Code to the extent that they are not regulated by other legislation. Customs may be resorted to where they are invoked by law.

§ 10

(1) If a legal case cannot be decided on the basis of an express provision, it is to be judged by the provision nearest in content and purpose to the legal case under consideration.

(2) If there is no such provision, the legal case shall be determined according to the principles of justice and the principles on which this Act rests, so as to arrive, having regard to the customs of private life and taking into account the state of legal doctrine and settled decisional practice, at a good arrangement of rights and obligations.

§ 11

The general provisions on the creation, modification and extinction of rights and obligations under obligations in Part Four of this Act shall apply *mutatis mutandis* to the creation, modification and extinction of other private rights and obligations.

Volume 3**Protection of private rights****§ 12**

Anyone who feels deprived of his or her rights may seek protection from a body exercising public authority ("public authority"). Unless otherwise provided by law, this public authority is the court.

§ 13

Anyone who seeks legal protection may reasonably expect that his legal case will be decided in a manner similar to another legal case which has already been decided and which is identical to his legal case in essential respects; where a legal case has been decided differently, anyone seeking legal protection is entitled to a convincing explanation of the reason for that difference.

§ 14**Self Help**

(1) Anyone can reasonably help himself to his right if his right is threatened and it is clear that public intervention would be too late.

(2) Where unwarranted interference with a right is imminent, anyone so threatened may avert it by such efforts and means as must appear to a person in his position to be reasonable in the circumstances. If, however, the self-help is aimed only at securing a right which would otherwise be frustrated, the person who has resorted to it must, without undue delay, apply to the competent public authority.

TITLE II**PERSONS****Volume 1****General Provisions****§ 15**

(1) Legal personality is the capacity to have rights and obligations within the limits of the legal system.

(2) Legal personality is the capacity to acquire rights for oneself by one's own legal conduct and to bind oneself to obligations (to act legally).

§ 16

No one can waive even in part his legal personality or capacity; if he does so, it is disregarded.

§ 17

(1) Rights may be held and exercised only by a person. A duty can only be imposed on a

person and only against that person can the performance of the duty be enforced.

(2) If a person creates a right or imposes a duty on what is not a person, the right or duty is imputed to the person to whom, according to the nature of the legal case, it belongs.

§ 18

A person is either a natural person or a legal person.

§ 19

(1) Every person has inherent natural rights, already knowable by reason and emotion alone, and is therefore considered a person. The law only lays down the limits of the exercise of the natural rights of man and the manner of their protection.

(2) The natural rights inherent in the personhood of a person cannot be alienated and cannot be waived; if this happens, it is disregarded. Nor shall any limitation of those rights to an extent contrary to law, good morals or public order be taken into account.

§ 20

(1) A legal person is an organized body which the law provides has legal personality or whose legal personality is recognized by law. A legal person may, irrespective of its object, have rights and obligations which are compatible with its legal nature.

(2) Legal persons governed by public law shall be subject to the laws under which they are established; the provisions of this Act shall apply only if they are compatible with the legal nature of such persons.

§ 21

The State shall be deemed to be a legal person in private law. Other legislation sets out how the state acts legally.

§ 22

(1) A close person is a relative in the direct line of descent, a sibling and a spouse or partner under any other law regulating registered partnerships (hereinafter referred to as "partner"); other persons in a family or similar relationship shall be deemed to be close to each other if the injury suffered by one of them would reasonably be perceived by the other as an injury to himself or herself. Persons who are married or permanently living together shall also be deemed to be close persons.

(2) Where, for the protection of third parties, the law imposes special conditions or restrictions on the transfer, encumbrance or assignment of property between close persons, such conditions and restrictions shall also apply to similar legal transactions between a legal person and a member of its statutory body or one who substantially influences the legal person as a member or by agreement or otherwise.

Volume 2

Natural persons

Section 1

General Provisions

§ 23

A person has legal personality from birth until death.

§ 24

Every person is responsible for his actions if he is able to judge and control them. He who, through his own fault, brings himself into a state in which he would not otherwise be responsible for his actions is responsible for actions taken in that state.

§ 25

A child conceived is looked upon as already born, if it suits its interests. The child is considered to have been born alive. If, however, it is not born alive, it shall be regarded as if

it had never been born.

§ 26

Proof of death

(1) The death of a person shall be proved by a public document issued after the body of the deceased has been examined in the manner prescribed.

(2) If the body of a dead person cannot be examined in the prescribed manner, the court shall pronounce the person dead even without a petition if the person was involved in such an event that his death appears certain in view of the circumstances. In the decision, the court shall determine the day which shall be deemed to be the day of death.

§ 27

If the legal consequence depends on the fact that a person survived another person, and if it is not certain which of them died first, all shall be presumed to have died at the same time.

§ 28

(1) If it is not known where a person died, it is assumed to have happened where his body was found.

(2) The place where a person pronounced dead is presumed to be where he last resided alive.

§ 29

Sex change

(1) Changing a person's sex occurs through surgery while disabling reproductive function and transforming the reproductive organs. The date of gender reassignment is deemed to be the date specified in the certificate issued by the health care provider.

(2) A change of sex does not affect a person's personal status or personal or property circumstances; however, a marriage or registered partnership is dissolved. The provisions on the duties and rights of a man and a woman whose marriage has terminated in respect of a common child and on their property duties and rights in the period after the termination of the marriage shall apply *mutatis mutandis* to the duties and rights of divorced spouses in respect of a common child and on their property duties and rights in the period after the divorce; the court shall decide, even without a petition, how each parent shall henceforth care for the common child.

§ 30

Age of majority

(1) A person becomes fully autonomous by becoming an adult. The age of majority is attained on reaching the age of eighteen years.

(2) Before attaining the age of majority, full legal capacity is acquired by being granted legal capacity or by marriage. Legal capacity acquired by marriage is not lost either by the dissolution of the marriage or by the annulment of the marriage.

Minors

§ 31

It shall be presumed that every minor who has not acquired full legal capacity is competent to engage in legal conduct of a nature appropriate to the mental and volitional maturity of minors of his age.

§ 32

(1) If a legal guardian has given consent to a minor who has not acquired full legal capacity, in conformity with the customs of private life, to a certain legal act or to achieve a certain purpose, the minor is capable of taking legal action himself within the limits of

the consent, unless specifically prohibited by law; consent may be subsequently limited and withdrawn.

(2) If there are more than one legal representatives, it is sufficient if at least one of them expresses a will in relation to the third party; this does not apply if the third party knew that the representatives were in conflict.

§ 33

(1) Where the legal representative of a minor who has not acquired full capacity consents to the independent operation of a business establishment or other similar gainful activity, the minor becomes competent to perform the acts connected with that activity. The validity of the consent requires the authorisation of the court.

(2) The consent of the court replaces the condition of a certain age if it is established by another legal provision for the exercise of a certain gainful activity.

(3) Consent may be withdrawn by a legal guardian only with the leave of the court.

§ 34

Dependent work of minors under the age of fifteen or minors who have not completed compulsory schooling is prohibited. Such minors may only engage in artistic, cultural, advertising or sporting activities under the conditions laid down by other legislation. These minors may not engage in any other activities.

§ 35

A minor who has attained the age of fifteen years may undertake to perform dependent work in accordance with another legal provision. The date of commencement of work may not be agreed as the day preceding the day on which the minor completes compulsory schooling.

§ 36

(1) A minor who has not acquired full legal capacity is never, notwithstanding the content of other provisions, capable of acting independently in those matters for which even his legal representative would need the permission of the court.

(2) Even if a minor who has not acquired full legal capacity is capable of acting independently in a particular matter, it may be made conditional that the consequences of a legal act will only take effect with the consent of the minor's legal representative given within a specified period of time, otherwise within two weeks of the request; this does not apply to legal acts of a personal nature and legal acts under § 33.

§ 37

Granting legal capacity

(1) If a minor who is not fully capable of self-determination moves the court to grant him or her self-determination, the court shall grant the motion if the minor has reached the age of sixteen years, if the minor's ability to support himself or herself and to provide for his or her own affairs is established, and if the minor's legal representative consents to the motion. In other cases, the court shall grant the application if, for serious reasons, it is in the minor's best interests.

(2) Under the conditions set out in paragraph 1, the court shall also grant the minor's legal capacity on the application of the minor's legal representative if the minor consents to the application.

Section 2

Subsidiary measures in the case of disrupted capacity of an adult to make juridical acts

Declaration in anticipation of incapacity

§ 38

In anticipation of one's own incapacity to act legally, a person may express a desire to have his affairs managed in a certain way, or to have a certain person manage them, or to have a certain person become his guardian.

§ 39

(1) If the declaration is not in the form of a public instrument, it shall be made by a private instrument dated and acknowledged by two witnesses; the witness shall give such particulars of himself as may be found in the acknowledgment.

(2) The witnesses may be only persons who have no interest in the declaration and its contents and who are not blind, deaf, dumb or ignorant of the language in which the declaration is made. Witnesses must sign the declaration and be able to attest to the declarant's capacity to act and the contents of the declaration.

(3) If the contents of a declaration made by a public instrument specify who is to become guardian, the person who executed the public instrument shall enter the particulars of who made the declaration, who is called to be guardian, and who executed the public instrument in a nonpublic list maintained under another law.

§ 40

(1) If the declaration is made by a blind person or a person who cannot read or write, the declaration must be read aloud to him by a witness who did not write the declaration. The blind person, or a person who cannot read or write, shall certify before the witnesses that the instrument contains his true intention.

(2) Where a declaration is made by a person with a sensory impairment who cannot read or write, the contents of the instrument shall be interpreted to him in the mode of communication chosen by him by a witness who did not write the declaration; all witnesses shall be competent in the mode of communication in which the contents of the instrument are interpreted. He who makes the declaration shall certify to the witnesses by the mode of communication chosen that the instrument contains his true intention.

§ 41

(1) An express revocation of a declaration requires an expression of intent made in the form prescribed in § 39(1)

(2) If the person who made the declaration destroys the instrument containing the declaration, it has the effect of revocation.

§ 42

If the declaration relates to a matter other than the appointment of a guardian and the effectiveness of the declaration is subject to a condition, the court shall determine whether the condition has been satisfied.

§ 43

If the circumstances manifestly change in such a material way that the person who made the declaration would not have made it in those circumstances or would have made it with different content, the court shall modify or revoke the declaration if the person who made it would otherwise be in danger of serious harm. Before making a decision, the court shall make the necessary efforts to ascertain the opinion of the person whose declaration it is deciding, including by using such means of communication as the person chooses.

§ 44

If a declaration or revocation thereof is invalid, the court shall take it into account if there is no reason to doubt the intention of the person who made it.

Assistance in decision-making

§ 45

If a person needs help to make decisions because a mental disorder makes it difficult for them to do so, even though they may not be limited in their capacity, they can arrange with a supporter to provide support; there may be more than one supporter.

§ 46

(1) By the assistance agreement, the supporter undertakes to be present at the supported person's legal meetings, to provide the necessary information and communications, and to assist the supported person with advice, with the consent of the supported person.

(2) The agreement takes effect on the date it is approved by the court. If the contract is not in writing, the parties are required to express their intention to enter into the contract before the court. The court shall not approve the contract if the interests of the supporter conflict with the interests of the supported.

§ 47

(1) The supporter shall not compromise the interests of the supported by improper influence, nor shall the supporter unjustly enrich himself at the expense of the supported.

(2) The supporter shall act in accordance with the decisions of the supported in the performance of his/her duties. If the promoted person acts legally in writing, the promoter may affix his/her signature indicating his/her position and, if applicable, the support he/she has given to the promoted person; the promoter shall also have the right to object to the invalidity of the promoted person's legal action.

§ 48

On motion of the supported person or the supporter, the court shall remove the supporter; the court shall also remove the supporter if the supporter seriously breaches his or her duties, even without a motion.

Representation by a household member

§ 49

(1) If mental disorder prevents an adult who has no other representative from acting independently in a legal capacity, the adult may be represented by a descendant, ancestor, sibling, spouse, or partner, or by a person who has lived in the same household with the represented person for at least three years before the representation arises.

(2) The representative shall give the represented person notice that he or she will represent him or her and explain to him or her in plain language the nature and consequences of the representation. If the person to be represented refuses to do so, the representation shall not arise; the ability to express a wish shall be sufficient to refuse.

§ 50

Court approval is required to create a representation. Before making a decision, the court shall make the necessary efforts to ascertain the views of the represented party, including by using such method of communication as the represented party chooses.

§ 51

The attorney shall take care to protect the interests of the represented person and the exercise of his or her rights, and to ensure that his or her manner of life does not interfere with his or her abilities and that, if it cannot reasonably be contradicted, it also conforms to the special wishes and desires of the represented person.

§ 52

(1) The representation covers the usual matters as appropriate to the life circumstances of the represented person. However, a representative is not authorized to consent to interference with the mental or physical integrity of a person with permanent consequences.

(2) The attorney may dispose of the income of the represented person to the extent necessary to provide for the usual affairs as appropriate to the living circumstances of the represented person; however, the attorney may dispose of funds in the represented person's account only to the extent that the funds do not exceed the individual's monthly minimum subsistence level under other law.

§ 53

If the represented person has more than one representative, it is sufficient if one of them acts. But if more than one agent acts jointly in relation to another person, and if they contradict each other, the speech of none of them shall be disregarded.

§ 54

(1) The representation ceases if the agent disclaims it or if the represented person refuses to be represented by the agent any longer; capacity to express a wish is sufficient to refuse. The representation also terminates if the court appoints a guardian for the represented person.

(2) If a contract for assistance in decision-making is entered into, the representation terminates with the effectiveness of the contract to the extent that the represented person is legally competent to act.

Limitation of legal capacity

§ 55

(1) The restriction of capacity may only be undertaken in the interests of the person concerned, after seeing him or her and with full recognition of his or her rights and personal uniqueness. In doing so, careful consideration must be given to the extent and degree of the person's inability to take care of his or her own affairs.

(2) A person's capacity to act may be restricted only if he would otherwise be at risk of serious harm and if less restrictive measures would not suffice in the light of his interests.

§ 56

(1) Only a court can limit a person's capacity to act.

(2) The court shall make the necessary efforts to ascertain the opinion of the person whose capacity is being decided, including by using such means of communication as the person chooses.

§ 57

(1) The court may limit a person's capacity to act as a person to the extent that the person is incapable of legal action because of a mental disorder that is not merely transitory, and shall define the extent to which the person's capacity to act independently has been limited.

(2) If a person has difficulty communicating, this is not in itself a ground for limiting his or her capacity.

§ 58

The court may, in the course of proceedings for the restriction of legal capacity, entrust a third party with the performance of certain individual legal acts or the administration of property if this is necessary to prevent serious harm.

§ 59

(1) The court may limit the capacity in relation to a particular matter for the time necessary for its disposal or for a specified period otherwise specified, but not exceeding three years. If it is clear that the person's condition will not improve within that time, the court may limit the person's capacity for a longer period, but not more than five years.

(2) On the expiry of the period of restriction of legal capacity, the legal effects of the restriction cease. However, if proceedings to extend the period of restriction are initiated

at that time, the legal effects of the original decision shall continue until a new decision is taken, but for no longer than one year.

§ 60

If circumstances change, the court shall immediately modify or set aside its decision, even without a motion.

§ 61

If the court decides to limit a person's legal capacity, the person called by it as guardian may propose that he be appointed guardian; if he does not make a proposal, the court shall ascertain his opinion. If that person is competent to act as guardian, the court shall, with his consent, appoint him as guardian.

§ 62

In an order limiting capacity, the court appoints a guardian for the person. In selecting the guardian, the court shall take into account the wishes of the ward, the ward's needs and the suggestions of persons close to the ward, if they are for the ward's benefit, and shall take care that the selection of the guardian does not create distrust of the ward towards the guardian.

§ 63

A person incapable of legal action or whose interests conflict with those of the ward, or the operator of a facility where the ward resides or which provides services to the ward, or a person dependent on such a facility, may not be appointed guardian.

§ 64

A decision to limit a person's capacity does not deprive a person of the right to act legally independently in the ordinary affairs of daily life.

§ 65

(1) If the ward acted independently, although he could not act without a guardian, his legal action can be declared void only if it causes him harm. If, however, a change in the scope of the guardian's duties is sufficient to remedy the situation, the court shall do so without being bound by the parties' submissions.

(2) If the ward acted independently, although he could not act without the guardian, the ward's act shall be deemed valid if the guardian approved it. This applies even if the act was approved by the person acting alone after he or she had acquired legal capacity.

Section 3

Absent persons

§ 66

(1) A court may declare a person to be missing who has left his or her residence, has failed to report and is not known to be present. The court shall state in the decision the date on which the effects of the declaration of disappearance took effect.

(2) A declaration of missing may be made on the application of a person who has a legal interest in it, in particular a spouse or other person close to the person, a joint owner, an employer or a corporation in which the person has an interest.

§ 67

(1) In considering acts for which the consent, acquiescence, casting of a vote or other action of a person declared to be missing is otherwise required, such necessity shall not be taken into account; but this shall not apply if the matter is one of his personal status. He who acts touching the affairs of a missing person must do so also with regard to his interests.

(2) A legal act done without the consent or other necessary expression of the will of the missing person after he has left his residence but before he has been declared missing, although such a declaration has been proposed without undue delay, shall be regarded as

having been done with a condition precedent to the making of the order declaring him missing.

§ 68

If a person declared missing returns or appoints a trustee of his estate, the declaration of missing ceases to have effect. The declaration shall also cease to have effect on the date which is deemed to be the date of the death of the missing person.

§ 69

One who has been declared missing cannot claim the invalidity or ineffectiveness of a legal act done in his absence, which occurred during the effect of such declaration, on the ground that no manifestation of his will was required at the time.

§ 70

If one who has appointed a trustee for his estate is declared to be missing, the rights and obligations of the appointed trustee shall not be affected. This does not apply if the administrator is unknown, refuses to act in the interests of the missing person, neglects to act in the interests of the missing person or is unable to act at all.

Section 4

Presumption of death

§ 71

(1) On the application of a person having a legal interest therein, the court shall declare a person reasonably believed to be dead and shall fix the day which shall be deemed to be the day of his death.

(2) A person who has been declared dead shall be regarded as if he had died. The declaration of the husband's death shall terminate the marriage on the date which is deemed to be the date of his death; the same shall apply to a [registered partnership](#).

§ 72

If a person has been declared missing and the circumstances raise serious doubts as to whether he is still alive, although his death is not beyond doubt, the court may declare him dead on the application of a person having a legal interest therein and fix a date on which the missing person is not likely to survive. That day shall be deemed to be the day of the death of the missing person.

§ 73

A person who has been declared missing may not be declared dead until the expiration of five years counted from the end of the year in which the declaration of missing occurred. However, this may not be done if, during that period, a report appears from which it can be inferred that the missing person is still alive. In such a case, the procedure to be followed is [§ 74](#) or [75](#).

§ 74

(1) A person who has become missing by leaving his residence, failing to report, and whose whereabouts are not known, but who has not been declared missing, may be declared dead not earlier than seven years after the end of the year in which the last report appeared from which it may be inferred that he was still alive.

(2) A person who has become missing before his eighteenth year of age cannot be declared dead before the expiration of the year in which twenty-five years have elapsed since his birth.

§ 75

A person who has become missing as a participant in an event in which the lives of a large number of persons were in danger may be declared dead not earlier than three years after the end of the year in which the last report appeared from which it can be inferred that he was still alive during the events.

§ 76

(1) If a person has been pronounced dead, this does not exclude evidence that he died earlier or later, or that he is still alive. If he is found to be alive, the declaration of death shall not be taken into account; but the marriage or civil partnership shall not be revived.

(2) If a false proof of death has been made, [paragraph 1](#) shall apply *mutatis mutandis*.

Section 5

Name and residence of an individual

Name of an individual and its protection

§ 77

(1) A person's name is his or her personal name and surname, or such other names and maiden names as may be lawfully his or her. Every person has the right to use his name in legal transactions, as well as the right to the protection of his name and to respect for it.

(2) A person who uses a name other than his own in legal intercourse shall bear the consequences of any mistake and the prejudice resulting therefrom.

§ 78

(1) A person who has been prejudiced by a challenge to his right to a name or who has suffered injury because of an unjustified interference with that right, in particular by the unauthorized use of a name, may seek to have the unjustified interference dispensed with or to have its effect removed.

(2) If the person concerned is absent, or if he is missing, incapacitated or otherwise unable to assert the right to the protection of his name himself, his spouse, descendant, ancestor or partner may assert it, unless the person concerned, although competent, has expressly indicated that he does not wish to do so.

(3) Where the surname is wrongfully interfered with, and there is a reason for this consisting in an important interest in the protection of the family, the spouse or another person close to the person concerned may seek protection independently, even if their right to the name has not been directly interfered with.

§ 79

Assumed name

(1) A person may adopt a pseudonym for a particular field of activity or even for private intercourse in general. A legal act under a pseudonym is not detrimental to its validity if it is clear who acted and if the other party cannot be in doubt as to the person of the actor.

(2) If a pseudonym becomes known, it enjoys the same protection as a name.

§ 80

Place of residence

(1) A person is domiciled in the place where he resides with the intention of living there permanently subject to a change of circumstances; such intention may arise from his declaration or from the circumstances of the case. If a person states his domicile as a place other than his actual domicile, any person may also claim his actual domicile. A person who in good faith invokes the said place cannot plead against him that he has his actual domicile in another place.

(2) If a person has no domicile, the place where he lives shall be deemed to be his domicile. If such a place cannot be ascertained, or can only be ascertained with unreasonable difficulty, a person's domicile shall be deemed to be the place where he has property or, as the case may be, the place where he was last domiciled.

Section 6

Personality rights of an individual

Subsection 1

General Provisions

§ 81

(1) The personality of the individual, including all his natural rights, shall be protected. Everyone is obliged to respect a person's free decision to live as he or she chooses.

(2) In particular, a person's life and dignity, his health and his right to live in a favourable environment, his dignity, honour, privacy and his expressions of his personal character are protected.

§ 82

(1) A person whose personality has been infringed has the right to demand that the unwarranted interference be refrained from or that its effect be removed.

(2) After a person's death, any person close to him may seek protection of his personality.

§ 83

(1) If the unjustified interference with a person's personality is related to his activities in a legal person, the right to protection of his personality may also be asserted by that legal person; during his lifetime, however, only on his behalf and with his consent. If a person is unable to express his will because of absence or incapacity to judge, no consent is required.

(2) After a person's death, a body corporate may seek to have the wrongful interference dispensed with and its consequences remedied.

Subsection 2

Image and privacy

§ 84

Capturing in any way a person's likeness so that their identity can be determined from the image is only possible with their permission.

§ 85

(1) It is only possible to augment a person's likeness with their permission.

(2) If a person consents to the representation of his likeness in circumstances from which it is clear that it will be disseminated, he also consents to its reproduction and dissemination in the usual manner as he might reasonably have foreseen in the circumstances.

§ 86

No one may invade the privacy of another unless he has a lawful reason to do so. In particular, one may not, without a person's consent, invade his or her private premises, monitor his or her private life or make audio or visual recordings of it, use such or other recordings made of a person's private life by a third party, or disseminate such recordings of his or her private life. Private writings of a personal nature are protected to the same extent.

§ 87

(1) Whoever has consented to the use of a writing of a personal nature, an image or a sound or visual recording relating to a person or to expressions of a personal nature may revoke the consent, even if he has given it for a limited period of time.

(2) Where a permission given for a specified period has been revoked without a material change of circumstances or other reasonable cause justifying it, the person revoking the permission shall compensate the person to whom the permission was given for the loss resulting therefrom.

§ 88

(1) Consent is not required if the likeness or sound or visual recording is taken or used to exercise or protect the rights or legally protected interests of others.

(2) Consent is also not required where a likeness, a document of a personal nature or a sound or visual recording is taken or used under the law for an official purpose or where someone makes a public appearance on a matter of public interest.

§ 89

A likeness or a sound or visual recording may also be taken or used in a reasonable manner for a scientific or artistic purpose and for press, radio, television or similar reporting without the person's permission.

§ 90

A lawful reason for invading the privacy of another or for using his or her likeness, a writing of a personal nature or an audio or visual recording must not be used in an unreasonable manner contrary to the legitimate interests of the person.

Subsection 3**Right to Mental and Physical Integrity****§ 91**

The human person is inviolable.

§ 92

(1) The human body is under legal protection even after a person's death. It is prohibited to dispose of human remains and human remains in a manner unworthy of the deceased.

(2) If the human remains are not deposited in a public burial ground, the person whom the person expressly designated before his death shall have the right to have them released; otherwise, his spouse, child or parent in turn, and if there is none or if they refuse to take possession of the remains, his heir shall take possession.

Interference with integrity**§ 93**

(1) Except as provided by law, no person shall interfere with the integrity of another without his or her consent given with knowledge of the nature of the interference and its possible consequences. If a person consents to serious harm being caused to him, no account shall be taken of this; this shall not apply if the interference is, in all the circumstances, necessary in the interests of the life or health of the person concerned.

(2) A legal guardian may consent to an interference with the integrity of a represented person if it is for the direct benefit of the person who is incapable of giving consent himself.

§ 94

(1) Whoever wishes to perform a procedure on another person shall explain to that person in plain language the nature of the procedure. An explanation is properly given if it is reasonable to assume that the other party has understood the manner and purpose of the procedure, including the expected consequences and possible dangers to his or her health, and whether any other procedure is contemplated.

(2) Where consent is given on behalf of another by his or her legal representative, an explanation shall also be given to the person who is to be subjected to the procedure, if he or she is capable of making a judgement, in a manner commensurate with the ability of the person concerned to understand the explanation.

§ 95

A minor who lacks full capacity may also consent to a procedure on his or her own body in the usual course of business, if it is reasonable to the minor's maturity of mind

and volition for his or her age and if it is a procedure that does not leave permanent or serious consequences.

§ 96

(1) Consent to interfere with a person's integrity requires a written form if a part of the body that is not to be restored is to be removed.

(2) Consent to

a) medical experiment on a human being, or

b) a procedure that the person's medical condition does not require; this does not apply if it is a cosmetic procedure that does not leave permanent or serious consequences.

§ 97

(1) Consent given may be withdrawn in any form, although a written form is required for consent to be given.

(2) If no written form is required for consent, it shall be deemed to have been given. Where it is uncertain whether consent has been withdrawn in a form other than in writing, it shall be presumed that there has been no withdrawal.

§ 98

(1) If a person is unable to give consent because of an inability to manifest a will, even temporarily, and has no legal guardian, the consent of the spouse, parent, or other person close to the person present is required. If none of these persons is present, the consent of the spouse is required, and if not, the consent of the parent or other person close to the person, if they can be easily identified and reached and if it is clear that there is no danger of delay. If it is not possible to obtain consent in any of the above ways, consent may be given by any other person present who shows a special interest in the person concerned.

(2) In the procedure and in giving consent, regard shall be had to the previously expressed known wishes of the person whose integrity is to be affected.

§ 99

If a person's life is in sudden and apparent danger, and if consent cannot be obtained in an emergency in any form other than that prescribed, immediate action may be taken if necessary for the health of the person concerned.

§ 100

(1) If the integrity of a minor who has reached the age of fourteen years, who has not acquired full legal capacity and who seriously opposes the intervention is to be interfered with, even though the legal guardian consents to the intervention, the intervention may not be carried out without the consent of the court. This also applies in the case of a procedure performed on an adult who lacks full legal capacity.

(2) If the legal guardian does not consent to the interference with the integrity of a person referred to in [paragraph 1](#), even though that person wishes it, the interference may be carried out at his or her request or at the request of a person close to him or her only with the consent of the court.

§ 101

If the integrity of a person incapable of judgment is to be interfered with in a manner leaving permanent, irreversible and serious consequences or in a manner involving serious danger to his life or health, the intervention may be carried out only with the permission of the court. This is without prejudice to the provisions of [§ 99](#).

§ 102

The court will authorize intervention under [§ 100](#) or [101](#) if, in its reasonable discretion, it is to the benefit of the person concerned, after viewing the person and with full

respect for his or her character.

§ 103

If the integrity of a person who was in a state where he was unable to judge what was being done to him was interfered with, and he did not himself consent to the procedure, the procedure must, as soon as his condition permits, be explained to him in a way that he will be able to understand, and he must be advised of its possible consequences and of the risk of not having the procedure carried out.

Subsection 4

The rights of an individual admitted to a health care facility without his consent

§ 104

A person may be taken into or kept in a health care facility without his or her consent only for a reason specified by law and provided that the necessary care for his or her person cannot be secured by a less restrictive and less restrictive measure. The filing of a petition for restriction of capacity does not, in itself, constitute a reason for a person to be admitted to or kept in such a facility without his consent.

§ 105

(1) If a person is taken into a health care facility or held therein, the health care provider shall promptly notify the person's legal guardian, custodian, or supporter and the person's spouse or other known relative; however, the health care provider shall not notify the spouse or other known relative unless prohibited from doing so.

(2) The health care provider shall notify the court within 24 hours of the person's admission to a health care facility; this shall apply even if the person is detained in such facility. The court shall decide on the action taken within seven days.

§ 106

(1) A health service provider shall ensure that a person admitted to or detained in a health care facility is given, without undue delay, an adequate explanation of his or her legal status, the lawful basis for the action taken and the legal protection available to him or her, including the right to choose a proxy or confidant.

(2) The explanation shall be given in such a way as to enable the person to understand it sufficiently and to realise the nature of the measure taken and its consequences; if such a person has a legal representative, guardian or supporter, the explanation shall also be given to him or her without undue delay.

§ 107

(1) If the person has a proxy or a confidant, the health service provider shall notify the proxy or confidant of the action taken without undue delay after becoming aware of it.

(2) A fiduciary may assert on behalf of a person all of the person's rights arising in connection with the person's admission to or possession in a relevant facility. The same rights as a trustee shall be enjoyed by a supporter.

§ 108

One who has been admitted to or is being held in a health care facility has the right to discuss his or her own affairs with his or her representative, confidant, or supporter in private and without the presence of third parties.

§ 109

(1) A person admitted to or held in a health care facility has the right to have his or her medical condition, medical records, or the attending physician's statement of incapacity to exercise judgment and express wishes independently reviewed by a physician independent of the health care provider in the facility and the facility's operator. A confidant or supporter has the same right.

(2) If the right to review is exercised before the court makes a decision under § 105(2), it must be allowed to be exercised so that the court can evaluate the results of the review in proceedings to determine whether the action taken is admissible.

§ 110

If the court determines that the action taken is permissible, it authorizes an involuntary stay in a health care facility but does not take away the right to refuse a particular procedure or treatment.

Subsection 5

Disposing of human body parts

§ 111

(1) A person who has had a body part taken away has a right to know how it has been treated. It shall be prohibited to dispose of a disembodied human body part in a manner that is undignified for a human being or in a manner that endangers public health.

(2) A disembodied part of a person's body may be used during his or her lifetime for medical, research or scientific purposes if he or she has given his or her consent. His express consent is always required for the use of a disembodied human body part for a purpose unusual in its nature.

(3) What originates in the human body is similarly true of parts of the human body.

§ 112

A person may transfer a part of his or her body to another only in the circumstances provided for by other legislation. This does not apply if it is hair or similar parts of the human body which can be painlessly removed without anaesthesia and which are naturally regenerated; they may also be transferred to another for remuneration and are regarded as movable property.

Subsection 6

Protection of human body after the death of an individual

§ 113

(1) A person has the right to decide how his or her body will be treated after death.

(2) An autopsy may be performed or a human body used after a person's death without the consent of the deceased only if another law so provides.

§ 114

(1) A person is entitled to decide what kind of funeral he or she wants to have. Unless he leaves an express decision to that effect, the husband of the deceased, and if he is not living, the children of the deceased, shall decide his burial; if they are not living, the parents, and if they are not living, the siblings of the deceased, shall decide; if they are not living, their children, and if they are not living, any of the persons close to them, shall decide; if none of these persons is living, the municipality in whose territory the person died shall decide.

(2) The cost of the funeral and burial arrangements shall be paid out of the estate. If the estate is not sufficient to cover the cost of the manner of burial which the deceased wished, he shall be buried in at least a decent manner according to local custom.

(3) Other legislation shall prescribe in what manner and at whose expense a person shall be buried whose estate is insufficient to meet the cost of burial and if no one is willing to pay the cost of the burial voluntarily.

Volume 3

Legal persons

Section 1

General Provisions

§ 118

A legal person has legal personality from its creation until its dissolution.

§ 119

Legal persons keep reliable records of their assets, even if they are not required to keep accounts under any other legal provision.

Public registers of legal persons

§ 120

(1) The public register shall record at least the date of incorporation of the legal person, the date of its dissolution with the legal reason for it and the date of its termination, as well as its name, the address of its registered office and the object of its activity, the name and residential or registered office address of each member of the statutory body, together with the manner in which that body represents the legal person and the details of the date of the creation or termination of their office.

(2) Other legislation shall specify what the public registers of legal persons are, which legal persons are entered in them and how, or what other information is entered in them about legal persons and how it is deleted from them, or whether the public register includes a collection of documents. The public registers of legal persons are accessible to everyone; anyone may consult them and take extracts, copies or extracts from them.

(3) If a registered fact changes, the registered person or the person to whom the law so requires shall notify the change without undue delay to the person who keeps the public register, who shall enter the change in the public register without undue delay.

§ 121

(1) A person who acts in reliance on information entered in the public register shall not be entitled to object to the fact that the entry does not correspond to the facts.

(2) Where a particular entered in the public register has been published, no person may, after the expiration of fifteen days from the publication, claim that he could not have known of the publication. If the published information does not correspond to the registered information, the person to whom the information relates may not claim against another person the published information; but if he proves that he was aware of the registered information, he may claim against him that the published information does not correspond to the registered information.

Creation and incorporation of a legal person

§ 122

A legal person may be established by a constitutive act, by law, by a decision of a public authority, or in any other manner provided for by another legal regulation.

§ 123

(1) The constituent act shall specify at least the name, the registered office of the legal person, the subject matter of the legal person's activities, the legal person's statutory body and how it is formed, unless the law provides directly. It shall also specify who are the first members of the statutory body.

(2) A written form is required for constitutive legal acts.

§ 124

If it is not stated for what period of time the legal entity is established, it is deemed to be established for an indefinite period.

§ 125

(1) Multiple founders establish a legal person by adopting a statute or entering into another contract.

(2) The law provides in which cases a legal person may be established by the legal action of one person contained in the instrument of incorporation.

§ 126

(1) A legal person is created on the date of registration in the public register.

(2) If a legal person is established by law, it comes into existence on the date of its entry into force, unless the law provides for a later date.

(3) The law provides in which other cases registration in the public register is not necessary for the establishment of a legal person. The Act provides in which cases a decision of a public authority is required for the establishment or formation of a legal person.

§ 127

A legal person may be acted on behalf of before its formation. Whoever so acts is alone entitled and bound by such acts; if more than one person acts, they are jointly and severally entitled and bound. A legal person may assume the effects of these acts for itself within three months of its formation. In that case, it shall be deemed to be entitled and bound by those acts from the outset. If it assumes them, it shall indicate to the other parties that it has done so.

§ 128

After the formation of a body corporate, it cannot be sought to establish that it has not come into existence and its registration in the public register cannot be cancelled on that ground.

§ 129

(1) The court shall declare a legal person void after its formation even without a petition if

- a) the constitutive act is absent,
- b) the constituent act lacks a requisite element for the legal existence of the legal person,
- c) the legal act of the founders contravenes § 145; or
- d) the legal entity was formed by fewer persons than are required by law to do so.

(2) on the date on which the legal entity is declared void, it enters into liquidation.

§ 130

Before making a decision under § 129, the court shall give the legal person a reasonable time to seek redress if it is a defect that can be remedied.

§ 131

Declaring a body corporate void does not affect the rights and obligations it has acquired.

Name

§ 132

(1) The name of the legal entity is its name.

(2) The name must distinguish the legal person from another person and include an indication of its legal form. The name must not be misleading.

§ 133

(1) The name may include the name of a person to whom the legal person has a special relationship. If the person is alive, his name may be used in the name of the legal person

only with his consent; if he died without giving his consent, the consent of his spouse is required, and if he is not, that of an adult descendant, and if he is not, that of an ancestor.

(2) Where a surname has been used in the name of a body corporate and there is a reason for this consisting in an important interest in the protection of the family, § 78(3) shall apply *mutatis mutandis*.

(3) Whoever has the right to give consent to the use of a person's name in the name of a legal person has the right to withdraw it at any time, even if he has given it for a specified period; if something else has been agreed, no account shall be taken of it if a material change of circumstances or other reasonable cause justifies the withdrawal of consent. Where consent given for a specified period has been withdrawn without a material change of circumstances or other reasonable cause justifying it, the withdrawing legal person shall compensate the legal person for the loss resulting therefrom.

§ 134

(1) The name of a body corporate may include any characteristic element of the name of another body corporate if there is a reason for it in their relationship to each other. Even then, the public must be able to distinguish the two names sufficiently.

(2) A distinctive element of the name of another legal person may not be used in the name without its consent. The provisions of § 133(3) shall apply *mutatis mutandis*.

§ 135

(1) A legal person who has been affected by a challenge to his right in a name or who has suffered damage because of an unlawful interference with that right or who is threatened with such damage, in particular by the unauthorised use of a name, may claim that the unlawful interference be dispensed with or that its effect be remedied.

(2) The same protection shall be afforded to a legal person against one who, without lawful cause, interferes with its reputation or privacy, unless the purpose is scientific or artistic or for press, radio, television or similar reporting; but even such interference shall not be contrary to the legitimate interests of the legal person.

§ 136

Registered office

(1) When a legal entity is established, its registered office shall be determined. If it does not disturb the peace and order of the house, the registered office may be in the flat.

(2) If the legal entity is incorporated in the public register, it is sufficient if the incorporation act states the name of the municipality where the legal entity's registered office is located; however, the legal entity shall propose to enter the full address of the registered office in the public register.

§ 137

(1) Anyone can invoke the real registered office of a legal entity.

(2) Against one who invokes the registered office entered in the public register, a legal person cannot argue that it has its real seat in another place.

Transfer of registered office

§ 138

(1) A legal entity that has its registered office abroad may relocate its registered office to the Czech Republic. This does not apply if the law of the State in which the legal person has its registered office does not allow it or if it is a legal person prohibited under § 145.

(2) A legal person that intends to transfer its registered office to the territory of the Czech Republic shall enclose with the application for registration in the relevant public register a decision on the legal form of the Czech legal person it has chosen and the constitutive act required by Czech law for that form of legal person.

(3) The internal legal relations of the legal entity shall be governed by Czech law after the transfer of its registered office to the Czech Republic. Czech law shall also govern the liability of its members or members of its organs for the debts of the legal person if incurred after the effective date of the transfer of the registered office to the Czech Republic.

§ 139

A legal person that has its registered office in the Czech Republic may transfer its registered office abroad if this does not contravene public policy and if the law of the State to which the registered office of the legal person is to be transferred so permits.

§ 140

(1) A legal person that intends to relocate its registered office abroad shall publish that intention, specifying the address of the new registered office and the legal form after the relocation of the registered office, at least three months before the date of the intended relocation of the registered office. Creditors shall have the right to demand sufficient security for their outstanding claims within two months of the publication if the collectability of their claims in the Czech Republic is impaired after the transfer of the registered office.

(2) If there is no agreement on the manner and extent of the security, the court shall decide on the sufficiency of the security and its extent, taking into account the type and amount of the claim. If the legal person fails to provide security in accordance with the court's decision, the members of the statutory body shall be liable for the debts that have not been secured, except for those who prove that they have made sufficient efforts to comply with the decision.

§ 141

(1) A member of a body corporate who has not consented to the transfer of its registered office abroad shall have the right to terminate its membership of the body corporate with effect from the date of the transfer of the registered office. If the member of the legal person has a right to a settlement upon termination of membership, the legal person shall provide the member with a settlement no later than the effective date of the relocation. The members of the statutory body shall be liable for the fulfilment of this obligation.

(2) The members of the legal person and its statutory body shall be liable for debts incurred before the effective date of the transfer of the registered office in the same manner as before the transfer of the registered office.

§ 142

The transfer of the registered office is effective from the date of registration of its address in the relevant public register.

§ 143

For the establishment and relocation of branches of legal entities, § 138 to 142 apply similarly.

Purpose of legal persons

§ 144

(1) A legal person may be formed in the public or private interest. This nature of it is judged according to the main activity of the legal person.

(2) The law provides for which purposes a legal person may be established only if special conditions are met.

§ 145

(1) It is prohibited to establish a legal person whose purpose is to violate a law or to achieve an objective in an unlawful manner, in particular if its purpose

- a) denying or restricting the personal, political or other rights of persons on account of their nationality, sex, race, origin, political or other opinion, religion or social status,
- b) inciting hatred and intolerance,
- c) promoting violence or
- d) the management of a public authority or the exercise of public authority without lawful authority.

(2) It shall be prohibited to establish a legal person armed or with armed forces, unless it is a legal person established by law and which is expressly permitted or required by law to be armed or to establish an armed force, which deals with weapons in connection with its business pursuant to another legal provision, or a legal person whose members possess or use weapons for sporting or cultural purposes or for hunting or for the performance of tasks pursuant to another legal provision.

Publicly beneficial status

§ 146

A legal person is a public utility if its mission is to contribute, in accordance with its constituent legal act, by its own activities to the achievement of the general welfare, provided that only persons of good character have a substantial influence on the decision-making of the legal person, provided that it has acquired its property from honest sources and provided that it uses its assets economically for a public utility purpose.

Bodies of a legal person

§ 151

- (1) The law provides, or the constitutive act determines, how and to what extent the members of the organs of the legal person decide for it and substitute its will.
- (2) The good faith of the members of the body of the legal person is imputed to the legal person.

§ 152

- (1) A body corporate forms a body of one member (individual) or multiple members (collective).
- (2) A natural person who is a member of a body of a legal person and who is elected, appointed or otherwise called to office (hereinafter referred to as a "member of an elected body") must be fully capable of exercising his or her own legal capacity. This also applies to a representative of a legal person who is himself a member of an elected body of another legal person.
- (3) If the main activity of the legal person concerns minors or persons with limited legal capacity and if the main purpose of the legal person is not to carry on business, the constitutive act may provide that a minor or a person with limited legal capacity may also be a member of the elected collective body of the legal person.

§ 153

- (1) A person whose insolvency has been certified may become a member of an elected body if he has given prior notice to the person calling him to office; this does not apply if at least three years have elapsed since the insolvency proceedings were closed.
- (2) Where a person who is a member of an elected body has been certified bankrupt, that person shall without undue delay notify the person who called him to office.
- (3) If no notification has been given, any person having a legal interest may apply to the court to have a member of the elected body removed from office. This does not apply where the person who called the member of the elected body has decided, after he has become aware of the person's bankruptcy certificate, that he should remain in office.

§ 154

If a member of an elected body of a body corporate is another body corporate, he shall authorise the natural person to represent him on the body, otherwise the body corporate shall be represented by a member of its statutory body.

§ 155

(1) Where a member of an elected body has been called to be a member of that body who is not qualified by law to be a member, his call to office is to be regarded as if it had not happened. If a member of an elected body loses the legal capacity to be a member of the elected body after being called to office, his office shall cease; he shall notify the legal person of the cessation of his office without undue delay.

(2) If the calling of a person to the office of member of an elected body is regarded as if it had not happened, or if the calling is invalid, it does not affect a right acquired in good faith.

§ 156

(1) If the body is a collective body, it decides the affairs of the body corporate. It is capable of deliberating in the presence or other participation of a majority of the members and decides by a majority of the votes of the members present.

(2) Where the powers of the individual members of the body are divided according to certain branches, the provisions of [paragraph 1](#) shall not apply. The division of competence does not relieve the other members of their duty to see that the affairs of the legal person are managed.

§ 157

(1) If the decision is adopted, the dissenting opinion of the member of the elected body who opposed the proposal is recorded on request.

(2) If the motion was passed in the absence of a member, that member shall be entitled to know the contents of the decision.

§ 158

(1) The constituent instrument may provide for the ability of the body to deliberate by a higher number of participants, require a higher number of votes for the adoption of a decision, or provide a procedure by which the manner of decision-making of the body may be changed.

(2) The constituent legal act may provide for the body to make decisions outside the meeting in writing or by technical means.

(3) The constituent legal act may provide that, in the event of a tie vote in the decision of an elected body of a legal person, the vote of the presiding officer shall prevail.

§ 158a

(1) A legal person shall keep the minutes of the proceedings of the supreme body, including the annexes, throughout its existence.

(2) Where the body referred to in [paragraph 1](#) makes a decision outside a meeting in writing, the legal person shall also retain all documents relating to such decision.

(3) In the event of the dissolution of a legal entity with a legal successor, the successor shall ensure the preservation of the documents referred to in [paragraph 1](#) or [2](#). Where a legal person is dissolved with liquidation, the liquidator shall ensure the preservation of those documents. Where a legal person is dissolved without liquidation, the insolvency administrator or another person appointed by the court shall ensure the preservation of those documents. The person referred to in the second and third sentences shall ensure the preservation of the documents for 10 years after the dissolution of the legal person.

§ 159

(1) Whoever accepts the office of a member of an elected body undertakes to perform it with the necessary loyalty as well as with the necessary knowledge and diligence. He shall be presumed to be negligent who is not capable of exercising such care as a good steward, although he must have discovered this when accepting the office or when exercising it, and does not draw the consequences thereof for himself.

(2) A member of an elected body shall hold office in person; but this shall not prevent a member from authorising another member of the same body to vote for him in his absence in a particular case.

(3) If a member of an elected body has not compensated a legal person for damage caused to it by a breach of duty in the performance of his or her functions, although he or she was obliged to compensate the damage, he or she shall be liable to a creditor of the legal person for the legal person's debt to the extent that he or she has not compensated the damage, unless the creditor cannot enforce performance against the legal person.

§ 160

If a member of an elected body resigns his office by a declaration delivered to the body corporate, the office ceases on the expiry of two months from the date of receipt of the declaration.

Acting on behalf of a legal person

§ 161

He who represents a legal person shall make known what entitles him to do so, unless it is already apparent from the circumstances. Whoever signs on behalf of a legal person shall append his signature to the name of the legal person and, where appropriate, his position or occupation.

§ 162

If a member of a body corporate represents the body corporate in the manner registered in the public register, it cannot be argued that the body corporate has not passed the necessary resolution, that the resolution was defective or that the member of the body corporate has contravened the resolution passed.

§ 163

The statutory body is vested with all powers not conferred on another body of the body corporate by the instrument of incorporation, statute or decision of a public authority.

§ 164

(1) A member of the statutory body may represent the legal person in all matters.

(2) If more than one person has the powers of the statutory body, they form a collective statutory body. If the constitutive act does not specify how its members represent the legal person, each member shall do so separately. If the constitutive act requires the members of the statutory body to act jointly, a member may represent the legal person as proxy separately only if he has been authorised to perform a particular legal act.

§ 165

(1) If the statutory body does not have a sufficient number of members to make decisions, the court shall, on the application of the person who certifies a legal interest, appoint the missing members for the period until new members are called in accordance with the procedure laid down in the constitutive act; otherwise, the court shall appoint a guardian to the legal person, even without application, whenever it becomes aware of it in the course of its business.

(2) The court shall appoint a guardian to a legal person, even without a petition, if the interests of a member of the statutory body conflict with the interests of the legal person and if the legal person has no other member of the body capable of representing it.

§ 166

(1) A legal person shall be represented by its employees to the extent customary in relation to their classification or function; in doing so, the status as it appears to the public shall prevail. What is provided for the representation of a legal person by an employee shall apply *mutatis mutandis* to the representation of a legal person by a member thereof or by a member of another body not entered in the public register.

(2) A limitation on the representative's authority by an internal regulation of a legal person has effect against a third party only if it must have been known to the third party.

§ 167

A legal person is bound by an unlawful act committed by a member of an elected body, an employee or other agent of the legal person in the performance of his or her duties to a third party.

Dissolution of a legal person

§ 168

(1) A legal person is dissolved by legal action, by the expiration of time, by a decision of a public authority or by the achievement of the purpose for which it was established, and for other reasons provided by law.

(2) The voluntary dissolution of a legal person shall be decided by its competent authority.

§ 169

(1) After the dissolution of a legal person, its liquidation is required, unless its entire assets are acquired by a legal successor, or if the law provides otherwise.

(2) If it does not follow from the legal act of dissolution of a legal person whether it is dissolved with or without liquidation, it is presumed that it is dissolved with liquidation.

§ 170

Whoever made the decision to dissolve a legal entity with liquidation may reverse the decision while the purpose of the liquidation has not yet been fulfilled.

§ 171

With the winding up, the body corporate is dissolved

- a) on the expiry of the period for which it was established,
- b) on the achievement of the purpose for which it was established,
- c) on the date specified by the law or by the legal proceedings for the dissolution of the body corporate, otherwise on the effective date thereof, or
- d) the date of the legal force of a decision of a public authority, unless the decision provides for a later date.

§ 172

(1) The court shall, on the application of the person who certifies a legal interest therein, or even without an application, dissolve the legal person and order its liquidation if

- a) it carries on an illegal activity to such an extent that it seriously disturbs public order,
- b) no longer meets the prerequisites required for the establishment of a legal person by law,
- c) has not had a statutory body capable of holding a meeting for more than two years, or
- d) so provides by law.

(2) If the law permits the court to dissolve a body corporate for a reason that can be remedied, the court shall allow it a reasonable period of time to remedy the defects before making its decision.

§ 173

- (1) If a legal entity is dissolved in a conversion, it shall be dissolved without liquidation on the effective date of the conversion.
- (2) If a legal person has been certified bankrupt, it shall be dissolved without liquidation by winding up the bankruptcy after the execution of the order of arrangement, or by winding up the bankruptcy because the assets are wholly insufficient; it shall, however, enter into liquidation if any assets appear after the insolvency proceedings have been closed.

Transformation of a legal person**§ 174**

- (1) A change of legal entity is a merger, division and change of legal form.
- (2) A legal person may change its legal form only if the law so provides.

§ 175

- (1) Whoever made the decision to convert a legal entity may change the decision until the conversion becomes effective.
- (2) If the conversion of a legal person becomes effective, it cannot be decided that it has not occurred, nor can the legal act that led to the conversion be declared void, nor can the registration of the conversion in the public register be cancelled.

§ 176

- (1) In a conversion, a record date must be established from which the acts of the surviving corporation are deemed for accounting purposes to have been performed on behalf of the successor corporation.
- (2) On the day preceding the record date, the surviving legal entity or legal entity being divided by a spin-off shall draw up final accounts. At the record date, the successor legal entity or legal entity being divided by a spin-off shall prepare an opening balance sheet.

§ 177

- (1) The effectiveness of the conversion of a legal entity registered in the public register shall take effect on the date of registration in the public register. In such a case, the record date shall be fixed so that it does not precede the date of filing of the petition for registration of the conversion in the public register by more than twelve months.
- (2) Where the interested persons are registered in different districts, the application for registration of the conversion shall be filed in any of them and the public authority shall enter in the public register all the facts recorded on the same date.

§ 178

- (1) A merger is effected by the amalgamation or amalgamation of at least two participating legal entities. The merger shall be deemed to be a transfer of the business of the employer.
- (2) In a merger, at least one of the participating persons ceases to exist; the rights and obligations of the surviving persons pass to the sole participating person as the successor legal entity.
- (3) In a merger, all the participating persons cease to exist and a new legal person is created in their place as the successor; the rights and obligations of all the surviving persons pass to it.

§ 179

- (1) A legal person shall be divided by demerger with the creation of new legal persons, or shall be divided by simultaneous merger with other legal persons (hereinafter referred to as "division by merger"). A legal person may also be created by demerger or by the combination of several methods of division. A division by amalgamation, a demerger, as

well as other methods of division, shall be deemed to be a transfer of the employer's activity.

(2) If, by a division, the legal entity being divided ceases to exist and its rights and obligations are transferred to several successor legal entities, then

- a)** if the successor legal persons are involved in the division as existing persons, it is a split by merger,
- b)** if the successor legal persons are yet to be formed by the division, it is a split with the creation of new legal persons.

(3) When a legal entity is divided by a spin-off, the legal entity being divided is neither dissolved nor terminated, but the carved-out part of its rights and obligations is transferred to the existing or newly established successor legal entity.

§ 180

In the cases referred to in § 179(2) or 3, the competent body of the legal person shall decide which employees of the legal person being dissolved shall become employees of each successor legal person.

§ 181

Legal entities of different legal forms may merge and demerge only if the law so provides.

§ 182

If the transformation of a legal person transfers its assets to the successor legal person and if the consent of a public authority is required under another legal regulation for the transfer of rights and obligations, such consent is also required for the transformation of the legal person.

§ 183

(1) A change of legal form does not dissolve or terminate the legal person whose legal form is being changed, only its legal relations and, if it is a corporation, the legal status of its members.

(2) If the date on which the draft agreement or the resolution to change legal form is made is not a balance sheet date under any other law, the legal entity shall prepare interim financial statements as at that date. The data from which the financial statements are drawn up at the date of preparation of the change of legal form may not precede the date of the legal entity's decision on the change of legal form by more than three months.

§ 184

(1) A decision may be made to convert a legal entity established by law if the law expressly so provides.

(2) The conversion of a legal person established by a decision of a public authority shall be decided by that authority.

Termination of a legal person

§ 185

A legal person entered in the public register ceases to exist on the date of its deletion from the public register.

§ 186

A legal person not subject to registration in the public register shall cease to exist on the termination of its liquidation.

Liquidation

§ 187

(1) The purpose of liquidation is to settle the assets of the dissolved legal entity (the liquidation estate), to settle debts to creditors and to deal with the net assets resulting

from the liquidation (the liquidation estate) in accordance with the law.

(2) A legal person enters into liquidation on the date on which it is dissolved or declared void. If a legal person entered in the public register enters into liquidation, the liquidator shall, without undue delay, propose the entry of the entry into liquidation in the public register. During the period of liquidation, the legal entity shall use its name with the addition "in liquidation".

§ 188

When a legal person enters into liquidation, no person may legally act for it outside the scope provided for in § 196 from the time when he or she knew or should and could have known of its entry into liquidation.

§ 189

(1) On entering into liquidation, the competent authority shall appoint a liquidator to the body corporate; only a person qualified to be a member of the statutory body may be a liquidator. If the office of liquidator ceases to exist before the dissolution of the legal person, the competent authority shall without undue delay appoint a new liquidator for the legal person.

(2) Where a legal person is being wound up and a liquidator has not been called, all members of the statutory body shall exercise the powers of the liquidator.

§ 190

If several liquidators are called upon to wind up a body corporate, they form a collective body.

§ 191

(1) A legal person that has entered into liquidation without a liquidator having been called under § 189 shall be appointed a liquidator by the court, even without a petition. The court shall appoint a liquidator even if it has itself decided to dissolve the legal person.

(2) On the application of a person who certifies a legal interest therein, the court shall remove a liquidator who fails to perform his duties properly and appoint a new liquidator.

(3) If no other motion has been filed or if the motion cannot be granted, the court may, in accordance with paragraph 1 or paragraph 2, appoint a member of the statutory body as liquidator without his consent. Such liquidator may not resign from his office. He may, however, apply to the court to discharge him from office if he proves that he cannot fairly be required to hold office.

(4) If a liquidator cannot be appointed even under paragraph 3, the court shall appoint him from among the persons entered in the list of insolvency practitioners.

§ 192

If a liquidator is appointed by the court, third parties shall provide assistance to the liquidator to the same extent as they are required to provide to the insolvency practitioner.

§ 193

A liquidator acquires the powers of a statutory body at the time of his or her appointment. The liquidator shall be liable for the proper performance of his functions in the same way as a member of the statutory body.

§ 194

Only the court may remove from office a liquidator whom it has appointed to the office.

§ 195

The remuneration of the liquidator and the manner of payment thereof shall be determined by the person who called him.

§ 196

(1) The activities of a liquidator can only pursue a purpose that is consistent with the nature and purpose of the liquidation.

(2) If the body corporate has acquired a legacy or bequest with a condition, proof of time or order, the liquidator shall comply with those restrictions. However, if the legal person has received earmarked funds from public budgets, the liquidator shall use those funds in accordance with the decision of the authority that provided them; the liquidator shall proceed in a similar manner if the legal person has received funds earmarked for a public benefit purpose.

§ 197

In the course of liquidation, the liquidator shall satisfy the claims of employees in priority; this does not apply if the legal entity is bankrupt.

§ 198

(1) The liquidator shall give notice of the entry of the legal person into liquidation to all known creditors.

(2) The liquidator shall, without undue delay, publish at least twice in succession, at least two weeks apart, a notice under [paragraph 1](#) together with an invitation to creditors to lodge their claims within a period of not less than three months from the second publication.

§ 199

(1) The liquidator shall prepare an opening balance sheet and an inventory of the assets of the legal entity as at the date of the legal entity's entry into liquidation.

(2) The liquidator shall issue, against payment of costs, an inventory of the assets to any creditor who so requests.

§ 200

If the liquidator discovers in the course of the liquidation that the body corporate is insolvent, he shall, without undue delay, file an insolvency petition, unless the case is one referred to in [§ 201](#).

§ 201

(1) If it is a case under [§ 173\(2\)](#) and the liquidation proceeds are insufficient to satisfy all debts, the liquidator shall pay the liquidation expenses in the first group from the proceeds, satisfy the claims of the employees in the second group from the balance, and then pay the claims of other creditors in the third group.

(2) If it is not possible to settle the claims in the same group in full, they shall be satisfied pro rata.

§ 202

(1) If the whole of the liquidation estate cannot be realised within a reasonable time, the liquidator shall, out of the partial proceeds, first settle the costs and claims of the first class and then, if possible, those of the second class; this is without prejudice to [§ 201\(2\)](#). The liquidator shall then offer the liquidation assets to the creditors of the third group of claims for acceptance in payment of the debts.

(2) If the liquidating estate is not even partially realised within a reasonable time, or if the partial proceeds do not fully satisfy the claims of the first and second classes, the liquidator shall offer the liquidating estate to all creditors for assumption.

(3) A creditor to whom the liquidating estate has been offered under [paragraph 1](#) or [paragraph 2](#) and who has not made an offer within two months shall be deemed to have accepted the offer; this effect does not arise if the liquidator has not so advised him in the offer.

§ 203

(1) The creditors who take over the liquidation estate are each entitled to a share determined in proportion to the amount of their claims; in the remainder their claims are extinguished.

(2) If any creditor refuses to participate in the liquidation estate, his claim shall be deemed extinguished. This does not apply if the assets of the legal person are subsequently discovered to be still unknown.

§ 204

(1) If all creditors refuse to take over the liquidation estate, the liquidation estate shall pass to the State on the date of the dissolution of the legal person; the liquidator shall notify the competent authority under another law without undue delay.

(2) Without regard to § 201 to 203, a creditor who is a secured creditor under another law shall be entitled to satisfaction of the security by which his claim was secured. If the secured creditor is not so satisfied in full in respect of his claim, he shall be entitled to the remainder of the benefit under § 201 to 203.

§ 205

(1) Once the liquidator has completed all that precedes the disposition of the liquidation balance or the delivery of the liquidating estate under § 202 or the notice under § 204, draw up a final report on the course of the liquidation, indicating at least how the liquidation assets have been dealt with and, where appropriate, a proposal for the use of the liquidation surplus. On the same date, the liquidator shall draw up the accounts. The liquidator shall attach a signature to the accounts.

(2) The final report, the proposal for the use of the liquidation balance and the accounts shall be submitted by the liquidator to the person who called him to office for approval. The person who has become liquidator under § 189(1) shall submit the final report, the proposal for the use of the liquidation balance and the accounts to the body of the legal person which has the power to remove him from office or to control him. If there is no such body, the liquidator shall submit these documents and proposals to the court for approval.

(3) The removal of a body corporate from the public register shall not be prevented by the failure to approve the documents referred to in paragraph 1.

(4) The liquidator shall ensure that the documents referred to in paragraph 1 are preserved for 10 years after the dissolution of the legal entity.

§ 206

(1) Until the rights of all creditors who have filed their claims in time under § 198 have been satisfied, no share of the liquidation balance may be paid out either as an advance or otherwise applied.

(2) If the claim is disputed or not yet due, the liquidation balance may be used only if sufficient security has been given to the creditor.

§ 207

The liquidation ends with the use of the liquidation balance, the acceptance of the liquidation assets by the creditor, or their rejection. The liquidator shall, within thirty days of the end of the liquidation, file a petition for the removal of the legal entity from the public register.

§ 208

If, before the deletion of the legal person from the public register, its assets are discovered or the need for other necessary measures arises, the liquidation shall not be terminated and the liquidator shall settle those assets or take other necessary measures. After the completion of these actions, he shall proceed in accordance with § 205 to 207; the provisions of § 170 shall not apply.

§ 209

(1) If unknown assets of a legal person are discovered after its deletion from the public register or if another interest worthy of legal protection appears, the court shall, on the motion of the person who certifies the legal interest, cancel the deletion of the legal person, decide on its liquidation and appoint a liquidator. Whoever keeps the public register shall, in accordance with this decision, enter in it the renewal of the legal person, the fact that it is in liquidation and the details of the liquidator. From the time of its renewal, the legal person shall be regarded as if it had never been dissolved.

(2) Where a body corporate has been restored by reason of the discovery of unknown assets, the unsatisfied claims of its creditors shall be restored.

Section 2

Corporations

Subsection 1

Corporations in general

§ 210

- (1) A corporation is formed as a legal entity by a community of persons.
- (2) A legal entity formed by a single member is viewed as a corporation.

§ 211

- (1) A corporation may have a single member if the law permits. In such a case, the sole member of the corporation may not voluntarily terminate membership unless a new person joins in his place.
- (2) If the number of members of a corporation falls below the number prescribed by law, the court shall dissolve the corporation even without a petition and order its liquidation. It shall, however, first grant it a reasonable time to make good.

§ 212

- (1) By accepting membership of the Corporation, a member undertakes to behave honestly towards the Corporation and to observe its internal rules. The corporation shall not unreasonably favor or disadvantage its member and shall respect the member's rights and legitimate interests.
- (2) If a member of a private corporation abuses the right to vote to the detriment of the whole, the court shall, upon motion of one who shows a legal interest, rule that the vote of that member shall be disregarded for a particular case. This right shall lapse if the application is not made within three months from the date on which the abuse of vote occurred.

§ 213

If a corporation is damaged by a member of the corporation or a member of its body in a manner which gives rise to an obligation on the part of the member to make good, and by which another member of the corporation has also been damaged in the value of his or her interest, and if only that member seeks to make good, the court may, even without a special motion, order the wrongdoer to make good the damage to the corporation alone if the circumstances of the case so warrant, particularly if it is sufficiently clear that such an order will also make good the damage to the impaired interest.

Subsection 2

Association

§ 214

- (1) At least three persons actuated by a common interest may form and associate in a society for its pursuit as a self-governing and voluntary association of members.
- (2) If the associations form a new association as their association for the pursuit of their common interest, they shall express in the name of the new association its association

character.

§ 215

(1) No person shall be compelled to participate in the association and no person shall be prevented from withdrawing from it.

(2) Members of the society shall not be liable for its debts.

§ 216

The name of the society must include the words "society" or "registered society", but the abbreviation "of. s."

§ 217

(1) The main activity of an association can only be the satisfaction and protection of those interests for the fulfilment of which the association is established. Business or other gainful activity cannot be the main activity of the association.

(2) In addition to its main activity, an association may also carry on an ancillary economic activity consisting in business or other gainful activity, if its purpose is to support the main activity or to make economic use of the association's property.

(3) Profits from the activities of the association may only be used for the association's activities, including the administration of the association.

Formation of an association

§ 218

The founders shall establish the society if they agree on the contents of the statutes; the statutes shall contain at least

- a) the name and registered office of the association,
- b) the purpose of the association,
- c) the rights and obligations of the members towards the association and, where appropriate, the manner in which their rights and obligations will accrue,
- d) determination of the statutory body.

§ 219

The bylaws may establish a subsidiary society as an organizational unit of the society or determine the manner in which the subsidiary society is established and which body decides on the establishment, dissolution, or conversion of the subsidiary society.

§ 220

(1) If the constitution specifies that membership is of different kinds, it shall also define the rights and obligations associated with each kind of membership.

(2) The rights or obligations associated with a particular type of membership may be restricted only under conditions specified in advance in the statutes, otherwise with the consent of a majority of the members concerned. This does not apply if the association has just cause to limit rights or extend obligations.

§ 221

The constitution must be deposited in full at the registered office of the society.

Constituting Meeting

§ 222

(1) A society may also be formed by a resolution of a constituent meeting of the constituent society. The provisions relating to the members' meeting shall apply mutatis mutandis to the constituent meeting.

(2) The draft statutes shall be drawn up and other persons interested in the formation of the society shall be summoned by the convener to the constituent meeting in an appropriate manner. The correctness and completeness of the list of those present shall be verified by the convener or a person authorised by him.

§ 223

Everyone who is present at the constituent meeting and who meets the requirements for membership of the Society shall sign the list of those present, signing their name and address or residence. The correctness and completeness of the list of those present shall be verified by the convener or a person authorised by him. The persons entered in the list of those present shall be deemed to have duly applied for membership of the association.

§ 224

(1) The Convener or his/her nominee shall open the constitutional meeting. He or she shall inform the constituent meeting of the number of persons present and shall acquaint it with the actions already taken by the convener in the interests of the association. He shall also propose to the constituent meeting the rules governing its proceedings and the election of the chairman and any other officers.

(2) The constituent meeting shall elect the members of such bodies as it is required by law and the constitution to elect.

(3) The constituent meeting adopts a resolution by a majority of those present at the time of the vote.

(4) Those who voted against the adoption of the draft constitution may withdraw their application to the society. A record of this must be made in the register of those present, bearing the signatures of the withdrawer and the person who made the record.

§ 225

If at least three persons are present at the constituent meeting, they may approve the by-laws under § 218.

Incorporation of an association

§ 226

(1) The society comes into existence on the date of registration in the public register.

(2) The application for registration of the society in the public register shall be made by the founders or by a person appointed by the constituent meeting.

(3) If the association is not entered in the public register within thirty days of the filing of the petition for registration, and if no decision to refuse registration is made within that period, the association shall be deemed to be entered in the public register on the thirtieth day after the filing of the petition.

§ 227

If the society continues to operate after its registration in the public register has been refused, the provisions on the society shall apply.

Subsidiary association

§ 228

(1) The legal personality of a subsidiary society is derived from the legal personality of the main society. A subsidiary society may have and acquire rights and obligations to the extent determined by the statutes of the main society and entered in the public register.

(2) The name of the subsidiary society must contain a characteristic element of the name of the main society and express the characteristics of the subsidiary society.

§ 229

- (1) A subsidiary society comes into existence on the date of registration in the public register.
- (2) The application for registration of a subsidiary society in the public register is made by the main society.
- (3) If a decision on registration or on refusal of registration is not made within thirty days of the filing of the application for registration, the affiliated society shall be deemed to be registered in the public register.
- (4) The main society shall be jointly and severally entitled and liable with the subsidiary society for legal actions of the subsidiary society arising before the date of its registration in the public register. From the date of registration of the subsidiary association in the public register, the main association shall be liable for the debts of the subsidiary association to the extent specified in the statutes.

§ 230

- (1) The dissolution of the main society also dissolves the subsidiary society.
- (2) The main society does not cease to exist until all subsidiary societies have ceased to exist.

Membership**§ 232**

- (1) Unless otherwise provided in the bylaws, membership in the society is attached to the person of the member and does not pass to the member's successor.
- (2) If a member of the association is a legal person, the statutory body represents the legal person, unless the legal person appoints another representative.

§ 233

- (1) After the formation of a society, membership may be acquired by admission as a member or in any other manner specified in the statutes.
- (2) Whoever applies for membership of the society thereby indicates his intention to be bound by the statutes from the time he becomes a member of the society.
- (3) Admission to membership shall be decided by the body designated by the statutes, otherwise by the supreme body of the society.

§ 234

It shall be understood that the creation of membership in a subsidiary society also creates membership in the main society; this shall also apply to the termination of membership.

§ 235

The constitution may determine the amount and payment of membership subscriptions, or may determine which body of the society shall determine the amount and payment of membership subscriptions and in what manner.

§ 236**List of Members**

- (1) Where a society maintains a list of members, the by-laws shall determine the manner in which entries and deletions relating to the membership of persons in the society are to be made in the list of members. The by-laws shall also determine how the list of members shall be made available or that it shall not be made available.
- (2) Every member, even a former member, shall, on request, receive from the Society at its expense a certificate containing an extract from the list of members containing particulars of his or her person or, where appropriate, a certificate stating that such

particulars have been deleted. In the place of a deceased member, his spouse, child or parent may apply for a certificate, and if none of these is present, another person close to him or an heir may apply for a certificate if he shows an interest worthy of legal protection.

(3) A list of members may be published with the consent of all the members appearing on it; where an incomplete list of members is published, it shall be apparent that it is incomplete.

Extinction of membership

§ 237

Membership in the society shall cease by resignation, expulsion, or other means specified in the constitution or by law.

§ 238

Unless otherwise provided in the by-laws, membership shall lapse if a member fails to pay the membership fee even within a reasonable time specified by the association in a subsequent notice to pay, although he or she has been advised of this consequence in the notice.

§ 239

(1) Unless the statutes provide otherwise, the association may expel a member who has seriously breached an obligation arising from membership and has failed to remedy the breach within a reasonable time, even after notice from the association. A notice is not required if the breach of duty cannot be remedied or if it has caused particularly serious damage to the association.

(2) The expulsion decision shall be served on the expelled member.

§ 240

(1) Unless the constitution specifies otherwise, the decision to expel a member shall be made by the statutory body.

(2) Unless the statutes otherwise provide, a motion for expulsion may be made in writing by any member; the motion shall state the circumstances evidencing the grounds for expulsion. The member against whom the motion is made shall be given an opportunity to be acquainted with the motion for expulsion, to ask for an explanation thereof, and to state and prove anything in his favour.

§ 241

(1) A member may, within fifteen days of receipt of the decision in writing, request that the decision to expel him be reviewed by the arbitration committee, unless the constitution specifies a different body.

(2) The competent body shall revoke the decision to expel a member if the expulsion is contrary to law or the statutes; it may also revoke the decision to expel a member in other justified cases.

§ 242

A member who has been expelled may, within three months of receipt of the final decision of the association on his or her expulsion, petition the court to rule that the expulsion is invalid; otherwise, this right shall lapse. If he has not been served with the decision, the member may bring the application within three months of the date on which he became aware of it, but not later than one year from the date on which his membership was entered in the register of members following the decision to expel him; otherwise this right shall lapse.

Organisation of the association

§ 243

The organs of the association shall be the statutory body and the supreme body, the control committee, the arbitration committee, if any, and other bodies specified in the statutes. The statutes may name the organs of the association arbitrarily, provided that this does not give a misleading impression of their nature.

§ 244

The statutes shall determine whether the statutory body is collective (committee) or individual (chairman). Unless the statutes provide otherwise, the members of the statutory body shall be elected and removed by the supreme body of the association.

§ 245

A resolution of a members' meeting or other body which is contrary to good morals, or amends the constitution so that its contents contravene the coercive provisions of the Act, shall be treated as if it had not been passed. This shall apply even if a resolution is passed on a matter on which that body has no power to decide.

§ 246

(1) Unless the constitution specifies the term of office of the members of the elected bodies of the society, the term of office shall be five years.

(2) Unless the constitution otherwise provides, members of the elected bodies of the society whose number has not fallen below half may co-opt substitute members until the next meeting of the body responsible for the election.

(3) Unless the statutes provide otherwise, the provisions of § 156 and § 159(2) and the provisions of the members' meeting shall apply mutatis mutandis to the convocation, meetings and decisions of the collective bodies of the association.

§ 247

Supreme body of an association

(1) The statutes determine which body is the supreme body of the association; its competence generally includes determining the main focus of the association's activities, deciding on amendments to the statutes, approving the association's financial results, evaluating the activities of other bodies of the association and their members, and deciding on the dissolution of the association with liquidation or on its conversion.

(2) If, according to the statutes, the statutory body of the association is also its supreme body and is unable to perform its duties for more than one month, at least one fifth of the members of the association may convene a meeting of all the members of the association; the powers of the supreme body of the association shall pass to the meeting. This shall not apply if the statutes provide otherwise.

(3) Unless the statutes provide otherwise, the highest organ of the association shall be the general meeting; the provisions of § 248 to 257 shall apply to the general meeting unless the statutes provide otherwise.

Members' meeting

§ 248

(1) A membership meeting shall be called to order by the statutory body of the society at least once a year.

(2) The statutory body of the association shall convene a meeting of the members on the initiative of at least one third of the members of the association or the supervisory body of the association. If the statutory body of the association fails to convene a meeting of the members within thirty days of receipt of the initiative, the person who submitted the initiative may convene a meeting of the members at the expense of the association itself.

§ 249

(1) A meeting of the members shall be convened in an appropriate manner within the period specified in the constitution, otherwise at least thirty days before the meeting. The place, time and agenda of the meeting shall be clear from the invitation.

(2) If a meeting is called under § 248, the agenda may be changed against the motion stated in the motion only with the consent of the mover of the motion.

(3) The place and time of the meeting shall be so determined as to be as least restrictive as possible on the ability of members to attend.

§ 250

(1) Whoever convened the meeting may recall or adjourn it in the same manner as it was convened. If this happens less than one week before the date of the meeting as notified, the society shall reimburse the members who attended the meeting as invited for the expenses reasonably incurred.

(2) Where a meeting is convened under § 248, it may not be cancelled or adjourned except on the motion or with the consent of the person who gave the requisition.

§ 251

Any member shall be entitled to attend a meeting and to request and receive an explanation of the affairs of the Society at that meeting if the explanation requested relates to the business of the meeting of the members. If a member requests at a meeting a disclosure of facts which the law forbids to be made public or the disclosure of which would cause serious harm to the association, it cannot be given to him.

§ 252

(1) A meeting of the members of the Society shall be capable of transacting business if a majority of the members of the Society are present. Resolutions shall be passed by a majority of the members present at the time of the meeting; each member shall have one vote.

(2) If the by-laws, in regulating the various kinds of membership of the society, specify that only an advisory vote is attached to a particular kind of membership, that vote shall be disregarded for the purposes of paragraph 1.

§ 253

(1) Whoever calls the meeting to order shall verify that the membership is quorate. He or she shall then arrange for the election of the chairman of the meeting and, if necessary, of such other officers as may be required by the constitution.

(2) The chairman shall conduct the meeting as the agenda has been announced, unless the meeting of members decides to close the meeting early.

(3) A matter which was not on the agenda when the meeting was announced may be decided only with the presence and consent of all members of the Society entitled to vote on it.

§ 254

(1) The statutory body of the society shall cause minutes of the meeting to be taken within thirty days of the conclusion of the meeting. If this is not possible, the minutes shall be drawn up by the person who chaired the meeting or who has been authorised to do so by the general meeting.

(2) The minutes shall show who convened the meeting and how, when it was held, who opened it, who chaired it, what other officers, if any, were elected by the members, what resolutions were passed and when the minutes were taken.

(3) Any member of the society may inspect the minutes of the meeting subject to the conditions specified in the constitution. Unless the statutes provide otherwise, this right may be exercised at the registered office of the association.

§ 255

Partial members' meeting

The constitution may specify that a meeting of the members shall be held in the form of a partial members' meeting or may also specify which matters cannot be decided in this way. If the statutes permit the holding of partial membership meetings, they shall also specify the period within which all meetings must be held. The members present and the votes cast shall be counted for quorum and for the adoption of resolutions.

§ 256

Assembly of Delegates

- (1) The bylaws may provide that the business of the membership meeting shall be performed by the assembly of delegates.
- (2) Each delegate shall be elected by an equal number of votes. If this is not readily possible, the bylaws may provide for a reasonable variance for the election of delegates.

§ 257

Alternate session of members' meeting

- (1) If a meeting of the members is unable to hold a quorum at its meeting, the statutory body or the person who convened the original meeting may convene a new meeting of the members by invitation within fifteen days of the previous meeting for a substitute meeting. The invitation shall make it clear that it is a replacement meeting of the members. The alternative meeting of the members must be held not later than six weeks from the date on which the meeting of the members was previously convened.
- (2) At a substitute meeting, a membership meeting may only discuss business on the agenda of the previous meeting. It may pass a resolution with any number of members present, unless the constitution specifies otherwise.
- (3) If a general meeting decides at a sub-meeting of the members or if the assembly of delegates decides instead, paragraphs 1 and 2 shall apply mutatis mutandis.

Invalidity of a decision of a body of the association

§ 258

Any member of an association or one who has an interest worthy of legal protection may petition the court to rule that a decision of an organ of the association is invalid because it is contrary to the law or to the statutes, if the invalidity cannot be invoked before the organs of the association.

§ 259

The right to invoke the nullity of a decision expires within three months of the date on which the claimant knew or could have known of the decision, but not later than one year after the decision was taken.

§ 260

- (1) The court shall not declare the decision void if there has been a breach of the law or the statutes without serious legal consequences and if it is in the interests of the association worthy of legal protection not to declare the decision void.
- (2) The court shall not declare a decision void even if it would substantially prejudice a right of a third party acquired in good faith.

§ 261

- (1) If the association has violated a member's fundamental membership right in a material way, the member is entitled to reasonable compensation.
- (2) If the association objects, the court shall not award the member the right to relief if it has not been asserted

- a) within the time prescribed for bringing an application for annulment of the decision, or
- b) within three months from the date on which the decision dismissing the application becomes final, if the application was dismissed under § 260.

Supervisory committee

§ 262

(1) If the statutes establish an audit committee, it is required to have at least three members. Unless the statutes provide otherwise, the members of the audit committee shall be elected and removed by the members' meeting. If the statutes provide that the members of the audit committee shall be appointed or removed by the statutory body, this shall not be taken into account.

(2) Unless the statutes provide for further restrictions, membership of the audit committee shall not be compatible with membership of the statutory body of the association or with the office of liquidator.

§ 263

The Audit Committee shall see that the affairs of the association are properly conducted and that the association carries on its business in accordance with the statutes and the law, unless the statutes confer other powers on it. If the Audit Committee finds deficiencies, it shall draw the attention of the statutory body and other bodies designated by the statutes to them.

§ 264

Within the scope of the audit committee's competence, its authorised member may inspect the documents of the association and request explanations from members of other bodies of the association or from its employees on individual matters.

Arbitration committee

§ 265

If an arbitration committee is established, it shall decide disputed matters belonging to the association to the extent determined by the bylaws; if the bylaws do not determine the scope of the arbitration committee, it shall decide disputes between the member and the association concerning the payment of dues and review decisions to expel a member from the association.

§ 266

(1) Unless otherwise provided in the bylaws, the arbitration committee shall have three members, who shall be elected and removed by the membership or by a meeting of the members of the association.

(2) A member of the Arbitration Commission may only be a person of good character, of full age and legal capacity, who does not act as a member of the statutory body or the Audit Committee of the Association. If no one has proposed that the election of a member of the arbitration commission be declared void for lack of integrity, it shall be deemed, subject to any change of circumstances, that a person of integrity has been elected.

(3) A member of the arbitration board who is prevented by the circumstances of the case from exercising, or is likely to be prevented from exercising, impartial judgment shall be disqualified from serving on the arbitration board.

§ 267

Proceedings before an arbitration board are governed by different legislation.

§ 268

Dissolution of an association

(1) The court shall dissolve the society with winding up on the petition of a person having a legitimate interest therein, or even without a petition, if the society, although notified by the court,

- a) engages in an activity prohibited in § 145,
- b) engages in activity in violation of § 217,
- c) compels third parties to join, participate in, or support the association, or
- d) prevents members from leaving the association.

(2) The provisions of § 172 are not affected.

Liquidation of an association

§ 269

(1) On the winding up of the society with liquidation, the liquidator shall draw up an inventory of the assets and make it available at the registered office of the society to all members.

(2) The liquidator shall, against payment of costs, issue an inventory of the assets to any member who so requests.

§ 270

(1) If a liquidator cannot otherwise be called, the court shall appoint a member of the statutory body as liquidator without his consent. If this is not possible, the court shall appoint a member of the association as liquidator without his consent.

(2) A liquidator appointed under paragraph 1 may not resign but may apply to the court to be discharged from office if he proves that he cannot fairly be required to hold office.

§ 271

The liquidator shall only realise the liquidation property to the extent necessary to meet the debts of the society.

§ 272

(1) The liquidator shall deal with the balance of the liquidation in accordance with the articles.

(2) If the liquidation balance cannot be disposed of in accordance with the articles, the liquidator shall offer the liquidation balance to an association with a similar purpose. If that is not possible, the liquidator shall offer the liquidation balance to the municipality in whose territory the association has its registered office. If the municipality does not accept the offer within two months, the liquidation balance shall be acquired by the county in whose territory the association has its registered office. If the municipality or the county acquires the liquidation balance, it shall be used only for a publicly beneficial purpose.

§ 273

If the association has received earmarked benefits from the public budget, the provisions of § 272 shall not apply and the liquidator shall dispose of the relevant part of the liquidation balance in accordance with the decision of the competent authority.

Merger of associations

§ 274

The participating societies enter into a merger agreement as a society merger agreement or as a society amalgamation agreement.

§ 275

A merger agreement shall include at least the name, registered office and identifying information of each of the participating societies, indicating which society is the

surviving and the successor society, and the record date.

§ 276

(1) The agreement for the amalgamation of the societies also contains provisions about the constitution of the successor society.

(2) If the merger results in a change to the constitution of the successor society, the merger agreement shall also contain a provision for that change.

§ 277

(1) Together with the draft merger agreement, the members of the statutory bodies of the participating societies shall draw up a report explaining the economic and legal reasons for and consequences of the merger. The report may also be drawn up as a joint report for all the participating associations.

(2) A report explaining the economic and legal reasons for and consequences of the merger need not be drawn up if all the members of the participating society are members of its statutory or supervisory body or if all the members of the participating society agree.

§ 278

A meeting of the members to which the draft merger agreement is to be submitted for approval must be announced by the person calling it at least thirty days before the meeting. Within that period, they must be made available to all members

a) the draft merger agreement,

b) the constitution of the successor society,

c) a statement of the assets and liabilities of all participating societies not more than six months old, and

d) a report explaining the economic and legal reasons and consequences of the merger, if one is required.

§ 279

(1) The participating societies shall publish a joint notice at least thirty days before the meeting of the members, stating which societies are affected by the merger and which society will become the successor society.

(2) If the society is not a recipient of public benefits, has a negligible number of creditors and the total amount of debts is negligible, it shall be sufficient if it serves notice on known creditors.

§ 280

If a creditor of a participating society files a claim within six months of the date on which the merger registration became effective against him, he is entitled to sufficient security if the recoverability of the claim deteriorates. If the creditor proves that the recoverability of the claim will deteriorate substantially as a result of the merger, he shall be entitled to sufficient security before the merger is entered in the public register.

§ 281

(1) The draft merger agreement shall be approved by the membership meetings of the participating societies. The membership meeting may only approve or reject the draft merger agreement.

(2) A meeting of the membership meetings of the participating societies may also be convened as a joint meeting. In that case, the members' meetings of the participating societies shall vote separately on the draft merger agreement. However, if, after approval of the draft merger agreement, members of the organs of the successor society are elected, the members' meetings of the participating societies may decide to vote on those members jointly.

§ 282

Whoever signs the draft merger agreement on behalf of a participating society shall, among other particulars, add to his signature a statement that the draft agreement has been approved by a general meeting of the society and when this was done. The merger agreement shall be adopted by a resolution of the membership meeting of the last of the participating societies approving the draft merger agreement and signing it on behalf of that society.

§ 283

A motion to invalidate the merger agreement may only be filed together with a motion to invalidate the resolution of the membership meeting approving the agreement. Only the participating association or the person entitled to file a motion for annulment of the membership meeting has the right to seek annulment.

§ 284

(1) The application for registration of the merger in the public register shall be made jointly by all the societies involved. In the case of a merger by amalgamation, the members of the statutory body of the acquiring association shall also sign the application.

(2) On the basis of the proposal, the competent authority shall register the merger by deleting the merging associations in the public register on the same date, noting who their successors are and, in the event of a merger

a) by merger shall note for the successor society the effective date of the merger and the names, registered office addresses and identifying details of the societies which have merged with the successor society and any other changes to the successor society, if any, as a result of the merger,

b) by merger, shall register the successor society and record with it the names, registered office addresses and identifying particulars of the societies which are its predecessors in title.

§ 285

A merger agreement cannot be amended or cancelled after the merger has been registered in the public register.

§ 286

On registration of the merger, the members of the dissolving society acquire membership in the successor society.

§ 287

(1) If the participating societies do not file a proposal for registration of the merger within six months from the date on which the merger agreement was concluded, the participating society which was prepared to file the proposal may withdraw from the merger agreement. If only one party withdraws from the contract, the obligation of all the parties created by the contract is extinguished.

(2) If the participating societies do not file a proposal for registration of the merger within one year from the date on which the merger agreement was concluded, all participating societies shall be deemed to have withdrawn from the agreement.

(3) Jointly and severally with the society which caused the proposal for registration of the merger not to be filed in time, the members of its statutory body, except those who prove that they made sufficient efforts to ensure that the proposal was filed in time, shall indemnify the other societies against any damage resulting therefrom.

De-merger of an association**§ 288**

(1) In a division by merger, the participating societies enter into a deed of division.

(2) The separation agreement shall contain at least

- a)** the name, registered office and identifying information of the participating societies, indicating which society is the dissolving society and which are the successors,
- b)** specifying what assets and debts of the dissolving society are being taken over by the successor societies,
- c)** determining which employees of the dissolving society become employees of each successor society,
- d)** the record date.

(3) If, as a result of a division by amalgamation, the constitution of any of the successor societies is altered, the deed of division shall also contain an agreement to that effect.

(4) Unless the articles of division provide otherwise, each member of the dissolving society shall, on the effective date of the division, acquire membership in all successor societies.

§ 289

(1) In the event of a demerger with the formation of new societies, the demerging society shall execute a draft of the demerger.

(2) The draft shall contain at least

- a)** the name, registered office and identifying information of the participating societies, indicating which society is the dissolving society and which are the successors,
- b)** specifying what assets and debts of the dissolving society are being taken over by the successor societies,
- c)** determining which employees of the dissolving society become employees of each successor society,
- d)** the draft constitution of the successor societies,
- e)** the record date.

(3) Unless the draft division provides otherwise, each member of the dissolving society shall acquire membership in all successor societies on the effective date of the division.

§ 290

(1) If it is not clear from the division agreement or the draft division what property passes from the society being divided to the successor societies, the successor societies shall be deemed to be co-owners of such property.

(2) If it is not clear from the deed of division or the draft deed of division what debts pass from the society being divided to the successor societies, the successor societies shall be jointly and severally liable for such debts.

§ 291

(1) In the case of a division by merger, the merger provisions apply *mutatis mutandis*.

(2) In the event of a division with the establishment of new associations, the statutory body of the association being divided shall draw up a report explaining the economic and legal reasons for and consequences of the division together with the draft of the division. The report need not be drawn up if all the members of the association are members of its statutory body or if all the members of the association agree to it.

§ 292

(1) A meeting of the members to which a deed of division or a draft deed of division is to be submitted for approval must be given at least thirty days' notice by the person calling it.

(2) Within the time limit referred to in [paragraph 1](#), the association shall make available to all members at its registered office a report of the statutory body explaining the economic and legal reasons for and consequences of the division, if one is required. The report shall contain,

a) if the division is a merger, a draft of the division agreement, the statutes of the successor society and a statement of the assets and liabilities of all the participating societies not more than six months old, or

b) where the division is a division with the formation of new societies, a draft of the division, a statement of the assets and liabilities of the society being divided, as well as the opening balance sheet and draft articles of association of the successor societies.

§ 293

(1) Not less than thirty days before the meeting of the members, the society to be divided shall publish a notice stating which society is affected by the division and which societies will become its successor societies. In the notice, the society being divided shall also notify creditors of their right under [§ 301](#).

(2) If the society is not a public beneficiary, has an insignificant number of creditors and the total amount of the debt is insignificant, it is sufficient if it serves notice on known creditors.

§ 294

(1) The distribution agreement shall be approved by the membership meetings of the participating societies. The provisions of [§ 282](#) shall apply mutatis mutandis.

(2) The draft division shall be approved by the members' meeting of the society being divided.

(3) The membership meeting may only approve or reject the separation agreement or the project of separation.

§ 295

(1) The society to be divided shall file a petition for registration of the division in the public register. If the division is by merger, the society being divided and the successor society shall file a joint application.

(2) On the basis of the proposal, the competent authority shall register the division by deleting the dissolved association from the public register on the same date, noting who its successor in title is and, in the event of a division

a) by amalgamation shall note for the successor society the effective date of the division by amalgamation and the name, registered office address and identifying information of the society which amalgamated with the successor society and any other changes to the successor society, if any, as a result of the division,

b) with the formation of the new society, make a registration of the successor society and note the name, registered office address and identifying information of the predecessor society.

§ 296

After the registration of the division in the public register, the division agreement or the draft division cannot be amended or cancelled.

§ 297

(1) If, on a division by amalgamation, the participating societies do not file a proposal for registration of the division within six months of the date on which the division

agreement is executed, the participating society which was prepared to file the proposal may withdraw from the division agreement. If only one party withdraws from the agreement, the obligations of all the parties created by the agreement shall be extinguished.

(2) If, in the event of a division by merger, the participating societies do not file a proposal for registration of the division within one year from the date on which the division agreement was concluded, all participating societies shall be deemed to have withdrawn from the agreement.

(3) Jointly and severally with the society which caused the proposal for registration of the division not to be filed in time, the members of its statutory body, except those who prove that they made sufficient efforts to have the proposal filed in time, shall indemnify the other societies against any damage resulting therefrom.

§ 298

If the society being divided fails to file a petition for registration of the division when the division with the formation of new societies is effected within one year from the date on which the resolution to divide is passed, the resolution to divide is cancelled on the expiry of the time limit.

§ 299

(1) Each of the successor societies is jointly liable with the other successor societies for the debts transferred from the society being divided to the other successor society.

(2) If the divided society has its assets valued by an expert appointed by the court under another law, including a separate valuation of the assets passing to each successor society, and complies with the disclosure obligation under § 269, each successor society shall be liable for the debts under paragraph 1 only to the extent of the net assets acquired by the division.

(3) The right of liability under paragraphs 1 and 2 cannot be exercised by creditors who have received security under § 300.

§ 300

If a creditor of a participating association files a claim within six months of the date on which the registration of the distribution became effective against him, he is entitled to sufficient security if he proves that the recoverability of the claim will be impaired. If the creditor proves that the recoverability of the claim will be substantially impaired as a result of the division, he shall be entitled to sufficient security before the division is entered in the public register.

§ 301

(1) Any person whose legal interests are affected by the division has the right to be notified by any of the participating societies within one month of receipt of the application as to what assets are transferred by the division to each of the successor societies.

(2) If the debtor of a defunct society is not told who is a creditor of the society after the division, he may pay any of the successor societies. If a creditor of a defunct society is not told who is its debtor after the division of the society, he may demand performance from any of the successor societies.

§ 302

If the articles of association provide that a decision on the merger or division of an association is to be taken by a body other than a members' meeting, the provisions relating to the merger or division of an association shall apply mutatis mutandis to the decision of that body.

Section 3

Endowed institutions

Subsection 1

Endowed institutions in general

§ 303

A foundation is a legal entity created by assets set aside for a specific purpose. Its activities are linked to the purpose for which it was established.

§ 304

The foundation is established by the act of incorporation or by law, which must also specify its assets and purpose.

§ 305

The internal affairs of a foundation are governed by its statutes.

Subsection 2

Foundations

§ 306

(1) The founder establishes a foundation to permanently serve a socially or economically useful purpose. The purpose of the foundation may be both public benefit, if it consists in promoting the general welfare, and charitable, if it consists in supporting a particular class of persons, whether individually or otherwise.

(2) It is prohibited to establish a foundation for the purpose of supporting political parties and movements or otherwise participating in their activities. It shall be prohibited to establish a foundation exclusively for profit-making purposes. If a foundation fulfils a prohibited purpose, the court shall, even without a petition, dissolve it and order its liquidation.

§ 307

(1) A foundation may engage in business if the business is merely incidental and the proceeds of the business are used only to further its purpose; however, a foundation may not engage in business if the founder has excluded it in the foundation's charter. Under the same conditions, the foundation may take over the management of a commercial company.

(2) A foundation may not be an unlimited liability partner of a corporation.

§ 308

(1) The name of the foundation includes the word "foundation."

(2) A regular part of the name of the foundation is a designation indicating its purpose.

Formation of a foundation

§ 309

(1) A foundation is established by a foundation deed, which may be a charter of incorporation or an acquisition on death.

(2) A foundation's instrument of incorporation is made by one or more persons.

(3) If more than one person stands on the part of the founder of the foundation, they shall be deemed to be the sole founder and shall act unanimously in the affairs of the foundation; if any of these persons refuses to consent without good cause, the court shall, on the application of any of the other founding persons, substitute its decision.

(4) A foundation charter requires the form of a public deed.

§ 310

The foundation's charter shall include at least

a) the name and registered office of the foundation,

- b)** the name of the founder and his residence or registered office,
- c)** a statement of the purpose for which the foundation is established,
- d)** an indication of the amount of each founder's contribution,
- e)** an indication of the amount of the endowment capital,
- f)** the number of members of the board of trustees as well as the names and residences of its first members and an indication of the manner in which the members of the board of trustees act for the foundation,
- g)** the number of members of the supervisory board and the names and residence of its first members, or, if no supervisory board is established, the name and residence of the first auditor,
- h)** the designation of the custodian of the deposits and
- i)** the conditions for making foundation contributions, or the range of persons to whom they may be made, or the range of activities which the foundation may carry out in relation to its purpose, or a determination that these particulars shall be laid down in the statutes of the foundation.

§ 311

(1) When a foundation is established by a death benefit, a contribution is made to the foundation by calling the foundation heir or by ordering a bequest. In such a case, the creation of the foundation takes effect upon the death of the testator.

(2) If the foundation instrument is included in the acquisition on death, it shall contain at least

- a)** the name of the foundation,
- b)** a statement of the purpose for which the foundation is established,
- c)** an indication of the amount of the contribution,
- d)** an indication of the amount of the endowment; and
- e)** the conditions for making endowment contributions, or the range of persons to whom they may be made, or a determination that these particulars shall be laid down in the statutes of the foundation.

§ 312

(1) If the acquisition on death does not contain the other requisites set out in § 310, the person designated in the acquisition, otherwise the executor of the will, shall decide on them; this also applies if the testator has appointed the members of the board of trustees or the supervisory board and one of them has died, is not qualified to hold office or declines to do so.

(2) A decision under [paragraph 1](#) requires the form of a public deed.

§ 313

(1) If the foundation deed does not specify the subject matter of the deposit, the deposit obligation shall be in money.

(2) If the instrument of foundation specifies that the obligation to deposit is to be met by the deposit of a non-monetary object, and if this is not possible or if the value of the deposit does not reach the amount specified in the instrument of foundation when the obligation to deposit is met, the depositor shall be deemed to make up the difference in money.

§ 314

By-laws of a foundation

(1) The Foundation Statutes shall at least

a) the manner in which the organs of the foundation shall act and

b) the conditions for making foundation contributions, and, where appropriate, the range of persons to whom they may be made.

(2) If the founder does not issue the statutes of the foundation together with the foundation charter, the board of trustees shall, with the prior consent of the supervisory board, issue them within one month from the date of the foundation's establishment. Unless the foundation deed so excludes, changes to the statutes shall be decided by the board of trustees after prior approval by the supervisory board.

(3) The foundation shall publish the statutes by depositing them in the collection of documents. Anyone may inspect the statutes in the public register and may take extracts, copies or copies of them. The same right may also be exercised at the registered office of the Foundation.

§ 315

Incorporation of a foundation

(1) The Foundation comes into existence on the date of registration in the public register.

(2) The application for registration of the foundation in the public register shall be made by the founder; if this is not possible and if the founder has not specified otherwise, the application for registration shall be made on behalf of the foundation by its board of trustees.

§ 316

Changing the registered office of the foundation

Unless the foundation's charter so provides, the board of trustees may, with the prior approval of the supervisory board, change the registered office of the foundation. The decision to move the foundation's registered office abroad requires the approval of the court; the court shall not approve the transfer of the registered office unless there is a serious reason for it or if the change of registered office would jeopardise the legitimate interests of the persons to whom the foundation contributions are to be made.

Amendment to the foundation charter

§ 317

After the foundation has been established, the foundation charter may be amended to the extent and in the manner expressly reserved by the founder in the foundation charter to himself or to any of the foundation's organs.

§ 318

(1) If circumstances change after the foundation's formation so as to create a reasonable need in the foundation's interest to change its internal affairs, the founder may amend the foundation's charter, even though he or she has not reserved such a right in the foundation's charter; the validity of the amendment requires the consent of the board of directors and that the amendment does not affect the rights of third parties.

(2) An amendment to the foundation charter shall be published by the foundation; the amendment shall take effect three months after the date of publication. If, within that period, the person claiming that his rights have been affected by the amendment of the foundation charter applies to the court for a ruling that the amendment is invalid, the court may order that the effectiveness of the amendment of the foundation charter be postponed pending its decision.

(3) The provisions of paragraphs 1 and 2 shall not apply if the amendment to the foundation deed should relate to a part of it which the founder has determined in the foundation deed to be unalterable.

§ 319

(1) If there is no longer a founder and if circumstances change after the formation of the foundation so as to create a reasonable necessity in the interest of the foundation to change its internal affairs, the court may decide to amend the foundation charter on application by the foundation; the board of trustees must consent to the application.

(2) The court shall grant the motion if the proposed amendment of the foundation's charter does not affect the rights of third parties; at the same time, the intention of the founder evident from the foundation's charter must be as far as possible investigated and the conditions which the founder may have specified in the foundation's charter for such a case must be fulfilled.

(3) In deciding to amend the foundation deed, the court shall take into account the opinion of the supervisory board and shall take into account the interests of third parties worthy of legal protection.

§ 320

If the founder has expressly stated in the foundation charter that it is unalterable or that a certain part of it cannot be altered, it cannot be altered even by a court decision.

Special Provisions on Changing the Purpose of a Foundation**§ 321**

(1) If the foundation's charter does not confer a right to change the purpose of the foundation on the founder or any of the foundation's organs, the court may change that purpose on a motion of the foundation approved by the board of directors and the board of trustees. However, if the founder or the person designated in the foundation instrument does not agree to such a change, the court shall dismiss the motion.

(2) The foundation shall publish notice of the proposed change without undue delay after the filing of the motion. Any person having a legal interest may oppose the proposal in court within one month from the date on which the notice is published.

§ 322

If the achievement of the purpose of the foundation is impossible or difficult to achieve for reasons unknown or unforeseeable to the founder, the court shall, on the application of the founder or a person having a legal interest therein, replace the existing purpose of the foundation with a similar purpose, unless the foundation instrument provides otherwise.

§ 323

If there is no longer a founder, and if there is no longer a person to whom the founder has, if applicable, conferred the right to consent to a change in the purpose of the foundation or to refuse such consent, the court shall take into account the known intentions and wishes of the founder in deciding whether to change the purpose of the foundation, even if they are not apparent from the foundation instrument.

§ 324

Only a court may decide to change the purpose of a foundation from public benefit to charitable purpose if there is a particularly compelling reason to do so and the foundation instrument does not exclude it.

§ 325

When the purpose of the foundation changes, gifts made for the benefit of the original purpose and the proceeds must be used to make endowment contributions in accordance with the original purpose, unless the donor indicates a different intent.

§ 326

If the court changes the purpose of the foundation, it may also decide, without a motion, the extent to which and for how long the foundation will use the proceeds of

the endowment principal to make endowment contributions consistent with the original purpose. It shall determine that extent and duration whenever the equitable interest of the persons designated as beneficiaries of the foundation in relation to the original purpose of the foundation so requires. If the court changes the purpose of the foundation from a public benefit purpose to a charitable purpose and does not decide on this scope and duration, the foundation shall use the proceeds of the four-fifths to make endowment contributions in accordance with the original purpose for a period of five years from the date on which the change became effective.

Contributions to the Foundation

§ 327

(1) The amount of a contribution with an in-kind object cannot be determined by an amount greater than that determined as the value of the object of the contribution by an expert's report.

(2) If the object of the contribution to the foundation is non-monetary, it must satisfy the presumption of a permanent return and may not serve as security.

§ 328

(1) If the subject of the deposit is an investment security or a money market instrument under the law regulating capital market business, its value may also be determined by the weighted average of the prices at which trades in that security or instrument were made on a regulated market during the six months preceding the redemption of the deposit.

(2) Paragraph 1 does not apply if the value of the object of the deposit, determined in accordance with paragraph 1, is affected by exceptional circumstances which would materially alter it at the date of the fulfilment of the deposit obligation.

§ 329

(1) If the object of the deposit is an item other than an investment security or money market instrument under the law governing capital market business, the value may also be determined

a) the market value of the item as determined by a generally recognized independent expert using generally accepted valuation practices and principles not earlier than six months before the deposit obligation is satisfied, or

b) the amount of the valuation of the item in the financial statements for the financial year immediately preceding the deposit obligation if the item is valued at fair value under other law and if the auditor has audited the financial statements with an unqualified opinion.

(2) Paragraph 1 shall not apply if new circumstances have arisen which could materially alter the value of the deposit at the date of the deposit obligation.

§ 330

(1) Prior to the formation of the foundation, the deposit requirement shall be satisfied at least to the extent that the aggregate amount of the deposits is at least CZK 500,000.

(2) Prior to the establishment of the foundation, deposits into the foundation shall be accepted by the person designated by the foundation's charter as the custodian of the deposits. If his or her function ceases, the founder, or the executor of the will, or another authorised person, shall without undue delay appoint a new administrator of the deposits; if this is not possible, the board of trustees of the foundation shall appoint new administrators of the deposits. The provisions on the rights and obligations of members of bodies corporate shall apply mutatis mutandis to the rights and obligations of the trustee.

§ 331

(1) The deposit obligation is fulfilled by handing over the object of the deposit to the deposit manager. The foundation acquires ownership of the object of the deposit on the date of its creation, but if the law makes the acquisition of ownership subject to registration in a public register, the foundation shall acquire ownership of the object of the deposit only upon such registration.

(2) If the object of the deposit is in cash, it shall be deposited by the custodian of the deposit in a special account with a bank or savings and credit cooperative which he shall establish for and in the name of the foundation. Until the foundation is established, the person who maintains the account shall not allow disbursements or payments from the balance of the account unless it is proved that the foundation was not validly established; if the foundation was established by a death benefit, the court shall be required to rule on the invalidity of the establishment.

(3) If the object of the contribution is a thing entered in the public register, the depositor shall also deliver to the custodian of the deposits a declaration of the contribution; after the foundation has been established, its title shall be entered in the public register on the basis of this declaration. The signature of the depositor on the declaration shall be required to be certified.

§ 332

The deposit manager shall certify in writing to the person proposing the registration of the foundation in the public register who has made the deposit, when it was made, what the object of the deposit is and the aggregate amount of the deposit. If the trustee of the deposits confirms a higher amount of performance than the actual amount, he shall be liable up to the amount of the difference to the creditors for the debts of the foundation for a period of five years from the foundation's establishment.

§ 333

(1) The assumed object of the deposit shall be handed over by the deposit administrator to the foundation without undue delay after its creation.

(2) If the foundation does not come into existence, the deposit administrator shall return the object of the deposit to the person who paid or contributed it. The legal acts done by the trustee in administering the object shall also bind that person.

§ 334

(1) After the foundation is established, the endowment principal may be multiplied by endowment gifts or by a resolution to increase the endowment capital.

(2) If the non-cash object of the gift meets the requirement of a permanent return and does not serve as security, the gift is deemed to multiply the endowment principal.

Property of a foundation and endowment capital

§ 335

Foundation assets consist of endowment principal and other assets.

§ 336

(1) The endowment principal consists of a collection of items contributed to the endowment, including endowment gifts, if applicable.

(2) The endowment principal must have an aggregate value of at least CZK 500,000.

§ 337

The monetary expression of the endowment principal is the endowment capital. The amount of the endowment capital is recorded in the public register.

§ 338

(1) The Foundation shall use its assets in accordance with the purpose set out in the Foundation's charter and statutes and under the conditions specified therein to make endowment contributions, to carry out its own activities in pursuit of its purpose, and to

defray the costs of appreciation of the endowment principal and the costs of its own administration.

(2) A legal act by which a foundation assumes unlimited liability for another person shall not be considered.

§ 339

(1) What constitutes the endowment principal may not be pledged or otherwise used to secure the debt. This does not apply if the foundation operates a commercial establishment to the extent necessary for its continued operation.

(2) Something of the endowment principal may be alienated only if it does not contravene the will of the person who made the gift to the foundation or fulfilled the deposit obligation. Otherwise, something of the endowment principal may be disposed of only if it is for consideration included in the endowment principal or if the need for disposal is caused by a change in circumstances that could not have been foreseen and could not otherwise have been dealt with even with the exercise of due care.

§ 340

The Foundation shall handle the endowment principal with the care provided by this Act for the management of foreign property. If, under the provisions relating to the simple administration of foreign property, the consent of the beneficiary is required for a particular legal action, the prior consent of the person designated in the foundation instrument shall be required for such legal action; if no such person is designated, the prior consent of the board of trustees shall be required.

§ 341

(1) If the endowment capital or the turnover of the foundation in the preceding financial year amounts to at least ten times the amount provided for in § 330(1), the ordinary financial statements, the extraordinary financial statements and the consolidated financial statements shall be subject to audit by an auditor.

(2) The financial statements are also subject to audit if the financial statements are used to decide on an increase or decrease in the endowment capital or on the conversion of the foundation.

Increase in endowment capital

§ 342

(1) After the approval of the financial statements, the Board of Directors may, within one year from the date on which the information on which the financial statements were based was determined, decide to multiply the endowment principal and increase the endowment capital,

a) unless the increase in the endowment capital exceeds the difference between the amount of the endowment's own sources of financing of the endowment's assets shown on the liabilities side of the balance sheet and the endowment capital; and

b) unless the increase in endowment capital is made up of own resources that are earmarked and whose purpose the foundation is not authorised to change.

(2) The decision to multiply the endowment principal and increase the endowment capital shall include the amount by which the endowment capital is increased and the designation of the source from which the endowment capital is increased, according to the structure of the endowment's own sources of funding in the financial statements.

(3) If the foundation determines from any subsequently prepared financial statements that its own resources have decreased, the decision to increase the endowment capital shall be based on those financial statements.

§ 343

(1) Where the foundation increases the endowment capital by the amount of a gift of an item eligible to be contributed to the foundation, the extent of the increase in the

endowment capital shall not exceed its assessed value.

(2) The decision to increase the endowment capital shall include the amount by which the endowment capital is increased and a description of the item by which the endowment principal is increased, together with an indication of the value of the item and the manner in which that value was determined.

Decrease in endowment capital

§ 344

(1) Unless prohibited by the foundation's charter, a foundation may reduce the endowment capital by reducing the endowment principal if the interest in the more economical accomplishment of its purpose so requires. The endowment capital may be reduced by no more than an amount equal to one fifth of the amount of the endowment capital over a period of five years. The reduction of the endowment capital may not directly or indirectly cover the costs of administering the foundation.

(2) The decision to reduce the endowment capital shall contain the amount by which the endowment capital is reduced and the reason for which it is reduced.

§ 345

The endowment capital shall not be reduced to an amount less than 500,000 CZK.

§ 346

If the foundation loses any part of the endowment principal or if the value of the endowment principal decreases substantially, the foundation shall replenish the endowment principal without undue delay; if this is not well possible, it shall reduce the endowment capital to the extent corresponding to the loss.

Common Provisions

§ 347

Increases or decreases in the endowment capital shall be decided by the Management Board with the prior approval of the Supervisory Board.

§ 348

An increase or decrease in the endowment capital shall take effect on the date of its entry in the public register.

Affiliated Fund

§ 349

(1) A contract may entrust to a foundation, as an affiliated fund, the management of property eligible for contribution to the foundation and authorize the foundation to use the property for an agreed purpose if it is related to the foundation's mission; the use may not consist of supporting a political party or political movement.

(2) The contract requires a written form.

§ 350

If it is agreed that the foundation will administer an affiliated fund under a separate designation, the designation must include the words "affiliated fund". The designation must appear at the same time as the name of the foundation administering the affiliated fund.

§ 351

It shall be presumed that the foundation exercises simple management of the assets in the affiliated fund and that it does so for such remuneration as is usually required in similar cases.

§ 352

(1) Only the administering foundation has rights and obligations arising from the disposal of the associated fund. The assets in the affiliated fund shall be recorded by the foundation separately from its own assets.

(2) If the foundation is dissolved, the liquidator shall deal with the associated fund in such a way that its legal nature and purpose are preserved.

Foundation grant

§ 353

(1) A foundation may not make a foundation contribution to a person who is a member of its body or who is an employee of the foundation, or to a person close to them.

(2) Unless there are special reasons for this, brought about by a change of circumstances on the part of the founder, the foundation may not make a foundation contribution to its founder; if there are such reasons, the board of trustees shall decide after consulting the supervisory board or the auditor. This shall also apply in the case of a foundation grant to a person close to the founder, unless the foundation was established to support persons close to the founder.

§ 354

Anyone who has accepted a foundation contribution may use it only in accordance with the agreed terms and conditions; he or she must prove to the foundation, on request, how he or she has used it. Anyone who has used the foundation contribution contrary to the agreed conditions shall return it to the foundation as unjust enrichment.

§ 355

(1) A foundation may not make endowment contributions if the amount of the foundation's own funding sources of assets reported on the liabilities side of the balance sheet is less than the amount of endowment capital adjusted in accordance with [paragraph 2](#), or if it would be less than the adjusted amount of endowment capital as a result of making endowment contributions.

(2) To the amount of endowment capital shall be added for the purposes set out in [paragraph 1](#)

a) an increase in the endowment capital as a result of the adoption of an endowment capital or resolution, even if it has not yet been entered in the public register, and

b) its own resources which are earmarked and whose purpose the foundation is not entitled to change.

(3) The provisions of [paragraphs 1](#) and [2](#) shall not apply in the case of contributions made from gifts designated for that purpose by the donor.

§ 356

A person who has accepted in good faith a foundation contribution made in violation of [§ 355](#) is not required to return it.

§ 357

Cost of administration

The Foundation accounts separately for endowment contributions, other activities to fulfill the Foundation's purpose, and the costs of administering the Foundation.

Annual Report

§ 358

(1) The Foundation shall prepare an annual report by the end of the sixth month after the end of the previous financial year.

(2) The annual report shall include financial statements and a summary of all activities of the Foundation, including an evaluation of those activities.

(3) In the annual report, the foundation shall at least

- a)** an overview of its own assets and liabilities,
- b)** for individual endowment gifts, an overview of the persons who have made endowment gifts of more than 10,000 CZK,
- c)** a summary of how the foundation's assets were used,
- d)** a summary of the persons to whom a foundation contribution of more than 10,000 CZK was made,
- e)** an assessment of whether the foundation's management has complied with the rules for making endowment contributions under [§ 353 to 356](#), and a summary of the costs of self-management and
- f)** an assessment of the basic data in the annual financial statements and the auditor's report if the foundation is required to have its financial statements audited.

(4) If, after the publication of the report, a fact comes to light that justifies a correction of the report, the foundation shall make the correction without undue delay and publish it.

§ 359

(1) If the donor so requests, the Foundation shall not include the donor's details in the annual report. The recipient of the foundation's contribution has the same right. When making a foundation contribution of more than 10,000 CZK, only a person who has received a foundation contribution for humanitarian reasons, in particular for health reasons, may request anonymity.

(2) The Foundation shall preserve anonymity if the request is received by the beneficiaries before the approval of the annual report. However, a person who has received a foundation contribution on humanitarian grounds may exercise his right to anonymity at any time if the foundation has not advised him of his right when making the contribution; it shall be presumed that no such advice has been given.

§ 360

(1) The Foundation shall publish the Annual Report within thirty days of its approval by the Board of Trustees and shall also make it available at its registered office. If the foundation is not established as a public benefit, it shall be sufficient to make the annual report available at its registered office.

(2) If the board of trustees has not approved the annual report, the foundation shall make the annual report available in the manner provided for in [paragraph 1](#) no later than the end of the immediately following financial year and shall state that the annual report has not been approved and the reasons why.

§ 361

Anyone may inspect the annual report in the public register and make extracts, copies or copies of it. The same right may also be exercised at the registered office of the Foundation.

Foundation board

§ 362

The Governing Board is the statutory body of the Foundation; it has at least three members.

§ 363

Unless the foundation's charter specifies other restrictions, a person is not eligible for membership on the board of directors who

- a) is a member of the foundation's supervisory board,
- b) has an employment relationship with the foundation, or
- c) is not of good character in relation to the purpose of the foundation.

§ 364

Unless the foundation's charter specifies a different term of office for a trustee, the term of office of a trustee shall be five years. Unless the foundation's charter excludes it, a member of the board of trustees may be re-elected.

§ 365

(1) Unless the foundation charter specifies otherwise, the board of trustees shall elect and remove its own members.

(2) The foundation instrument may provide that a certain number of members of the board of trustees shall be elected from candidates proposed to the board of trustees by persons designated by the foundation instrument or by persons designated in the manner provided therein.

§ 366

Unless the foundation's charter provides for other grounds, the board of trustees shall remove from office a member who has seriously or repeatedly violated the foundation's charter or bylaws, or who has violated the law in a manner clearly detrimental to the reputation of the foundation. If it fails to do so within one month of the date on which it became aware of the reason for removal, but not later than six months from the date on which the reason arose, the court shall remove the member of the board of trustees from office on the application of a person who certifies a legal interest; the right to seek the removal of a member of the board of trustees shall lapse if it has not been exercised within one year from the date on which the reason for removal arose.

§ 367

(1) If the membership of the Board ceases, the Board shall elect a new member within three months. If it fails to do so, the court shall appoint a new member of the management board on the proposal of the supervisory board or on the proposal of a person who certifies a legal interest, for the period until the management board elects a new member.

(2) The court shall appoint a new member of the board of trustees even without a proposal if the board of trustees is unable to decide on a new election due to a decrease in the number of its members.

Supervisory Board

§ 368

(1) The Supervisory Board is the control and review body of the Foundation; it has at least three members.

(2) The Supervisory Board must be established if the foundation's capital amounts to at least ten times the amount set forth in [§ 330 paragraph 1](#).

§ 369

Unless the foundation's charter specifies further restrictions, a person is not eligible for membership on the supervisory board who

- a) is a member of the board of trustees or a liquidator,
- b) is in an employment relationship with the foundation, or
- c) is not of good character in relation to the purpose of the foundation.

§ 370

(1) If the foundation's charter or, within the limits of its designation, the foundation's statutes do not confer additional powers on the supervisory board, the supervisory board

a) shall see that the board of trustees exercises its powers in accordance with the law and in conformity with the foundation's charter and statutes,

b) monitors the fulfilment of the conditions laid down for the granting of endowment contributions,

c) draws the attention of the Board of Trustees to the deficiencies identified and makes proposals for their elimination,

d) monitors how the accounts are kept and reviews the annual, extraordinary and consolidated accounts,

e) comments on the annual report and

f) reports in writing to the Board of Directors at least once a year on its audit activities.

(2) The Supervisory Board shall represent the Foundation against the Trustees and in any matter where the interests of the Trustees conflict with the interests of the Foundation. For this purpose, the Supervisory Board shall delegate one of its members.

§ 371

(1) The Supervisory Board shall convene a meeting of the Board of Trustees unless the Chairman of the Board of Trustees does so on a proposal by the Supervisory Board.

(2) Within the scope of the Supervisory Board's authority, an authorized member of the Supervisory Board may inspect the Foundation's documents and request explanations from members of other bodies of the Foundation or its staff on particular matters.

§ 372

Unless the Foundation's charter provides otherwise, the Supervisory Board shall elect and remove its own members. For the election and removal of the members of the Supervisory Board and for their term of office, the provisions on the Administrative Board shall apply *mutatis mutandis*.

Inspector

§ 373

(1) If no supervisory board is established, the auditor shall exercise its powers.

(2) The foundation charter or the statutes of the foundation may provide that the function of auditor shall be performed by a legal person whose object of activity makes it possible to carry out control and audit activities and that this function shall be performed for an indefinite period of time.

§ 374

(1) For eligibility to be an auditor, § 369 applies similarly. If the auditor is a legal person, its rights and obligations related to the function of auditor may be exercised by its representative who meets the conditions under the first sentence.

(2) Unless the foundation charter specifies a shorter term, the term of office of the auditor shall be five years. The auditor may be re-elected, unless the foundation charter so provides.

§ 375

(1) Unless the foundation charter specifies otherwise, the board of directors shall elect and remove the revisor.

(2) Unless the foundation's charter specifies other grounds, the board of directors shall remove an auditor who has seriously or repeatedly violated the foundation's charter or bylaws, or who has violated the law in a manner clearly detrimental to the reputation of the foundation. If it fails to do so within one month of the date on which it became aware of the ground for removal, but not later than six months from the date on which the ground arose, the court shall remove the auditor on the application of a person who proves a legal interest; the right to seek removal of the auditor shall lapse if it has not been exercised within one year from the date on which the ground for removal arose.

Dissolution of Foundation with Liquidation

§ 376

If the purpose for which the foundation was established has been achieved, the foundation shall be dissolved and the board of trustees shall elect a liquidator.

§ 377

(1) The court shall dissolve the foundation with liquidation on the petition of a person having a legal interest therein or without a petition if

- a)** the foundation engages in an activity prohibited in § 145 or acts in violation of § 307,
- b)** the foundation becomes an unlimited liability partner of the corporation,
- c)** the foundation materially or repeatedly violates the prohibition against making a foundation contribution to a person listed in § 353,
- d)** the foundation does not make foundation contributions for more than two years without good cause,
- e)** the foundation disposes of endowment principal in violation of § 339,
- f)** the value of the endowment principal is reduced below 500,000 CZK, and that this condition continues for more than one year from the end of the fiscal year in which the reduction in the value of the endowment principal occurred,
- g)** the endowment principal has not produced any income for more than two years, or
- h)** it is not permanently possible for the foundation to continue to fulfill its purpose.

(2) This provision is without prejudice to § 172.

§ 378

(1) The liquidator shall monetize the liquidating assets to the extent necessary to satisfy the debts of the foundation. He shall dispose of the liquidation balance in accordance with the foundation's charter.

(2) If the foundation instrument of a public benefit foundation specifies that the liquidation balance is to be used for purposes other than public benefit, no account shall be taken of this.

§ 379

(1) If the foundation's charter does not specify how the liquidation balance is to be disposed of, the liquidator shall offer it to a foundation with a similar purpose. However, if there is good reason to do so, the board of trustees may decide that the liquidation balance shall be offered in preference to the municipality, county or state.

(2) If it is not reasonably practicable to offer the liquidating balance to a foundation with a similar purpose, or if an offer made under paragraph 1 is rejected, the liquidator shall offer the liquidating balance to the municipality in whose territory the foundation has its registered office. If the municipality does not accept the offer even within two months

from the effective date of the offer, the liquidation balance shall be acquired by the county in whose territory the foundation has its seat.

§ 380

If a municipality, county, or state acquires the liquidating balance, it shall use the liquidating balance only for a public benefit purpose.

§ 381

If the foundation has received earmarked benefits from the public budget, the provisions of § 378 shall not apply and the liquidator shall dispose of the relevant part of the liquidation balance in accordance with the decision of the competent authority.

Transformation of the Foundation

§ 382

(1) The transformation of a foundation may occur through its merger with another foundation or with an endowment fund, or by changing its legal form to an endowment fund.

(2) A foundation may be merged with another foundation or with an endowment fund if the foundation's charter does not preclude it and the persons involved serve the same or a similar purpose. In the case of a merger between a foundation and an endowment fund, the successor entity must be the foundation.

§ 383

(1) The merger agreement shall contain at least

- a) the name, registered office and identifying information of the persons involved, indicating which is the surviving and successor entity,
- b) an identification of the structure in which the successor entity takes over the non-liability components of the equity and foreign capital of the surviving entity,
- c) the amount of endowment capital if the surviving person is a foundation,
- d) an agreement to change the status of the surviving person if the merger results in such a change,
- e) the record date.

(2) Where foundations are merging, the amount of endowment capital under paragraph 1(c) is determined by the sum of the endowments of the merging foundations. In the event of a merger of an endowment fund with a foundation as a successor entity, the endowment capital may be increased under the conditions set out in § 342; in such a case, the merger agreement must contain the elements set out in § 342(2).

(3) The merger agreement requires the form of a public deed.

§ 384

(1) Prior to the execution of the merger agreement, the interested persons shall disclose their books and records to each other and provide other information and documents necessary to assess the legal and economic consequences of the merger.

(2) Whoever becomes aware of the information under paragraph 1 shall maintain the confidentiality of the facts which the law prohibits the disclosure of or the disclosure of which may cause serious harm to an interested person.

§ 385

The supervisory boards or auditors of the participating persons shall examine the accounts of each of the participating persons and prepare a report on the facts underlying their accounts, including an opinion on the draft merger agreement and the economic consequences of the merger; the report may also be prepared as a joint report for all participating persons.

§ 386

(1) If a report is prepared under § 385, the boards of directors of the interested persons shall decide on the merger. Notice of the board meeting shall be given at least thirty days before the meeting; within that period, each board member shall be given access to the

- a) the draft merger agreement,
- b) if the merger is to result in a change in the articles of the surviving entity, its articles of association,
- c) the financial statements of all the persons involved; if the financial statements are drawn up from information as at a date more than six months after the date of the draft merger agreement, the interim financial statements of the relevant person,
- d) the opening balance sheet of the surviving person and
- e) a report under § 385.

(2) The board of directors may only accept or reject the proposed merger agreement.

(3) If a meeting of the boards of directors of the interested persons is convened as a joint meeting, the individual boards shall vote separately on the draft merger agreement. However, if, after the approval of the agreement, members of the governing bodies of the surviving person are elected, the boards of directors of the participating persons may decide to vote jointly on those members.

§ 387

(1) The Interested Persons shall publish a joint notice at least thirty days prior to the board meeting specifying the persons affected by the merger and which of them will become the surviving person.

(2) If a creditor of an interested person files a claim within six months of the date on which the merger registration became effective against him, he shall be entitled to sufficient security if he proves that the recoverability of the claim will be impaired. If the creditor proves that the recoverability of the claim will be materially impaired as a result of the merger, he shall be entitled to sufficient security before the registration of the division in the public register.

§ 388

Only an interested person, a member of the board of directors, a member of the supervisory board or a reviser has the right to seek to invalidate the merger agreement; this right is extinguished if the petition is not filed within three months of the date on which the board of directors meeting was held.

§ 389

(1) The proposal for registration of the merger in the public register shall be filed jointly by all the persons concerned; the proposal shall also be signed by the members of the statutory body of the surviving person.

(2) On the basis of the proposal, the merger shall be registered by deleting the merging persons in the public register on the same date, noting who their successors are and, in the case of the successor person, indicating the effective date of the merger and the names, registered office addresses and identifying information of the persons who have merged with the successor person and any other changes in the successor person, if any, as a result of the merger.

§ 390

(1) If the interested persons do not file a petition for registration of the merger within six months after the date on which the merger agreement was executed, any of the interested persons who was prepared to file a petition may withdraw from the agreement. If even one party withdraws from the contract, the obligations of all the parties created by the contract are extinguished.

(2) If the interested parties do not file a proposal for registration of the merger within one year from the date on which the merger agreement was concluded, all interested parties shall be deemed to have withdrawn from the agreement.

(3) Jointly and severally with the interested person who caused the application for registration of the merger not to be filed in time, the members of its statutory body shall indemnify the other interested persons against any damage resulting therefrom, except for those who prove that they made reasonable efforts to have the application filed in time.

Change of legal form of a foundation to an endowment fund

§ 391

(1) If the foundation's charter expressly permits it, the board of trustees may, with the prior opinion of the board of trustees or the auditor, decide to change the legal form of the foundation to an endowment fund, but only if the value of the endowment principal has been reduced below the amount specified in § 330(1) for a non-transitory period.

(2) The decision to change the legal form must include

- a) designation of the foundation by name, registered office and identifying information,
- b) the name of the foundation after the change of legal form,
- c) the record date,
- d) details of the members of the foundation's bodies, which shall be entered in the public register.

(3) The decision requires the form of a public deed.

§ 392

A decision to change legal form takes effect on the date of registration in the public register.

§ 393

(1) At least thirty days prior to the meeting of the Board of Directors, the Foundation shall publish a notice of its intention to adopt a resolution to change its legal form.

(2) A creditor of the foundation who files his claim within six months of the date on which the registration of the change of legal form becomes effective against third parties may request that his claim be secured by sufficient security if the recoverability of the claim is impaired as a result of the change of legal form. If the creditor proves that the enforceability of his claim will be substantially impaired as a result of the change of legal form, he shall be entitled to sufficient security before the change of legal form is entered in the public register.

Subsection 3

Endowment Fund

§ 394

(1) The founder establishes an endowment fund for a purpose useful socially or economically.

(2) The name of the endowment fund must include the words "endowment fund."

§ 395

The endowment fund is established by a charter or by a death benefit.

§ 396

(1) The deed of incorporation contains at least

- a) the name and registered office of the foundation,

- b)** the name of the founder and his or her residence or registered office,
- c)** a statement of the purpose for which the endowment fund is established,
- d)** an indication of the amount of the contribution or, where appropriate, of its in-kind object,
- e)** the number of members of the board of trustees and the names and places of residence of the first members and an indication of the manner in which the members of the board of trustees act for the foundation,
- f)** the number of members of the board of trustees and the names and residence of its first members, or the name and residence of the first auditor,
- g)** the designation of the custodian of the deposits and
- h)** the conditions for making contributions from the assets of the endowment fund or defining the range of activities that the endowment fund may carry out in relation to its purpose.

(2) If the endowment fund is established by a death grant and if the founder does not specify either the manner of appointment of the first members of the administrative and supervisory boards or the first auditor, the executor of the will shall appoint them; otherwise they shall be appointed by the court on the motion of a person who certifies a legal interest therein.

§ 397

Incorporation of an endowment fund

The Endowment Fund comes into existence on the date of registration in the public register.

§ 398

(1) The assets of the Endowment Fund consist of the aggregate arising from deposits and donations, the object of which need not meet the requirement of a permanent return. What is in the endowment fund property may not be pledged or otherwise used to secure a debt; a legal act to the contrary shall be disregarded.

(2) The property of the endowment fund may be disposed of if it is consistent with the purpose of the endowment fund. It may also be used for an investment deemed prudent.

(3) An endowment fund does not create endowment principal or endowment capital.

§ 399

(1) If expressly permitted by the constituent instrument, the board of trustees may decide to change the legal form of the endowment fund to a foundation, subject to the prior opinion of the board of trustees or the auditor. The decision on the change of legal form must include at least the name, registered office and identifying information of the foundation and the requirements laid down for the foundation charter.

(2) The decision requires the form of a public deed.

§ 400

(1) At least thirty days prior to the board meeting, the foundation shall publish a notice of intent to change legal form.

(2) A creditor of the Foundation Fund who files his claim within six months of the date on which the registration of the change becomes effective against third parties may request that his claim be secured by sufficient security if the recoverability of the claim is impaired as a result of the change of legal form. If the creditor proves that the enforceability of his claim will be substantially impaired as a result of the change of legal form, he shall be entitled to sufficient security before the change of legal form is entered in the public register.

§ 401

(1) If it is not permanently possible for the endowment fund to continue to fulfil its purpose, the board of trustees shall decide to dissolve the endowment fund with liquidation and elect a liquidator.

(2) If the endowment fund does not fulfil the purpose for which it was established, the court shall dissolve it on the petition of a person who certifies a legal interest therein and order its liquidation.

Section 4

Institute

§ 402

An institute is a legal person established for the purpose of carrying on an activity useful socially or economically, using its personal and property component. The institute carries out an activity the results of which are equally accessible to everyone under conditions laid down in advance.

§ 403

If the Institute operates a commercial establishment or other ancillary activity, the operation shall not be detrimental to the quality, scope and availability of the services provided as part of the Institute's core business. Profits may be used by the Institute only to support the activity for which it was established and to defray the costs of its own administration.

§ 404

Name of the Institute

The name of the institute must include the words "registered institute", but the abbreviation "z.ú."

§ 405

Formation of an institute

(1) An institute is established by a charter of incorporation or by acquisition on death. The instrument of incorporation shall contain at least

- a)** the name of the institute and its registered office,
- b)** the purpose of the institute by defining its object and, where appropriate, the object of its business,
- c)** an indication of the amount of the contribution or, where appropriate, its non-monetary object,
- d)** the number of members of the board of directors and the names and places of residence of its first members, and
- e)** details of the internal organization of the Institute, unless its regulation is reserved by the statutes of the Institute.

(2) If the constituent act establishes a supervisory board, it shall specify the number of members of the supervisory board and the names and residences of its first members.

§ 406

(1) The founder decides on changes to the constituent legal acts, even during the lifetime of the institute.

(2) If the decision of the founder is not possible, the person designated by the founding legal act acquires his rights against the institute to the extent specified therein, otherwise the board of directors acquires them; in such case, however, the prior consent of the court is required for the decision of the board of directors to change the purpose of the institute or to dissolve it.

§ 407

Incorporation of an institute

The Institute is established by registration in the public register.

§ 408

Director

(1) The Director is the statutory authority of the Institute. The statutes may choose another designation for this body, provided that this does not give a misleading impression of its nature.

(2) The director may not be a member of the board of directors and, if a supervisory board or other body of a similar nature has been established, a member of such a body. If a person convicted of a deliberate criminal offence has been elected as a director, the election shall be disregarded.

Board of trustees

§ 409

(1) Unless the constituent instrument specifies otherwise, the founder shall appoint and remove the members of the board of directors. If this is not possible, the Supervisory Board, if established, shall elect and remove the members of the Management Board; otherwise, the Management Board shall elect and remove its own members.

(2) Unless the constituent instrument specifies otherwise, the term of office of a member of the Management Board shall be three years. Unless the constituent instrument so provides, a member of the board may be re-elected; however, if the board elects and removes its own members, the same person may be re-elected for a maximum of two consecutive terms.

(3) Where a supervisory board has been established, membership of the board of directors and of the supervisory board shall be incompatible.

§ 410

The Board of Trustees elects and removes the Director, supervises the exercise of the Director's authority, and decides on the Institute's legal actions vis-à-vis the Director; unless otherwise specified, the Chairman of the Board of Trustees expresses the will of the Institute in these legal actions.

§ 411

(1) The Board of Trustees approves the budget, the ordinary and extraordinary accounts and the annual report of the Institute.

(2) The Board of Trustees decides on the opening of a commercial establishment or other ancillary activity of the Institute, or on a change in its object, unless the constituent legal acts provide otherwise.

§ 412

(1) Unless the constituent instrument specifies further restrictions, the board of directors shall give prior approval to the legal action by which the institute

- a) acquires or loses title to immovable property,
- b) encumbers the immovable property,
- c) acquires or disposes of a copyright or industrial right or
- d) incorporates another legal person or participates in such person by contribution.

(2) Unless the founding legal act specifies otherwise, the Board of Directors shall also grant prior approval to a legal act by which the Institute acquires or loses ownership of a movable asset whose value exceeds the value of a small-scale contract under the law governing public procurement.

§ 413

By-laws of an institute

(1) If the constituent legal act so determines or if it is expedient, the Board of Directors shall issue the Statutes of the Institute and shall regulate therein the internal organization of the Institute and the details of its activities.

(2) The Institute shall publish the statutes by depositing them in the collection of documents. Anyone may consult the statutes in the public register and take extracts, copies or extracts from them. The same right may also be exercised at the seat of the Institute.

§ 414

If the constitution does not specify that the members of the organs of the Institute shall be entitled to remuneration for the performance of their functions and the manner of determining such remuneration, the Director shall be entitled to the usual remuneration and the functions of the members of the other organs shall be deemed to be honorary. In such a case, the amount of the Director's remuneration or the method of determining it shall be determined by the Board of Directors.

§ 415

(1) The Institute shall account separately for the costs and revenues associated with its principal activity, the operation of its business establishment or other incidental activity, and the administration of the Institute.

(2) The financial statements of the institute shall be audited by the auditor if the act of incorporation or the statutes so require, or if the net turnover of the institute exceeds ten million CZK. In such cases, the auditor shall also audit the annual report of the institute.

§ 416

Annual Report

(1) The annual report of the Institute shall contain, in addition to the particulars prescribed by other legislation governing accounting, other significant information on the activities and management of the Institute, including the amount of benefits provided to the members of the Institute's bodies, and any changes in the constituent legal acts or changes in the membership of the Institute's bodies.

(2) Unless the constituent act also specifies another method of publication, the Institute shall publish the annual report no later than six months after the end of the financial year by depositing it in the collection of documents. Anyone may consult the statutes in the public register and take extracts, copies or extracts from them.

§ 417

If the institute does not fulfill its purpose in the long term, the court shall abolish it upon petition of a person who certifies a legal interest.

§ 418

In other respects, the provisions relating to the foundation shall apply *mutatis mutandis* to the legal relations of the institute; but the provisions relating to the endowment principal and endowment capital shall not apply.

Volume 4

Consumer

§ 419

A consumer is any person who, outside the scope of his business or the independent exercise of his profession, enters into a contract with or otherwise deals with a business.

Volume 5

Entrepreneur

§ 420

(1) Whoever, on his own account and responsibility, carries on a gainful activity by trade or similar means with the intention of doing so consistently for profit, shall be regarded as an entrepreneur in respect of that activity.

(2) For the purposes of consumer protection and for the purposes of § 1963, any person who enters into contracts in connection with his own business, manufacturing or similar activity or in the independent pursuit of his profession, or any person who acts in the name of or on behalf of an entrepreneur, shall also be deemed to be an entrepreneur.

§ 421

(1) A person registered in the commercial register is deemed to be an entrepreneur. The conditions under which persons are entered in the commercial register are determined by another law.

(2) A person is deemed to be an entrepreneur if he has a trade licence or other authorisation to carry on business under another law.

§ 422

A businessman who does not have a business name legally acts in his business under his own name; if he attaches to it additions more particularly characterizing his person or business establishment, they shall not be misleading.

Corporate name**§ 423**

(1) A business name is the name under which a business is registered in the commercial register. An entrepreneur may not have more than one business name.

(2) The protection of rights in a business name belongs to the person who rightfully used it for the first time. Whoever has been prejudiced in his right to the trade name has the same rights as in the protection against unfair competition.

§ 424

A trade name must not be confused with another trade name or misleading.

§ 425

(1) A person registers in the commercial register under a business name, usually consisting of his name. If his name changes, he may continue to use his former name in the business name; however, he shall publish the change of name.

(2) If a person registers in the commercial register under a business name other than his name, it must be clear that it is not the business name of a legal person.

§ 426

If multiple business establishments of multiple businesses are combined into a business grouping, their names or trade names may contain identical elements; however, the public must be able to distinguish between them.

§ 427

(1) Whoever acquires a trade name has the right to use it if he has the consent of his predecessor or successor in title; however, he is required to attach to the trade name a statement expressing the legal succession.

(2) On conversion of a corporation, the trade name shall pass to the successor in title if he consents; the consent of any other person is not required. If a legal person has more than one legal successor and it is not determined to which of them the business name passes, the business name does not pass to any of them.

§ 428

A person who has such a compelling reason for consenting to the use of his name in a corporation's business name that he cannot fairly be required to use his name in the business name has the right to withdraw his consent; such reason may include, but is not limited to, a change in the predominant nature of the business of the corporation or a change in the ownership structure of the corporation. Under these conditions, the successor in title of the person who gave the consent has the right to withdraw the consent.

§ 429

Registered office of an entrepreneur

(1) The registered office of the entrepreneur shall be determined by the address entered in the public register. If a natural person does not register as an entrepreneur in the public register, his registered office shall be the place where he has his principal place of business or, where appropriate, where he resides.

(2) If a businessman gives as his registered office a place other than his actual registered office, anyone may also refer to his actual registered office. Against one who invokes the registered office of the entrepreneur as entered in the public register, the entrepreneur may not claim that he has his actual registered office in another place.

Representation of the entrepreneur

§ 430

(1) If an entrepreneur entrusts someone with a particular activity in the operation of the business establishment, that person represents the entrepreneur in all dealings that normally occur in the course of that activity.

(2) The entrepreneur is also bound by the acts of another person on his business premises if the third person had a good faith belief that the person acting was authorized to act.

§ 431

If a representative of the entrepreneur exceeds the representative's authority, the entrepreneur is legally bound by the act; this does not apply if the third party knew or ought to have known of the exceedance given the circumstances of the case.

§ 432

Prohibition of competition

(1) A person who acts as the entrepreneur's agent in the operation of a business establishment shall not, without the entrepreneur's consent, do anything on his own or another's account that is within the scope of the business establishment. If this happens, the entrepreneur may request that his representative refrain from such acts.

(2) If the agent has acted on his own account, the entrepreneur may claim that the agent's act is declared to have been done on his account. If the agent acted on behalf of another, the entrepreneur may claim that the right to remuneration be assigned to him or that remuneration already granted be released to him. These rights shall lapse if they have not been exercised within three months of the date on which the entrepreneur became aware of the act, but at the latest one year from the date on which the act took place.

(3) In lieu of the right under [paragraph 2](#), the entrepreneur may claim damages; however, this is only if the agent should have known and could have known that his or her actions were detrimental to the entrepreneur. If the person on whose behalf the entrepreneur's representative acted illegally should have known and could have known that the activity was detrimental to the entrepreneur, he is also liable for damages.

§ 433

(1) Whoever, as a businessman, acts in relation to other persons in an economic relationship, must not abuse his quality as a professional or his economic position to create or to take advantage of the dependence of the weaker party and to achieve an obvious and unjustified imbalance in the mutual rights and obligations of the parties.

(2) The weaker party shall always be deemed to be a person who, in relation to the entrepreneur, acts in an economic relationship outside the context of his own business.

§ 434

If a businessman makes it known to the public at which place he does business, he shall allow the public to enter into legal intercourse with him at that place during the hours of business fixed; otherwise during the usual hours.

§ 435

(1) Every business must state its name and registered office on business documents and in information made available to the public by remote access. An entrepreneur registered in the commercial register shall also indicate on the commercial document the details of that registration, including the section and the insert; an entrepreneur registered in another public register shall indicate his registration in that register; an entrepreneur not registered in a public register shall indicate his registration in another register. If the entrepreneur has been assigned an identification number, he shall also indicate that number.

(2) Other particulars may be included on the document referred to in [paragraph 1](#) if they are not likely to give a misleading impression.

TITLE III

REPRESENTATION

Volume 1

General Provisions

§ 436

(1) Whoever is authorized to act legally on behalf of another is his agent; the representation gives rise to rights and obligations directly to the represented person. If it is not obvious that someone is acting for another, he is acting on his own behalf.

(2) If the agent has good faith or ought to have known of a particular circumstance, that circumstance is taken into account for the represented person; this does not apply if it is a circumstance of which the agent has knowledge before the representation arises. If the represented person is not in good faith, he cannot invoke the good faith of the representative.

§ 437

(1) One whose interests conflict with those of the represented party cannot represent another unless, in contracting for the representation, the represented party knew or should have known of such conflict.

(2) If an agent whose interest conflicts with the interest of the represented person has acted with a third person and that person knew or ought to have known of the circumstance, the represented person may bring an action. There is a conflict between the interests of the agent and the represented person if the agent also acts for that third person or if he acts on his own affairs.

§ 438

A representative acting in person. He may appoint another representative if agreed with the represented person or if the necessity so requires, but he shall be responsible for the proper selection of his person.

§ 439

If a represented person has more than one representative for the same matter, it shall be presumed that each of them may act independently.

§ 440

(1) If a representative exceeds the representative's authority, the legal action binds the represented person if the representative approves the excess without undue delay. This applies even if a person who is not authorised to act for another acts legally.

(2) If the legal act is not approved without undue delay, the person who legally acts for another is bound by the act itself. The person with whom the act was done and who was acting in good faith may require the person acting to perform what was agreed or to make good the loss.

Volume 2

Contractual representation

Section 1

General Provisions

§ 441

(1) If the parties so agree, one of them represents the other as attorney-in-fact to the extent agreed.

(2) The principal shall specify the scope of the agent's authority in the power of attorney. If the representation does not concern only a specific legal act, the power of attorney shall be in writing. Where a special form is required for a legal act, the power of attorney shall be given in the same form. Where the form of a public document is required for a legal act, it shall be sufficient if the power of attorney for that legal act is in writing and bears a certified signature.

§ 442

The principal may not waive the right to revoke the power of attorney, but if the parties agree on certain grounds for revoking the power of attorney, the power of attorney may not be revoked on any other ground. This does not apply if the principal has a particularly compelling reason for revoking the authorisation.

§ 443

When a legal person is empowered, the exercise of the power of attorney falls within the competence of its statutory body. A person designated by the statutory body is also entitled to exercise the power of representation.

§ 444

(1) Whoever, through his own fault, causes a third party to believe that he has authorized another to act legally, cannot plead lack of authority if the third party was in good faith and could reasonably have assumed that the authority was given.

(2) If the principal has given notice to another person that he has authorized the agent to do certain legal acts, he may assert against that person that the authorization has subsequently terminated only if he has given notice to that person before the principal's act or if that person knew of the termination at the time of the principal's act.

§ 445

If a person incompetent to act as agent in the matter in question acted as agent himself, no action can be brought against one who neither knew nor could have known of the fact.

§ 446

If the agent has exceeded the agent's authority and the principal does not agree, the agent shall notify the person with whom the agent has acted without undue delay after the agent has become aware of the legal action. If he fails to do so, he shall be deemed to have authorised the excess; this shall not apply if the person with whom the agent was legally dealing should have known and could have known beyond reasonable doubt from the circumstances that the agent was manifestly exceeding the agent's authority.

§ 447

If the principal's instructions are contained in the power of attorney and must have been known to the person against whom the principal was acting, exceeding them is considered a breach of the agent's authority.

§ 448

(1) The power of attorney shall terminate upon the performance of the act to which the representation was limited; the power of attorney shall also terminate if the principal revokes it or the agent terminates it. If the agent or the principal dies, or if either of them is a legal person and ceases to exist, the power of attorney shall also cease, unless otherwise agreed.

(2) Until the revocation is known to the agent, his act has the same effect as if the power of attorney were still in existence. However, this cannot be invoked by a party who knew, or should have known and could have known, of the revocation of the power.

§ 449

(1) If the principal dies or the agent revokes the power of attorney, the agent shall still do everything that cannot be delayed to ensure that the principal or his successor in title does not suffer prejudice. His act shall have the same effect as if the power of attorney were still in force, unless it contradicts what the principal or his successor in title has already ordered.

(2) The principal shall without undue delay after the termination of the power of attorney deliver to the principal all that the principal has lent to him or that he has acquired for the principal. If the principal is deceased, any person who has such things in his possession shall be under this obligation to the principal.

Section 2

Corporate representation

§ 450

(1) By granting a power of attorney, an entrepreneur registered in the Commercial Register authorises a proxy to carry out legal acts occurring in the course of the operation of a business establishment or a branch, including those for which a special power of attorney is otherwise required. However, the proxy is authorised to alienate or encumber immovable property if this is expressly stated.

(2) When granting a power of attorney, it must be expressly stated that it is a power of attorney. If the entrepreneur grants a proxy for a branch of his business establishment or for one or more of his business establishments, he shall expressly designate the branch or business establishment.

§ 451

A proxy is not authorized to transfer a proxy to another or to grant additional proxies; contrary arrangements are disregarded.

§ 452

(1) It is prohibited to grant a proxy to a corporation.

(2) If a proxy is granted to several persons, each of them represents the entrepreneur separately, unless otherwise specified when the proxy is granted.

§ 453

The restriction of a proxy by internal guidelines has no effect against third parties, even if it has been published.

§ 454

A proxy shall exercise the proxy with due care.

§ 455

A proxy shall sign by affixing his signature to the name of the business and an indication indicating the proxy; if the proxy has been granted for a single branch or one of several business establishments, he shall also affix an indication indicating the branch or business establishment.

§ 456

A power of attorney shall also terminate upon the transfer or lease of the business establishment or branch for which it was granted. On the death of the entrepreneur the proxy does not terminate unless otherwise agreed.

Volume 3

Legal Representation and Guardianship

Section 1

General Provisions

§ 457

Legal representation and guardianship both seek to protect the interests of the represented and to fulfill the rights of the represented.

§ 458

A legal representative or guardian is not authorized to act legally for the represented person in matters relating to the formation and dissolution of marriage, the exercise of parental responsibilities and rights, and the procurement for death or declaration of disinheritance and their revocation.

§ 459

A legal representative may not remove from a represented person a thing of special interest unless the danger to his life or health, and, if the person is a minor who is not fully competent, other compelling reason, justifies it. The object of special interest must also be retained when the represented person is placed in a health care facility, social services facility, child welfare facility or similar facility.

§ 460

If the interests of the legal representative or guardian conflict with the interests of the represented person or if there is a conflict of interests of those represented by the same legal representative or guardian, or if such a conflict is imminent, the court shall appoint a conflict guardian for the represented person.

§ 461

(1) If the legal representative or guardian manages the property of the represented person, he is entitled to the ordinary management of such property. If it is not an ordinary matter, the court's approval is required for the disposition of the property of the represented person.

(2) A gift, legacy or bequest intended for the principal with the condition that it be administered by a third party is excluded from administration under [paragraph 1](#). However, the legal representative or guardian may refuse to accept such a gift, legacy or bequest; such refusal shall require the approval of the court.

§ 462

A legal representative or guardian may not seek attorney's fees from the represented person. However, if he or she has a duty to administer the estate, a fee may be awarded for the administration. The court shall decide on the amount of the fee, taking into account the costs of the administration, the value of the assets to be administered and the proceeds thereof, as well as the time and labour involved in the administration.

§ 463

(1) The court appoints the guardian; it also determines the scope of the guardian's rights and duties. The person to whom the guardian has been appointed becomes the ward for the duration of the guardianship.

(2) If the guardian so requests, the court shall remove the guardian; the court shall also remove the guardian if the guardian fails to perform his or her duties. At the same time, it shall appoint a new guardian for the ward.

§ 464

(1) If the person's estate is not being administered, only a single guardian may be appointed. Where a special guardian is appointed to administer the estate of the person represented or to administer part of his estate and the guardian of the person, the latter shall have exclusive representation of the person represented before the court, even if the matter concerns the estate to be administered.

(2) If the court appoints more than one guardian and does not decide in which matters each of them is legally competent to act separately for the ward, the guardians are required to act jointly.

Section 2

Guardianship of an individual

§ 465

(1) The court appoints a guardian for a person if it is necessary to protect his interests or if the public interest so requires. In particular, the court shall appoint a guardian for a person whose legal capacity has been limited, for a person whose whereabouts are unknown, for an unknown person involved in a particular legal proceeding, or for a person whose state of health makes it difficult for him to manage his property or defend his rights.

(2) If the circumstances so warrant, the court may order the guardian to insure himself to a reasonable extent against damage to the ward or to any other person in the exercise of his functions.

§ 466

(1) The duties of the guardian include maintaining regular contact with the ward in an appropriate manner and to the extent necessary, showing genuine concern for the ward, as well as taking care of the ward's health and taking care to fulfil the ward's rights and protect the ward's interests.

(2) If the guardian makes decisions about the ward's affairs, he or she shall explain to the ward in a comprehensible manner the nature and consequences of the decision.

§ 467

(1) In carrying out his or her duties, the guardian shall give effect to the ward's legal statements and he or she shall take into account the ward's views, even if the ward has previously expressed them, including beliefs or creeds, and shall consistently take them into account and arrange the ward's affairs in accordance with them. If this is not possible, the guardian shall act in accordance with the interests of the ward.

(2) The guardian shall take care that the ward's manner of life is not inconsistent with the ward's abilities and that, if it cannot reasonably be contradicted, it is also consistent with the ward's special wishes and desires.

§ 468

Death of the guardian or removal of the guardian does not terminate the guardianship, and until the court appoints a new guardian for the ward, it passes to the public guardian under another statute.

§ 469

(1) A person whose health causes him difficulty in the administration of his property or in the vindication of his rights shall, on his petition, be appointed by the court as guardian and, in accordance with such petition, the court shall determine the scope of the guardian's authority. The court shall also remove the guardian on the application of the ward.

(2) The guardian shall, as a rule, act jointly with the ward; if the guardian acts alone, he shall act in accordance with the will of the ward. If the will of the ward cannot be ascertained, the court shall decide on the guardian's motion.

§ 470

If a person appoints a guardian to administer his estate himself, a guardian cannot be appointed to administer his estate. This does not apply if the trustee is unknown, refuses or neglects to act in the interests of the person represented, or is unable to administer the estate.

§ 471

(1) If the court decides to appoint a guardian for a person, it may do so only after seeing him, unless an insuperable obstacle prevents it; it must also hear his statement or otherwise ascertain his opinion and proceed on that basis.

(2) The court shall appoint as guardian the person nominated by the ward. If that is not possible, the court shall appoint a relative or other person close to the ward as guardian who demonstrates a long-standing and serious interest in the ward and the ability to continue to show that interest in the future. If this is not possible, the court shall appoint another person as guardian who fulfils the conditions for becoming a guardian or a public guardian under another law.

(3) The eligibility to be a public guardian shall be vested in the municipality where the ward resides or in a legal person established by that municipality to perform tasks of this kind; the appointment of a public guardian under another law shall not be subject to its consent.

Council of Guardians

§ 472

(1) If a guardian is appointed, the ward or any person close to the ward may apply for the establishment of a guardianship council; the guardian shall call a meeting of persons close to the ward and his friends, if known to him, so that the meeting shall be held within thirty days after receipt of the application. If the meeting is not convened in time, or if it is not held for any other reason, or if the guardianship council is not elected at the meeting, the court shall convene the meeting, even without a motion.

(2) The meeting may be attended by the ward, any person close to the ward, and any of the ward's friends, even if not invited; each shall have one vote. If at least five persons attend the meeting, the guardianship council may be elected.

§ 473

(1) The persons present at the meeting shall elect the members of the guardianship council, and their alternates if any, by majority vote. In making the election, care shall be taken, where possible, to ensure equal representation of the persons listed in § 472.

(2) Only a person who demonstrates a long-standing and serious interest in the ward and the ability to demonstrate that interest in the future, and whose interests do not conflict with the interests of the ward, may be a member of the guardianship council. A guardian may not be a member of the guardianship council.

§ 474

The guardianship council has at least three members. It shall be able to deliberate in the presence of a majority of its members; however, if the Guardianship Council has three members, the presence of all of them is required. Decisions of the guardianship council shall be taken by a majority of the members present.

§ 475

The minutes of the election of the members of the guardianship council and alternates shall be taken by a recorder appointed by those present. The minutes shall show when the meeting was held, who attended, who was elected as recorder, trustee and alternate trustee and by how many votes, whether anyone objected to the proceedings and for what reason. Protests made in writing must be attached to the minutes. The minutes of the election of the members of the guardianship council shall be delivered by the recorder to the guardian and to the court which appointed the guardian.

§ 476

(1) The court may, on motion of the guardian or any person entitled to attend the meeting, or without motion, declare the election void if there has been such a violation of law in the election that the ward is in danger of being prejudiced as a result. In such case, the court shall without undue delay order a new election.

(2) If there are serious reasons for doing so, the court may, after the commencement of the proceedings, suspend the exercise of the rights of the guardian until the election is determined to be invalid.

§ 477

(1) A member of the guardianship council is elected for an indefinite term. He or she may resign from office; resignation is effective upon delivery of written notice to the guardian and the court. He shall give notice of his resignation to the other members of the guardianship council.

(2) The court may remove a member of the guardianship council from office on the motion of the guardian or of any person entitled to attend the meeting, or on its own initiative, if the member of the guardianship council seriously or repeatedly breaches his or her duties, loses interest in the ward, or repeatedly finds his or her interests in conflict with those of the ward. The provisions of § 476(2) shall apply mutatis mutandis.

(3) On the termination of the office of a member of the guardianship council, the guardian or the chairman of the guardianship council shall arrange for the election of a new member of the guardianship council or a replacement. If the election is not held without undue delay, the court shall proceed in accordance with § 472(1), mutatis mutandis.

§ 478

(1) The Guardianship Council shall meet at least once a year; it shall be called to meet by its chairman or by the guardian, or otherwise by any member of the Guardianship Council, or by the court on motion of a person who certifies a serious interest in the ward, or without motion.

(2) The guardianship council shall invite the ward and the guardian to the meeting.

(3) The minutes of the meeting of the guardianship council shall show when it was held, who attended, what decisions were made, who objected, and who took the minutes. If the minutes do not indicate who voted in favour of the motion and who voted against the motion, all members of the guardianship board present shall be deemed to have voted in favour of the motion. The minutes shall be delivered by the chairman of the guardianship board to the guardian and to the court which appointed the guardian.

§ 479

(1) The guardianship council at its regular meeting shall consider the guardian's report on the guardian's activities with respect to the ward's affairs, shall comment on the inventory of the ward's assets and the account of their administration, as well as the account of the guardian's remuneration, if any, for the administration of the assets.

(2) If the guardianship board so decides, a member thereof authorized by order shall petition the court to modify the amount of the guardian's fee for the administration of the ward's estate.

(3) If the guardianship council so directs, a member thereof shall petition the court to revoke the guardianship or to remove the guardian and replace him or her with another person.

§ 480

(1) Without the consent of the guardianship board, the guardian may not make a decision about

a) change of residence of the ward,

b) placing the ward in a locked institution or similar facility when the ward's health clearly does not require it, or

c) interference with the integrity of the ward, unless the interference is without serious consequences.

(2) A guardian may not dispose of the ward's property without the consent of the guardian

a) the acquisition or disposition of property having a value in excess of an amount equal to one hundred times the individual's subsistence minimum under any other provision of law,

b) the acquisition or alienation of property in excess of one-third of the ward's estate, unless that one-third is of only a trivial value, or

c) the acceptance or making of a loan, credit, or security of the amounts specified in [paragraph \(a\)](#) or [paragraph \(b\)](#),

such decisions also require court approval.

(3) If it is in the best interests of the ward, the guardian may decide what other decisions of the guardian concerning the ward are subject to the guardian's consent; such orders shall not restrict the guardian beyond a degree reasonable under the circumstances.

§ 481

A member of the guardianship council who did not vote in favor of its decision, the guardian, or the ward may, within fifteen days of the decision, petition the court to set aside the decision of the guardianship council and substitute its own decision. Until the court has ruled, the decision of the guardianship council shall not take legal effect.

§ 482

(1) If a guardianship council cannot be established because of the lack of interest of a sufficient number of the persons referred to in [§ 472\(1\)](#) or for other similar reasons, the court may, on the application of any of those persons, decide that only one of those persons shall exercise the powers of the guardianship council and shall at the same time decide on the appointment of that person.

(2) If a guardianship council is not elected, and if the procedure under [paragraph 1](#) is not possible either, the court shall approve the arrangements of the guardian of the ward or of the ward's estate instead of the guardianship council.

§ 483

(1) Unless approved by the court, the guardian may not consent to a change in the ward's personal status.

(2) If the guardian manages the ward's property, the guardian may not, without the court's approval, unless the court has ordered further restrictions,

a) obligate the ward to the performance of a member of the guardian's board or a person close to that member,

b) acquire for the ward an immovable property or an interest therein, or alienate or encumber the ward's immovable property or interest therein,

c) to acquire for the ward a business plant, an interest in a business plant or an interest in a corporation, nor to alienate or encumber such property; this does not apply if the acquisition is of participating or similar securities providing a secure return,

d) to enter into a contract on behalf of the ward binding him or her to a continuing or repeated performance for a period exceeding three years,

e) to refuse an inheritance or other benefit of the estate, or

f) obligate the ward to make a gratuitous gift to another person, unless the gift is made on a customary occasion in accordance with the principles of decency and is reasonable in scope, and the ward is of sound judgment and has consented to the gift.

(3) Notwithstanding the provisions of [paragraph 2](#), the guardian may not, unless approved by the court, dispose of the property of the ward if it is

- a) the acquisition or disposal of property with a value exceeding an amount equal to five hundred times the individual's subsistence minimum under any other law,
- b) the acquisition or alienation of property in excess of one-half of the ward's estate, unless that one-half is of negligible value and is not a matter of special interest to the ward, or
- c) the acceptance or making of a loan, credit, or security of the amounts listed under paragraph (a) or paragraph (b).

(4) The court shall seek the opinion of the guardianship council before making a decision under paragraphs 1 to 3. If the guardianship council fails to communicate its opinion to the court within a reasonable period of time, then the court shall decide itself.

§ 484

(1) A legal person whose main activity consists in caring for persons with disabilities and protecting their interests has the right to propose that a meeting be convened to establish a guardianship council.

(2) A legal person whose main activity consists in the care of persons with disabilities and the protection of their interests, who has been continuously active in the Czech Republic for at least three years and has been in regular contact with the ward for at least three months, shall have the right to be a member of the guardianship council or to participate in its meeting, a meeting to establish the guardianship council and to propose to the court that the decision of the guardianship council be annulled and replaced by its own decision. However, if the legal person does not exercise its rights in accordance with the interests of the ward, the court shall, on the proposal of the ward, the guardian or the members of the guardianship council, revoke those rights.

§ 485

Inventory of assets and liabilities and account of administration

(1) The guardian who administers the ward's estate shall, within two months of his or her appointment, prepare an inventory of the assets administered and deliver it to the court, the ward, and the guardianship board.

(2) During the period of the guardianship, the guardian shall prepare an account of the administration of the property by 30 June of each year, unless the guardian agrees with the members of the guardianship council to submit the account earlier. If there is good reason for this, the ward or the guardianship council may petition the court to order the guardian to draw up an extraordinary account. The guardian shall deliver each account to the ward, the guardianship council and the court.

(3) A guardian whose office is terminated shall deliver the final account of the administration of the estate to the guardian, the guardianship council and the court, and, if appropriate, to the next guardian or court commissioner appointed in the probate proceedings. If the guardian dies, the papers and other documents relating to the ward and his affairs shall be delivered to the court which appointed him by whoever has those papers and documents in his possession.

Section 3

Guardianship of a legal person

§ 486

(1) The court appoints a guardian to a corporation that needs it to manage its affairs or to protect its rights.

(2) The court may appoint as guardian of a legal person only a person who fulfils the conditions laid down for eligibility to be a member of the statutory body. If the guardian ceases to fulfil these conditions, he shall notify the court without undue delay. If the court becomes aware that the guardian does not meet the above conditions, it shall replace him/her with a new guardian without undue delay.

§ 487

(1) The provisions on the rights and obligations of a member of a statutory body shall apply mutatis mutandis to the rights and obligations of a guardian of a legal person. The powers of the guardian shall be governed mutatis mutandis by the provisions on the powers of the statutory body.

(2) The court shall order the guardian to exercise professional diligence in order to ensure that the statutory body of the legal person is properly restored; if necessary, the court shall further define the powers of the guardian, taking into account the powers of the other bodies of the legal person and, where applicable, the rights of the shareholders.

§ 488

If the instrument of incorporation provides that a certain person is to be appointed as guardian of the legal person, the court shall appoint such person as guardian if he or she is competent and consents to the appointment.

TITLE IV**THINGS AND THEIR DIVISION****Volume 1****General Provisions****§ 489**

A thing in the legal sense (hereinafter referred to as "thing") is anything that is distinct from a person and serves a need of people.

§ 490

A thing dedicated to the general use is a public good.

§ 491

(1) A fruit is that which a thing regularly provides from its natural nature, as determined by its ordinary purpose and in proportion to it, whether with or without human agency.

(2) A utility is what a thing regularly provides from its legal nature.

§ 492

(1) The value of a thing, if it can be expressed in money, is its price. The price of a thing is to be determined as the normal price, unless otherwise agreed or provided by law.

(2) The extraordinary price of a thing shall be determined, if its value is to be replaced, taking into account special circumstances or special popularity caused by the accidental characteristics of the thing.

§ 493

The human body and its parts, though separated from the body, are not things.

§ 494

A living animal has special meaning and value already as a sentient living creature endowed with senses. A living animal is not a thing, and the provisions on things apply mutatis mutandis to a living animal only to the extent that it does not contradict its nature.

§ 495

The aggregate of everything belonging to a person constitutes his property. A person's property is the sum of his assets and his debts.

Volume 2**Division of things****§ 496**

Corporeal and incorporeal things

(1) A tangible thing is a controllable part of the external world that has the nature of an independent object.

(2) Intangible things are rights whose nature permits, and other things without material substance.

§ 497

Controllable forces of nature

The provisions on tangible things apply mutatis mutandis to controllable forces of nature that are traded.

§ 498

Immovable and movable things

(1) Immovable things are land and underground structures with a separate purpose, as well as rights in rem thereon, and rights declared by law to be immovable things. If the law provides that a thing is not part of the land and if such thing cannot be transferred from place to place without disturbing its substance, it is also immovable.

(2) All other things, whether their substance is tangible or intangible, are movable.

§ 499

Fungible thing

An immovable thing that can be replaced by another thing of the same kind is fungible; other things are non-fungible. When in doubt, the case shall be judged according to custom.

§ 500

Consumable thing

A movable thing whose ordinary use consists in its being consumed, processed or disposed of is usable; movable things belonging to a warehouse or other collection are also usable if their ordinary use consists in their being sold individually. Other items are unusable.

§ 501

Collective thing

A collection of individual items belonging to the same person, considered as a single object and as such bearing a common designation, shall be considered as a whole and constitute a bulk item.

§ 502

Business enterprise

A business establishment ("establishment") is an organized collection of assets created by an entrepreneur and used by his will to carry on his business. A plant is deemed to consist of everything that is normally used for its operation.

§ 503

Branch

(1) A branch is that part of the establishment which exhibits economic and functional autonomy and which the entrepreneur has decided to be a branch.

(2) If a branch is entered in the commercial register, it is a branch plant; this also applies to another organisational unit if another legal provision provides for it to be entered in the commercial register. The head of a branch plant is entitled to represent the entrepreneur in all matters relating to the branch plant from the date on which he or she was entered as head of the branch plant in the commercial register.

§ 504**Business secrets**

Trade secrets consist of competitively material, identifiable, valuable and not normally available in the relevant business circles facts relating to the plant, the owner of which ensures in his interest that they are adequately kept secret.

Volume 3**Component part of a thing and accessory to a thing****Component part of a thing****§ 505**

A part of a thing is everything that belongs to it by its nature and cannot be separated from the thing without devaluing it.

§ 506

(1) The land includes the space above and below the surface, structures erected on the land and other facilities (hereinafter referred to as a "structure"), except temporary structures, including what is embedded in the land or fixed in walls.

(2) Where an underground structure is not an immovable thing, it is part of the land, even if it extends under other land.

§ 507

The vegetation growing on the land is part of the land.

§ 508

(1) A machine or other fixed plant (hereinafter referred to as "the machine") is not part of a property entered in the public register if, with the consent of the owner thereof, a reservation has been entered in the same register to the effect that the machine is not his property. The reservation shall be deleted if the owner of the immovable property or any other person entitled to do so under the entry in the public register proves that the owner of the immovable property has become the owner of the machine.

(2) If a machine which is part of the immovable property is to be replaced by such a machine, the reservation may be entered in the public register if the person registered in the more favourable order does not oppose it. However, neither the person whose right cannot be impaired by the entry of the reservation nor the person whose claim has already been satisfied shall have the right to oppose it; to that end, a claim which has not yet matured may also be satisfied.

§ 509

linear structures, in particular water, sewer or power or other lines, and other objects which by their nature regularly encroach on more than one parcel of land are not part of the land. Structures and technical installations which are operationally related to such structures shall be deemed to form part of linear structures.

Accessory to a thing**§ 510**

(1) An accessory is a thing incidental to the owner's possession of the main thing if the purpose of the accessory is to be used permanently with the main thing for their economic purpose. If the ancillary thing has been temporarily separated from the main thing, it does not cease to be an accessory.

(2) The legal acts and rights and obligations relating to the main thing shall be deemed to relate to its accessories.

§ 511

If there is any doubt as to whether something is an accessory to the thing, the case is to be determined according to the custom.

§ 512

If a building is part of the land, the owner's incidental things in the case of a building are accessories to the land if their purpose is to be used permanently with the building or land in the course of their economic purpose.

§ 513

Interest, default interest and costs associated with the claim are ancillary to the claim.

Volume 4

Securities

Section 1

General Provisions

§ 514

A security is an instrument to which a right is attached in such a way that, after the issue of the security, it cannot be exercised or transferred without the instrument.

§ 515

If the issuer has not issued the security as a class with particulars specifically provided for by law, the instrument must specify, at least by reference to the terms of issue, the right attached to the security and an indication of the issuer.

§ 516

Fungible securities

(1) Securities of the same kind issued by the same issuer in the same form, giving rise to the same rights, are fungible.

(2) The issuer's signature on a fungible security may be replaced by its imprint if the security features on the instrument are simultaneously used to prevent forgery or alteration.

§ 517

If a person other than the issuer is obliged under the security and breaches his obligation, the issuer shall indemnify the person against any loss resulting therefrom.

§ 518

Form of Security

(1) A security may be in bearer, series, or registered form.

(2) If the security contains the name of the beneficiary, it is deemed to be a security in registered form. If the security does not contain the name of the person entitled, it shall be deemed to be a bearer security.

§ 519

Issue of securities

(1) The issue date of a security refers to the date on which the security may be issued to the first purchaser. Unless otherwise specified, the date of issue of a security shall be determined by the issuer.

(2) The terms and conditions of issue set out the rights and obligations of the issuer and the securityholders, as well as more detailed information about the issue.

§ 520

Delivery of securities

(1) A security is issued on the date on which it satisfies the requirements prescribed for it by law or regulation and becomes the property of the first purchaser in the prescribed manner.

(2) The amount of money for which the issuer issues the security is the issue price of the security.

§ 521

(1) If the purchaser was in good faith acquiring a duly issued security, the security is issued even though the requirements of the procedure for issuing the security were not followed or the security did not become the property of the first purchaser in the manner prescribed.

(2) One whose rights have been interfered with by the failure to comply with the formalities of the procedure for the issue of the security or by the failure of the security to become the property of the first purchaser in the prescribed manner shall be entitled to damages against the issuer and against the person who acted on behalf of or on behalf of the issuer in the matter, subject to the conditions laid down in this Act.

§ 522

Counterparts

(1) If a security is issued in multiple counterparts, the counterparts must be numbered in the body of the instrument, otherwise each counterpart is considered a separate security.

(2) If one counterpart has been executed, the rights in all other counterparts are extinguished.

§ 523

Coupon

(1) Where a right to a return is attached to a security, a coupon may be issued as a bearer security to exercise that right; coupons are issued in a coupon sheet. If the coupon sheet includes a talon, it gives rise to a right to issue a new coupon sheet; however, a talon is not a security.

(2) The coupon must contain at least the details of

- a) the type and issuer of the security to which it was issued; if the coupon was issued for a security, its numerical designation is also required,
- b) the amount of the proceeds or the manner of their determination, and
- c) the date and place of exercise of the right to the proceeds.

§ 524

Global certificate

(1) The fungible securities may be replaced by a bulk deed. The same conditions apply to the issue and delivery of a collective instrument as apply to the issue of an individual security. A block deed shall contain at least those particulars which the law prescribes for an individual security, including the number of the security which it replaces; however, a block deed need not contain a numerical designation.

(2) The holder of a bulk charter has the right to exchange it for individual securities; if the issuer specifies conditions for exchange, then upon satisfaction of those conditions.

(3) The rights in a collective document may not be divided into shares by conversion. This does not apply where a security has been immobilised in the course of a collective trust, in which case such share must correspond to the individual securities which are being replaced by the collective instrument.

Section 2

Book-entry securities

§ 525

Book-entry securities

(1) If a security is replaced by an entry in the relevant register and cannot be transferred otherwise than by a change of entry in that register, it is a book-entry security. Book-entry securities are fungible if issued by the same issuer and if they carry the same rights.

(2) The provisions of the [Securities Act](#) shall apply to book-entry securities unless their nature, this Act or other legislation precludes it.

§ 526

Register of book-entry securities

Evidence of book-entry securities is maintained in property accounts; these are the owner's account or the customers' account.

§ 527

Owner's Account

(1) The owner's account holds the book-entry securities of the person for whom the account was established.

(2) The owner of a book-entry security is deemed to be the person in whose owner's account the book-entry security is registered.

§ 528

Clients' account

(1) A customer account holds the book-entry securities of the persons who have entrusted the book-entry security to the person for whom the customer account was established.

(2) The person for whom the customer account was established is not the owner of the book-entry securities registered in that account.

Section 3

Conversion of securities to book-entry securities and conversion of book-entry securities to securities

Subsection 1

Conversion of securities to book-entry securities

§ 529

(1) If the issuer has decided to convert a security into a book-entry security, it shall without undue delay publish its decision, including the time limit within which the security holder shall surrender the security to the issuer, and shall publish the decision within the same time limit in a manner allowing remote access.

(2) It is prohibited to set a time limit for the delivery of the security to the issuer of less than two months and more than six months from the date of publication of the decision.

(3) An issuer who is required by other legislation to keep a register of security holders shall send to the person named in that register and to the address specified therein a notice of the conversion of that security into a book-entry security.

§ 530

(1) The owner of the security shall, on surrender of the security, notify the issuer of the number of the account in the relevant register in which the security is to be registered; if he fails to do so, the issuer shall allow him an additional period of not less than two months in which to do so.

(2) If the owner has surrendered a security to the issuer and has not disclosed to the issuer the number of the account in the relevant register in which the security is to be

registered, even within the additional period, ownership of that security shall pass to the issuer on the date on which the issuer pays the owner a fair price for the security.

§ 531

If the owner of a security is in default in surrendering the security, the issuer shall specify an additional period of time for the surrender of the security in the manner set out in § 529(1) and shall, when announcing it, give notice that the security which is not surrendered even within the additional period shall be declared void by the issuer.

§ 532

(1) At the request of the issuer, the central depository shall register the book-entry securities in the central register in a manner similar to the issuance of a book-entry security and shall register the securities in the property accounts specified in the request. The issuer shall make the application after the expiry of the time limit set out in § 529(1) or i before the expiry of that time limit if all securities have been surrendered to it, but not later than the expiry of the additional time limit.

(2) From the time of the issuer's application for registration of the book-entry security in the central register until the registration of the entire issue, the securities may not be traded on a European regulated market.

§ 533

(1) A security that has not been surrendered is registered by the CSD in a special technical account; the owner of the technical account is the issuer. By being registered in this account, these securities are converted into book-entry securities.

(2) The right to receive the proceeds of a security referred to in paragraph 1 for the period from the expiry of the time limit under § 529(1) does not accrue until the owner of the security surrenders the security to the issuer.

§ 534

(1) If the security has not been surrendered even within the additional period, the issuer shall declare it void.

(2) After a security has been declared void, the issuer shall sell the book-entry security replacing it with due diligence. If the issuer decides to sell the book-entry security at a public auction, it shall publish the place, time and object of the auction at least two weeks before the auction takes place.

(3) The issuer shall pay the proceeds of the sale of the book-entry security to the person whose security has been declared void, after set-off of the claims incurred by the issuer in declaring the security void and in selling the book-entry security that replaces it.

§ 535

The provisions of § 529, 531 to 533 shall apply mutatis mutandis to securities which are converted into book-entry securities to be kept in separate registers.

Subsection 2

Conversion of book-entry securities to securities

§ 536

If the issuer decides to convert a book-entry security into a security, it shall make its decision public without undue delay and shall publish the decision within the same period in a manner that allows remote access.

§ 537

(1) The central securities depository shall provide the issuer with the issuer's notice of conversion of the book-entry security within thirty days from the date on which it receives the issuer's notice, an extract from the central and downstream registers containing details of the issue of the book-entry security, the owners of the book-entry securities,

whether the book-entry security has been suspended and whether the book-entry security has been pledged, including the name of the pledgee.

(2) Neither the central depository nor the customer account holder may make any entry in its records relating to the book-entry security being converted into a security after the statement has been made.

§ 538

(1) A central depository shall cancel the registration of a book-entry security on a date specified by the issuer, but not earlier than the date on which the statement is made under § 537(1) and not later than one month after the date on which the statement is made.

(2) The cancellation of the registration of a book-entry security shall be notified by the central depository to the organiser of the European regulated market on which the book-entry securities are admitted to trading, to the participants of the central depository, who shall notify the owners of the book-entry securities and the customer account holder.

(3) The customer account holder shall cancel the registration of the book-entry securities on the same date as the central depository.

§ 539

(1) The owner of a book-entry security that has been converted into a security shall, on the date of cancellation of the registration of the book-entry security, be entitled to surrender the security by the issuer.

(2) The security is issued no earlier than the date of cancellation of the registration.

§ 540

(1) If, on the date of cancellation of the registration of a book-entry security, the disposal of the security ordered by a public authority is suspended, the issuer shall surrender the security to that authority.

(2) Where, on the date of cancellation of the registration of a book-entry security, the disposal of a book-entry security which has been ordered by a person authorised to do so under the law governing business on the capital market is suspended, the owner of that book-entry security shall not be entitled to surrender the security until the expiry of the period for which the disposal of the book-entry security has been suspended. This shall not apply if the person who gave the order for the suspension agrees to surrender the security to the owner.

§ 541

(1) If, on the date of cancellation of the registration of the book-entry security, the book-entry security is pledged, the effects of the pledge remain unaffected; the right to surrender the security accrues to the pledgee. The obligation to surrender the security shall also be fulfilled by the issuer by depositing the issued security in escrow for the benefit of the owner with the consent of the pledgee and by delivering to the custodian the original of the pledge agreement or a certified copy thereof.

(2) In the case of conversion of a book-entry security into a series security, the issuer shall endorse thereon a declaration of pledge of the security.

§ 542

(1) Upon cancellation of the registration of a book-entry security, the issuer shall without undue delay publish a notice to the holders of the securities of that issue to take up the securities and shall publish the notice within the same period in a manner permitting remote access. The time limits for taking up the security shall be set out in the invitation in a manner similar to that set out in § 529(2) and § 531.

(2) In the case of a registered or series security, the issuer shall also send a notice to take delivery of the security to the registered or residential address of the owner as shown in the relevant register.

§ 543

(1) If the owner does not take possession of the security even within the additional period, the issuer shall sell it with due diligence. If the issuer decides to sell the security at a public auction, it shall publish the place, time and object of the auction at least two weeks before the auction takes place.

(2) The issuer shall pay the proceeds of the sale of the security to the owner after setting off claims incurred by the issuer in connection with the sale.

§ 544

Sections 536 to 543 of [Sections 536 to 543](#) shall apply mutatis mutandis to book-entry securities held in separate registers.

TITLE V**LEGAL FACTS****Volume 1****Juridical acts****Section 1****General Provisions****§ 545**

A legal act produces the legal consequences expressed therein, as well as legal consequences arising from the law, good morals, custom and established practice of the parties.

§ 546

Act may be done by act or omission; it may be done expressly or otherwise in a manner that raises no doubt as to what the person acting intended to manifest.

§ 547

Legal conduct must be consistent in content and purpose with good morals and the law.

Condition**§ 548**

(1) The creation, modification or termination of rights may be conditional on the satisfaction of a condition. If the extinction of a right or obligation is linked to an impossible condition, it is disregarded.

(2) A condition is condition precedent if it depends on its fulfilment for the legal consequences of an act to occur. A condition is condition precedent if, on its fulfilment, it depends on whether the legal consequences that have already occurred will pass away.

(3) Unless something else follows from the legal act or its nature, the condition is presumed to be condition precedent.

§ 549

(1) A condition shall be disregarded if its fulfilment is intentionally caused by a person who is not entitled to do so and to whom the fulfilment of the condition is for the benefit of.

(2) If a party who is not authorised to do so intentionally frustrates the fulfilment of a condition to the benefit of the party to whom the condition is not fulfilled, the condition shall be deemed to have been fulfilled.

§ 550**Determination of time**

If an initial time is specified for the legal action to take effect, the § 548 and 549 on conditions precedent apply mutatis mutandis. If the effectiveness of a legal act is limited by a finite period, § 548 and 549 on the condition precedent shall apply mutatis mutandis.

Putative juridical act

§ 551

There is no legal act if the will of the person acting is absent.

§ 552

A legal act does not take place if no serious intention is manifestly manifested.

§ 553

(1) There is no legal act if, because of vagueness or unintelligibility, its content cannot be ascertained even by interpretation.

(2) If the expression of intent between the parties has been subsequently clarified, its defect is disregarded and it is treated as if the legal act had been there from the beginning.

§ 554

An apparent legal act is not taken into account.

Section 2

Interpretation of juridical acts

§ 555

(1) Legal actions are judged by their content.

(2) If a legal act is intended to disguise another legal act, it shall be judged according to its true nature.

§ 556

(1) What is expressed in words or otherwise shall be construed according to the intention of the actor, if such intention was known or must have been known to the other party. If the intention of the actor cannot be ascertained, the meaning to be given to the expression of the will is that which would ordinarily be given by a person in the position of the person to whom the expression of the will is addressed.

(2) In interpreting a manifestation of intent, regard is to be had to the practice established between the parties in the course of legal dealings, to what preceded the legal act, and to the manner in which the parties subsequently indicated the content and meaning they attached to the legal act.

§ 557

If the expression used admits of different interpretations, it shall be construed in doubt against the person who first used the expression.

§ 558

(1) In a legal transaction with a business, a term admitting of a different interpretation is given the meaning it regularly has in such a transaction. If, however, the other party is not a businessman, the party claiming it must prove that the other party must have known such meaning.

(2) In the legal dealings of businessmen, regard shall be had to the usage of the trade generally observed, or in the particular trade, unless the agreement of the parties or the law excludes it. In the absence of any other agreement, the custom of the trade shall prevail over a provision of law which has no coercive effect, otherwise the entrepreneur may invoke the custom if he proves that the other party must have known and understood the custom.

Section 3

Form of juridical acts

§ 559

Everyone has the right to choose any form for legal actions, unless he is restricted in his choice of form by agreement or law.

§ 560

A legal act which establishes or transfers a right in rem over immovable property, as well as a legal act which modifies or cancels such a right, requires a written form.

§ 561

(1) The signature of the actor is required for the validity of a legal act done in writing. The signature may be substituted by mechanical means where this is customary. Other legislation shall specify how a document may be electronically signed in the case of a legal act performed by electronic means.

(2) Where more than one person acts, their expressions on the same instrument are required in a legal act which creates or transfers a right in rem in immovable property or which varies or cancels such a right.

§ 562

(1) The written form shall be preserved even in the case of a legal act performed by electronic or other technical means enabling its content to be captured and the person acting to be identified.

(2) Records of data on legal acts in an electronic system are presumed to be reliable if they are made systematically and sequentially and are protected against alteration. If the record was made during the operation of the plant and is relied upon by the other party for its own benefit, the record shall be presumed to be reliable.

§ 563

(1) Where a person who cannot read or write but is able to acquaint himself with the contents of a legal proceeding by means of apparatus or special aids or by another person of his choice signs the instrument in writing; if he is unable to sign, he shall, instead of signing before at least two witnesses, make a hand or other sign on the instrument to which one of the witnesses shall add the name of the person acting.

(2) Witnesses are subject to [§ 39](#) likewise.

(3) If the procedure in [paragraph 1](#) cannot be followed, a form of public document is required for the actions of a person who cannot read and write. Such form is required even if the law provides that the expression of the will of the person acting must be written in his own hand on the instrument. If the actor is able to do so, he shall affix his own sign to the record of his act.

§ 564

If the law requires a certain form for a legal act, the content of the legal act may be changed by an expression of will in the same or a more restrictive form; if only the agreement of the parties requires such form, the content of the legal act may be changed in another form, unless the agreement of the parties so excludes.

Section 4

Private instrument and public instrument

Private instrument

§ 565

It is up to anyone invoking a private deed to prove its authenticity and accuracy. Where a private deed is used against the person who apparently signed the deed, or against his heir, or against one who acquired the property on the conversion of the body corporate as

its successor in title, the genuineness and correctness of the deed shall be presumed to have been admitted.

§ 566

(1) If a private deed is not signed, it is for the person who used it to prove that it came from the person he claims.

(2) Documents relating to legal facts occurring in the ordinary course of business of a factory are presumed to prove, when relied on by the other party for his benefit, what is contained in the document and that the document was executed at the time stated therein; this applies even if the document was not signed.

Public instrument

§ 567

A public document is a document issued by a public authority within the limits of its powers or a document declared by law to be a public document; this does not apply if it suffers from such defects that it is regarded as if it were not a public document.

§ 568

(1) Where any fact is acknowledged in a public deed, it establishes against every person full proof of the origin of the deed by the authority or person who created it, of the time when the deed was made, and of the fact which the originator of the public deed acknowledged to have happened or been done in his presence, until the contrary is proved.

(2) Where a public instrument records the manifestation of the will of a person in a legal act and is signed by the actor, it establishes against every person full proof of such manifestation of will. This applies even if the signature of the actor has been substituted in a manner prescribed by law.

§ 569

If a public deed was made to contradict an earlier public deed of a legal transaction between the same persons, it takes effect against third parties if its contents have been published in a public register or if it has been produced to a third party.

Section 5

Juridical acts with respect to a person that is not present

§ 570

(1) Legal action operates against an absent person from the time the manifestation of intent reaches him; if the other party knowingly frustrates the reach, it is presumed to have properly occurred.

(2) A legal act does not operate against a person who lacks full capacity until the expression of will reaches his legal representative or guardian. However, if the legal act is intended only to confer a legal advantage on such a person, the legal act has effect from the time it is done in relation to that person.

§ 571

If the manifestation of intent is altered by the means used by the one who acted or by other circumstances set up during the carriage, the legal case shall be judged under the provisions of the mistake.

§ 572

A person acting in writing may revoke his or her expression of will if the revocation reaches the other party no later than at the same time as the original expression of will.

§ 573

Presumption of the time of reaching

An inbound shipment sent using a postal service provider is presumed to have arrived on the third business day after mailing, but if sent to an address in another state, on the fifteenth business day after mailing.

Section 6

Invalidity of juridical acts

General Provisions

§ 574

A legal action should be viewed as valid rather than invalid.

§ 575

If an invalid legal act has the elements of another legal act which is valid, that other legal act is valid if it is clear from the circumstances that it expresses the intention of the person acting.

§ 576

If the ground of invalidity relates only to a part of the legal act which can be separated from its other content, only that part is invalid if it can be presumed that the legal act would have occurred without the invalid part if the party had recognised the invalidity in time.

§ 577

If the ground of invalidity consists only in an unlawful determination of quantity, time, territory or other scope, the court shall modify the scope so as to conform to a fair arrangement of the rights and obligations of the parties; it shall not be bound by the proposals of the parties, but shall consider whether the party would have proceeded with the legal action at all if it had recognized the invalidity in time.

§ 578

Mistakes in writing or in numbers are not prejudicial to a legal act if its meaning is beyond doubt.

§ 579

(1) If someone has caused a legal act to be invalid, he has no right to object to the invalidity or to claim a benefit for himself from the invalid act.

(2) Whoever has caused a legal act to be void shall compensate the party who did not know of the voidness for the damage resulting therefrom.

Main grounds for invalidity

§ 580

(1) A legal act that is contrary to good morals, as well as a legal act that is contrary to the law, is void if the meaning and purpose of the law requires it.

(2) A legal act is void if it requires something impossible to be performed.

§ 581

If a person does not have full capacity, a legal act for which he lacks capacity is void. An act of a person acting under a mental disorder which renders him incapable of legal action is also invalid.

§ 582

(1) If a legal act is not done in the form agreed by the parties or prescribed by law, it is void unless the parties subsequently cure the defect. If the expression of will includes several legal acts simultaneously, the lack of form required for any of them does not in itself render the others invalid.

(2) If the form of the legal act agreed by the parties is not observed, nullity may be pleaded only if it has not already been performed. This applies even if the form of a particular legal transaction is required by the provisions of Part Four of this Act.

Error

§ 583

If one is mistaken about a critical circumstance and has been misled by the other party, the legal transaction is void.

§ 584

(1) If the mistake relates to an incidental circumstance which is not even declared by the parties to be decisive, the legal act is valid, but the person who was mistaken is entitled to reasonable compensation against the person who made the mistake.

(2) If the legal act was induced by deceit, the legal act is void even though the mistake relates only to an incidental circumstance.

§ 585

If the mistake of the actor was caused by a third party, the act is valid. If, however, the person with whom the legal act was done had a share in the act of the third person, or knew or at least ought to have known of it, that person is also deemed to be the author of the mistake.

Consequences of invalidity

§ 586

(1) If the invalidity of a legal act is established to protect the interest of a particular person, only that person may object to the invalidity.

(2) If the person entitled does not object to the invalidity of the legal act, the legal act is deemed to be valid.

§ 587

(1) Whoever has been induced to perform a legal act by a threat of physical or mental violence which, in view of the importance and likelihood of the threatened danger and the personal characteristics of the person threatened, gives rise to his reasonable apprehension, has the right to object to the invalidity of the legal act.

(2) Whoever has induced another to commit a legal act by threat or deceit shall always compensate for the injury resulting therefrom.

§ 588

The court shall take into account, even without a petition, the invalidity of a legal act which is manifestly contrary to good morals or which is contrary to law and manifestly disturbs public order. This also applies if the legal act obliges the performance of a performance that is impossible from the outset.

Section 7

Relative ineffectiveness

§ 589

(1) If the debtor's legal action shortens the satisfaction of the creditor's enforceable claim, the creditor has the right to request that the court determine that the debtor's legal action is not legally effective against the creditor. The creditor has this right even if the third party's right is already enforceable or has already been satisfied.

(2) The ineffectiveness of a legal act of the debtor is established by the court's decision on the creditor's action opposing the legal act of the debtor (counterclaim).

§ 590

(1) A creditor may assert that a legal action is ineffective,

- a)** made by the debtor within the last five years with the intention of defrauding his creditors, if such intention was known to the other party,
- b)** by which the debtor has, within the last two years, defrauded its creditors, if the other party must have known of the debtor's intention to defraud the creditors; or
- c)** which has defrauded a creditor and which has taken place within the last two years between the debtor and a person close to the debtor or which the debtor has done for the benefit of such a person, unless the debtor's intention to defraud the creditor was not known to the other party at the time the act took place and need not have been known.

(2) A creditor may claim the ineffectiveness of a contract of sale or exchange made within the last year if the other party must have known in the debtor's conduct the waste of property by which the debtor's creditor is defrauded.

§ 591

The ineffectiveness of a debtor's gratuitous act may be invoked by a creditor if it occurred within the last two years. This does not apply if it is

- a)** the performance of an obligation imposed by law,
- b)** customary occasional gifts,
- c)** a donation made in a reasonable amount for a public benefit purpose, or
- d)** a transaction in satisfaction of a moral obligation or a consideration of decency.

§ 592

In the same way as the legal acts referred to in § 590 or 591, an omission by which a debtor has lost a property right or by which he has caused another person to create, preserve or secure a property right against him. This applies even if the debtor has refused the inheritance, unless it was overdue.

§ 593

If a creditor reserves the right to invoke the ineffectiveness of a legal act before his claim becomes enforceable, by giving notice of the reservation through a notary, executor or court to the person against whom he may invoke the ineffectiveness of the legal act, the time limit for the creditor to invoke the ineffectiveness of the legal act does not run until the claim becomes enforceable.

§ 594

(1) The ineffectiveness of a legal act may be invoked against the person who legally dealt with the debtor or who directly benefited from the legal act, against his heir or against the person who acquired the property in the transformation of the legal person as its successor.

(2) Against another legal successor, ineffectiveness may be invoked only if

- a)** the successor in title must have been aware of the circumstances for which the creditor could invoke the ineffectiveness of the legal act,
- b)** the successor in title acquired the right gratuitously, or
- c)** the successor in title is a person close to the predecessor in title unless the person may not have been aware, at the time he or she acquired the right from the predecessor in title, of circumstances for which the creditor could claim the ineffectiveness of the legal act.

§ 595

(1) The ineffectiveness of a legal act gives rise to a creditor's right to seek satisfaction of a claim also out of what has been lost from the debtor's estate by the ineffective act. If this is not possible, the creditor is entitled to appropriate compensation.

(2) One who is obliged to perform is deemed to be a dishonest holder; but his heir or other general successor in title is only to be considered a dishonest holder if he must have known the circumstances for which the creditor could claim the ineffectiveness of the act.

(3) The honest recipient of a gratuitous transaction shall satisfy the creditor in respect of that transaction to the extent that he has been enriched thereby. This does not apply if the creditor could have invoked the ineffectiveness of the legal act even if it was for consideration.

§ 596

If a third party has acquired such a right to a thing from which the creditor could otherwise claim satisfaction that the ineffectiveness cannot be asserted against that person, the person against whom the creditor could have previously asserted the ineffectiveness of the legal act and in whose possession the third party's right arose is liable to the creditor for damages.

§ 597

(1) Whoever owes a duty to a creditor under § 595 or 596 may discharge it by satisfying the creditor's claim against the debtor. He may do so even before the creditor invokes the ineffectiveness.

(2) One who owes a duty to a creditor under § 595 or 596 may recover from the debtor the consideration or satisfaction of a claim revived as a result of the creditor's invocation of ineffectiveness.

§ 598

Where multiple creditors invoke the ineffectiveness of the same act, no more can be claimed in the aggregate from the obligor than is provided for in § 595 and 596.

§ 599

(1) If a creditor pleads the ineffectiveness of a legal act relating to a matter entered in a public list, he may, together with the presentation of a counterclaim and proof of its filing, request the authority in charge of maintaining such list to note therein the plea of ineffectiveness of the legal act.

(2) If the court upholds the action, the judgment shall have effect against the persons who, after the making of the entry, acquired the thing or right in the thing entered in such list.

Volume 2

Legal events

§ 600

General Provisions

The law sets out which rights and which obligations arise, change or cease from legal facts independent of a person's will. The agreement of the parties may also determine such a consequence.

The meaning of time

§ 601

(1) If a right accrues or an obligation arises on a particular day, it accrues or arises at the beginning of that day; if a right or obligation ceases on a particular day, it ceases at the end of that day. This does not apply if the nature of the legal case precludes it.

(2) Where the extinction of a right is conditional on the creation of another right in relation to each other, both occur at the same time. Unless otherwise agreed or provided, such legal effect shall take effect at the end of the day.

§ 602

If a right is to be exercised or an obligation performed on or before a certain day, it is required to be done at the usual time of day, unless something else follows from custom, from the established practice of the parties, or from the special circumstances of the case.

§ 603

Rights and obligations cease on expiry of the period for which they were limited.

§ 604

A change in the person of the creditor or debtor does not affect the running of the time or period.

Computation of time

§ 605

(1) A period of time or period determined by days begins on the day following the fact determinative of its commencement.

(2) The end of a period or period determined by weeks, months or years shall fall on a day which coincides in name or number with the day on which the fact from which the period or period is calculated falls. If there is no such day in the last month, the end of the period or period shall be on the last day of the month.

§ 606

(1) The middle of a month is defined as fifteen days and the middle of a month is defined as its fifteenth day.

(2) If a period or time is fixed for one or more months and part of a month, the part of the month shall be counted last.

§ 607

If the last day of the period falls on a Saturday, Sunday or public holiday, the last day of the period shall be the working day nearest to the next working day.

§ 608

A deadline or period of time specified in units of time shorter than days is calculated from the time it begins to the time it ends.

Volume 3

Statute of limitations and prescription

Section 1

Statute of limitations

Subsection 1

General Provisions

§ 609

If the right has not been exercised within the limitation period, it is barred and the debtor is not obliged to perform. If, however, the debtor has performed after the expiry of the limitation period, he cannot claim repayment of what he has performed.

§ 610

(1) The court will only take into account the statute of limitations if the debtor argues that the right is time-barred. If a person waives the right to raise a limitation objection in advance, it shall not be taken into account.

(2) Where the parties are obliged to repay to each other what they have acquired under a void contract or under a cancelled obligation, the court shall take into account the plea of limitation only if the other party could also plead limitation. This applies even if the performance was based on an apparent legal transaction.

§ 611

All property rights shall be barred except as provided by law. Other rights shall be barred where the law so provides.

§ 612

In the case of the right to life and dignity, name, health, respectability, honour, privacy or similar personal rights, only rights to redress for injury to those rights are time-barred.

§ 613

The right to alimony is not time-barred, but rights to individual reimbursements are subject to the statute of limitations.

§ 614

The right of ownership or the right to demand partition of the common property, the right to establish a necessary way and the right to redeem a real burden are not barred.

§ 615

(1) If the performance of the debt is secured by a lien, the lien is not extinguished before the debt. The limitation of the claim does not prevent the pledgee from satisfying the pledge.

(2) The lien is not barred as long as the pledgee has the movable collateral in his possession or, where applicable, as long as a third party holds it for him.

(3) If the creditor has a lien, [paragraphs 1 and 2](#) apply mutatis mutandis.

§ 616

When security is given by way of transfer of right, the lapse of time on a claim is not a ground for retrospective transfer of the right to the person who gave the security.

§ 617

(1) Even after the expiration of the statute of limitations, a party may assert its right in defending against a right asserted by the other party if both rights relate to the same contract or to several contracts entered into in relation to each other in purpose.

(2) Even after the expiration of the limitation period, a party may assert a right of set-off if the set-off could have been taken at any time before the limitation period expired.

§ 618

If a right entered in a public list or register of mortgages becomes time-barred, the person who keeps the public list or register of mortgages shall, on the application of the person having a legal interest in the deletion, delete the time-barred right therefrom.

Commencement of limitation period**§ 619**

(1) If the right is enforceable by a public authority, the limitation period begins to run from the date on which the right could first have been asserted.

(2) A right may be asserted for the first time if the person entitled to it has knowledge of the circumstances relevant to the commencement of the limitation period, or should and could have had such knowledge.

§ 620

(1) The circumstances relevant to the commencement of the limitation period in a right to compensation include knowledge of the damage and the person liable to compensate for it. The same applies mutatis mutandis to damages.

(2) The circumstances relevant to the commencement of the limitation period for a right to compensation for damage caused by a defect in a product under [§ 2939](#) include knowledge of the damage, the defect and the identity of the manufacturer.

§ 621

Circumstances relevant to the commencement of the limitation period for a right to the recovery of unjust enrichment include knowledge that unjust enrichment has occurred and of the person liable for its recovery.

§ 622

If the injury is to a minor who is not fully competent, the limitation period shall begin to run at the earliest when the minor becomes fully competent. If he or she has not acquired full legal capacity, the limitation period shall not begin to run until a guardian has been appointed for him or her after he or she has reached the age of majority.

§ 623

In the case of partial performance of a debt, the limitation period shall begin to run for each partial performance from the date of its maturity. If the whole debt becomes time-barred due to the failure to perform any of the partial performance, the limitation period for the whole debt shall begin to run from the date of maturity of the unperformed partial performance.

§ 624

For the right to release funds deposited in an account or representing a deposit, the limitation period begins to run from the date on which the contractual obligation ceased to exist.

§ 625

For a right arising from the total destruction or loss of the thing transported, the limitation period begins to run from the date on which the consignment should have been delivered to the consignee. However, if the thing carried was merely damaged or if it was delivered late, the limitation period begins to run from the date of delivery of the consignment.

§ 626

For the right to claim, the limitation period begins to run one year after the insured event. This applies even if the injured party has a direct right to the insurance benefit against the insurer, or if the insured claims against the insurer for reimbursement of what he or she has provided to the injured party in fulfillment of the obligation to compensate for damage or other injury.

§ 627

If, by custom or practice established between the parties, a claim is to be settled on the basis of an account submitted at the end of a period, the limitation period begins to run from the day after the end of the period when the account should have been submitted.

§ 628

In the case of a right which must first be asserted against the person concerned, the limitation period begins to run from the date on which the right is so asserted against him.

Subsection 2**Length of limitation period****General provisions****§ 629**

(1) The statute of limitations is three years.

(2) A property right is barred not later than ten years after the date on which it accrues, unless a different limitation period is specifically provided by law.

§ 630

(1) The parties may agree on a shorter or longer limitation period, calculated from the date on which the right could first have been exercised, than that provided by law, but not less than one year and not more than fifteen years.

(2) If a shorter or longer period is agreed to the disadvantage of the weaker party, the agreement shall be disregarded. Nor shall an agreement for a shorter limitation period be disregarded where the right to performance arises from injury to liberty, life or health or from wilful breach of duty.

Special Provisions

§ 631

If a right has been entered on a public register, it is barred ten years from the date on which it could first have been exercised.

§ 632

If a right has been entered in the public register which may be exercised continuously or repeatedly, it shall be barred unless exercised for ten years. However, if a right has been entered in the public register which is exercised only infrequently, it is required that the person to whom the right belongs has had at least three opportunities to exercise it within a period of ten years and has never exercised it; if no opportunity to exercise the right occurs three times within a period of ten years, the period of limitation shall be extended until none of the three opportunities has been taken.

§ 633

(1) If the person bound by the easement prevents the exercise of the right, the easement is barred unless the person entitled asserts his right within three years.

(2) The right to individual performance under a real easement is barred as a claim.

§ 634

The right to require the court to determine the contents of a future contract under a contract of sale is barred one year from the last day of the period when the future contract should have been made. This applies even if it has been agreed that a third party or the court will determine certain content of the contract.

§ 635

(1) If it is a life insurance policy, the right to the policy benefit is barred after ten years.

(2) The right to claim under a liability insurance policy is barred at the latest by the limitation of the right to recover for the loss or injury covered by the policy.

§ 636

(1) The right to recover damages for loss or other injury is barred not later than ten years after the date on which the loss or injury occurred.

(2) If the damage or injury was caused intentionally, the right to compensation shall be barred not later than fifteen years from the date on which the damage or injury occurred. This shall also apply where the damage or injury is caused by a breach of duty as a result of bribery consisting in the offer, promise or giving of a bribe by someone other than the injured party or in the direct or indirect solicitation of a bribe from the injured party.

(3) For a right arising from injury to liberty, life or health, [paragraphs 1 and 2](#) do not apply.

§ 637

The right to compensation for damage caused by a defective product under [§ 2939](#) is time-barred no later than ten years from the date on which the manufacturer placed the defective product on the market.

§ 638

(1) The right to the release of unjust enrichment is time-barred no later than ten years from the date on which the unjust enrichment occurred.

(2) If the unjust enrichment was acquired intentionally, the right to its recovery is time-barred not later than fifteen years from the date on which the unjust enrichment occurred.

§ 639

If the debtor has acknowledged his debt, the right is time-barred ten years from the date on which the acknowledgement was made. If, however, the debtor also specifies in the acknowledgement the time by which he will perform, the right is time-barred ten years from the last day of the specified period.

§ 640

A right conferred by a decision of a public authority is time-barred ten years from the date on which it should have been performed in accordance with the decision.

§ 641

If, in an acknowledgement of debt or in a decision of a public authority, the performance has been divided into individual partial performances, the limitation period of ten years also applies to those partial performances and starts to run from the date of maturity of each partial performance. If the failure to perform any of the partial performances brings the entire debt to maturity, the limitation period shall begin to run from the date on which the unperformed partial performance has matured.

§ 642

If the debt has been acknowledged or the right has been granted by a decision of a public authority, the 10-year limitation period does not apply to interest and to those repayments that have matured after the acknowledgement of the debt or the grant of the right.

§ 643

(1) If the obligation has passed to the heir, the limitation period shall not expire until the expiration of six months from the date on which the heir's acquisition of the inheritance is confirmed.

(2) Where a legal person has been restored, the limitation period for its creditors shall expire no earlier than the expiry of six months from the date on which the registration of the legal person in the public register was restored.

§ 644

If a mortgagee discharges a debt to a creditor on behalf of a debtor, the mortgagee's right against the debtor is not barred until six months after the discharge of the debt.

Subsection 3**Running of limitation period****§ 645**

Where a person is required to have a legal representative or guardian, the limitation period shall not begin to run in respect of a right of or against such person until the date on which he obtains a legal representative or guardian. A period already begun shall continue to run but shall not expire until one year after the obstacle has ceased to exist.

§ 646

Between spouses, the statute of limitations does not begin to run or run while the marriage is ongoing. This applies mutatis mutandis to rights between persons living in a common household, between a representative and a legal representative, between a ward and a guardian, or between a ward and a guardian.

§ 647

In the case of an agreement to negotiate out of court between a creditor and a debtor concerning a right or a circumstance giving rise to a right, the limitation period shall begin to run after the creditor or debtor expressly refuses to continue such negotiations; if the limitation period has begun to run earlier, it shall not run during the period of negotiations.

§ 648

If the creditor asserts a right before a public authority within the limitation period and proceeds with the duly initiated proceedings, the limitation period does not run. This also applies to a right already enforceable if enforcement of the decision or an order for execution has been proposed.

§ 649

Where a creditor asserts a counterclaim with a public authority and where both rights relate to the same contract or to several contracts made in relation to each other in respect of their purpose, the limitation period shall cease to run on the date on which proceedings are commenced in respect of the right against which the counterclaim is directed. In other cases, the limitation period shall cease to run on the date on which the counterclaim is asserted.

§ 650

The limitation period does not run while the creditor is prevented by threat from exercising the right. This applies even if the creditor has not exercised the right, having been misled by the debtor or a person close to the debtor.

§ 651

The statute of limitations does not run while a force majeure event exists that prevented the creditor from exercising the right during the last six months of the limitations period.

§ 652

If the limitation period continues to run after one of the impediments listed in § 646 to 651 has ceased to exist, the limitation period will not expire until six months after the date on which it began to run again.

Subsection 4**Restoring a claim and running of a new limitation period****§ 653**

(1) If the right has already been time-barred and the debtor has acknowledged the debt, the claim is reinstated and a new limitation period starts to run from the date on which the debt was acknowledged. If, however, the debtor also specifies in the acknowledgement a time by which he will comply, the right is time-barred ten years from the last day of the specified period.

(2) Where a right, although already time-barred, has been recognised by a decision of a public authority, [paragraph 1](#) shall apply mutatis mutandis.

Section 2**Prescription****§ 654**

(1) If the right has not been exercised within the time limit, it shall lapse only in cases expressly provided by law. The court shall take into account the extinction of the right even if the debtor does not object.

(2) The provisions of this Act on the running of the limitation period shall apply mutatis mutandis to the limitation period.

PART TWO

FAMILY LAW

TITLE I

MARRIAGE

Volume 1

General Provisions

§ 655

Marriage is a permanent union between a man and a woman formed in the manner provided for in this Act. The main purpose of marriage is the establishment of a family, the proper upbringing of children and mutual support and assistance.

Volume 2

Formation of marriage

§ 656

(1) Marriage is created by the free and full consent of the man and woman who intend to enter into marriage (hereinafter referred to as "the betrothed") to enter into marriage together.

(2) The marriage ceremony is public and solemn; it is performed in the presence of two witnesses.

§ 657

(1) If the betrothed and the bride and groom express their intention to enter into marriage together in person before the public authority performing the marriage ceremony in the presence of the registrar, it is a civil marriage.

(2) If the betrothed and the bride and groom manifest their intention to enter into marriage together in person before the authority of a church or religious society authorised to do so under any other law (hereinafter referred to as the "authorised church"), it is a religious marriage.

§ 658

(1) If it is a civil marriage, other legislation shall specify who is the public authority performing the marriage ceremony.

(2) If it is a church marriage, the authority of the authorised church is the person authorised by the authorised church.

§ 659

Marriage is solemnized by the person acting for the public authority, or the person acting for the authority of the authorized church, asking the betrothed couple, as the marriage officiant, whether they wish to enter into marriage together; the affirmative answer of both betrothed couples shall constitute marriage. Marriage shall also be contracted in any other way if it is clear that the betrothed declare their intention to marry.

§ 660

In the marriage ceremony, the betrothed shall declare that

a) the surname of one of them shall be their joint surname,

b) they will both retain their surnames, or

c) the surname of one of them shall be their common surname, and the one whose surname is not to be the common surname shall append his or her existing surname to the common surname in the other place.

§ 661

(1) If the betrothed keep their current surnames, they also declare at the marriage ceremony which of their surnames will be the surname of their joint children.

(2) If the spouses have retained their existing surnames, they may also later make a declaration to a public authority that they have agreed on the common surname of one of them or on the surname according to [section 660\(c\)](#).

(3) If the spouses have a surname under [§660\(c\)](#), they may also later make a declaration to a public authority that one of them is dropping the surname being appended.

(4) If the spouses have a common surname, they may also later make a declaration to the public authority that one of them will append to the common surname in the second place the surname he or she had before the marriage.

§ 662

(1) If, in the case of an election under [§ 660\(c\)](#), the fiancé whose surname is not to be a joint surname has an attached surname, he or she may choose only the first surname as the attached surname.

(2) The choice under [§ 660\(c\)](#) is not available if the fiancé whose last name is to be the surname to be the joint last name already has an attached last name.

§ 663

(1) If it is a civil marriage, the marriage ceremony shall take place at a place designated for that purpose by the public authority performing the marriage ceremony; in doing so, it shall take into account the will of the betrothed.

(2) If it is a church marriage, the marriage ceremony shall take place at the place designated by the internal regulations of the authorised church.

§ 664

(1) The betrothed shall apply to the public authority in whose administrative district the marriage is to be celebrated for the performance of the marriage ceremony and shall produce documents certifying their identity and their capacity to marry; other legislation shall specify the documents to be produced.

(2) The public authority may dispense with the production of the specified documents if their action is linked to an obstacle that is difficult to overcome.

§ 665

At the marriage ceremony, the spouses shall state, before they make their marriage vows, that they are not aware of any obstacles that would prevent them from marrying, that they know each other's state of health, and that they have considered the arrangement of their future property, their living arrangements and their material support after the marriage.

§ 666

(1) If a religious marriage is to be celebrated, the couple must first present to the marriage registrar a certificate issued by the registry office in whose administrative district the marriage is to be celebrated. The certificate must contain a confirmation that the betrothed has fulfilled all the requirements laid down by law for the celebration of the marriage. No more than six months shall elapse between the issue of this certificate and the marriage ceremony.

(2) If a church marriage has been celebrated, the marriage officiant shall, within three working days of the celebration of the marriage, deliver to the civil registry office in whose administrative district the marriage was celebrated a record of the celebration of the marriage, stating the facts as required by other legislation.

§ 667

(1) If the life of the betrothed is directly endangered, the marriage ceremony may be performed by any authority under [§ 658](#), or by any other authority provided for by other legislation, at any place; this applies mutatis mutandis to a church marriage. Outside the territory of the Czech Republic, the marriage ceremony may also be performed by the commander of a naval vessel flying the national flag of the Czech Republic or the commander of an aircraft registered in the Air Register in the Czech Republic, and, if at least one of the betrothed is a citizen of the Czech Republic, also by the commander of a military unit of the Czech Republic abroad.

(2) In the cases referred to in [paragraph 1](#), it is not necessary to present documents otherwise required; the presence of a registrar is not required.

§ 668

A citizen of the Czech Republic may also marry outside the territory of the Republic before a diplomatic mission or consular office of the Czech Republic.

§ 669

(1) If there are important reasons for this, the regional authority in whose administrative district the marriage is to be celebrated may, at the request of the fiancés, allow the expression of will of one of the fiancés to enter into marriage to be made on his/her behalf by his/her proxy.

(2) The power of attorney shall contain information certifying the identity and other relevant facts concerning both fiancés and the proxy and a statement of the surname. It must also state that the fiancés are not aware of any obstacles which would prevent them from entering into the marriage, that they know each other's state of health and that they have considered the arrangement of their future property, housing and material security after the marriage. The power of attorney must be in writing and the signature must be officially certified.

(3) The revocation of a power of attorney is only effective if the other spouse becomes aware of it before he or she makes his or her marital expression.

§ 670

(1) Where a civil marriage has been solemnized, subsequent religious ceremonies have no legal effect.

(2) If a religious marriage has been solemnized, a subsequent civil marriage cannot be solemnized.

§ 671

Capacity to enter into marriage

Anyone may marry unless prevented by a legal impediment under [§ 672 to 676](#).

Legal impediments to marriage

§ 672

(1) Marriage cannot be contracted by a minor who is not fully competent.

(2) The court may, in exceptional cases, authorize the marriage of a minor who is not fully competent and has reached the age of sixteen years, if there are compelling reasons for doing so.

§ 673

Marriage cannot be contracted by a person whose capacity to act has been limited in this area.

§ 674

Marriage cannot be contracted by a person who has previously contracted a marriage, or by a person who has previously entered into a registered partnership or other similar union contracted abroad, and that marriage, registered partnership or other similar union contracted abroad continues.

§ 675

Marriage cannot be contracted between ancestors and descendants, nor between siblings; the same applies to persons whose relationship was established by adoption.

§ 676

Marriage cannot be contracted between a guardian and a ward, between a child and a person to whose care the child has been entrusted, or between a foster parent and a ward.

Ostensible marriage and invalidity of marriage

Section 1

Ostensible marriage

§ 677

(1) A marriage will not come into existence unless at least one of the persons intending to marry has, in or in connection with the expression of intention to enter into the marriage or the marriage ceremony, fulfilled such requisites as must be insisted upon unqualifiedly in order for the marriage to come into existence.

(2) In the case of a church marriage, these requisites include the fact that the marriage was solemnized before the authority of the authorized church. If the marriage ceremony is not performed in the event of imminent danger to the life of the betrothed, these facts shall include a certificate from the registry office that the betrothed has fulfilled all the requirements of the law for the celebration of the marriage and that a period of not more than six months has elapsed between the issue of this certificate and the celebration of the marriage.

§ 678

The court may determine that there is no marriage, even without a petition.

§ 679

(1) Immediately after the court determines that there is no marriage, the court shall decide paternity of the common child and the parents' duties and rights to the child.

(2) The property duties and rights of a man and a woman shall be considered individually according to their nature. Unless otherwise, the provisions on unjust enrichment shall apply. In these matters, regard shall be had to the husband or wife acting in good faith, as well as to the rights and legal interests of the common children and third parties.

Section 2

Invalidity of Marriage

§ 680

If a marriage has been celebrated although prevented by a legal impediment, the court shall declare the marriage null and void on the application of anyone having a legal interest therein, unless the marriage was prevented by an impediment of limited capacity.

§ 681

A marriage is presumed valid until it is declared void. If the marriage has been declared void, it shall be deemed not to have been contracted.

§ 682

A marriage cannot be declared void if it has been dissolved or if a remedy has already been obtained.

§ 683

Marriage cannot be declared void if it was contracted by a minor who is not fully competent or by a person whose competence has been limited in that area and a child was conceived who was born alive.

§ 684

(1) The court shall declare the marriage null and void on the petition of a spouse whose expression of will to enter into the marriage was made under duress consisting in the use of violence or the threat of violence or whose expression of will to enter into the marriage was made only as a result of a mistake as to the identity of the betrothed or as to the nature of the marriage act. The petition may be filed no later than one year from the date on which the

spouse could, in the circumstances, have done so at the earliest, or when he or she became aware of the true state of affairs.

(2) In the case provided for in [paragraph 1](#), the court shall declare the marriage null and void, even if it has been dissolved by the death of the spouse earlier, before the end of the proceedings for annulment brought on the application of the other spouse, or if the descendants of the spouse who brought the application for annulment apply to the court within one year after his death for the marriage to be declared void.

§ 685

The court will declare a marriage void even without a petition, even if it has already been dissolved if it was contracted

a) by a person who has previously contracted a marriage, or who has previously entered into a registered partnership or other similar union contracted abroad, if such marriage, partnership or other similar union continues,

b) between an ancestor and a descendant, between siblings or between persons whose relationship has been established by adoption.

§ 686

(1) The provisions on the duties and rights of a man and a woman whose marriage has been declared void in respect of a common child and on their property duties and rights in the period after the declaration of nullity shall apply *mutatis mutandis* to the duties and rights of divorced spouses in respect of a common child and to their property duties and rights in the period after the divorce.

(2) If the marriage has been declared void under [§ 684](#), the one who acted in good faith shall be taken into account when deciding the property duties and rights.

Volume 4

Duties and rights of spouses

Section 1

General Provisions

§ 687

(1) Spouses have equal duties and equal rights.

(2) Spouses owe each other respect, are obligated to live together, to be faithful to each other, to respect each other's dignity, to support each other, to maintain a family community, to create a healthy family environment, and to care for children together.

§ 688

The husband has the right to have the other spouse disclose to him details of his income and the state of his assets, as well as his current and contemplated employment, studies and similar activities.

§ 689

In choosing his or her work, study and similar activities, the husband is obliged to take into account the interests of the family, the other spouse and the minor child who has not acquired full legal capacity and who lives with the spouses in the family household, and, where appropriate, other family members.

§ 690

Satisfying family needs

Each spouse contributes to the needs of family life and the needs of the family household according to his or her personal and financial circumstances, abilities and capabilities, so that the standard of living of all family members is substantially comparable. The provision of material benefits is of equal importance to the personal care of the family and its members.

§ 691

(1) If the spouses do not have a family household, each of them bears the expenses of his or her household; this does not relieve them of the duty to help and support each other.

(2) If a common child of the spouses, in respect of whom both have a maintenance obligation, or a minor child who has not acquired full legal capacity and who is entrusted to the care of the spouses or one of them, lives with one of the spouses and the other spouse leaves the family household without special reason and refuses to return, that spouse shall also be obliged to contribute to the costs of the family household. The reason for leaving the family household or, where appropriate, for refusing to return, shall be assessed by the court in accordance with the principles of decency and good morals.

§ 692

Deciding on family matters

(1) The spouses are to agree on family matters, including the choice of the location of the family household, where applicable, the household of one spouse and other family members, especially children who have not acquired full legal capacity, and the family's way of life.

(2) If the spouses do not agree on a substantial family matter, the court may, on the application of one of them, substitute its decision for the consent of the other spouse if he or she refuses to give his or her consent on such a family life matter without serious reason and contrary to the interests of the family or if he or she is unable to manifest his or her will. However, the court shall, above all, guide the spouses to an agreement.

Providing for family matters

§ 693

Family affairs are taken care of jointly by the spouses or by one of them.

§ 694

(1) In the ordinary affairs of the family, a legal act of one spouse binds and authorises both spouses jointly and severally; this does not apply if the spouse who has not acted legally has previously communicated to a third party that he or she does not agree with the legal act. The court may also, at the request of the spouse, exclude the consequences of future legal acts of the other spouse for third parties. Such measures do not apply to legal acts by which the spouse provides for the normal necessities of life of the family and its members, in particular children who have not acquired full legal capacity.

(2) In other family matters, a legal act of one spouse binds and authorises both spouses jointly and severally if the other spouse has given his or her consent to the legal act of the spouse; the provisions of § 692(2) shall apply mutatis mutandis. However, if the spouse who does not consent to the other spouse's legal act does not obtain the assistance of the court beforehand, he or she may invoke the nullity of such legal act.

(3) If the spouses do not live together in the situation referred to in § 691(2), a legal act of one spouse in family matters does not bind or authorise the other spouse without his or her consent.

§ 695

The provisions of § 693 and 694 shall not apply to matters governed by the matrimonial property law provisions.

§ 696

Mutual representation of spouses

(1) A husband has the right to represent his spouse in his ordinary affairs.

(2) A husband shall not have the right referred to in paragraph 1 if the spouse to be represented gives prior notice to the one with whom his spouse is to act or intends to act

legally that he does not consent to representation, or if the court, on the spouse's motion, revokes the other spouse's right of representation.

(3) A spouse does not have the right set out in [paragraph 1](#) even if the spouses are not living together in the situation set out in [§ 691\(2\)](#).

§ 697

Maintenance and support between spouses

(1) Spouses have a mutual maintenance obligation to the extent that it provides both with substantially the same material and cultural standard. The maintenance obligation between the spouses precedes the maintenance obligation of the child and of the parents.

(2) The general provisions on maintenance otherwise apply to the maintenance obligation between spouses.

Usual family household equipment

§ 698

(1) The usual furnishings of a family household consist of a set of movable goods which serve the ordinary necessities of life of the family and its members; it is not decisive whether the individual goods belong to both spouses or to one of them only.

(2) The spouse needs the consent of the other spouse to dispose of an item which forms part of the normal equipment of the family household; this does not apply if it is an item of negligible value.

(3) A spouse may invoke the nullity of a legal act by which the other spouse has disposed of an object which forms part of the normal equipment of the family household without his or her consent.

§ 699

(1) If the husband leaves the family household with the intention of doing so permanently and refuses to return, he may demand that the husband deliver to him that which belongs to the usual furnishings of the family household and belongs exclusively to him. What belongs to the spouses jointly shall be divided equally between them, unless the nature of the property precludes this; in such a case, the general provisions of this Act on the dissolution and division of community of property shall apply.

(2) If the spouse needs what belongs to the normal equipment of the family household, in particular also for the joint minor child of the spouses who has not acquired full legal capacity and towards whom both have a maintenance obligation, or for a minor child who has not acquired full legal capacity, has been entrusted to the joint custody of the spouses living in the family home and has remained in the family home, [paragraph 1](#) shall not apply.

Family enterprise

§ 700

(1) A family plant is one in which spouses, or at least one spouse and their relatives up to the third degree, or persons related to spouses up to the second degree, work together and which is owned by any of those persons. Those of them who permanently work for the family or for the family business shall be regarded as family members participating in the operation of the family business.

(2) The provisions on the rights and obligations of family members involved in the operation of the family factory shall not apply where those rights and obligations are governed by a memorandum of association, including the memorandum of incorporation of a company or cooperative, a silent partnership agreement or a contract and the provisions of another law relating to employment, or any other similar agreement. If the family members involved in the operation of the family business are spouses, the

provisions of this Act on matrimonial property law shall apply in preference to the provisions on the family business.

§ 701

Family members participating in the operation of the family plant shall share in the profits thereof and in the property acquired from such profits, as well as in the additions to the plant, to the extent appropriate to the amount and type of their work. This right may be waived only by a person of full capacity by personal declaration; the declaration shall take the form of a public deed.

§ 702

Decisions regarding the use of profits from the family plant or its increments, as well as decisions regarding matters outside the usual course of business, including changes to the basic principles of plant operations or discontinuance of plant operations, shall be made by a majority vote of the family members participating in the operation of the family plant. If among them there is a person who is not fully capable of exercising his/her legal capacity, he/she shall be represented in the vote by a legal representative if he/she is a minor, otherwise by a guardian.

§ 703

Participation in the operation of the family race is tied to the person of a family member and cannot be transferred to another unless it is one of the family members listed in [§ 700 paragraph 1](#) and all family members already participating in the operation of the family race agree.

§ 704

(1) If the family plant is to be divided in the division of the estate by the court, the family member involved in its operation has a preferential right to it.

(2) If the family plant is to be disposed of, the family member involved in its operation has a pre-emptive right to it, unless otherwise agreed. This also applies if a co-ownership interest in the family plant is to be disposed of or if an item which, by its nature and previous purpose, is intended to serve the family plant on a permanent basis is to be disposed of.

§ 705

(1) Upon the disposition of the plant, participation in the operation of the family plant shall cease.

(2) A family member's participation in the operation of the family plant ceases even if he or she ceases to work for the family or in the family plant, or if the legal basis for continuing to work in the family plant changes.

§ 706

When participation in the operation of the family plant has ceased, payment to a family member still participating in the operation of the plant may be spread over installments if agreed or approved by the court. If there is no reasonable ground for staggering the payment, the court shall not approve the payment in instalments or, where appropriate, decide that the instalment arrangement is invalid.

§ 707

Families formed to operate a family business without the express agreement of the family members shall be governed by the customs and practices established therein, unless inconsistent with [§ 700 to 706](#).

Section 2

Matrimonial property law

§ 708

(1) What belongs to the spouses, has a property value and is not excluded from the legal relationship is part of the community property of the spouses (hereinafter referred to as "community property"). This does not apply if the community property ceases to exist by operation of law during the marriage.

(2) The community property is subject to a statutory regime, or to a contractual regime, or to a regime established by a court decision.

Statutory regime

§ 709

(1) The community property includes what is acquired by one spouse or acquired by both spouses jointly during the marriage, except what

- a)** serves the personal use of one of the spouses,
- b)** acquired by gift, inheritance or bequest by one spouse only, unless the donor at the time of the gift or the testator in the acquisition on death manifested a different intention,
- c)** acquired by one of the spouses as compensation for non-pecuniary injury to his or her natural rights,
- d)** acquired by one of the spouses by legal action relating to his or her exclusive property,
- e)** acquired by one of the spouses by way of compensation for damage, destruction or loss of his or her exclusive property.

(2) The community property includes the gain from what belongs exclusively to one spouse.

(3) The community property also includes the spouse's share in a company or cooperative if the spouse became a partner in the company or a member of the cooperative during the marriage. This does not apply if one of the spouses has acquired the share in a manner giving rise to his/her sole ownership under [paragraph 1](#). The acquisition of a share shall not give rise to a participation by the other spouse in that company or cooperative, except in the case of housing cooperatives.

§ 710

Debts incurred during the marriage are part of the community property, unless

- a)** they relate to property belonging exclusively to one of the spouses, to the extent that they exceed the profit from that property, or
- b)** is taken over by only one spouse without the consent of the other, without the provision for the daily or ordinary needs of the family.

§ 711

(1) The general provisions of this Act shall apply to the acquisition and disposal of the various components of the community property.

(2) Amounts of earnings, salary, wages, profits and other values from employment and other gainful activities become part of the community property at the moment when the spouse who contributed to their acquisition has acquired the possibility of disposing of them.

(3) Claims arising out of the sole property of only one spouse and intended to become part of the community property shall become part of the community property on the date on which they fall due.

§ 712

Unless otherwise provided in this Part of the Act, the provisions of this Act relating to the company or, as the case may be, the provisions relating to joint ownership shall apply *mutatis mutandis* to the community property.

Administration under the statutory regime

§ 713

- (1) The components of the community property are used, benefitted, maintained, disposed of, managed and administered by both spouses or by one of them as agreed.
- (2) The obligations and rights attaching to the community property or to its components belong jointly and severally to both spouses.
- (3) The spouses shall be jointly and severally bound and entitled to legal actions concerning the community property or parts thereof.

§ 714

- (1) In matters concerning the community property and its components which cannot be regarded as ordinary, the spouses shall legally act jointly, or one spouse shall act with the consent of the other. If a spouse refuses to give his or her consent without good reason and contrary to the interests of the spouses, the family or the family household, or if he or she is incapable of expressing his or her will, the other spouse may apply to the court to substitute his or her consent.
- (2) If a spouse acts legally without the consent of the other spouse in a case where consent was required, the other spouse may claim the invalidity of that act.

§ 715

- (1) If a part of the community property is to be used for the business of one of the spouses and if the property value of what is to be used exceeds a measure proportionate to the matrimonial property, the consent of the other spouse is required for the first such use. If the other spouse has been omitted, he or she may plead the invalidity of the act.
- (2) If a part of the community property is to be used to acquire a share in a company or cooperative or if the acquisition of the share results in liability for the debts of the company or cooperative to an extent exceeding the extent proportionate to the spouses' matrimonial property, [paragraph 1](#) shall apply mutatis mutandis.

Contractual regime

§ 716

- (1) The spouses may agree on a matrimonial property regime that differs from the statutory regime. If the spouses agree on a contractual regime, they will generally regulate their obligations and rights concerning the pre-existing community property. If retroactive effect is arranged for the agreed regime, no account is taken of this.
- (2) An agreement on a matrimonial property regime requires the form of a public deed.

§ 717

- (1) The contractual regime may consist of a separate property regime, a regime reserving the creation of community property on the date of dissolution of the marriage, and a regime extending or reducing the scope of the community property in a statutory regime. The provisions on the separate property regime shall apply mutatis mutandis to the regime reserving the community of property on the date of dissolution of the marriage.
- (2) The matrimonial regime may be changed by agreement of the spouses or by a decision of the court; such a change requires an agreement of the spouses or a decision of the court on the components of the community property in the existing regime.

§ 718

- (1) A contract may contain any provision and relate to any matter, unless prohibited by law; it may relate in particular to the extent, content, time of creation of a legal or other community of property regime, individual items and sets of items. The contract may change the classification of existing and future components of the property differently from the statutory regime.

(2) A contract may also arrange the property relations in the event of the dissolution of the marriage; if it is an arrangement for the dissolution of the marriage by death, it shall be deemed to be a contract of succession in this respect if it has the requisites thereof.

(3) The contract may not exclude or modify the provisions concerning the usual furnishings of the family household unless one of the spouses has permanently left the household and refuses to return.

§ 719

(1) A marital property regime agreement must not, by its consequences, exclude the ability of the spouse to provide for the family.

(2) A contract on matrimonial property regime may not, by its content or purpose, affect the rights of a third party unless he or she consents to the contract; such a contract concluded without the consent of the third party shall have no legal effect against him or her.

§ 720

(1) The agreement of the spouses on the matrimonial property regime takes effect upon the conclusion of the marriage. If the contract concerns an existing asset entered in a public register, an amendment may be made to that register only after the marriage has been celebrated.

(2) Where a matrimonial property regime agreement concerns a pre-existing matter entered in a public register, the agreement shall take effect as regards that part against third parties upon entry in that register, unless this Act provides otherwise.

§ 721

(1) A matrimonial property regime agreement shall be entered in the public register if it so provides; otherwise at the request of both spouses. Anything which changes the matrimonial property regime shall be entered in the register.

(2) The entry shall be made without undue delay by the person who drew up the agreement and, if that is not possible, by the person who keeps the list.

Administration under the contractual regime

§ 722

(1) Both spouses and fiancés may enter into an agreement for the administration of what is part of the community property that deviates from the provisions of § 713 and 714; The provisions of § 719 and 720 apply to this contract as well.

(2) A contract under paragraph 1 contains an agreement as to which spouse will manage the community property or part of it and how.

§ 723

(1) The spouse who administers the community property shall legally act independently in matters relating to the community property, including in judicial or other proceedings, unless otherwise provided hereafter.

(2) A spouse who administers all the community property may act legally only with the consent of the other spouse

a) in dealing with the community property as a whole,

b) when disposing of the dwelling in which the spouses' family household is located, if that dwelling is part of the community property, or which is the dwelling of one of them, or the dwelling of a minor child who has not acquired full legal capacity and for whom the spouses are caring, as well as when arranging for the permanent encumbrance of immovable property which is part of the community property.

(3) The provisions of § 714(2) shall apply mutatis mutandis.

Regime established by court order

§ 724

(1) If there is a compelling reason for doing so, the court, on the spouse's motion, shall dissolve the community property or reduce its existing scope.

(2) Serious cause is always the fact that the spouse's creditor seeks security for his/her claim to an extent exceeding the value of what belongs exclusively to that spouse, that the spouse can be considered to be profligate, as well as that the spouse has consistently or repeatedly taken unreasonable risks. The fact that the spouse has started a business or has become an unlimitedly liable partner in a legal person may also be found to be a serious reason.

§ 725

A regime established by a court order can be changed by a marriage contract or by a court order.

§ 726

(1) The court may restore the community of property after having dissolved it; the court may do so, in particular, when the grounds for dissolving the community of property have ceased to exist. This also applies if the spouse proposes that the community property, the extent of which has been reduced, be extended to the legal extent.

(2) If the community property has been extinguished by operation of law, the court shall, on application by the spouse, restore it if this is in the interests of both spouses.

§ 727

(1) The court's decision cannot exclude or modify the provisions governing the usual amenities of the family household.

(2) A court decision on the modification, dissolution or restoration of community property may not have the effect of excluding the ability of the spouse to provide for the family and may not affect the rights of a third party in content or purpose, unless the third party consents to the decision.

§ 728**Administration under the regime formed by the decision of a court**

If a spouse acts in the administration of the community property in a manner that is manifestly contrary to the interests of the other spouse, the family or the family household, and the spouses have not entered into an agreement for the administration of what is part of the community property, the court may, on the application of the other spouse, decide how the community property is to be administered.

Separate property regime**§ 729**

In the separate property regime, a spouse may dispose of his or her property without the consent of the other spouse.

§ 730

If the spouses carry on a business jointly under the separate property regime or one spouse carries on a business with the assistance of the other spouse, they shall divide the income from the business as they have agreed in writing; otherwise the income shall be divided equally.

Protection of third persons**§ 731**

If the debt was incurred by only one spouse during the community of property, the creditor may satisfy himself in execution of the judgment also from what is in the community property.

§ 732

If a debt has been incurred by only one spouse against the will of the other spouse, who has not consented to the creditor without undue delay after becoming aware of the debt, the community property may be affected only to the extent that the debtor's share would have been if the community property had been dissolved and settled under § 742. This also applies in the case of a spousal maintenance obligation, or where the debt arises from the wrongful act of only one spouse, or where the debt of only one spouse was incurred before the marriage.

§ 733

If one of the spouses has contracted less than six months from the time of the change or exclusion of the legal property regime, whether by a marriage contract or a court order, the claim of his creditor may be satisfied out of whatever would have been part of the community property if the marriage contract or court order had not occurred.

§ 734

If a right of a third party, in particular of a creditor, is affected by a marriage contract or a court decision by which the legal property regime has been modified or excluded, that person may assert his or her right on the occasion of the settlement of what was previously part of the community property in the same way as if the marriage contract or court decision had not occurred; in doing so, § 742 shall apply.

§ 735**Special Provisions**

If spouses who intend to obtain a dissolution of the marriage in the manner set forth in § 757 do not enter into an agreement with each other for the arrangement of property obligations and rights in the event of divorce, in which, under the condition, that the marriage will be dissolved, also agree on how they will acquire rights and obligations during the period of separation, the provisions on community property shall apply mutatis mutandis to the period of separation of the spouses, unless this Act provides otherwise.

Settlement of community property**§ 736**

If the community of property is dissolved or terminated, or if its existing scope is reduced, the obligations and rights still held in common shall be liquidated by way of settlement. As long as the reduced, dissolved or extinguished community property is not settled, the provisions on community property shall apply mutatis mutandis.

§ 737

(1) The settlement of the property shall not affect the right of a third party. If his right has been affected by the settlement, the third party may apply to the court for a declaration that the settlement is ineffective against him.

(2) The settlement of debts has effect only between the spouses.

§ 738

(1) A settlement agreement always has effect on the date on which the community property is reduced, dissolved or terminated, regardless of whether the agreement was concluded before or after the reduction, dissolution or termination of the community property. However, if the subject of the settlement is a matter which is entered in the public register, the agreement shall take effect in so far as it relates to that matter on entry in the public register.

(2) The validity of a settlement agreement is not precluded if it concerns only part of the common property obligations and rights.

§ 739

(1) A settlement agreement requires a written form if it was concluded during the marriage or if the subject of the settlement is a property for which the agreement on the transfer of ownership also requires a written form.

(2) If the settlement agreement does not require a written form and one of the spouses so requests, the other spouse shall deliver to the other spouse a confirmation of the settlement.

§ 740

If the spouses do not agree on the settlement, either spouse may ask the court to decide. The court shall decide on the division according to the state in which the effects of the reduction, dissolution or termination of the community property have taken place.

§ 741

If, within three years of the reduction, dissolution or termination of the community property, there is neither a settlement of what was formerly part of the community property by agreement nor a petition for settlement by court decision, the spouses or former spouses shall be deemed to have settled the community property in such a way that

- a)** the tangible movable property is the property of the one of them who uses it exclusively as owner for his or her own use, that of his or her family or that of the family household,
- b)** other tangible movable and intangible property shall be owned jointly by both; their shares shall be equal,
- c)** other property rights, claims and debts belong jointly to both; their shares are equal.

§ 742

(1) Unless the spouses or former spouses agree otherwise or unless the provisions of § 741 apply, the following rules shall apply to the division:

- a)** the shares of both spouses in the property to be divided are equal,
- b)** each spouse shall be reimbursed for what has been spent out of the community property on his/her sole property,
- c)** each spouse shall be entitled to be reimbursed for what he or she has spent out of his or her sole property on the community property,
- d)** the needs of dependent children shall be taken into account,
- e)** account shall be taken of how each spouse has cared for the family, in particular how he or she has cared for the children and the family home,
- f)** account shall be taken of how each spouse has contributed to the acquisition and maintenance of the assets belonging to the community property.

(2) the value of what of the community property has been spent on the spouse's sole property, as well as the value of what of the spouse's sole property has been spent on the community property, shall be taken into account in the division of the community property, increased or decreased according to the increase or decrease in the value of that part of the property on which the expense was incurred from the date of the expenditure to the date on which the community property was reduced, dissolved or terminated.

Certain provisions on the housing of spouses

§ 743

(1) Spouses have a dwelling where they have a family household.

(2) If a spouse requests a transfer of the family household for good cause, the other spouse is to comply unless the reasons for remaining outweigh the reasons for the change.

(3) The spouses may agree to live permanently apart. An agreement by the spouses to live apart has the same legal effect as leaving the family household with the intention of living permanently elsewhere.

§ 744

If the matrimonial home is a house or flat in which one of the spouses has an exclusive right enabling him or her to reside in the house or flat, and if that right is other than a contractual right, the right to reside accrues to the other spouse on the conclusion of the marriage. If one of the spouses acquires such an exclusive right during the marriage, this shall give rise to a right of habitation for the other spouse.

§ 745

(1) If the matrimonial home is a house or flat in which one of the spouses had a right of tenancy on the date of the marriage, the conclusion of the marriage gives rise to a joint tenancy right in the house or flat for both spouses; if the tenancy agreement is concluded at a later date, the two spouses have a joint tenancy right on the effective date of the agreement.

(2) The provisions of [paragraph 1](#) shall not apply if the spouses agree otherwise.

§ 746

(1) If the spouses have a joint tenancy of the house or flat, they are jointly and severally bound and entitled.

(2) The spouse who has the right of occupancy has the status of a guarantor of his or her spouse.

§ 747

(1) If at least one of the spouses has the right to dispose of the house or flat in which the matrimonial household or the family is located, and the house or flat is indispensable for the living of the spouses or the family, he or she must refrain from everything and avoid everything that may make the living impossible or dangerous. In particular, the spouse must not, without the consent of the other spouse, alienate such house or apartment or establish a right over the house, part of it or the whole of it, the exercise of which is incompatible with the matrimonial or family home, unless it ensures that the spouse or family has a home similar in all respects to the existing home.

(2) If a spouse acts without the consent of the other spouse in contravention of [paragraph 1](#), that spouse may invoke the nullity of that act.

§ 748

(1) If the spouses have a joint tenancy of the house or flat in which the family household of the spouses or the family is located, [§ 747 paragraph 1 sentence 1](#) shall apply mutatis mutandis. A spouse may not, without the consent of the other spouse, terminate the tenancy or restrict it by a right the exercise of which is incompatible with the matrimonial or family home.

(2) If a spouse, without the consent of the other spouse, acts in violation of [paragraph 1](#), that spouse may invoke the nullity of that act.

§ 749

The consent of a spouse under [§ 747](#) and [748](#) requires a writing.

§ 750

(1) If the spouses, or the fiancés, as the case may be, agree to deviate from the provisions of [§ 747](#) and [748](#), the agreement must not impair the status of their common minor child, who has not acquired full legal capacity and who lives in the family household with them and for whom they have a maintenance obligation, or a minor child who has not acquired full legal capacity and who has been entrusted to the joint custody of the spouses or one of them; furthermore, the agreement may not affect the rights of third parties, unless they have consented to such an agreement.

(2) Both the agreement and the consent of third parties under [paragraph 1](#) require a written form.

Special provisions against domestic violence

§ 751

(1) If the continued cohabitation of the spouses in the house or apartment in which the matrimonial household is located becomes intolerable for one of them because of physical or mental violence against his or her spouse or anyone else living in the matrimonial household, the court may, on the application of the spouse concerned, restrict or, if necessary, exclude for a specified period the right of the other spouse to reside in the house or apartment.

(2) The same procedure as in [paragraph 1](#) may be followed in the case of divorced spouses as well as in the case where the spouses or divorced spouses live together elsewhere than in the family household.

§ 752

Restriction or exclusion of the spouse's right to live in the house or apartment shall be determined by the court for a maximum period of six months. The court shall decide again on application if there are particularly compelling reasons for doing so.

§ 753

Any other person living in a family household with the spouses or divorced spouses also has the right to seek protection against domestic violence.

Volume 5

Termination of marriage

Section 1

General Provisions

§ 754

Marriage shall not be dissolved except for reasons provided by law.

Section 2

Divorce

§ 755

(1) A marriage may be dissolved if the cohabitation of the spouses is deeply, permanently and irretrievably broken and cannot be expected to be restored.

(2) Despite the fact that the cohabitation of the spouses has been dissolved, the marriage cannot be dissolved if the dissolution would be inconsistent

a) with the interest of a minor child of the spouses who has not acquired full legal capacity, which is determined by special reasons, the interest of the child in the continuation of the marriage being ascertained by the court, including by inquiry of the guardian appointed by the court for the proceedings for the adjustment of the child's relations for the period after the divorce; or

b) with the interest of a spouse who has not predominantly participated in the breakdown through breach of marital duties and who would be particularly seriously harmed by the divorce, on the basis that the exceptional circumstances weigh in favour of preserving the marriage, unless the spouses have not lived together for at least three years.

(3) If the spouses have a minor child who is not fully competent, the court will not dissolve the marriage until it has decided the child's circumstances in the period after the divorce.

§ 756

A court adjudicating a dissolution of marriage shall ascertain the existence of the breakdown of the marriage, and in so doing shall ascertain the causes thereof, unless otherwise provided hereafter.

§ 757

(1) If a spouse joins in a petition for dissolution of marriage filed by the other spouse, the court shall dissolve the marriage without inquiring into the causes of the dissolution if it finds that the identical allegations of the spouses as to the dissolution of the marriage and the intention to obtain a divorce are true and if

- a) on the date of the commencement of the divorce proceedings the marriage has lasted at least one year and the spouses have not been living together for more than six months,
- b) the spouses, who are parents of a minor child who has not acquired full legal capacity, have agreed to regulate the circumstances of that child for the period after the divorce and the court has approved their agreement,
- c) the spouses have agreed to adjust their property, their living arrangements, and, if applicable, alimony for the period after the divorce.

(2) Agreements referred to in [paragraph 1\(c\)](#) require a written form and signatures must be notarized.

§ 758

The spouses are not living together if they do not form a conjugal or family community, regardless of whether they have or maintain a family household, provided that at least one of the spouses clearly does not wish to resume the conjugal community.

Section 3

Consequences of termination of marriage

§ 759

Surname of divorced spouse

A spouse who has adopted the surname of the other spouse may, within six months of the dissolution of the marriage, notify the registry office that he or she is adopting back his or her former surname. This also applies if the spouse who has taken the surname of the other spouse, with the intention of adding his or her former surname or the first of his or her surnames to the joint surname, intends to use only his or her former surname in future.

Maintenance and support of a divorced spouse

§ 760

(1) If the divorced spouse is unable to support himself or herself and that inability originates in or is related to the marriage, his or her former spouse shall have a maintenance obligation towards him or her to the extent that he or she can fairly be required to do so, taking into account, in particular, the age or health of the divorced spouse at the time of the divorce or the termination of the care of the divorced spouses' common child.

(2) In deciding on maintenance or the amount thereof, the court shall have regard to the duration of the divorced marriage and whether

- a) the divorced spouse has failed to secure reasonable employment, even though he or she has not been prevented from doing so by a substantial impediment,
- b) the divorced spouse could have provided for his or her support by the proper management of his or her own property,
- c) the divorced spouse participated in the maintenance of the family household during the marriage,

d) the divorced spouse did not commit an act in the nature of a crime against the former spouse or a person close to the former spouse, or

e) there is some other similarly compelling reason.

(3) The general provisions on maintenance apply *mutatis mutandis* to the maintenance obligation of divorced spouses.

§ 761

(1) The extent of the maintenance obligation and the manner in which maintenance is to be provided shall be governed by agreement of the spouses or divorced spouses; if they agree that maintenance is to be replaced by alimony, the divorced spouse's right to maintenance shall cease upon the provision of alimony.

(2) If there is no agreement between the divorced spouses regarding maintenance, the needy former spouse may petition the court to decide the maintenance obligation of the other spouse.

§ 762

(1) If the spouses or the divorced spouses do not agree on maintenance, the spouse who did not predominantly cause the breakdown of the marriage or did not consent to the divorce and who has been seriously harmed by the divorce may also move the court to determine the maintenance obligation of the former spouse to an extent that ensures that the divorced spouses have substantially the same standard of living. In this case, the divorced spouse's right to maintenance can only be considered reasonable for a period appropriate to the circumstances, but not longer than three years after the divorce.

(2) If the former spouse has committed acts towards the other spouse which fulfil the characteristics of domestic violence, he or she is not entitled to maintenance under [paragraph 1](#), even though he or she would otherwise satisfy the conditions for an award of maintenance.

§ 763

The divorced spouse's right to maintenance ceases if the eligible divorced spouse remarries or enters into a civil partnership.

Property rights and duties upon termination of marriage

§ 764

(1) If the marriage is dissolved by the death of the spouse, the property obligations and rights of the former spouses shall be assessed in the succession proceedings in accordance with the property regime that existed between the spouses and, where applicable, with the instructions made by the deceased spouse during his/her lifetime regarding his/her property in the event of death; otherwise, the rules set out in [§ 742](#) shall apply, with the exception of [§ 742\(1\)\(c\)](#), unless the surviving spouse agrees otherwise with the heirs on the settlement.

(2) If the spouse has been declared dead, his or her property obligations and rights shall be assessed as of the date specified in the decree declaring him or her dead.

§ 765

(1) Where a marriage is dissolved by divorce, the property duties and rights of the divorced spouses shall be administered by agreement of the spouses or the divorced spouses.

(2) If the divorced spouses do not agree on a settlement, the former spouse may file a petition for settlement by court order.

Housing after the termination of marriage

§ 766

(1) If the marriage has ended by the death of the husband and the spouses had a joint tenancy of the house or flat in which their family household was located, the surviving

spouse remains the tenant of the flat. If the spouses were jointly entitled to another right of obligation in the house or flat, the surviving spouse remains the beneficiary.

(2) Where the marriage has ended by the death of the spouse and only one of the spouses had a tenancy right in the house or flat in which the spouses' family household was situated, the provisions on the tenancy of the flat shall apply.

§ 767

(1) Where the marriage has been dissolved by the death of the spouse who had the exclusive right to the house or flat in which the matrimonial household was situated, allowing him or her to reside in the house or flat, and if that right was other than a right of obligation, while the other spouse had a right of habitation in the house or apartment, that spouse's right of habitation shall cease if the exclusive right of the deceased spouse has passed to a person other than the surviving spouse. This does not apply if the surviving spouse cannot fairly be required to leave the house or apartment.

(2) Where it is reasonable in the circumstances of the surviving spouse, in particular because he or she is caring for a minor child who has not acquired full capacity for whom the spouses were caring, or for a minor child who has not acquired full capacity for whom the deceased spouse is the parent, or for a dependent child, who lives with the surviving spouse, the court may, on the surviving spouse's application, establish in his favour a right corresponding to a housing easement, according to the circumstances of the case, but not longer than until such child is permanently capable of supporting himself or herself, and at a remuneration comparable to the rent customary in the locality; this right shall not be extinguished if the child acquires the ability to support himself only for a temporary period.

(3) If the surviving spouse had the right to reside for another reason, [paragraphs 1 and 2](#) shall apply *mutatis mutandis*.

§ 768

(1) Where the marriage has been dissolved by divorce and the spouses had an equal or joint right to the house or flat in which their family home was situated and they do not agree who shall continue to live in the house or flat, the court shall, on the application of one of them, revoke, according to the circumstances of the case, the existing right of the divorced spouse who may fairly be required to leave the house or apartment and, if necessary, at the same time decide on the manner of compensation for the loss of the right; in doing so, it shall take into account, in particular, which of the divorced spouses has been entrusted with the care of a minor child who has not acquired full legal capacity and who was cared for by the spouses, as well as the opinion of the landlord, lender or other person in a similar position.

(2) A divorced spouse who is to leave the house or apartment shall have the right to reside there until the other spouse has provided him or her with alternative accommodation, unless compensation has been awarded in proceedings under [paragraph 1](#), in which case he or she shall have the right to reside in the house or apartment for a maximum of one year. However, if he has been entrusted with the care of a minor child who has not acquired full legal capacity and who has been cared for by the spouses during the marriage, or of a dependent child who lives with him, the court may, on application by that spouse, establish a right of residence in his favour; the provisions of [§ 767\(2\)](#) shall apply *mutatis mutandis*.

§ 769

If the marriage has been dissolved by divorce and the spouses did not have an equal or joint right to the house or flat in which their family household was situated, and the spouses or the divorced spouses, as the case may be, do not agree on the continued residence of the spouse who has only the right to reside in the house or flat, or any other right which is weaker than that of the other spouse, the court shall, on the application of the spouse who has a right of ownership or other right in rem, or an exclusive right of tenancy or other right of obligation, decide on the obligation of the other spouse to move out; the provisions of [§ 767\(2\)](#) shall apply *mutatis mutandis*.

§ 770

Where a marriage has been dissolved by divorce and the spouses had a right to reside in the house or apartment, with one right being derived from the other, the right to seek eviction of the divorced spouse who had only the derived right is vested in the one who has a right in rem or obligation in the house or apartment from which the other spouse's right to reside was directly derived.

TITLE II**FAMILY AND IN-LAW RELATIONSHIPS****Volume 1****General Provisions****Family relationship****§ 771**

Kinship is a relationship of persons based on blood ties or formed by adoption.

§ 772

(1) Persons are related in the direct line if they are descended from one another.

(2) Persons are related in a collateral line if they have a common ancestor but are not descended from each other.

§ 773

The degree of relationship between two persons is determined by the number of births by which they descend from each other in the direct line and from their nearest common ancestor in the collateral line.

§ 774**In-law relationship**

The formation of a marriage creates a sister-in-law relationship between one spouse and the other spouse's relatives; in what line and degree one is related to one spouse, in that line and degree one is related to the other spouse. If the marriage is dissolved by the death of one of the spouses, the consanguinity is not thereby dissolved.

Volume 2**Relationships between parents and a child****Section 1****Determination of parenthood****§ 775****Maternity**

The mother of a child is the woman who gave birth to it.

Paternity**§ 776**

(1) If a child is born between the time of the marriage and the expiration of the thirtieth day after the marriage has been dissolved or declared void, or after the mother's husband has been declared missing, the mother's husband shall be presumed to be the father.

(2) Where a child is born to a woman remarried, the father shall be deemed to be the husband of the later husband, even if the child is born before the expiration of the three hundredth day after the previous marriage has been dissolved or declared void.

§ 777

(1) If a child is born between the commencement of the divorce proceedings and the three hundredth day after the dissolution of the marriage and the husband or former husband of the mother declares that he is not the father of the child while another man declares that he is the father of the child, that man shall be deemed to be the father if the mother joins in both declarations. In this way, paternity may also be established in respect of a child not yet born if it has already been conceived.

(2) The declaration of the husband of the mother of the child, or of her former husband, the man who claims to be the father of the child, and the mother of the child shall be made in proceedings before a court, instituted on the application of either of them, before a registry office or before an embassy of the Czech Republic; the application may be made or the declaration made not later than one year after the birth of the child.

(3) The establishment of paternity of the child under [paragraphs 1 and 2](#) cannot take place until the decree of dissolution of marriage has become final.

(4) Where the proceedings are for the annulment of a marriage, [paragraphs 1 to 3](#) apply *mutatis mutandis*.

§ 778

If a child conceived by artificial insemination is born to an unmarried woman, the man who consented to the artificial insemination shall be presumed to be the father of the child; this shall also apply if the child is born between the dissolution of the marriage or its annulment and the expiration of the thirtieth day thereafter.

§ 779

(1) Failure to establish paternity under [§ 776](#), [777](#) or [778](#), the father shall be deemed to be the man whose paternity has been established by the affirmative declaration of the mother and that man. In this way, paternity may also be established in respect of a child not yet born if it has already been conceived.

(2) The declaration shall be made in person before the court or the registry office. A minor who is not fully competent shall always make the declaration before the court.

§ 780

When a declaration is made by one who is not fully competent, it may be made only before a court. The court will consider, according to the circumstances of the case, whether the person who lacks full capacity is capable of acting alone or whether his guardian will act for him.

§ 781

If the mother, because of mental disorder, is unable to appreciate the significance of her declaration or if the measure of her declaration involves an obstacle that is difficult to overcome, paternity cannot be established by a consent declaration.

§ 782

The general provisions on legal acts apply to the declaration of paternity as a special expression of will, unless otherwise provided. However, the invalidity may be invoked only within the time limit for denying paternity.

§ 783

(1) Failure to establish paternity under [§ 776](#), [777](#) or [778](#), nor under [§ 779](#), the mother, the child, and the man who claims to be the father can petition the court to establish paternity.

(2) A man who has had intercourse with the child's mother during a period of time from which less than one hundred and sixty days have elapsed until the birth of the child and more than three hundred days have elapsed shall be presumed to be the father unless compelling circumstances preclude his paternity.

(3) If the putative father is not alive, the petition shall be filed against a guardian appointed by the court.

§ 784

- (1) If the petitioner dies during the proceedings, another person entitled to the petition may continue the proceedings.
- (2) If a child dies during the proceedings, a descendant of that child may also file a petition within six months of the child's death if he or she has a legal interest in the determination.
- (3) If the putative father dies during the proceedings, the proceedings shall proceed against a guardian appointed by the court for that purpose.
- (4) If the man who claimed to be the father dies during the proceedings and the child or the mother does not continue the proceedings, the court shall discontinue the proceedings.

Denial of Paternity

§ 785

- (1) A husband may, within six months of the date on which he became aware of facts giving rise to a reasonable doubt that he is the father of a child born to his wife, deny his paternity in court, but not later than six years after the birth of the child. He shall deny paternity in respect of the child and the mother if both are alive and, if one of them is not alive, in respect of the other; if neither is alive, the husband shall not have this right.
- (2) If, before the expiry of the six-year period of denial, the husband's legal capacity has been so impaired that he cannot himself deny paternity, his guardian, appointed by the court for that purpose, may deny it within six months of the appointment by the court.

§ 786

- (1) If a child is born between the one hundred and sixtieth day after the marriage is celebrated and the three hundredth day after it is dissolved or declared void, paternity may be denied, except as provided in the provisions of § 777, only if it is excluded that the husband of the mother is the father of the child.
- (2) If the child is born before the one hundred and sixtieth day after the marriage, it is sufficient to disregard the fact that the mother's husband is the father of the child if he denies his paternity. This shall not apply if the husband of the mother has had sexual intercourse with the mother of the child during a period of less than one hundred and sixty days and more than three hundred days from the birth of the child, or if he knew at the time of the marriage that she was pregnant.

§ 787

Paternity cannot be denied to a child born between the one hundred and sixtieth day and the three hundredth day after artificial insemination performed with the consent of the mother's husband, or with the consent of another man when the mother is not married, regardless of the genetic substance used. This shall not apply if the mother of the child has otherwise become pregnant.

§ 788

If the later husband has denied his paternity of the remarried mother's child, the six-month period for denying the paternity of the earlier husband begins on the day after he becomes aware of the decision.

§ 789

A mother may deny that her husband is the father of the child within six months of the child's birth. The provisions on the denial of paternity by the husband apply *mutatis mutandis*.

§ 790

- (1) A man whose paternity has been established by a consensual declaration of the parents may deny paternity of the child only if it is excluded that he may be the father of

the child. He may do so within six months of the date on which paternity was so established; if the establishment of paternity takes place before the birth of the child, the time limit shall not expire until six months after the birth of the child.

(2) The second sentence of § 785(1) and the second sentence of § 785(2) shall apply mutatis mutandis.

§ 791

The mother of a child may deny that the father of the child is a man whose paternity has been established by a consensual declaration of the parents within the time limits set out in § 790 para 1 sentence two.

§ 792

If a petition to deny paternity is filed after the expiration of the denial period, the court may order that the delay be excused if the best interests of the child and public policy so require.

§ 793

If the obvious interests of the child so require and if the provisions guaranteeing fundamental human rights are to be fulfilled, the court may, even without a petition, initiate proceedings for the denial of paternity where paternity has been established by a consensual declaration of the parents but the father of the child so established cannot be the child's father. The court shall, as a rule, suspend the exercise of parental responsibility at the same time.

Section 2

Adoption

Subsection 1

Adoption, adoptive parent and child being adopted

§ 794

Adoption is the adoption of another person as one's own.

§ 795

It is a prerequisite for adoption that the relationship between adopter and adoptee is that of parent and child, or that there is at least the rudiments of such a relationship. The adoption of a minor must be in accordance with the minor's best interests.

§ 796

(1) The adoption of a minor shall be decided by the court on the application of the person who wishes to adopt the child. The petition for adoption of a child from or to a foreign country shall be accompanied by a decision of the competent public authority on consent to the adoption.

(2) The court shall decide on the adoption of an adult on the application of the person who wishes to adopt the adult, to which the adult to be adopted has joined.

§ 797

By virtue of the court order of adoption, the adoptive parent(s) shall be registered as the parent(s) of the child.

§ 798

No person shall derive undue profit from adoption mediation activities.

§ 799

(1) Only a person of full age and capacity may become an adoptive parent if, by his or her personal characteristics and manner of life, as well as the reasons and motives which lead him or her to adopt, he or she guarantees that he or she will be a good parent for the child to be adopted.

(2) The health of the adoptive parent or both adoptive parents must not limit the care of the adopted child to a significant degree.

§ 800

(1) The adoptive parents may be spouses or one spouse. Exceptionally, another person may also adopt; in this case, the court shall also decide that the entry of the other parent is deleted from the civil register.

(2) If the spouses adopt, they file the petition for adoption jointly as joint adoptive parents.

§ 801

When a person who is a parent adopts, the court shall evaluate whether the adoption is fundamentally contrary to the interests of the adoptive parent's children; property interests are not determinative of the evaluation.

§ 802

A minor child who has not acquired full legal capacity may be adopted.

§ 803

There must be a reasonable age difference between the adopter and the adopted child, as a rule not less than sixteen years; only if the guardian representing the child in the proceedings consents to the adoption and if the adoption is in accordance with the interests of the child, the age difference between the adopter and the adopted child may exceptionally be less than sixteen years.

§ 804

Adoption is excluded between persons related to each other in the direct line and between siblings. This does not apply in the case of surrogacy.

Subsection 2

Consent to Adoption

§ 805

Adoption cannot be decided without the consent of the child, the child's parents or persons who are entitled to give consent on behalf of the parents or, where applicable, the adoptive spouse. This applies even if the consent has been withdrawn.

Consent of the child to adoption

§ 806

(1) If the child to be adopted is at least twelve years of age, the child's personal consent is always required, unless it is beyond reasonable doubt that a procedure requiring the personal consent of the child to be adopted would be fundamentally contrary to the child's interests or that the child is incapable of assessing the implications of consent.

(2) Before the adopted child expresses his or her views, the court shall properly instruct the child on the purpose, content, and consequences of consenting to the adoption.

§ 807

(1) If the child has not attained the age of at least twelve years, the guardian shall give consent to the adoption on his/her behalf; the guardian shall, as a rule, be appointed by the court as a social and legal protection authority for children. Before giving consent, the guardian shall ascertain all relevant facts which lead him to conclude that the adoption will be in accordance with the interests of the child.

(2) Where possible, the court shall also hear the child to be adopted and take into account the child's representations, having regard to the child's degree of mental development.

§ 808

Adopted child may withdraw his or her consent to adoption until the adoption is decided.

Parental consent**§ 809**

Consent of the parents of the child being adopted is required for adoption

§ 810

(1) Consent is given by the parent by personal declaration to the court. The declaration must comply with the general requirements of a legal act, but if the consent is conditional or limited in time, it shall be disregarded.

(2) Before the parent makes a statement, the court shall properly instruct the parent on the nature and consequences of the declaration of consent and the nature of the adoption.

§ 811

(1) A parent's consent to the adoption of his or her child is required even if he or she has not acquired full legal capacity. A parent who has not yet reached the age of sixteen cannot give consent to the adoption.

(2) If the consent of a parent who has not acquired full capacity is given, it is not possible for his guardian to act for him; his capacity to consent shall be assessed by the court in accordance with the general provisions.

§ 812

A parent whose legal capacity has been limited by a court order may act legally in adoption matters, including consent to adoption, only to the extent that his or her legal capacity has not been limited.

§ 813

(1) The mother of an adopted child may give consent to the adoption no earlier than six weeks after the birth of the child. The father of the child to be adopted may give consent to the adoption before the expiry of this period, but not earlier than after the birth of the child.

(2) If the consent of the father or mother has been given earlier, it shall not be taken into account.

§ 814

It is irrelevant whether the consent to adoption was given with or without a designation for a particular adoptive person.

§ 815

If consent to adoption is given with a designation for a particular person as the adoptive parent and the petition for adoption is withdrawn or dismissed, the consent shall cease to be effective.

§ 816

Consent to adoption will always lapse if the adoption does not take place within six years of the date on which consent was given.

§ 817

(1) Consent to adoption may be withdrawn for three months from the date on which it was given.

(2) Consent to adoption may be withdrawn after three months from the date on which it was given,

a) if the child to be adopted has not yet been placed in the care of the adopter before the adoption,

b) if the adopted child is to be given up by the person to whom he or she has been entrusted to the care of the adoptive parents pursuant to an order of the court made on the petition of the parents because it is consistent with the best interests of the child to be with his or her parents.

(3) The provisions as to how, against whom and with what effect consent to adoption is given shall apply *mutatis mutandis* to the revocation of consent.

§ 818

(1) The consent of the parent of the child to be adopted is not required for adoption if the parent

a) has been deprived of parental responsibility and the right to consent to the adoption,

b) is unable to express his or her will or to recognize or control the consequences of his or her actions, or

c) is in an unknown place and that place cannot be ascertained by the court, in cooperation with other public authorities, even if the necessary diligence is exercised.

(2) If these facts are present in both parents, the consent of the guardian or, where appropriate, the consent of a guardian appointed by the court for that purpose is required for the adoption; this applies even if both parents are deceased or if the parentage of the child to be adopted has not been established. Before consent is given or withheld, all the relevant facts concerning the adopted child and his or her family which could affect the adoption decision must be ascertained; in particular, it shall be ascertained whether the adopted child has close relatives and whether they are interested in caring for the child, and the person in whose care the adopted child is currently being cared for shall be heard.

§ 819

(1) Furthermore, the consent of a parent who is clearly not interested in the child is not required for adoption.

(2) A parent is manifestly uninterested in the child if he or she does not consistently show a genuine interest in the child and thereby persistently and culpably violates his or her duties as a parent.

§ 820

(1) A parent's lack of interest in a child is presumed to be manifest if it has persisted for at least three months since the last manifestation of genuine interest. If, however, the parent's behaviour cannot be regarded as a gross breach of his or her obligations, it is necessary that he or she has been advised by the child welfare authority of the possible consequences of his or her behaviour and that at least three months have elapsed since such advice. The child welfare authority is obliged to provide the parent with counselling and assistance under the conditions laid down in other legislation no later than after such instruction.

(2) The instruction referred to in [paragraph 1](#) shall not be required if the parent has left the place where he or she used to reside without disclosing where he or she now resides and if it has not been possible to locate the place where the parent resides even after three months.

§ 821

(1) The court shall decide in a special proceeding whether or not the consent of the parent is required for the adoption.

(2) If the court decides that the consent of both parents is not required for the adoption, the consent of a guardian appointed by the court for that purpose is required for the adoption. Before giving consent, the guardian shall ascertain all relevant facts concerning the adopted child and his or her family which may affect the adoption decision; in particular, he or she shall ascertain whether the adopted child has close relatives who are interested in caring for him or her and shall hear the person in whose care the adopted child is currently.

§ 822

(1) If circumstances have arisen where the consent of the parent is not required for the adoption, the adoption may nevertheless not be decided in the affirmative if there is a close relative of the child who is willing and able to care for the child and makes a proposal to that effect to the court.

(2) The court shall entrust the child to the care of a close relative of the child if it is consistent with the best interests of the child and if it is clear that the person is capable of caring for the child.

Subsection 3

Care before adoption

§ 823

(1) With the consent of the prospective adoptive parent, the adopted child may be given to the prospective adoptive parent for care immediately after both parents have consented to the adoption. If the parents consent, the child may also be given to the prospective adoptive parent earlier, as soon as the child's health permits. The parents of the child to be adopted are obliged to inform the child welfare authority of the transfer of the child.

(2) Care of the child before the expiry of three months from the date on which consent to the adoption was given is not pre-adoption care. During that period, the person to whom the child has been given into care has only the duty and right to take proper care of and protect the child; he may act in matters relating to the child's care only if it is strictly necessary to do so.

§ 824

(1) The court will decide whether to transfer custody of the child under § 823.

(2) If the court considers that there are circumstances in which the consent of the parent is not required for adoption, it may apply § 823(1) by analogy.

§ 825

After the expiration of three months from the date on which consent to the adoption was given, the exercise of the rights and obligations arising from parental responsibility shall be suspended; the court shall appoint a guardian of the adopted child to be the guardian of the child's social and legal protection authority, unless the guardian has been appointed earlier. The provisions of § 929 shall apply mutatis mutandis.

§ 826

After the expiration of three months from the date on which consent to adoption is given, the adopted child may be transferred to the custody of the adoptive parent prior to adoption. Such transfer shall be decided by the court on the petition of the adoptive parent.

§ 827

(1) The court shall decide on the transfer of the child to the care of the adoptive parent before the adoption only after making an inquiry into the mutual suitability of the child and the adoptive parent, having regard in particular to

a) the personality and state of health of the adoptive parent and his or her social environment, in particular housing and home, as well as the adoptive parent's ability to

care for the child and the adoptive parent's motives for adopting,

- b) the personality and health of the child, the social environment from which the child comes, as well as the child's status rights,
- c) the ethnic, religious and cultural background of the child and the adoptive family,
- d) the length of time the child has been in the care of the adoptive parent.

(2) If one spouse wishes to adopt the child, the court shall determine the reason why the other spouse did not join in the petition.

§ 828

If the adopted child has previously been placed in the care of the adoptive parent, his or her continued care shall be deemed to be pre-adoption care. No further decision of a public authority is required for pre-adoption care.

§ 829

(1) Before an adoption can be decided, the adopted child must be in the care of the adopter at the adopter's expense. The adoptive parent has the duties and rights of the person in whose care the child is entrusted under § 953 to 957.

(2) The adoptive parent's care of the adopted child prior to the adoption shall continue for a period of time sufficient to establish conclusively that a relationship has developed between the adoptive parent and the child which is the purpose and goal of the adoption; such care shall not terminate until the expiration of six months.

(3) During the time the child is in the care of the adoptive parent, the previously established support obligation of another person for the child is suspended.

§ 830

(1) If a man who claims to be the father of the child being adopted files a petition for a determination of paternity, the adoption cannot be decided until the petition for a determination of paternity is decided.

(2) If the adopted child has been surrendered to the care of the prospective adoptive parent under § 823 and the three-month period has expired, within which the consent to adoption may be revoked before a petition under paragraph 1 has been filed, § 817 shall apply mutatis mutandis.

§ 831

If a person who claims to be a close relative of the child being adopted files a petition for custody of the child under § 953, the adoption cannot be decided until the petition is decided.

Subsection 4

Consequences of adoption

§ 832

(1) A child who has been jointly adopted by a spouse, or by the spouse of his or her parent, has the status of a child of the spouses; otherwise, he or she has the status of a child of the adoptive parents.

(2) Adoptive parents have parental responsibility.

§ 833

(1) Adoption terminates the relationship between the adoptee and the original family, as well as the rights and obligations arising from that relationship. The rights and obligations of the guardian or, where appropriate, the guardian appointed to exercise those rights and obligations on behalf of the parents shall also cease.

(2) If the adoptive parent is the spouse of one of the adoptee's parents or the surviving spouse of a parent or adoptive parent, the adoption does not affect the relationship

between the adoptee and that parent and the adoptee's relatives or the rights and obligations arising from that relationship.

§ 834

If a child who is a parent has been adopted, the effects of the adoption apply to the parent's child.

§ 835

(1) An adoptee under 12 years of age shall have the surname of the adoptive parent; a joint adoptee of a married couple shall have the surname according to § 860.

(2) If the adoptee has attained the age of 12 years, the adoptive parent, with the adoptee's consent, may declare before the registry office that the adoptee will take the adoptive parent's surname, or the surname under § 860, if the adoptee is a joint adoptee, or declare that the adoptee will add the adoptive parent's surname to his or her surname. If the adoptee has an appended surname, the adoptive parent's surname may be appended only to the adoptee's first surname; if the adoptee has an appended surname, only the adoptive parent's first surname may be appended to the adoptee's surname.

§ 836

The adoptive parent shall inform the adoptee of the fact of adoption as soon as it appears appropriate, but no later than the start of school.

§ 837

Secrecy of adoption

(1) An adoptive parent or adoptee may move the court to order that the adoption and its circumstances be kept secret from the child's family of origin. This similarly applies to the concealment of the blood parent and his or her consent to the adoption.

(2) Even if the adoption and its circumstances or the blood parent and his consent to the adoption have been kept secret, the court may order their declassification if a very serious situation threatening the life or health of the adopted child justifies it.

§ 838

Once the adopted child becomes competent, he or she becomes entitled to know the contents of the file that was kept in the adoption proceedings.

§ 839

Supervision of success in adoption

(1) Regardless of whether adoption success supervision is imposed, the child welfare agency will generally provide counseling and services to adoptive parents related to the care of the adoptee.

(2) If the circumstances of the case so justify, the court shall, even without a petition, order supervision of the adoptive parents and the adoptee for the period of time strictly necessary, the length of which it shall also determine; supervision shall normally be exercised by the child welfare authority.

Cancellation of adoption

§ 840

(1) If there are compelling reasons for doing so, the court shall, on motion of the adoptive parent or the adoptee, annul the adoption; if only one of them files the motion, the other may join in the motion.

(2) An adoption may not be annulled after three years have elapsed from the date of the adoption decree. This does not apply if the adoption is contrary to law.

§ 841

(1) The dissolution of an adoption terminates the relationship created by the adoption and the obligations and rights arising from that relationship and restores the previous relationship.

(2) The property rights and property obligations of the adoptee arising before the adoption was annulled are not affected by the annulment of the adoption.

§ 842

Adoptee will have the surname he/she had before the adoption after the annulment of the adoption, unless the adoptee, who has reached the age of 12, declares before the registry office that he/she will keep the existing surname.

§ 843

Re-adoption of an adopted child

Adoptee may only be re-adopted

- a) if the previous adoption has been revoked,
- b) if he or she is to be adopted by a later spouse of the adoptive parent after the previous spouse who was a joint adoptive parent has died, or
- c) if the one who was the sole adopter or those who were joint adopters has died.

§ 844

If it is consistent with the best interests of the child, the court may, on the petition of the adoptive parent, decide, even before the expiration of three years from the date of the decree of adoption, that the adoption is irrevocable.

§ 845

An irrevocable adoption does not prevent the adoptee from being adopted again.

Subsection 5

Adoption of an adult

§ 846

A minor may be adopted if it is not contrary to good morals.

§ 847

Adoption analogous to adoption of a minor

(1) A minor may be adopted if

- a) a natural sibling of the adoptee was adopted by the same adoptive parent,
- b) the adoptee was a minor at the time the petition for adoption was filed,
- c) the adoptive parent was already caring for the adoptee as his or her own at the time of the minor's minority; or
- d) the adoptive parent intends to adopt the child of his or her spouse.

(2) A minor may not be adopted if it would be contrary to the reasonable interests of the minor's natural parents.

(3) The provisions relating to the adoption of a minor, including those relating to the consequences of adoption, shall apply, except for § 838 and 839, mutatis mutandis.

Adoption not analogous to the adoption of a minor

§ 848

(1) If it is not detrimental to the important interests of the offspring of the adopter or the offspring of the adoptee, an adult may also be adopted exceptionally for reasons of

special consideration, if this is beneficial to the adopter and the adoptee each other, or, in justified cases, to at least one of them.

(2) The provisions on the adoption of a minor, including those on its consequences, shall apply *mutatis mutandis*.

§ 849

(1) The adoptee and his/her descendants shall not acquire by adoption any relationship to the members of the adopter's family and shall not acquire any property rights in relation to them. The adoptive parent shall not acquire any property rights against the adoptee and his/her descendants by adoption.

(2) The adoptee and his descendants do not acquire any rights in their own family by adoption.

Common provisions for adoption of an adult

§ 850

(1) If the adopted person is not fully capable of acting, the legal guardian or, where appropriate, a guardian appointed by the court shall act for him/her.

(2) If the adoptee's marriage is ongoing, he/she may be adopted only with the consent of his/her spouse. If the spouse is unable to give consent because he or she is not fully competent or if the measure of his or her consent involves an obstacle that is difficult to overcome, the court shall separately assess whether the adoption is not contrary to the legitimate interests of that spouse or other members of the family.

§ 851

(1) Adoption of an adult does not affect the surname of the minor.

(2) If the adoptive parent agrees, the adoptee may declare before the registry office that he or she will take his or her surname, or the surname according to § 860, if the adoptee is a joint adoptee, or declare that he or she will add the adopter's surname to his or her surname; if the adopter's marriage is ongoing and the spouses have a common surname, the consent of the other spouse is also required.

(3) If the adoptee's marriage is ongoing and the spouses have a common surname, the adoptee may add the adoptive parent's surname to his or her own surname or change the surname to the adoptive parent's surname, or to the surname under § 860, if the adoptee is a joint adoptee, only with the consent of his or her spouse.

§ 852

Adoption has legal consequences for the adoptee and his or her descendants if born later. For the earlier-born descendants of the adoptee, the adoption has legal consequences only if they consented to the adoption.

§ 853

(1) The maintenance obligation of the adoptee towards his or her ancestors or descendants continues only if and to the extent that there are no other persons who have a maintenance obligation or if those persons are unable to fulfil their maintenance obligation. The adoptee shall be entitled to maintenance in respect of his ancestors or descendants only if and to the extent that the adopter is unable to fulfil his maintenance obligation.

(2) The adoptee inherits from the adopter in the first legal class of heirs, but does not interfere with the adopter's right of inheritance against other persons.

(3) If the adoption also has legal consequences for the descendants of the adoptee, [paragraph 1](#) and [paragraph 2](#) shall apply *mutatis mutandis*.

§ 854

For the adoption of a minor who has been granted legal capacity, the provisions on the adoption of an adult shall apply *mutatis mutandis*.

Section 3

Parents and children

Subsection 1

General Provisions

§ 855

(1) Parents and child have duties and rights towards each other. They cannot waive those mutual duties and rights; if they do so, they are not taken into account.

(2) The purpose of duties and rights towards a child is to ensure the moral and material well-being of the child.

§ 856

The duties and rights of parents connected with the personality of the child and the duties and rights of a personal nature arise at the birth of the child and cease when the child reaches the age of majority.

§ 857

(1) A child is bound to respect his parents.

(2) Until the child becomes self-governing, parents have the right to direct their child by educational measures as appropriate to the child's developing capacities, including restrictions aimed at protecting the morals, health and rights of the child, as well as the rights of other persons and public order. The child is obliged to submit to these measures.

§ 858

Parental responsibility includes the duties and rights of parents, which consist in caring for the child, including in particular the care of the child's health, physical, emotional, intellectual and moral development, the protection of the child, the maintenance of personal contact with the child, the provision of the child's upbringing and education, the determination of the child's place of residence, the representation of the child and the management of the child's property; shall arise at the birth of the child and shall cease when the child acquires full legal capacity. The duration and extent of parental responsibility may be changed only by the court.

§ 859

Support obligation and right to maintenance are not part of parental responsibility; their duration does not depend on the acquisition of majority or legal capacity.

Subsection 2

Given name and surname of a child

§ 860

(1) The child has the common surname of the parents or the surname of one of the parents designated for the joint children of the spouses.

(2) If the child does not have a surname under [paragraph 1](#), the parents shall choose the surname of one of them for the child; otherwise, the surname of the child shall be determined by the court. The same applies to the child's personal name.

(3) If the common surname of the spouses or the surname of one of them intended for their joint children has been changed, this change shall also apply to the surname of their previously born child. However, if the child has reached the age of 12 years, this change of surname may be made by declaration of the parents before the registry office with the consent of the child.

section 861

(1) If only one parent is known, the child takes his or her surname. That parent shall also determine the child's personal name; otherwise, the court shall determine it.

(2) If there is a denial of parentage, the child shall have the surname of the sole parent. However, if the child has reached the age of 12, this change of surname may be made by declaration of the child or parent before the registry office with the consent of the child.

section 862

(1) If the child is a child whose parents are not married, the parents shall choose the surname of one of them for the child; otherwise, the surname of the child shall be determined by the court.

(2) If the mother of a child whose father is unknown enters into a marriage, the mother of the child and her husband may declare unanimously before the registry office that the surname designated for their other children will also be given to that child.

section 863

(1) A change in a child's personal name or surname requires the child's statement on the same terms as in other matters concerning the child. If the child has reached the age of 12 years, consent to the change is required.

(2) A change of personal name or surname by declaration of a parent is not possible if the child has reached the age of majority.

§ 864

If neither parent is known, the court shall determine the personal name and surname of the child even without a petition.

Subsection 3

Parental Responsibility

§ 865

(1) Parental responsibility belongs equally to both parents. Each parent has it unless he or she has been deprived of it.

(2) If the court decides to limit a parent's legal capacity, it also decides on the parent's parental responsibility.

§ 866

The best interests of the child are determinative of the court's decision concerning the extent of parental responsibility or the manner or extent to which parents are to exercise it.

§ 867

(1) Before making a decision affecting the child's interests, the court shall provide the child with the necessary information to enable him or her to form his or her own opinion and to communicate that opinion.

(2) If, in the opinion of the court, the child is unable to receive the information properly or is unable to form his or her own opinion or is unable to communicate that opinion, the court shall inform and hear the person who is able to protect the interests of the child, provided that it must be a person whose interests are not in conflict with the interests of the child; a child over the age of twelve shall be presumed to be able to receive the information, form his or her own opinion and communicate it. The opinion of the child shall be given due weight by the court.

§ 868

(1) The exercise of parental responsibility by a minor parent who has not previously acquired full capacity by the grant of legal capacity or by marriage shall be suspended until such time as he or she acquires full capacity; this shall not apply to the exercise of the duty and right to care for the child, unless the court decides, in view of the parent's personality, that the exercise of this duty and right shall also be suspended until such time as the parent acquires full capacity.

(2) The exercise of parental responsibility by a parent whose capacity to act in this area has been limited shall be suspended during the period of the limitation of his or her capacity, unless the court decides that the parent, because of his or her person, shall be maintained in the exercise of the duty and right of care and personal contact with the child.

§ 869

(1) If a parent is prevented from exercising his or her parental responsibility by a serious circumstance and it may be considered necessary in accordance with the interests of the child, the court may order that the exercise of parental responsibility by that parent be suspended.

(2) The suspension of the exercise of parental responsibility shall not affect the performance of the maintenance obligation towards the child.

§ 870

If a parent fails to exercise his or her parental responsibility properly and if the best interests of the child so require, the court shall limit his or her parental responsibility or restrict its exercise, and shall also determine the extent of such limitation.

§ 871

(1) If a parent abuses his or her parental responsibility or the exercise thereof, or neglects his or her parental responsibility or the exercise thereof in a serious manner, the court shall relieve him or her of his or her parental responsibility.

(2) If a parent has committed a deliberate criminal offence against his or her child, or if a parent has used his or her child, who is not criminally responsible, to commit a criminal offence, or if a parent has committed a criminal offence as an accomplice, instigator, facilitator or organiser of a criminal offence committed by his or her child, the court shall separately consider whether there are grounds for relieving the parent of his or her parental responsibility.

§ 872

Before the court decides to limit parental responsibility, the court shall always assess whether the best interests of the child make it necessary to limit the right of the parent to have personal contact with the child. If the parent is deprived of parental responsibility, the parent retains the right to have personal contact with the child only if the court decides to maintain this right for the parent taking into account the best interests of the child.

§ 873

If the court has relieved a parent of parental responsibility, it may also decide to relieve the parent of all or some of the obligations and rights set out in § 856, in particular the right to consent to adoption.

§ 874

The removal of a parent from his or her parental responsibility, or the limitation thereof, does not affect the parent's child support obligation.

Special provisions concerning the exercise of parental responsibility

§ 875

(1) Parental responsibility is exercised by the parents in accordance with the interests of the child.

(2) Before a decision affecting the child's interests is made, the parents shall communicate to the child all necessary information to enable the child to form his or her own opinion on the matter and to communicate it to the parents; this shall not apply if the child is unable to accept the communication properly or is unable to form his or her own opinion or is unable to communicate that opinion to the parents.

Parents shall give due weight to the child's views and take the child's views into account in their decision-making.

§ 876

- (1) Parental responsibility is exercised by parents in mutual agreement.
- (2) If there is a danger of delay in deciding the child's affairs, either parent may decide or give permission himself; but he shall promptly inform the other parent of the state of affairs.
- (3) If one parent acts alone in a child's matter vis-à-vis a third person who is acting in good faith, he shall be deemed to act with the consent of the other parent.

§ 877

- (1) If the parents do not agree on a matter which is significant for the child, in particular with regard to the child's best interests, the court shall decide on the parent's motion; this applies even if one parent has excluded the other parent from deciding on a significant matter of the child.
- (2) In particular, not routine medical and similar interventions, the determination of the child's place of residence and the choice of the child's education or employment shall be regarded as a significant matter.

§ 878

- (1) If either parent is not alive or is unknown, if either parent does not have parental responsibility or if the exercise of parental responsibility is suspended, the other parent shall exercise parental responsibility; this shall also apply if the parental responsibility of one parent is limited or its exercise is restricted.
- (2) If neither parent has full parental responsibility, or if the exercise of parental responsibility by both parents is suspended, or if the parental responsibility of the parents is affected in any of the ways mentioned, but by each of them otherwise, the court shall appoint a guardian for the child, who shall be entitled to the duties and rights of the parents or to exercise them in their place.
- (3) If the parental responsibility of the parents is limited or the exercise thereof is restricted, the court shall appoint a guardian for the child.

§ 879

- (1) In legal proceedings against a child who lacks the capacity to act independently in the matter, it is sufficient to proceed against only one parent as the child's representative.
- (2) If it is legally relevant whether or not a child who lacks capacity to act independently in a matter is in good faith, the good faith of both parents must be assessed; however, if only one parent has custody of the child, only the good faith of that parent shall be assessed.
- (3) If it is legally relevant whether or not the child, who lacks capacity to act independently in the matter, had knowledge of the matter or fact, the knowledge of both parents must be assessed; but if only one parent has custody of the child, only the knowledge of that parent shall be assessed.

Child Care and Protection

§ 880

- (1) Parental responsibility concerning the person of the child is exercised by the parents in a manner and to the extent appropriate to the child's stage of development.
- (2) When making decisions about the child's education or employment, parents shall take into account the child's opinion, abilities and talents.

§ 881

The parents may entrust the care and protection of the child, the exercise of his or her upbringing, or certain aspects thereof, or the supervision of the child to another person; the agreement of the parents with that person need not affect the duration or extent of parental responsibility.

§ 882

(1) If another person is unlawfully retaining a child, the parents have the right to demand that the child be handed over to them; this applies even between parents. This right is also available to the person who has legal custody of the child.

(2) A person who unlawfully retains a child has a duty to hand the child over properly to the person who has legal custody of the child.

§ 883

Parent and child owe each other a duty of help, support and respect for their dignity.

§ 884

(1) Parents have a critical role in the upbringing of a child. Parents are to be all-round role models to their children, especially when it comes to the way of life and behaviour in the family.

(2) Educational means may be used only in a form and degree that is appropriate to the circumstances, does not endanger the child's health or development and does not affect the child's human dignity.

§ 885

If only one parent is caring for the child, the spouse or partner of the child's parent shall also participate in the care and upbringing of the child if he or she lives in the family household with the child. This also applies to a person who lives with the child's parent without having entered into a marriage or registered partnership with him or her, if he or she lives in a family household with the child.

§ 886

(1) If the child lives in a family household with his or her parents or either of them and is properly cared for, the child also shares in the care of the household. This obligation of the child ceases at the same time as the parents provide maintenance for the child.

(2) The child shall contribute to the maintenance of the family household by his or her own labour or, if he or she has his or her own income, by financial contributions, or by both. In determining the extent of the child's contribution to the maintenance of the family household, the child's abilities and possibilities and the justified needs of the family members are decisive.

Right to personal contact between a parent and his child

§ 887

Parents cannot entrust another person with the exercise of the right of parents to maintain personal contact with their child.

§ 888

A child who is in the custody of only one parent has the right to have contact with the other parent to the extent that is in the child's best interests, just as that parent has the right to have contact with the child, unless the court restricts or prohibits such contact; the court may also determine the conditions of the contact, in particular the place where it is to take place, as well as the persons who may or may not participate in the contact. The parent who has custody of the child is obliged to prepare the child properly for contact with the other parent, to allow the child to have contact with the other parent and to cooperate with the other parent to the extent necessary in exercising the right of personal contact with the child.

§ 889

The custodial parent and the other parent must refrain from anything that interferes with the child's relationship with both parents or that makes it more difficult to raise the child. If the custodial parent persistently or repeatedly prevents the other parent from having contact with the child without justification, such conduct shall be grounds for a new decision by the court as to which parent should have custody of the child.

§ 890

Parents have a duty to disclose to each other all material matters concerning the child and the child's interests.

§ 891

(1) The custodial parent and the other parent shall agree together how the non-custodial parent will relate to the child. If the parents do not agree, or if the interests of the child's upbringing and the circumstances of the family so require, the court shall regulate the parent's contact with the child. In justified cases, the court may determine the place of contact between the parent and the child.

(2) If the best interests of the child so require, the court shall restrict the right of the parent to have personal contact with the child, or even prohibit such contact.

Representation of the child

§ 892

(1) Parents have the duty and right to represent a child in legal actions for which the child lacks legal capacity.

(2) Parents represent the child jointly, but either parent may act; the provisions of § 876(3) apply *mutatis mutandis*.

(3) A parent may not represent a child if there may be a conflict of interest between the parent and the child or between children of the same parents. In such a case, the court shall appoint a guardian for the child.

§ 893

If the parents do not agree which of them will represent the child in legal proceedings, the court shall decide, on the parent's motion, which parent will act legally for the child and in what manner.

§ 894

(1) Parents, as legal guardians, may enter into a contract for representation by a person with professional expertise, or another suitable person, to deal with the child's affairs, if it is not a personal matter.

(2) If the child enters into a representation agreement, this does not affect the child's legal representation by the parent.

(3) If there is no agreement between the legal representative and the contractual representative, the court shall decide in accordance with the interests of the child.

§ 895

If paternity is denied, legal actions taken by the father as legal representative remain unaffected.

Care of the child's property

§ 896

(1) Parents have a duty and right to care for their child's property, especially to manage it as good stewards. They must safely dispose of funds which may be presumed not to be needed for the payment of expenses relating to the child's property.

(2) In legal proceedings concerning an individual part of the child's property, the parents act as the child's representatives; the provisions of § 892(3) apply *mutatis*

mutandis.

(3) If the parents violate their duty to care for the child's property as good stewards, they shall compensate the child jointly and severally for the damage resulting therefrom.

§ 897

If the parents do not agree on essential matters in the care of the child's property, the court shall decide on the parent's motion.

§ 898

(1) Parents need the court's consent for legal action concerning the child's existing and future assets or a particular part of those assets, unless the matters are ordinary matters or, although exceptional, involve negligible property value.

(2) The court's consent is always required for legal action by which a child

a) acquires, alienates or encumbers an immovable property or an interest therein,

b) disposes of or encumbers property as a whole unless its value does not exceed an amount equal to twenty times the minimum subsistence level of an individual under any other law, or acquires, disposes of or encumbers property with a value exceeding an amount equal to one hundred times the minimum subsistence level of an individual under any other law,

c) enters into an agreement among heirs as to the amount of the inheritance or the distribution of the estate, refuses the inheritance, or declares that he or she does not want the inheritance; or

d) enters into an agreement

1. commits to a continuing or recurring performance or contract relating to his or her residence for a period of more than three years or for a period extending beyond the child's attainment of majority; or

2. credit or similar.

(3) If it is in the best interests of the child, the court may narrow the range of legal actions that are subject to court approval.

(4) If a parent has acted on behalf of a child without the court's consent, the legal act may be declared void only if it causes harm to the child.

§ 899

What the parents acquire by using the child's property is acquired by the child.

§ 899a

(1) The satisfaction of a pecuniary debt arising out of a legal act of a minor who has not acquired full capacity may be enforced only out of property acquired by the minor before acquiring full capacity and property acquired by a legal act relating solely to property acquired before acquiring full capacity; this does not apply to a pecuniary debt incurred in the course of gainful activity under [§ 33](#).

(2) A parent who has acted for the child or consented to the legal act is liable for a pecuniary debt incurred by the child as a result of a legal act performed before the child acquired full legal capacity; this is without prejudice to [§ 876\(3\)](#) The guarantor may not enforce payment of that debt against the debtor.

§ 900

(1) Income from the child's property not used by the parents for the proper management of the child's property (profit) shall first be used for the support of the child. If necessary, the parents may thereafter use the remaining income from the child's property as his or her contribution to the parents' own support and to the support of a minor sibling of the child, if they live in a family household with the child,

unless it is necessary for important reasons to preserve it for the child for a period after he or she has acquired legal capacity.

(2) The property of a child may be used by the parents, with the approval of the court, for the support of the child's own and the child's siblings only if, but for the fault of the persons having a duty of support to the child, a substantial disproportion between the circumstances of the child and the circumstances of the persons obligated would result.

§ 901

(1) The obligation and right of a parent to take care of the child's property ceases upon the declaration of bankruptcy over the parent's property or the termination of insolvency proceedings on the ground that the parent's property is wholly insufficient to satisfy creditors. If there is no other parent who can take care of the child's property, the court shall appoint a guardian to administer the child's property even without a petition.

(2) After three years have elapsed since the bankruptcy proceedings have been annulled or the insolvency proceedings have been discontinued on the ground that the debtor's assets are wholly insufficient to satisfy creditors, the court may, on the application of the parent or the guardian for the administration of the child's property, revoke the limitation of parental responsibility, unless the restoration of the parent's obligation and right to care for the child's property would be contrary to the interests of the child.

§ 902

(1) As soon as the child acquires full legal capacity, the parents shall hand over to the child the assets which they have administered, in particular, shall hand over to him the parts of his property or, where appropriate, transfer the administration thereof to them, and shall give the child an account of the administration of the assets without undue delay, but not later than six months from the date on which the child acquired full legal capacity. An account shall not be required unless the child requests it.

(2) If the parents have incurred expenses in or in connection with the administration of the child's property, they may claim reimbursement.

§ 903

(1) If the administration of the estate has been considerably difficult, especially because of the size or diversity of the estate, and the parents have properly administered the estate, they may, after they have given the administered estate to their child, claim a reasonable remuneration if the return of the estate so permits.

(2) If, during the pendency of the administration of the estate, it is already apparent from the circumstances that the administration is substantially burdensome and the parents are properly carrying it out, the court shall, upon motion, award them a reasonable annual or otherwise determinable remuneration for the administration of the estate.

§ 904

The transfer and assumption of assets does not affect the parents' responsibility for the administration of the child's assets.

§ 905

(1) The court shall appoint, even without a petition, a guardian to administer the child's property if the interests of the child may be endangered, in particular if there are joint property rights of the parents and the child or of the child and his or her sibling. To the extent of the duties and rights of the guardian of the child's property, the parents are limited in the exercise of their duties and rights in relation to the child's property.

(2) The provisions concerning a guardian who administers the property of a ward or a guardian who administers the property of a ward shall apply *mutatis mutandis* to the

duties and rights of a guardian for the administration of the property of a child who has been appointed in addition to the parents.

Exercise of parental responsibility after divorce

§ 906

(1) If the divorce of the parents of a child is to be ordered, the court shall first determine how each parent shall henceforth care for the child, taking into account the best interests of the child; with this in mind, the court shall deviate from the parents' consensual position only if the best interests of the child so require. The court shall take into account not only the child's relationship with each parent, but also his or her relationship with siblings and, where appropriate, grandparents.

(2) The court may also decide to approve the agreement of the parents unless it is clear that the agreed method of exercising parental responsibility is not in the child's best interests.

§ 907

(1) The court may entrust the child to the custody of one of the parents, or to alternate custody, or to joint custody; the court may also entrust the child to the custody of a person other than a parent if this is necessary in the interests of the child. If the child is to be placed in joint custody, the parents must consent.

(2) In deciding on custody, the court shall make a decision that is in the best interests of the child. In doing so, the court shall take into account the child's personality, in particular his or her aptitudes and abilities in relation to the developmental possibilities and living conditions of the parents, as well as the child's emotional orientation and background, the child's educational abilities of each parent, the existing and expected permanence of the educational environment in which the child is to live in the future, and the child's emotional ties to his or her siblings, grandparents and, where appropriate, other relatives and non-relatives. The court shall always take into account which parent has so far properly cared for the child and properly attended to his or her emotional, intellectual and moral upbringing, as well as which parent is better placed to ensure the child's healthy and successful development.

(3) In deciding on the custody of the child, the court shall also take into account the right of the child to the care of both parents and to maintain regular personal contact with them, the right of the other parent to whom the child will not be entrusted to receive regular information about the child, and the court shall also take into account the ability of the parent to agree on the upbringing of the child with the other parent.

§ 908

Exercising rights and duties of parents who live apart

If the parents of a minor child who lacks full legal capacity live together and do not agree on the arrangements for the care of such child, the court shall decide on them even without a petition. In other respects, the provisions of § 906 and 907 shall apply *mutatis mutandis*.

§ 909

Special Provisions

If circumstances change, the court shall modify the order regarding the enforcement of obligations and rights arising from parental responsibility without a motion.

Subsection 4

Duty to maintain and support

§ 910

(1) Ancestors and descendants have a mutual duty of maintenance.

(2) Parents' maintenance obligation to the child precedes that of grandparents and other ancestors to the child.

(3) More distant relatives have a maintenance obligation only if closer relatives cannot perform it.

(4) If there is no parent-child relationship, the maintenance obligation of the descendants precedes that of the ancestors.

§ 911

Support may be awarded if the beneficiary is unable to support himself.

§ 912

A minor child who is not fully capable of self-support is entitled to maintenance even if he or she has property of his or her own but the income from the property together with income from gainful employment is insufficient to support him or her.

§ 913

(1) The reasonable needs of the beneficiary and his/her financial circumstances, as well as the abilities, possibilities and financial circumstances of the obligor, are decisive for determining the extent of maintenance.

(2) In assessing the abilities, possibilities and financial circumstances of the obligor, it is also necessary to examine whether the obligor has given up, without good cause, a more advantageous occupation or gainful occupation or financial gain, or whether he or she is taking unreasonable financial risks. In addition, account shall be taken of the fact that the debtor is personally caring for the beneficiary and the extent to which he does so; account shall also be taken, where appropriate, of the care of the family household.

§ 914

If there are several persons liable who are in the same position in relation to the beneficiary, the extent of the maintenance obligation of each of them shall correspond to the proportion of his or her means, abilities and possibilities to those of the others.

Maintenance and support between parents and children, and ancestors and descendants

§ 915

(1) The standard of living of the child should be substantially the same as that of the parents. This consideration precedes the consideration of the child's reasonable needs.

(2) The child is obliged to provide a decent standard of living for his or her parents.

§ 916

Unless he or she establishes in a proceeding for the maintenance of a parent for a child or for the maintenance of another ancestor for a minor child who has not acquired full capacity, the person liable for maintenance duly discloses his or her income to the court by submitting all documents and other supporting documents for the assessment of his or her financial circumstances, and does not enable the court to ascertain other facts necessary for the decision by disclosing information protected under another legal regulation, the average monthly income of that person shall be twenty-five times the amount of the minimum subsistence level for an individual under another legal regulation.

§ 917

If the court decides on the maintenance obligation of a parent towards a child or on the maintenance obligation of an ancestor towards a minor child who has not acquired full legal capacity and the financial circumstances of the person liable for maintenance allow it, the creation of savings may be considered as the justified needs of the child, unless the circumstances of the special case preclude it; the maintenance provided

shall become the property of the child. The general rules on the property of the child shall apply to the administration of the sums so provided.

§ 918

In a proceeding for the maintenance of a parent to a child, the court may, in cases worthy of special consideration, order the person liable for maintenance to make an advance payment of maintenance due in the future; the maintenance granted shall become the property of the child successively on the respective dates on which the maintenance is due. The deposit shall be regarded as the property of the obligor.

§ 919

If the parents of a minor child who has not acquired full legal capacity live together and do not agree on the performance of the maintenance obligation towards the child, or if the parents of such a child live together but one of them does not perform the maintenance obligation towards the child, the court shall proceed in accordance with § 915 to 918. This applies even if the court decides on the custody of a minor child who has not acquired full legal capacity, unless the parents agree on the performance of the child support obligation.

§ 920

Maintenance and support, and provision for the payment of certain costs for an unmarried mother

(1) If the mother of the child is not married to the father of the child, the father of the child shall provide her with maintenance for a period of two years from the birth of the child and shall contribute to her a reasonable amount towards the costs of pregnancy and childbirth. The obligation to pay the costs of pregnancy and childbirth shall arise for the man whose paternity is probable even if the child is not born alive.

(2) The court may, on the application of the pregnant woman, order the man whose paternity is probable to provide the amount necessary for maintenance and contribution to the costs of pregnancy and childbirth in advance.

(3) The court may also, on the application of the pregnant woman, order the man whose paternity is probable to provide in advance the amount necessary for the maintenance of the child for the period during which the woman would be entitled to maternity leave as an employee under any other provision of law.

Common provisions on maintenance and support

§ 921

(1) Maintenance shall be paid in periodic instalments and shall be payable monthly in advance unless the court orders otherwise or the person liable for maintenance agrees otherwise with the person entitled.

(2) A person liable for maintenance who is in default in the payment of maintenance may be required by the person entitled to pay interest on the default.

§ 922

(1) Maintenance may be awarded only from the date of the commencement of the proceedings; in the case of child maintenance, also for a period of not more than three years back from that date.

(2) Child support for an unwed mother and payment of costs associated with pregnancy and childbirth may be awarded retroactively, but not more than two years from the date of the birth.

§ 923

(1) If circumstances change, the court may modify the agreement and the order for support for a minor child who has not acquired full capacity.

(2) If past child support for a minor child who has not acquired full legal capacity is revoked or reduced, the child support consumed is not refundable. Neither shall the alimony which has been fulfilled for a month in advance for such child be refunded, but the child has died before the expiry of the month.

Section 4

Special measures in the upbringing of a child

Preventive, upbringing and punitive measures

§ 924

If a child is found to be in a state of lack of proper care, whether or not there is a person who has the right to care for him or her, or if the child's life, normal development or other important interest is seriously endangered or has been impaired, the court shall provisionally adjust the child's circumstances for the necessary period of time; the court's decision shall not be interfered with unless the child is properly represented.

§ 925

(1) If the interest in the proper upbringing of the child so requires and if the child welfare authority fails to do so, the court

- a)** admonish in an appropriate manner the child, the parents, the person to whose care the child has been entrusted, or whoever is interfering with the proper care of the child,
- b)** to establish supervision over the child and to carry it out with the assistance of the school, the child welfare authority, or other institutions and persons, where appropriate, operating in particular in the child's place of residence or place of work; or
- c)** impose restrictions on the child or the parents to prevent harmful influences on his upbringing, in particular by prohibiting certain activities.

(2) The court monitors whether the educational measure it has decided on is being complied with and assesses its effectiveness, as a rule, in cooperation with the child welfare authority or other persons, as appropriate.

§ 926

If the custody and protection of the child or the care of the child's property is entrusted to a person other than the parent by order of the court, and the parent and that person cannot agree on the exercise of custody, the court shall decide on the application of one of the parties concerned.

Section 5

Relationships between the child and other relatives and other persons

§ 927

Persons related to the child, whether closely or distantly, as well as persons socially close to the child, have the right to have contact with the child if the child has an emotional relationship with them which is not merely transitory and if it is clear that the lack of contact with such persons would cause harm to the child. The child also has the right to have contact with such persons if they consent to such contact.

TITLE III

TUTORSHIP AND OTHER FORMS OF CHILD CARE

Volume 1

Tutorship

§ 928

(1) If there is no parent who has and exercises full parental responsibility for his or her child, the court shall appoint a guardian for the child.

(2) The guardian has, in principle, all the duties and rights as a parent towards the child, but does not have a maintenance obligation towards the child. With regard to the person of the guardian or the circumstances of the child, as well as with regard to the reason why the parents do not have all the duties and rights, the scope of the duties and rights of the guardian may exceptionally be defined differently.

§ 929

If the situation referred to in § 928(1) arises, the guardianship shall be exercised by the child welfare authority as a public guardian until the court appoints a guardian for the child or until the guardian assumes office.

§ 930

(1) The court shall appoint a guardian for the child immediately upon finding that the child is a child for whom a guardian should be appointed.

(2) Where a guardian dies, loses capacity or ability to act as guardian, or is discharged or removed from office and another person has not yet been appointed as guardian, the provisions of § 929 shall apply mutatis mutandis.

(3) The court shall, immediately after the situation referred to in § 928 or in paragraph 1 has arisen, ascertain whether there is a suitable person to act as guardian. If no such person can be found, the court shall appoint a child welfare authority to act as guardian.

§ 931

(1) If it is not contrary to the interests of the child, the court shall appoint as guardian the person indicated by the parents, unless that person refuses guardianship. Otherwise, the court shall appoint as guardian a person related to or close to the child or the child's family, unless the parent has expressly excluded such person. If there is no such person, the court shall appoint another suitable person as guardian.

(2) An individual appointed by the court may decline his or her appointment as guardian. The court shall then appoint another person.

§ 932

(1) Only a person who is fully competent in his or her own right and whose manner of life ensures that he or she is capable of properly performing the functions of guardian may be appointed as guardian. Before appointing her as guardian, the court shall determine whether her appointment is not contrary to the best interests of the child.

(2) The court may also appoint two persons as guardians; they will normally be spouses.

§ 933

(1) The trustee is responsible for the proper discharge of his duties and is subject to the constant supervision of the court.

(2) The trustee shall take office on the date of appointment.

(3) Within ninety days after his appointment, the guardian shall file with the court an inventory of the child's assets; the court may extend this period upon application of the guardian, but not for more than sixty days.

§ 934

(1) Any decision by the guardian in a non-ordinary matter concerning the child must be approved by the court. A legal action by a guardian that lacks the necessary approval of the court shall be disregarded.

(2) The guardian shall regularly report to the court on the child's person and progress and render accounts of the administration of the child's property at least once a year, unless the court directs a shorter period. The court may exempt the guardian from the obligation to file detailed accounts of the assets administered, provided that the income of the assets does not exceed the probable costs of maintaining the assets and of bringing up and supporting the child.

§ 935

(1) Guardianship terminates if at least one of the ward's parents acquires parental responsibility or the capacity to exercise it. Guardianship also ceases if the child acquires legal capacity or is adopted.

(2) The guardianship ceases on the death of the guardian, or on a court order discharging the guardian from his or her office or removing the guardian.

§ 936

The court shall discharge a guardian from his or her office if he or she applies for good cause shown or if the person who has been acting as guardian becomes incapable of acting as guardian.

§ 937

(1) The court shall remove a guardian who is in breach of his or her guardianship duties.

(2) The court shall consider removing a guardian if it finds reasons why it is not appropriate for the guardian to continue to serve as guardian.

§ 938

(1) On the termination of the guardianship, the person who has exercised the guardianship shall without undue delay, but not later than six months, transmit to the court all that he had in his possession by reason of his office, and shall submit to it a final report on the exercise of the guardianship; this shall include a final account of the administration of the child's estate.

(2) If the person who exercised the function of guardian dies, his heir shall transmit to the court everything which the deceased had in his possession by reason of his exercise of the function of guardian. If there are no heirs, anyone who has access to what the deceased had in his possession by reason of the exercise of his guardianship shall have this obligation.

§ 939

If the guardian is a person who personally cares for the child as if the child were permanently entrusted to his care, he is entitled to material security as a foster parent.

§ 940

If the guardian cares for the child personally together with his or her spouse, the provisions on the relationship of the parent and his or her spouse to the child shall apply *mutatis mutandis*.

§ 941

(1) If the guardian is a person who personally cares for the child and the care of the child's property is considerably difficult, especially because of the size or diversity of the estate, the guardian may move the court to appoint a guardian to administer the child's property; the motion shall include an inventory of the child's property as of the date of the motion.

(2) If the court appoints a guardian under [paragraph 1](#), it shall also define the mutual duties and rights of the guardian and the ward.

§ 942

If a guardian has not been appointed to administer the estate, the provisions relating to the guardian to administer the estate shall apply *mutatis mutandis* to the guardian who looks after the estate of the child, unless otherwise provided in the provisions relating to the guardian.

Volume 2**Guardianship of a child****Section 1****Guardian****§ 943**

The court appoints a guardian for a child if there is a conflict of interest between the child on the one hand and another person on the other, if the legal guardian does not adequately protect the interests of the child, or if the interests of the child require it for any other reason, or if the law so provides. The appointed guardian has the right to file a petition to initiate proceedings whenever the interests of the child require a court or other public authority to decide on the child's matter.

§ 944

The provisions relating to guardianship, guardian and ward apply *mutatis mutandis*.

§ 945

In the order appointing the guardian, the court shall state in particular why the guardian is appointed, whether and how the period for which he is to hold the office is limited, what his rights and duties are, including in relation to other persons, whether he needs the consent of the court for any legal action, whether and how he reports to the court, whether he is entitled to reimbursement of all or some of his expenses and whether he is entitled to remuneration.

§ 946

Before proceeding on behalf of a child to take legal action which he has been appointed to take, the guardian shall ascertain the opinion of the parent or guardian, if applicable, and the opinion of the child, if applicable, and the opinion of other persons.

§ 947

A guardian who has not been appointed solely for a particular legal action shall be discharged by the court even if the need which led to his appointment no longer exists.

Section 2

Guardian for the administration of a child's property

§ 948

In the order appointing a guardian for the administration of the estate, the court shall define the extent of the estate to be administered by the guardian; it shall also, as a rule, determine the manner in which the guardian is to dispose of the various parts of the estate, or, where appropriate, the manner in which the guardian is prohibited from doing so.

§ 949

The wealth management trustee shall exercise due care in the performance of his duties and shall not take unreasonable risks.

§ 950

(1) The guardian ad litem shall be responsible to the court for the proper discharge of his or her functions and shall be subject to its constant supervision.

(2) The provisions relating to the parents' administration of the child's estate shall apply to the acts of the guardian ad litem in like manner; the court shall determine, if it deems it necessary, which acts of the guardian ad litem must be approved by the court.

(3) The guardian ad litem shall submit to the court periodic reports and accounts of the administration of the estate, for such period of time as the court may determine; such period shall not exceed one year.

§ 951

(1) The guardian ad litem shall have the right to deduct from the proceeds of the child's estate the necessary expenses relating to the administration of the child's estate. If the proceeds are insufficient, the court may order that the costs be paid from the estate.

(2) The guardian for the administration of the estate is entitled to a reasonable fee from the proceeds of the child's estate; [paragraph 1](#) applies *mutatis mutandis*. The amount of the remuneration and the period for which the remuneration of the guardian for the administration of the estate is to be fixed shall be determined by the court having regard to

the nature of the proceeds of the child's estate. The provisions of § 903(2) shall apply mutatis mutandis.

§ 952

If the guardianship for the administration of the estate is terminated, the provisions of § 938 para 1 shall apply mutatis mutandis as to the duties of the person who acted as guardian. If the guardian has died, the provisions of § 938(2) shall apply mutatis mutandis.

Volume 3

Entrusting a child to the care of another person and foster care

Section 1

Entrusting a child to the care of another person

§ 953

(1) If neither parent nor guardian can personally care for the child, the court may entrust the child to the personal care of another person (hereinafter referred to as the "caring person"). The decision to entrust the child to the care of another person must be consistent with the best interests of the child.

(2) Entrusting a child to the personal care of a caring person does not replace foster care, pre-adoptive care or care that must precede adoption. It takes precedence over the care of a child in institutional care.

§ 954

(1) The person caring for the child must offer guarantees of proper care, be resident in the Czech Republic and consent to the child being entrusted to their personal care.

(2) If a person related or close to the child has taken personal care of the child, the court shall give him or her priority over another person, unless this is not in accordance with the interests of the child.

§ 955

The duties and rights of the person having care shall be defined by the court; otherwise, the provisions on foster care shall apply mutatis mutandis.

§ 956

(1) The court shall determine the extent of maintenance for the parents, taking into account their means, abilities and financial circumstances, and the obligation to pay maintenance at the hands of the person having care.

(2) The person having care shall have the right to enforce the maintenance fixed by the parents for the child in their care, as well as the right to manage the maintenance for the child in accordance with the child's needs and in accordance with the child's interests. The court may regulate the manner in which the child's maintenance is to be managed, in particular by determining what part is to be used for consumption and what part is to be saved for the child.

§ 957

If it is not possible to impose a child support obligation on the parents or other relatives, the provisions of § 953 to 956 shall not apply.

Section 2

Foster care

§ 958

(1) If neither parent nor guardian can personally care for the child, the court may entrust the child to the personal care of a foster parent.

(2) Foster care takes precedence over custody of a child in an institution.

(3) The court may also place a child in foster care for a temporary period. The details are set out in another law.

§ 959

(1) Foster care may be ordered by the court for the period of time that the impediment preventing the parents from having personal care of the child continues.

(2) A parent may request the child be returned to his or her personal custody. The court shall grant the application if it is consistent with the best interests of the child.

§ 960

(1) Parents have duties and rights with respect to the child arising from parental responsibility, except for the rights and duties that the law provides for a foster parent, unless the court decides otherwise for reasons worthy of special consideration.

(2) Parents have the right to have personal and regular contact with the child and the right to information about the child, unless the court decides otherwise for reasons worthy of special consideration.

§ 961

(1) The fostering of a child does not affect the duration of the parents' maintenance obligation towards the child. The court shall determine the extent of maintenance to be paid to the parents having regard to their means, abilities and financial circumstances and the reasonable needs of the child.

(2) If the child is entitled to an allowance to cover his or her needs under another law, the child's right passes to the State. If the maintenance exceeds this allowance, the difference is due to the child. The court shall decide on the method of payment and the management of the maintenance.

§ 962

(1) Whoever is to become a foster parent must offer guarantees of proper care, reside in the territory of the Czech Republic and must agree to the child being placed in foster care.

(2) If a person related or close to the child has taken personal care of the child, the court shall give him or her priority over another person, unless this is not in accordance with the interests of the child.

§ 963

The court may commit a child to prospective foster parents for pre-foster care; the length of the pre-foster care period shall be determined by the court taking into account the circumstances of the case. The court shall supervise the course and success of the pre-foster care. The court shall also supervise the course and success of the pre-foster care.

§ 964

(1) A child may be placed in the care of joint foster parents if they are married.

(2) A court that decides to dissolve the marriage of joint foster parents shall not dissolve that marriage until the duties and rights of the foster parents for the period after the divorce have been adjusted. Upon dissolution of the marriage, the joint foster care of the spouses shall cease.

(3) If one of the joint foster parents dies, the child remains in the foster care of the surviving spouse.

§ 965

(1) With the consent of the other spouse, a child may be placed in the foster care of only one spouse.

(2) The consent of the other spouse is not required to place the child in foster care if the other spouse is not fully capable of acting or if the provision of his/her consent is linked to an obstacle that is difficult to overcome.

(3) The spouse of the foster parent also participates in the personal care of the child in foster care if he or she lives in the family household.

§ 966

(1) The foster parent is required and entitled to personally care for the child.

(2) The foster parent shall exercise the duties and rights of a parent in the rearing of the child in a reasonable manner. He or she shall have the duty and authority to decide only the ordinary affairs of the child, to represent the child in those affairs, and to administer the child's property. He shall have the duty to inform the child's parents of the child's essential affairs. If the circumstances so require, the court shall determine the other duties and rights of the foster parent.

(3) Paragraphs 1 and 2 apply mutatis mutandis to a prospective foster parent to whom a child has been placed in pre-foster care.

§ 967

The foster parent has the duty to maintain, develop and deepen the child's relationship with his/her parents, other relatives and persons close to the child. He or she has the duty to allow the parents to have contact with the child in foster care, unless the court orders otherwise.

§ 968

A child placed in foster care shall help in the foster parent's household according to his or her ability and capacity; if he or she has his or her own income, he or she shall also contribute to the payment of the common needs of the family.

§ 969

If there is a substantial change in circumstances or a disagreement between the parents and foster parent on a substantial matter concerning the child, the child, parent, or foster parent may petition the court for a modification of rights and responsibilities, termination of foster care, or other order.

§ 970

Foster care terminates no later than when the child becomes fully competent, otherwise upon the child's majority.

Volume 4

Institutional care

§ 971

(1) Where the upbringing of a child or his physical, intellectual or mental condition or his proper development is seriously endangered or impaired to such an extent that it is contrary to the best interests of the child, or where there are serious reasons why the child's parents cannot provide for his upbringing, the court may also order institutional education as a necessary measure. It shall do so, in particular, where the measures previously taken have not led to a remedy. In doing so, the court shall always consider whether it is not preferable to place the child in the care of a natural person.

(2) If the parents are unable, for serious reasons, to provide for the temporary upbringing of the children, the court shall place the child in an institution for children in need of immediate assistance for a maximum period of six months.

(3) Inadequate housing or financial circumstances of the child's parents or of the persons to whom the child has been entrusted may not in themselves be a ground for the court's decision on institutional upbringing, if the parents are otherwise capable of ensuring the proper upbringing of the child and the fulfilment of other obligations arising from their parental responsibility.

(4) The court shall, in the decision ordering the institutional upbringing, indicate the institution in which the child is to be placed. In doing so, it shall take into account the interests of the child

and the opinion of the child welfare authority. The court shall ensure that the child is placed as close as possible to the home of the parents or other persons close to the child. This shall also apply if the court decides to transfer the child to another institution for the performance of institutional or protective education.

§ 972

(1) Institutional education may be ordered for a maximum period of three years. Institutional education may be extended before the expiry of three years from the date of its order if the grounds for ordering institutional education still exist. The duration of institutional care may be extended repeatedly, but always for a maximum of three years. During the period of time before the court decides to revoke or extend the institutional upbringing, the child shall remain in institutional upbringing, even if the period of time previously determined by the court's decision has elapsed.

(2) If the reasons for which the institutional upbringing was ordered are no longer applicable, or if it is possible to provide the child with other than institutional care, the court shall immediately revoke the institutional upbringing and at the same time decide, according to the circumstances, to whom the child shall henceforth be entrusted.

(3) The institutional upbringing shall cease by the court's decision on the adoption. If it has been decided to entrust the child to the care of the prospective adoptive parent under § 823 or 829, the institutional upbringing shall be discontinued.

§ 973

If a court order has been made under § 971, the court is required to review at least once every six months whether the grounds for ordering the measure continue or whether it is not possible to provide the child with alternative family care. For this purpose, in particular

- a) request reports from the competent child welfare authority,
- b) obtain a statement of the child's opinion, if the child is capable of forming and communicating such an opinion after having been duly instructed by the court, having regard to the child's age and intellectual maturity, and
- c) invite the child's parents to express their views.

§ 974

For important reasons, the court may extend the institutional education for up to one year after the age of majority.

§ 975

If the court decides to place the child in institutional or protective education, it shall also modify the scope of the parents' maintenance obligations.

PART THREE

ABSOLUTE PROPERTY RIGHTS

TITLE I

GENERAL PROVISIONS

§ 976

Absolute property rights operate against everyone unless otherwise provided by law.

§ 977

Only the law determines which property rights are absolute.

§ 978

The provisions of this Part may be departed from by an arrangement having effect against third parties only if the law permits.

TITLE II

RIGHTS IN REM

Volume 1

General Provisions

§ 979

The provisions of this title shall apply to both tangible and intangible things, but to rights only insofar as their nature permits and unless the law otherwise requires.

§ 980

(1) Where a right in a thing is entered in a public register, ignorance of the entry shall not excuse any person. If the law so provides, the right to use or enjoy the thing shall be entered in the public register, in addition to the right in rem, as well as any limitation on the extent or manner of use or enjoyment of the thing by the co-owners.

(2) Where a right in a thing is entered in the public register, it shall be deemed to have been entered in accordance with the actual legal situation. Where a right in a thing has been deleted from the public register, it shall be deemed not to exist.

§ 981

If a right in rem is entered in the public list, it takes precedence over a right in rem which is not apparent from the public list.

§ 982

(1) The time of filing of the petition for registration of the right is decisive for the ranking of rights in rem. Rights registered on the basis of applications filed at the same time shall have the same ranking.

(2) If the owner establishes a right in rem over his own property, he may reserve and enter in the public register a priority order for another right before that right; if the reservation is to be entered in the public register after the establishment of the right in rem, the consent of the person whose right is to be affected is required. The consent of the person whose right is limited by the reservation shall not be required for the registration of a right for which a better ranking has been reserved, unless the right to which the reservation of a better ranking relates is to be registered in the public register to a wider extent than is implied by the reservation.

§ 983

(1) Where a right of first refusal to grant a right in rem to another person is recorded in the public register and no application for registration of the right to which the right of first refusal relates has been made within one year of the recordation, the owner may seek to have the right of first refusal deleted. If the person who has the preferential right proves that he has brought an action for the transfer or other establishment of the right in rem before the expiry of the time limit, the time limit shall begin to run from the end of the court proceedings; however, if the action is dismissed, the preferential right shall be deleted at the request of the owner at the time of the legal validity of the decision.

(2) Where a right of first refusal is recorded in the public register as conditional or with time endorsement, the time limit under [paragraph 1](#) shall begin to run on the date on which the right of first refusal becomes enforceable.

§ 984

(1) If the status recorded in the public register is not in accordance with the actual legal status, the recorded status shall inure to the benefit of the person who acquired the right in rem in good faith from the person entitled to it under the recorded status. The good faith shall be assessed as at the time when the legal transaction took place; however, if the right in rem arises only by registration in the public register, then as at the time when the application for registration was filed.

(2) For a necessary way, an exchange and for a right in rem arising by operation of law without regard to the status of entries in the public register, the first sentence of [paragraph 1](#) shall not

apply.

§ 985

If the status recorded in the public register is not in accordance with the actual legal status, the person whose right in rem is affected may seek to have the discrepancy removed; if he proves that he has asserted his right, it shall be entered in the public register at his request. A decision made on his right in rem shall be effective against anyone whose right has been entered in the public register after the person concerned has requested the entry.

§ 986

(1) Anyone who claims to be affected in his or her rights by an entry made in the public register without legal justification in favour of another may seek to have such an entry removed and to have it noted in the public register. The authority maintaining the public register shall delete the notation of the disputability of the entry if the applicant fails to prove, even within two months of the receipt of the request, that he has asserted his right before a court.

(2) If the applicant has requested that the disputability of the entry be noted within one month of the date on which he became aware of the entry, his right shall operate against anyone to whom the disputed entry is attributable or who has obtained a further entry on the basis of it; after that period, however, only against the person who obtained the entry without being in good faith.

(3) If the applicant has not been duly notified of the registration of the foreign right, the time limit under [paragraph 2](#) shall be extended to three years; the time limit shall begin to run from the date on which the contested registration was made.

Volume 2

Possession

§ 987

A holder is one who exercises the law for himself.

§ 988

(1) A right may be held which can be transferred by legal action to another and which admits of permanent or repeated exercise.

(2) A personal right is not subject to possession or retention. But one who exercises a personal right in good faith is entitled to exercise and defend his alleged right.

§ 989

(1) The right of ownership is held by one who has taken possession of the thing in order to possess it as owner.

(2) Another right is held by one who has begun to exercise it as the person to whom such right belongs by law, and to whom other persons in concert with him exercise it.

Acquisition of possession

§ 990

(1) Possession may be acquired immediately by the holder taking possession by his power. Immediately, possession is acquired to the extent that the holder has actually taken possession.

(2) Possession may be acquired derivatively by the existing holder transferring possession to the new holder or by the new holder taking possession as successor in title to the existing holder. Possession is acquired by derivation to the extent that the former holder held it and transferred it to the new holder.

§ 991

Lawful possession

A possession is proper if it is based on a valid legal ground. One who takes possession immediately without disturbing another's possession, or who takes possession by the will of a previous holder or by virtue of a decree of a public authority, is a regular possessor.

Possession in good faith

§ 992

(1) Whoever believes for compelling reasons that he is entitled to the right he exercises is an honest possessor. He is dishonestly held who knows or to whom it must be apparent from the circumstances that he is exercising a right which does not belong to him.

(2) Dishonesty of agent in acquiring possession or in the agent's exercise of possession renders possession dishonest. This does not apply if the principal, by a special order given with respect to the possession, directs the agent to take possession or to exercise it.

(3) A holder in good faith is entitled to the same rights as a holder in due course.

§ 993

Genuine Possession

If it is not shown that any person has intruded into possession arbitrarily or by stealth or artifice, or that any person seeks to convert into a permanent right what he has been allowed only by exaction, it is true possession.

§ 994

It is held that the possession is proper, honest and genuine.

§ 995

If an action challenging possession or its fairness is allowed, the fair possessor is deemed to be dishonest at the latest from the time the action is served on him. However, an accident which would not have caught the thing in the possession of the possessor comes to the possessor only if he has arbitrarily delayed the dispute.

Possession of the right of ownership

§ 996

(1) An honest possessor may, within the limits of the law, keep and use the thing, even destroy it or otherwise dispose of it, and is not liable to anyone for doing so.

(2) An honest possessor is entitled to all the fruits of the thing as soon as it is separated. His are also all the benefits already collected which have come to maturity during the possession.

§ 997

(1) The honest possessor shall be paid the necessary costs incurred for the continued preservation of the substance of the thing, as well as costs incurred expediently and increasing the usefulness of the thing or its value. Compensation is due up to the amount of the present value, provided that it does not exceed the actual cost.

(2) Ordinary maintenance costs are not recoverable.

§ 998

Only so much of the expense made by an honest possessor for hobby or ornament is to be paid as has increased the usual value of the thing; but the former possessor may remove for his own benefit anything that can be separated from the thing without impairing its substance.

§ 999

An honest possessor cannot claim to be compensated for the price at which he transferred the thing to himself.

§ 1000

The dishonest possessor shall deliver up all the benefit which he has acquired by his possession, and shall make good that which would have accrued to the person abridged, as well as all the damage which has resulted from his possession.

§ 1001

If the dishonest possessor has incurred the necessary expenses which were required to preserve the substance of the thing, he is entitled to compensation for them. As regards other costs, the provisions relating to the unattributed agent shall apply mutatis mutandis.

§ 1002

Possession of other rights

For holders of other rights, § 996 to 1001 applies mutatis mutandis.

Protection of Possession

§ 1003

No one is entitled to arbitrarily disturb possession. Anyone who has been disturbed in possession may demand that the disturber refrain from disturbing and restore everything to its former state.

§ 1004

(1) If the holder is threatened by the carrying out of the construction in possession of the immovable property or can reasonably fear the consequences specified in § 1013 for doing so, and if the builder does not protect against it by way of law, the threatened holder may seek an injunction against the carrying out of the construction. The holder may not seek an injunction if, in the administrative proceedings to which he was a party, he failed to object to the application for permission for such construction, although he could have done so.

(2) Until the matter is decided, the court may prohibit the construction from being carried out. If, however, there is imminent danger, or if the defendant gives reasonable assurance that he will restore the matter to its former condition and make good the damage, but the plaintiff does not give security for the consequences of his prohibition, the court will not prohibit the building from going ahead in the meantime unless the circumstances of the case justify the prohibition.

§ 1005

For the case of removal of a structure, § 1004 applies similarly.

Retention of possession

§ 1006

The possessor may resist the arbitrary disturbance and repossess the thing taken from him in the act of disturbance, provided that in doing so he does not exceed the limits of the necessary defence.

§ 1007

(1) If the holder has been evicted from possession, he may require the evicter to refrain from further eviction and to restore the original state. It may be alleged against an action for the protection of possession that the plaintiff has obtained adverse possession against the defendant or that he has ousted him from possession.

(2) An ejectment from possession occurs when the other party refuses to perform what he has hitherto performed, when someone prevents the exercise of a right, or no longer observes a duty to refrain from doing an act.

§ 1008

Prescription time limits

(1) The court shall dismiss an action to protect or preserve possession if the action is brought after the expiration of six weeks from the date on which the plaintiff became aware

of his right and of the person threatening or defeating possession, but not later than one year from the date on which the plaintiff could first have asserted his right.

(2) The court shall disregard a plea of ejectment from possession if the defendant raises it after the expiry of the time limits set out in [paragraph 1](#).

§ 1009

Extinction of possession

(1) Possession ceases if the holder relinquishes it or permanently loses the ability to exercise the content of the right he has hitherto exercised. Possession also ceases if the holder is expelled from it and does not retain it by his own will or by action.

(2) If the holder does not exercise possession, possession is not thereby extinguished. Nor does the death or dissolution of the holder cause possession to cease.

§ 1010

Co-possession

Semi-tenure is governed by the possession and common law provisions, as appropriate.

Volume 3

Ownership

Section 1

Nature of the right of ownership and its scope

Subject and content of the right of ownership

§ 1011

Everything that belongs to someone, all his things tangible and intangible, is his property.

§ 1012

The owner has the right to dispose of his property at will within the limits of the law and to exclude others from doing so. The owner shall be prohibited from seriously interfering with the rights of other persons beyond what is reasonable in the circumstances, as well as from performing acts whose main purpose is to harass or harm other persons.

Limitation of the right of ownership

§ 1013

(1) The owner shall refrain from anything that causes waste, water, smoke, dust, gas, odor, light, shadow, noise, shocks, and other similar effects (immissions) to intrude on the land of another owner (neighbor) to an extent that is unreasonable to local conditions and substantially interferes with the normal use of the land; this includes the intrusion of animals. The direct introduction of immissions onto the land of another owner is prohibited, irrespective of the degree of such effects and the degree of nuisance to the neighbour, unless this is based on a specific legal reason.

(2) Where the immissions are the result of the operation of a plant or similar installation which has been officially approved, the neighbour is only entitled to compensation in money for the damage, even if the damage was caused by circumstances which were not taken into account in the official hearing. This does not apply if the operation exceeds the extent to which it was officially approved.

§ 1014

(1) If a movable thing belonging to another person is found on the land, the owner of the land shall without undue delay deliver it to the owner thereof or, as the case may be, to the person who had it in his possession; otherwise he shall allow him to enter his land and search for and remove the thing. Similarly, the owner may prosecute an animal or swarm of bees kept on another's land; but if a swarm of bees flies into a hive occupied by

another, the owner of the hive acquires title to the swarm without being liable to compensation.

(2) If a thing, animal, swarm of bees or the exercise of a right under [paragraph 1](#) causes damage to land, the owner of the land shall be entitled to compensation.

§ 1015

If a movable thing on another's land has caused damage, the owner of the land may retain it until he receives other security or compensation for the damage.

§ 1016

(1) Fruit falling from trees and shrubs on adjacent land belongs to the owner of the adjacent land. This does not apply if the neighbouring land is public property.

(2) If the owner fails to do so within a reasonable time after being requested to do so by the neighbour, the neighbour may remove the roots or branches of the tree overhanging his land in a considerate manner and at an appropriate time of year if it causes him damage or other inconvenience outweighing the interest in keeping the tree intact. He is also entitled to what he obtains from the roots and branches removed.

(3) Parts of other plants overhanging the neighbouring property may be removed by the neighbour in a considerate manner without further restriction.

§ 1017

(1) If the landowner has reasonable cause to do so, he may require the neighbour to refrain from planting trees in close proximity to the common boundary of the land and, if he has planted or allowed them to grow, to remove them. Unless otherwise provided by law or local custom otherwise requires, the permissible distance from the common boundary of the land shall be 3 m for trees normally growing to a height exceeding 3 m and 1.5 m for other trees.

(2) The provisions of [paragraph 1](#) shall not apply if there is a forest or orchard on the adjacent land, if the trees form a screen or if the tree is a tree specially protected under other legislation.

§ 1018

The land shall not be so altered that the adjoining land loses its proper support unless other adequate fixing is made.

§ 1019

(1) A landowner has the right to require a neighbour to modify a structure on neighbouring land so that water does not run off the structure or snow or ice does not fall on the neighbour's land. However, if water flows onto the land in a natural way from higher land, in particular if it springs there or as a result of rain or thunderstorms, the neighbour cannot require the owner of that land to improve his land.

(2) Where an inflow of water is necessary for the land below, the neighbour may require the owner of the land above not to obstruct the outflow of water to the extent that he does not need the water himself.

§ 1020

If a landowner has reasonable cause to do so, he may require a neighbour to refrain from establishing a structure on neighbouring land in close proximity to a common property line.

§ 1021

The owner shall allow the neighbour to enter his land at such times, to such extent and in such manner as are necessary for the maintenance or management of the neighbouring land, if this purpose cannot otherwise be achieved; but the neighbour shall compensate the landowner for any damage caused thereby.

§ 1022

(1) If a building cannot be erected or demolished, or cannot be repaired or restored except by the use of the neighbouring land, the owner has the right to require the neighbour to bear what is necessary for the work for reasonable compensation.

(2) The application cannot be granted if the neighbour's interest in the undisturbed use of the land outweighs the interest in carrying out the works.

§ 1023

(1) The owner of the land must tolerate the use of the space above or below the land if there is a compelling reason for doing so and if it is done in such a way that the owner cannot reasonably prevent it.

(2) No one can derive from such use of another's space a right which can be claimed after the reason which entitled the use has ceased to exist; but if, as a result of such use, an officially approved facility has been created, the owner may claim damages.

Elements constituting a boundary

§ 1024

(1) Fences, walls, boundaries, gullies and other similar natural or artificial divisions between adjacent properties are presumed to be common.

(2) A common wall may be used by each person on his own side up to half its thickness and niches may be made in it where there are none on the other side. But he shall not do anything which endangers the wall or which interferes with the use of his part by his neighbour.

§ 1025

Where there are double dams or where ownership is divided, each shall maintain at his own expense what is his.

§ 1026

The owner is not obliged to rebuild a dilapidated wall, fence or restore any other partition, but must keep it in good repair if, as a result of damage to it, there is a risk of damage to a neighbour. If, however, the partition is so damaged that the boundary between the properties is in danger of becoming imperceptible, any neighbour has the right to demand that the partition be repaired or restored.

§ 1027

On the application of a neighbour and after ascertaining the opinion of the building authority, the court may order the owner of the land to fence the land if this is necessary to secure the unimpeded exercise of the neighbour's right of ownership and if it does not prevent the efficient use of other land.

§ 1028

If the boundaries between the lots are unknown or doubtful, each neighbor has the right to demand that the court determine them according to the last peaceful possession. If it cannot be ascertained, the court shall determine the boundary at its discretion.

Necessary passage

§ 1029

(1) The owner of real property which cannot be properly managed or otherwise properly used because it is not adequately connected to a public way may require a neighbour to permit a necessary way across his land in return for compensation.

(2) The court may allow a necessary way to the extent that it is consistent with the need of the owner of the immovable property to use it properly at the least cost, even as an easement. At the same time, care must be taken to ensure that the neighbour is least inconvenienced and his land least affected by the construction or use of the necessary

way. This must be given special consideration if the applicant is to be permitted to construct a new road.

§ 1030

(1) A payment for a necessary journey is payable and damages are payable if not already covered by a payment. If the use of a private road is permitted, the compensation shall include the increased costs of maintaining it.

(2) The owner of the immovable property for whose benefit the necessary way has been authorised shall give security commensurate with any damage caused to the land concerned; this shall not apply if it is apparent that no appreciable damage will occur to the land concerned.

(3) The performance under paragraphs 1 and 2 shall be primarily for the owner of the land affected by the permitting of the necessary road, but if the right in rem of another person over the land affected is also to be affected, the performance shall be given to that person to the extent appropriate. The other person to whom another right in the immovable property in question has been granted shall be entitled to compensation for the damage suffered against the owner of the land concerned; this shall be taken into account in determining the compensation under paragraph 1.

§ 1031

Where a necessary way has been permitted to be constructed on the land concerned as an artificial way, it shall be constructed and maintained by the person in whose favour it was permitted.

§ 1032

(1) The court shall not allow the necessary way,

- a) if the damage to the neighbour's property clearly outweighs the benefit of the necessary journey,
- b) if the lack of access is caused by the gross negligence or intent of the person requesting the necessary way, or
- c) if the necessary way is requested for the sole purpose of making the connection more convenient.

(2) A necessary way shall not be permitted over a space enclosed for the purpose of preventing access to it by strangers, nor over land where the public interest prevents the establishment of such a way.

§ 1033

(1) Where a real property without access is surrounded by several contiguous parcels of land, a necessary way shall be permitted across only one of them. In doing so, consideration shall be given to which land is the most natural to access, having regard to the circumstances set out in § 1029(2)

(2) If an immovable thing loses its connection with a public way because the land has been subdivided, the necessary way can only be claimed against the person who participated in the subdivision. In such a case, the necessary way shall be allowed without payment.

§ 1034

When the cause for which the necessary way was allowed has passed away, and there is no other cause on the part of the party entitled to maintain the necessary way, the court shall, on the application of the owner of the land concerned, abolish the necessary way.

§ 1035

(1) Upon termination of the right of way necessary, the consideration shall not be refunded, but the security deposited shall be settled.

(2) If the consideration for the necessary journey is payable in instalments or in recurring benefits, the obligation to pay the instalments or benefits which are not payable on termination of the right of necessary journey shall cease.

§ 1036

When it is necessary to establish a necessary way as an artificial way, the owner of the land affected may require the applicant to take into his possession the land required for the necessary way. In such a case, the price shall be determined not only by reference to the value of the land ceded but also by reference to the depreciation of the remaining immovable property of the owner concerned.

Expropriation and limitation of the right of ownership

§ 1037

In a state of emergency or in the urgent public interest, the owner's property may be used for the necessary time and to the necessary extent if the purpose cannot otherwise be achieved.

§ 1038

In the public interest which cannot be otherwise satisfied, and only by operation of law, the right of ownership may be restricted or the thing expropriated.

§ 1039

(1) For the restriction of the right of ownership or expropriation of a thing, the owner is entitled to full compensation corresponding to the extent to which his property has been affected by these measures.

(2) Compensation shall be provided in money. However, it may be provided in other ways if the parties so agree.

Protection of the right of ownership

§ 1040

(1) Whoever wrongfully withholds an item may be sued by the owner to recover it.

(2) One who has alienated a thing on his own behalf to a transferee without being the owner of it, and only afterwards acquired title to it, cannot sue for the delivery of the thing; on the acquisition of title by the alienator, the transferee becomes the owner of the thing.

§ 1041

(1) Whoever claims the thing to be delivered to him must describe it by such features as distinguish it from other things of the same kind.

(2) The surrender of a movable thing which cannot be distinguished according to [paragraph 1](#), in particular if it is money or bearer securities mixed with other things of the same kind, may be claimed only if the ownership right of the person claiming the right and the lack of good faith of the person on whom the surrender of the thing is claimed can be ascertained from the circumstances.

§ 1042

A proprietor may seek protection against anyone who wrongfully interferes with or interferes with his right of ownership otherwise than by withholding the thing from him.

Protection of putative right of ownership

§ 1043

(1) One who has acquired possession of a property right in an honest, proper and genuine manner is looked upon as the owner against one who withholds or otherwise disturbs the property from him without having a legal ground for doing so, or if he has a legal ground equally strong or weaker.

(2) Where one has acquired possession of a property right gratuitously and another for consideration, the gratuitous acquisition shall be deemed to be a weaker legal ground.

§ 1044

If someone has a thing in his possession without the benefit of a presumption under § 1043, he may assert a right belonging to the owner for protection in his own name.

Section 2

Acquisition of the right of ownership

Subsection 1

Appropriation and discovery

Appropriation

§ 1045

(1) Anyone may appropriate a thing which does not belong to anyone, unless prevented by law or by the right of another to appropriate the thing. An immovable thing which the owner has abandoned because he does not want to keep it as his own does not belong to anyone.

(2) An abandoned immovable thing becomes the property of the state.

§ 1046

(1) A wild animal is masterless so long as it lives at large.

(2) A captive animal becomes a masterless animal when it gains its freedom and its owner fails to promptly and consistently pursue or search it in an effort to recapture it. However, such an animal does not become a masterless animal if it is marked in such a way that its owner can be identified.

§ 1047

(1) A tame animal which the owner does not pursue, and which does not even return to the owner himself within a reasonable time, although no one prevents him from doing so, becomes a masterless animal and may be appropriated on private land by its owner, and on public land by anyone. The reasonable time for the return of the animal to its owner is six weeks.

(2) Paragraph 1 does not apply if the animal is marked in such a way that its owner can be identified.

§ 1048

A domestic animal shall be deemed to have been abandoned if it is apparent from the circumstances that the owner intends to dispose of or expel the animal. This also applies to a pet animal.

§ 1049

An animal kept in a zoo and a fish kept in a pond or similar facility that is not a public asset is not without a master.

§ 1050

(1) If the owner does not exercise ownership of the movable property for three years, he is deemed to have abandoned it. Where a movable thing which was obviously of little value to the owner has been left in a place open to the public, it shall be deemed to have been abandoned without further notice.

(2) If the owner has not exercised ownership of the immovable property for ten years, he shall be deemed to have abandoned it.

Discovery

§ 1051

It is believed that everyone wants to hold on to their possessions and that the item found is not abandoned. Whoever finds an item must not, without more, consider it abandoned and appropriate it.

§ 1052

(1) A lost item shall be returned by the finder to the person who lost it, or to the owner, against payment of necessary costs and finding fees.

(2) If it cannot be ascertained from the circumstances to whom the item is to be returned and if the item is not deemed to have been abandoned, the finder shall, without undue delay, notify the municipality in whose territory it was found of the discovery, normally within three days; however, if the object was found in a public building or in a public means of transport, the finder shall hand over the find to the operator of those facilities, who shall act in accordance with other legal provisions, and if there are none, he shall proceed as if he were the finder.

§ 1053

(1) The municipality shall declare the finding in the usual manner. If the person who has lost the object fails to come forward within a reasonable time and if the object is of considerable value, the municipality shall take appropriate measures to make the discovery widely known.

(2) If the municipality itself ascertains the owner, in particular from the unmistakable marking of the object, it shall notify him of the find and invite him to take possession of the object.

§ 1054

(1) The municipality shall decide how the found item will be stored. If the finder or other person agrees and it is appropriate, the municipality may decide that the item will be deposited with that person. Items of considerable value, especially money of a larger amount, shall normally be deposited by the municipality in the custody of the court or in some other appropriate manner.

(2) A thing which cannot be kept without appreciable damage or which can be kept only at disproportionate cost shall be sold by the municipality at public auction and the proceeds disposed of in accordance with [paragraph 1](#); but before doing so, the municipality shall deduct its own costs in managing the thing. The municipality shall dispose of the unsellable item in any way it chooses; this shall not apply if it is an item whose uniqueness and value cannot be doubted.

§ 1055

The municipality shall deliver the item or the proceeds thereof, including fruits and benefits and after deduction of costs and finder's fees, to the person who lost the item or to the owner if he claims it within one year of the discovery.

§ 1056

(1) The finders' fee is due to the finder even if the owner can be obviously identified from marks on the item or other circumstances.

(2) The finders' fee is one-tenth of the value of the find. However, if the lost thing is of value only to the person who lost it or to its owner, the finder's fee shall be at the finder's discretion.

§ 1057

(1) If no one claims the item within one year of the discovery, the finder, municipality, or other person to whom the item was entrusted may dispose of the item as an equitable possessor. If, however, the discovery consists of money, these persons may only use it; this shall also apply to the proceeds of the discovery.

(2) If the person who has lost the thing or its owner applies after the expiration of one year from the declaration of discovery and before the expiration of three years from the declaration of discovery, the thing or the proceeds of the discovery shall be delivered to him after payment of costs and discovery fees.

(3) If three years have elapsed from the date of the award, the finder, the municipality or any other person to whom the property has been entrusted shall acquire title to the property or to the proceeds of the property.

§ 1058

(1) Where an animal is found which is apparent to have had an owner, the finder shall, without undue delay, notify the municipality of the find, unless it cannot be ascertained from the circumstances to whom it is to be returned.

(2) The person who has custody of the found animal shall care for it as a proper steward until the owner takes possession of it.

§ 1059

(1) If an animal is found apparently intended for pet keeping and no one claims it within two months of the discovery, the finder acquires ownership of it.

(2) If the finder declares to the municipality that he does not wish to acquire the animal and if the municipality irrevocably entrusts the animal to a person who operates an animal shelter, that person may dispose of the animal freely if no one claims it within four months of the date on which the animal was entrusted to him. If the discovery was not declared until after the animal has been handed over, the time limit starts to run from the date of the discovery.

§ 1060

If the finder declares to the municipality that he does not wish to acquire the found object, his right to use and acquire the object or the proceeds thereof shall pass to the municipality in whose territory it was found. The acquisition of the right of ownership shall give rise to an obligation on the part of the municipality to pay the finder's fee.

§ 1061

A finder who fails to report a find, appropriates it, or otherwise breaches his or her duties shall not be entitled to payment and no finder's fee, nor shall he or she be entitled to use or acquire title to the find under the provisions of this Act. This shall be without prejudice to his obligation to make good the damage.

§ 1062

When several persons find a thing at the same time, they are jointly and severally entitled and liable. The person who saw the thing and tried to reach it, even though someone else had previously grasped it, is also a joint owner.

Discovery of a hidden thing

§ 1063

The same applies to the discovery of a buried, walled or otherwise hidden item as to the discovery of a lost item. However, a finder's fee is not payable if the owner knew of the hiding of the item.

§ 1064

(1) If it is not clear to whom the concealed item belongs, the finder shall notify the owner of the land and the municipality in whose territory it was found of its discovery; § 1062 applies similarly.

(2) If the concealed item does not become the property of the state, county, or municipality under other law, the finder shall negotiate with the landowner as to which of them shall retain the item and pay the other half of the cost of the item. If they

disagree, the item shall belong to the owner of the land and the latter shall pay the finder half of its price.

§ 1065

A person arranged to find a lost or concealed item is not a finder and is only entitled to a finder's fee, if agreed.

Subsection 2

Natural accession

Accession of an immovable thing

§ 1066

The produce which land yields of itself without being cultivated belongs to the owner of the land. The same is similarly true of the natural fruits of other immovable property.

§ 1067

A tree belongs to the person from whose land the trunk grows. If the trunk grows on the boundary of different owners' land, the tree is common.

Alluvium and tear-off

§ 1068

The land washed ashore belongs to the riparian landowner. This includes accretions caused by wind or other natural forces.

§ 1069

A large and discernible portion of land that is washed to another bank by a watercourse becomes part of the riparian land unless the original owner claims title to the washed away land for one year.

§ 1070

(1) Where a watercourse separates a portion of land from the land as an island, the owner of the original land is the owner of the island.

(2) Otherwise, the island belongs to the owner of the watercourse.

§ 1071

A watercourse created by a ravine or as a result of an island becomes the property of the owner of the original watercourse.

§ 1072

Accession of a movable thing

The natural increment of a movable thing belongs to its owner.

§ 1073

(1) The fruits produced by an animal belong to the owner of the animal.

(2) A reward may be claimed for the insemination of an animal only if it has been agreed.

Subsection 3

Artificial accession

Processing

§ 1074

(1) A new thing resulting from the processing of movable things of several owners in such a way that the processed things cannot be restored to their previous state either

at all or only at considerable expense or loss, belongs as owner to the person who has contributed most to the value of the result by material or labour.

(2) The owner of the new thing shall pay to him who has lost title the value of the thing worked and to him who has contributed by labour to the result the remuneration for the labour.

§ 1075

(1) The owner of a thing which the workman has not worked into a new thing in good faith is left to his own will whether he appropriates the new thing and compensates the other for what he has lost, or whether he retains the thing for compensation.

(2) The right to elect a more advantageous solution shall lapse if not exercised within one month from the date on which the owner became aware of the processing.

§ 1076

(1) If a single owner of the new item cannot be identified, the item shall belong to the joint ownership of the owners of the processed items. The shares shall be determined according to the values of the processed items; if this is not possible, their shares shall be equal.

(2) The co-owners shall jointly and severally pay the remuneration for the work to the person who processed the thing.

§ 1077

If another's thing is used only to repair another thing, it shall inure to the owner of the thing repaired, who shall compensate the owner of the thing worked on for the value of the thing used.

Mixing

§ 1078

(1) Where movable property of several owners is so mixed that, although restoration of the previous state is impossible, the whole can be divided into parts without violating the substance, it is left to the will of each whether to separate a proportionate part of what has been created by the mixing or to claim compensation for what he has lost. If the person who mixed the goods was not in good faith, the owner is entitled to assign to him his share of the mixed goods for full compensation.

(2) The provisions of § 1075(2) shall apply mutatis mutandis.

§ 1079

When movable things of the same kind are mixed, in particular when this occurs in the course of their custody, § 1078 shall not apply; ownership of the proportionate part of the mixed things shall pass to the owners of the mixed things.

§ 1080

Whoever has participated in the commingling of other people's goods and has not acted in good faith shall also compensate the owners concerned for the loss of profit; however, he shall pay the actual damage only to the extent that the owners have not obtained compensation for it under the preceding provisions.

§ 1081

Whoever of those who participated in the merger has the new thing in his possession, although he is to deliver it up, is not obliged to do so until the owner has paid him compensation.

§ 1082

Common Provisions

One who is obligated to compensate another person in processing or commingling is not obligated to pay more than he would be obligated to pay in unjust enrichment.

Structure

§ 1083

(1) If someone uses someone else's property for a building on their land, the building becomes part of the land. The owner of the land shall compensate the owner of the thing used for its value.

(2) Whoever was not in good faith when using another's thing for a building shall also compensate the owner of the thing used for the loss of profit; however, he shall pay the actual damage only to the extent that the owner did not obtain compensation for it under paragraph 1.

§ 1084

(1) A structure established on someone else's land is vested in the owner of the land.

(2) The owner of the land shall reimburse the person who has established a bona fide structure on the land of another for the costs reasonably incurred. A person who was not acting in good faith has the same rights and obligations as an uncommitted agent.

§ 1085

A court may, on the application of the owner of the land, order that one who has established a building on another's land, although he has no right to do so, must, at his own expense, remove the building and restore the land to its former condition. In doing so, the court shall take into account whether the building was established in good faith.

§ 1086

(1) Whoever in good faith has established a building on another's land has the right to demand that the owner of the land, who knew of the establishment of the building and did not prohibit it without undue delay, transfer the land to him at the usual price. The owner of the land also has the right to require the developer to purchase the land at the usual price.

(2) The court, on the application of either party, shall vest the land in the landlord and decide on his obligation to pay compensation to the landowner.

§ 1087

Property encroachment

(1) If a permanent structure established on one's own land encroaches only a small part of another's land, the part of the land built on by the conversion becomes the property of the builder of the structure; this does not apply if the builder did not build the structure in good faith.

(2) Whoever has built in good faith shall compensate the owner of the land part of which has been built over by the conversion for the normal price of the land acquired.

Subsection 4

Mixed accession

§ 1088

(1) When land is sown with foreign seed or planted with foreign plants, the owner of the land is entitled to what is so added; but the plants do not belong to him until after they have taken root.

(2) On compensation for seed and plants, § 1083 and 1084 apply similarly.

Subsection 5

Acquisitive prescription

Ordinary acquisitive prescription

§ 1089

(1) If an honest possessor holds title for a specified period of time, he holds it and acquires possession of the thing.

(2) The dishonesty of a predecessor does not prevent an honest successor from commencing possession on the date he acquires possession.

§ 1090

(1) Possession requires that the possession be genuine and that the possession be based on a legal basis that would be sufficient to create a property right if it belonged to the transferor or had been established by the beneficiary.

(2) If the testator acquired a false possession, his heir cannot retain the right of ownership even if he held it honestly. This applies similarly to a general successor in title of a legal person.

§ 1091

(1) An uninterrupted possession of three years is required to retain ownership of a movable.

(2) Uninterrupted possession of ten years is required to retain ownership of immovable property.

§ 1092

The period of due and honest possession of a predecessor in title shall be included in the period of possession for the benefit of the possessor.

§ 1093

The possession is interrupted if the holder has not exercised it for more than one year during the possession period.

§ 1094

If a person is required to have a legal guardian or custodian, the period of prescription does not begin to run in respect of the right against him until the date on which he obtains a legal guardian or custodian. A period already begun shall continue to run but shall not end until one year after the obstacle has ceased to exist.

§ 1095

Extraordinary acquisitive prescription

If a period twice as long as would otherwise be required has elapsed, the holder retains possession even if he fails to prove the legal ground on which his possession is based. This does not apply if he proves dishonest intent.

§ 1096

Inclusion of the acquisitive prescription period

(1) If one has acquired possession in good faith from an honest possessor whose possession is based on a legal cause of action that would be sufficient to create a property right (§ 1090 para 1), the period of possession of his predecessor is counted.

(2) On an extraordinary retention, the successor shall be credited with the period of retention of his predecessor in good standing.

§ 1097

Prohibition of acquisitive prescription

A legal representative cannot retain title against a represented person, nor can a represented person against his or her legal representative. This applies similarly to a guardian and ward and to a guardian and ward.

§ 1098

Suspension of acquisitive prescription period

The statute of limitations does not begin to run between the spouses, nor does it run while the marriage lasts. This applies mutatis mutandis to cohabitants, legal guardian and representative, guardian and ward, and guardian and ward.

Subsection 6

Transfer of the right of ownership

§ 1099

Transfer of title to a thing determined individually is already transferred by the contract itself at the time of its effectiveness, unless otherwise agreed or provided by law.

§ 1100

(1) Where a party transfers by successive contracts to different persons the title to an item not entered in the public register, the person to whom the transferor has delivered the item first acquires the title. If there is no such person, the person with whom the contract which took effect first takes title.

(2) Where a party transfers title to a thing entered in the public register successively to several persons, the person who is bona fide and whose title was first entered in the public register becomes the owner, even if his title arose later.

Transfer of the right of ownership in a movable thing

§ 1101

Title to a movable thing determined by its kind is first acquired at the moment when the thing can be determined by sufficient distinction from other things of the same kind.

§ 1102

Where the ownership of a movable thing entered in a public list is transferred, the ownership of the thing is acquired by entry in such list, unless another legal provision provides otherwise.

§ 1103

(1) Title to a security is transferred to the bearer by contract at the time of delivery.

(2) Title to a security is transferred to the series by endorsement and contract at the time of delivery. The provisions of the law governing bills of exchange shall apply to the particulars of the endorsement and its acceptance, as well as to who is entitled under the endorsement and how such entitlement is to be proved; however, the transferor of the security shall be liable for the satisfaction of the rights under the security only if he is specifically obliged to do so.

(3) Title to a registered security is transferred by the contract itself at the time of its effectiveness.

§ 1104

(1) Ownership of a book-entry security is acquired by the registration of the book-entry security in the owner's account.

(2) If the book-entry security is also registered for the account of customers, title to it is acquired by registration for the account of customers.

(3) The provisions on the acquisition of ownership of book-entry securities under § 2413(1) shall apply mutatis mutandis to the acquisition of ownership of book-entry securities.

§ 1105

Transfer of the right of ownership in an immovable thing

If the ownership of an immovable property registered in a public list is transferred, the property is acquired by registration in such list.

Common provisions on the transfer of the right of ownership

§ 1106

Whoever acquires the right of ownership also acquires the rights and obligations attached to the thing.

§ 1107

(1) Whoever acquires title also acquires defects in the thing which are entered in the public register; he acquires other defects if he should and could have discovered them from the circumstances or if it was agreed or if the law so provides.

(2) Defects which do not pass are extinguished.

§ 1108

The provisions of § 1106 and 1107 apply mutatis mutandis to the acquisition of title otherwise than by transfer.

Subsection 7

Acquisition of the right of ownership from a non-entitled person

§ 1109

A person who has acquired a thing which is not registered in the public register and who, having regard to all the circumstances, had a good faith belief in the other party's authority to transfer title by virtue of a proper title, if the acquisition has taken place, becomes the owner of the thing

- a) at a public auction,
- b) from an entrepreneur in the ordinary course of his business,
- c) for consideration from someone to whom the owner has entrusted the thing,
- d) from an unauthorized heir to whom the acquisition of the inheritance has been confirmed,
- e) in a transaction in an investment instrument, security or instrument made out to bearer, or
- f) in a trade on a commodity exchange.

§ 1110

If a person has in good faith acquired for consideration a used chattel from a businessman who, in the ordinary course of his business, deals in such chattel, he shall deliver it to the owner who proves that he has lost the chattel by loss or that the chattel has been taken from him voluntarily and that not more than three years have elapsed since the loss or taking of the chattel.

§ 1111

If a person has acquired a movable thing in circumstances other than those provided for in § 1109 or 1110, he becomes the owner of the thing if he shows good faith in the transferor's authority to transfer title to the thing. This does not apply if the owner proves that he has acquired the thing by loss or by an act in the nature of a deliberate criminal act.

§ 1112

A person who has acquired a movable thing knowing that the title was acquired from an unauthorized person cannot claim to his advantage either the title or the good faith of his predecessor.

§ 1113

The provisions of § 1110 to 1112 shall not apply where the property is an investment instrument, security or document made out to bearer, or property acquired at a public auction, at an auction in execution of a judgment or execution by sale of chattels, or property acquired in a transaction on a commodity exchange.

Subsection 8

Acquisition of the right of ownership by a decision of a public body

§ 1114

A decision of a court or other public authority shall confer ownership on the date specified therein. If no such date is specified in the decision, ownership shall be acquired on the date of the legal force of the decision.

Volume 4

Co-ownership

Section 1

General Provisions

§ 1115

(1) Persons who hold title to a thing jointly are co-owners.

(2) The provisions on co-ownership shall apply *mutatis mutandis* to communities of other rights in rem.

§ 1116

In respect of the thing as a whole, the co-owners are treated as a single person and deal with the thing as a single person.

§ 1117

Each co-owner has a right to the whole thing. This right is limited by the equal right of each other co-owner.

§ 1118

A co-owner is entitled to an account of how the common property has been disposed of, as well as a share of the fruits and benefits of the common property.

§ 1119

Accounting may be claimed after the expiration of the period of time customary to the nature of the management of the common property, on the termination of the co-ownership or of the participation therein, or for other important reasons.

§ 1120

(1) The fruits and benefits of the common property are divided according to the proportion of the shares.

(2) The treatment of the fruits and benefits of the common property which cannot be divided according to the shares shall be determined by agreement of the co-owners. If the co-owners do not agree, these fruits and benefits shall be sold in an appropriate manner and the proceeds shall be divided according to the shares.

Section 2

Co-ownership share

§ 1121

Each co-owner is the full owner of his/her share.

§ 1122

(1) The share expresses the degree of participation of each co-owner in the formation of the common will and in the rights and obligations arising from the co-ownership of the thing.

(2) The size of the share results from the legal fact on which the co-ownership or the participation of the co-owner in the co-ownership is based. This does not preclude the co-owners from agreeing otherwise on the size of the shares; such an agreement must comply with the requirements laid down for the transfer of shares.

(3) The shares shall be deemed to be equal.

§ 1123

A co-owner may dispose of his share at will. However, such disposal must not be detrimental to the rights of the other co-owners, irrespective of what they are based on.

§ 1124

(1) Where the co-ownership has been established by an acquisition on death or by some other legal event so that the co-owners could not influence their rights and obligations from the beginning, and where one of the co-owners transfers his share, the other co-owners shall have a right of pre-emption over the share for a period of six months from the date of the co-ownership, unless the co-owner transfers the share to another co-owner or to his spouse, sibling or relative in the direct line. If the co-owners do not agree on how to exercise the pre-emption right, they shall have the right to redeem the share in proportion to the size of the shares.

(2) The co-owners shall have the right of pre-emption even if one of the co-owners transfers a share gratuitously; in that case, the co-owners shall have the right to redeem the share at the normal price. This also applies in other cases of statutory pre-emption.

§ 1125

(1) Where the co-ownership of an agricultural holding has arisen by acquisition on death or by another legal event in such a way that the co-owners could not influence their rights and obligations from the outset, and where one of the co-owners transfers his share, the other co-owners shall have a pre-emptive right to the share; the pre-emptive right shall also apply to the heritable share. If the co-owners or co-heirs do not agree how to exercise the pre-emption right, they shall have the right to redeem the share in proportion to the size of the shares.

(2) Where a co-owner transfers his share to a person who would be his heir under the provisions on the legal succession of heirs or to another co-owner, paragraph 1 shall not apply. This shall apply even if the co-owner has waived the right of pre-emption in writing.

Section 3

Administration of an undivided thing

§ 1126

(1) Each of the co-owners is entitled to participate in the management of the common property.

(2) In deciding on the common property, the votes of the co-owners are counted according to the size of their shares.

§ 1127

All co-owners are jointly and severally entitled and obliged to take legal action concerning the common property.

§ 1128

(1) The ordinary management of the common property shall be decided by the co-owners by majority vote.

(2) A decision has legal effect for all co-owners only if all have been notified of the need to decide, unless the matter was one that required immediate action. A co-owner omitted from

the decision on an urgent matter may apply to the court for a declaration that the decision on the urgent matter has no legal effect against him if he cannot fairly be required to bear it.

(3) If an application under [paragraph 2](#) is not made within thirty days of the decision, the right to make it ceases; if the co-owner has not been notified of the disposal, the time limit runs from the date on which he knew or could have known of the decision.

§ 1129

(1) A decision on a significant matter concerning the common property, in particular a substantial improvement or deterioration thereof, a change in its purpose or its treatment, requires at least a two-thirds majority vote of the co-owners. If this majority is not reached, the court shall decide on the proposal of the co-owner.

(2) A co-owner who is outvoted in a decision under [paragraph 1](#) may move that the matter be decided by the court; as part of this, he or she may also move that the court temporarily prohibit him or her from acting on the contested decision. The provisions of [§ 1128\(3\)](#) apply *mutatis mutandis*.

§ 1130

A co-owner who is threatened by a decision with serious harm, in particular by a disproportionate restriction on the use of the common property or by the creation of an obligation clearly disproportionate to the value of his share, may apply to the court to set aside the decision. The provisions of [§ 1128\(3\)](#) apply *mutatis mutandis*.

§ 1131

If a majority of the co-owners decide on a measure necessary for the preservation or improvement of the common property and undertake to the overruled co-owner not to require him to share in the cost or to compensate him for any damage caused by the measure taken and to provide sufficient security, the overruled co-owner shall not have a right under [§ 1130](#).

§ 1132

A decision whereby a common property is to be encumbered or unencumbered and a decision whereby the rights of co-owners are to be restricted for a period of more than ten years requires the consent of all co-owners.

§ 1133

To create a lien or other similar security to secure a pecuniary claim arising from the improvement of the common property or its renewal, the decision of at least a two-thirds majority of the co-owners is sufficient.

Administrator of an undivided thing

§ 1134

The election and removal of a trustee is decided by the co-owners in the same way as matters of ordinary administration.

§ 1135

The trustee has the legal status of a principal. He must account to the co-owners for the management; he is entitled to be reimbursed for expenses reasonably incurred, which he may collect from the proceeds of the thing managed.

§ 1136

A co-owner who has incurred an expense on a common thing for the benefit of the other co-owners without their notice and consent may claim

- a)** a proportionate part of the compensation to the extent of the appreciation of the thing if it was an expense which was to the benefit of the co-owners,
- b)** compensation for necessary expenses, if the expense was an expense that had to be incurred to save the thing.

§ 1137

If several persons are entrusted with the administration, they shall decide by majority vote; each of them shall have one vote.

§ 1138

If the co-owners of immovable property agree otherwise as to the management thereof, the agreement shall require the form of a public deed. The agreement shall be recorded in the collection of deeds with the authority with which the immovable property is registered in the public register.

§ 1139**Regulation of the relations between co-owners by court**

(1) If any co-owner moves the court to rule that the decision of a majority of the co-owners has no legal effect against him, to set aside such decision, or to substitute its own decision, the court shall arrange the legal relations of the co-owners in accordance with its sound discretion. In particular, the court may decide whether the change should be made without reservation, with reservation or against security, or whether it should not be made at all.

(2) In the manner set out in [paragraph 1](#), the court shall also make a decision if one of the co-owners seeks its decision because the necessary majority was not reached in deciding on the common property.

Section 4**Separation from co-ownership and cancellation of co-ownership****§ 1140**

(1) No one can be forced to remain in co-ownership.

(2) Each of the co-owners may at any time apply for his separation from the co-ownership, if the object of the co-ownership can be divided, or for the dissolution of the co-ownership. However, he may not do so at an inconvenient time or to the detriment of any of the co-owners.

§ 1141

(1) Joint ownership shall be dissolved by agreement of all the joint owners; the agreement shall contain an arrangement as to the manner of settlement. In the case of joint ownership of immovable property or a factory, the agreement shall be in writing.

(2) The co-owners shall settle by dividing the common property, by selling it outright or at public auction with a division of the proceeds, or by transferring ownership to one or more co-owners with payment to the others.

§ 1142

(1) If it is a common property which is intended as a whole to serve a particular purpose, its division is not possible.

(2) Agricultural land may be divided only so that the division will produce land which is capable of being cultivated in a practical manner, both as regards area and the possibility of permanent access. This does not apply if the land is to be divided for the purpose of erecting a building or for such a purpose for which the land may be expropriated.

§ 1143

If the co-owners do not agree on the dissolution of the co-ownership, the court shall decide on it at the request of one of the co-owners. If the court decides to dissolve the co-ownership, it shall also decide on the manner of settlement of the co-owners.

§ 1144

(1) If possible, the court shall decide on the division of the common property; however, it

cannot divide the property if this would substantially reduce its value.

(2) However, the division of a thing is not prevented by the impossibility of dividing it into parts corresponding exactly to the shares of the joint owners, if the difference is made up in money.

§ 1145

When the co-ownership is dissolved by division of the common property, the court may establish an easement or other right in rem if the proper use of the newly created property by the former co-owner so requires.

§ 1146

Common law deeds cannot be divided. If the co-owners do not agree with whom the common deeds shall be deposited, they shall deposit them with the oldest co-owner, unless otherwise there is no prejudice. The other co-owners shall receive certified copies or copies at their joint expense.

§ 1147

If the division of the common property is not well possible, the court shall assign it to one or more co-owners for reasonable compensation. If none of the co-owners wants the property, the court shall order the property to be sold at public auction; if justified, the court may decide that the property shall be auctioned only between the co-owners.

§ 1148

(1) On dissolution of co-ownership, the co-owners shall settle with each other the claims and debts relating to the co-ownership or to the common property.

(2) Each of the co-owners may demand payment of a claim due, as well as a claim which becomes due within one year after the effective date of the agreement on the dissolution of co-ownership or after the commencement of the proceedings for the dissolution of co-ownership.

(3) If the property is sold, all debts referred to in the preceding paragraphs shall be paid, after deduction of the costs of sale, before the proceeds are distributed among the co-owners.

§ 1149

(1) The former co-owners shall, at the request of either of them, deliver to each other a certificate of how they have settled, unless they have concluded an agreement in writing to dissolve co-ownership of the movable property.

(2) On the settlement of co-ownership of immovable property entered in a public register, new ownership rights are created by entry in that public register.

Protection of third persons in the division of an undivided thing

§ 1150

Division of the community property is not detrimental to the person who has an interest in the community property.

§ 1151

When the dominant tenement is divided, the easement for all parts generally continues, but may not be enlarged or made more onerous. If the easement benefits only some of the parts, it shall cease in relation to the other parts.

§ 1152

If the encumbered thing is divided and the easement affects only some of the parts, it shall extinguish in respect of the other parts.

§ 1153

(1) If the right by easement or other encumbrance confers a right to fruits or benefits, it may

- a)** each of the persons entitled if the servient estate is divided, or
- b)** each of the persons encumbered, if the thing encumbered is divided, to move the court to modify the execution.

(2) The court shall adjust the execution, having regard to the nature and purpose of the encumbrance and the economic peculiarities of the various parts, so that the result is consistent with the principles of equity and the encumbrance is not increased.

Deferral of cancellation of co-ownership

§ 1154

(1) If the co-owners agree not to seek the dissolution of the co-ownership for a certain period of time, but not exceeding ten years, this cannot preclude any other later agreement. If a deferral of the dissolution of the co-ownership has been agreed for a period longer than ten years, it shall be deemed to have been agreed for ten years. A deferral of the dissolution of the community of property may also be agreed repeatedly.

(2) If the arrangement for the deferral of the dissolution of co-ownership is also to bind the successors in title of co-owners whose succession arises otherwise than by inheritance or conversion of a legal person, this must be expressly agreed.

(3) An arrangement to postpone the dissolution of co-ownership requires the form of a public deed; if the arrangement concerns immovable property entered in the public register, the postponement of the dissolution of co-ownership shall be entered in the public register.

§ 1155

(1) On the application of a co-owner, the court may postpone the dissolution of co-ownership if this is to prevent a loss of property or a serious threat to the legitimate interest of a co-owner, and so extend the duration of co-ownership, but not for more than two years.

(2) The dissolution of co-ownership may also be postponed by acquisition on death.

§ 1156

The grounds for the dissolution of co-ownership may be changed later by agreement of the co-owners, or, failing that, by an order of the court made on the application of a co-owner who proves that he cannot fairly be required to remain in co-ownership or that the circumstances for which the co-ownership was deferred have materially changed.

§ 1157

Deferral of separation from co-ownership

For separation from co-ownership, § 1154 to 1156 apply similarly.

Section 5

Residential Co-Ownership

Subsection 1

General provisions

§ 1158

(1) Residential co-ownership is co-ownership of immovable property based on ownership of units. Residential co-ownership may arise if the immovable property includes a house with at least two flats.

(2) What is provided in this section about a dwelling also applies to non-residential premises, as well as to a group of dwellings or non-residential premises.

§ 1159

A unit includes a flat as a spatially separated part of a building and a share in the common parts of immovable property connected and inseparable from each other. A unit is an immovable thing.

Common areas

§ 1160

(1) Common parts are at least those parts of the immovable property which by their nature are intended to serve the unit owners jointly.

(2) Common areas are always the land on which the house was established or a right in rem which gives the unit owners the right to have a house on the land, the structural parts essential for the preservation of the house, including its main structures, and its shape and appearance, as well as for the preservation of the dwelling of another unit owner, and the facilities also serving another unit owner for the use of the dwelling. This applies even if a particular part is conveyed to a unit owner for the exclusive use of the unit.

§ 1161

If the shares in the common parts are not determined with reference to the nature, size and location of the flat or as being equal, they shall be determined by the ratio of the size of the floor area of the flat to the total floor area of all the flats in the building.

§ 1162

(1) Where the shares in the common parts are determined otherwise than by the ratio of the size of the floor area of the flat to the total floor area of all the flats in the building, or otherwise than as equal, the owner of the unit has the right to seek a variation of that determination if the circumstances have so materially changed that the determination of his share in the common parts is manifestly unfair.

(2) If the declaration is not amended on the application of the unit owner (§ 1169), the court shall amend the declaration.

Subsection 2

Creation of a unit

§ 1163

Construction

If the parties have agreed to do so in connection with the construction of a house or alteration of a house, a unit is created by construction if the house is at least in such a state of disrepair that it is already enclosed externally by the exterior walls and roof structure and the dwelling is enclosed by the exterior walls.

§ 1164

Registration in a public register

(1) A public listing creates a unit if the owner or a person entitled thereto by other property right by declaration divides his or her interest in the house and land into ownership of units.

(2) A unit shall also be created by entry in the public register if the co-owners so agree when separating from the co-ownership or when dissolving and dividing it, or if the spouses so agree when changing the extent or dividing the community property. The provisions on declarations shall apply mutatis mutandis to such arrangements.

§ 1165

Decision of a court

A unit shall be created if the court so decides on separation from the community of property, on dissolution and division of the community of property, on reduction of the community property or on division of the community property.

Declaration

§ 1166

- (1)** In the case of a division of title to real property into ownership of units, at least
- a)** details of the land, house, municipality and cadastral area,
 - b)** details of the unit, in particular
 1. naming and identification of the individual flats at least by number and location, indicating the purpose of use,
 2. identification and description of the common parts with reference to their structural, technical or user nature and, if applicable, identification of which of them are reserved for the exclusive use of the owner of a particular unit,
 3. the size of the shares in the common parts,
 - c)** what rights in rem and other rights and what defects pass with the creation of title to the unit to all or some of the unit owners.
- (2)** The declaration shall be accompanied by floor plans of all floors, or diagrams thereof, identifying the location of the flats and common parts of the building, together with details of the floor areas of the flats.

§ 1167

If the title to the units has been entered in the public register, the declaration cannot be declared invalid, nor can it be determined that title to the unit has not vested, if another person has acquired a property right in the unit.

§ 1168

Removal of defect in declaration

- (1)** If a declaration defines a unit in an indefinite or incorrect manner and is not promptly removed by the originator of the declaration after the defect has been brought to the attention of a person having a legal interest therein, the owners of the units affected may remove the defect by a joint declaration. If this does not happen, the court shall decide on the removal of the defect at the request of the person having a legal interest therein.
- (2)** If the declaration identifies indeterminately or incorrectly the unit owner's share in the common parts, it shall be disregarded.

§ 1169

Change of Declaration

- (1)** Unit owners can change the declaration. The amendment of the declaration requires the written consent of the unit owner whose rights and obligations are affected by the amendment. If the unit is encumbered, the written consent of the person entitled to the easement shall also be required if his rights and obligations are affected by the amendment. The consent of a majority of the votes of all unit owners shall be required for the amendment to the declaration to be effective, unless the amendment affects the rights and obligations of all unit owners.
- (2)** The consent of a majority of the votes of all unit owners is sufficient to amend the declaration if the amendment affects
- a)** of the common parts which does not change the size of the interest in the common parts, unless the parts are in the exclusive use of the unit owner,
 - b)** the purpose of the use of the dwelling at the request of the owner thereof, or

c) the rules for the management of the building and grounds and the use of the common areas, if specified in the declaration.

(3) The provisions of § 1209 shall apply mutatis mutandis to the review of a decision to vary a declaration.

Subsection 3

Construction of a building with units

§ 1170

Contract for construction

(1) By the Development Agreement, the parties agree to participate jointly in the construction, completion or alteration of the house for the purpose of establishing or altering units. The rights and obligations of the parties shall be subject to the provisions of this Corporation Act, mutatis mutandis.

(2) In the agreement, the parties shall at least

a) the particulars specified as particulars of the declaration of the division of the title to the house and land into the title to the units,

b) the method of payment of the cost of construction, or valuation of self-performed works, if applicable, and

c) the size of the co-ownership interests in the house, and, if the house is to be part of the land, the size of the co-ownership interests in the land, for the period before the first unit is created by the development; the co-ownership interests shall be determined in an amount corresponding to the size of the unit owner's interest in the common parts.

(3) The agreement requires a written form.

§ 1171

If the **construction contract** is concluded at a time when the building is already under construction but the flats are not yet under construction, the parties shall agree on the size of the co-ownership shares in the immovable property corresponding to the size of the co-ownership shares of the future unit owners in the common parts.

§ 1172

(1) If the unit is to be created by an extension, addition or structural modification of the house and if the units in the house are not yet defined, the parties shall also agree in the contract on the definition of the units in the house and the owner or a person entitled to do so by virtue of another right in rem shall transfer to the prospective purchaser of the new unit a co-ownership interest in the immovable property in an amount corresponding to the size of his/her co-ownership interest as a unit owner in the common parts.

(2) If a new unit is to be created or if an existing unit is to be changed by an extension, addition or alteration in a building where the units are already defined, the parties shall also agree in the contract on the changes in the size of the co-ownership shares after the creation of the new unit or the alteration of the existing unit so that they correspond to the newly defined sizes of the co-ownership shares.

§ 1173

If the development agreement does not contain an express provision for deviations from the unit designations, the development shall be deemed to be sound if the deviation is only slight and should have been and could reasonably have been anticipated by the affected co-owner. In the absence of agreement between the parties, the court shall decide how the consequences of the deviation from the designation of the units shall be dealt with.

§ 1174

(1) If a house is created by construction, the parties remain co-owners of the real property until the unit is created.

(2) On the creation of the unit, the shared co-ownership of the immovable property is transformed into a residential co-ownership.

Subsection 4

Rights and obligations of a unit owner

§ 1175

(1) A unit owner has the right to freely manage, exclusively use and internally modify his/her unit as well as the use of the common areas, but may not impede another unit owner from exercising the same rights or endanger, alter or damage the common areas.

(2) The unit owner shall manage his or her unit as required by the sound condition and good appearance of the building; however, with respect to the common areas within the unit and the common areas which are for the exclusive use of the unit owner, he or she shall only perform and pay for maintenance and minor repairs.

§ 1176

By acquiring ownership of a unit, the owner of the unit is obliged to comply with the rules governing the management of the house and grounds and the use of the common parts, provided that he has been acquainted with those rules or should and could have been aware of them, as well as to ensure compliance with them by persons to whom he has given access to the house or flat.

§ 1177

The owner of the unit shall, without undue delay, notify the person responsible for the management of the house and grounds (the "person responsible for the management of the house") of his or her name, the name and residence of the person to whom he or she has let the flat for use for a non-transient period and the number of persons who will have a household in the flat. This also applies if these details change.

§ 1178

(1) The person responsible for the management of the building shall keep a list of unit owners and persons to whom the owner has given the flat for occupation, to the extent specified in § 1177.

(2) If requested by a unit owner, the person responsible for the management of the building shall provide the person responsible for the management of the building with the name and residence of any unit owner or person to whom he or she has conveyed the unit for occupancy.

§ 1179

A unit owner has the right to know how the person responsible for the management of the house manages the house or land. With that person, the unit owner may inspect contracts entered into in relation to management matters, as well as books and documents, and may take extracts, copies and copies thereof.

§ 1180

(1) The unit owner shall contribute to the management of the house and grounds in a proportion appropriate to his share of the common parts, unless otherwise specified in the declaration, having regard in particular to the nature, dimensions and location of the common part which is for the exclusive use of a unit owner and the extent of the unit owner's obligation to manage that part at his own expense.

(2) Contributions intended for the remuneration of the person who manages the building or of the members of its bodies, for bookkeeping and for similar costs of self-management shall be allocated equally to each unit.

§ 1181

The unit owner shall pay advances for services connected with or incidental to the use of the dwelling (services) and shall have the right to have the person responsible for the management of the building account for the advances in a timely manner.

§ 1182

(1) The unit owner shall notify the person responsible for the management of the building in advance of any structural alteration inside his or her dwelling.

(2) If the unit owner makes structural alterations to his or her apartment, he or she shall, upon prior request, allow the person responsible for the management of the building to verify that the structural alterations do not endanger, damage or alter the common areas, including, where appropriate, by accessing the apartment.

(3) The owner of the unit shall give the person responsible for the management of the building prior notice of any business or other activity in the apartment that may result in a disturbance of the usual peace and order of the building for a period of time that is not temporary.

§ 1183

(1) The unit owner shall refrain from anything that interferes with the maintenance, repair, alteration, remodeling or other change of the house or land that has been duly decided upon; if it is carried out inside the dwelling or on a common area that is for the exclusive use of the unit owner, the unit owner shall allow access to it if he or she has been previously requested to do so by the person responsible for the management of the house. This also applies to the location, maintenance and inspection of water, gas, heat and other energy metering devices.

(2) Where a unit is damaged by the carrying out of work in accordance with [paragraph 1](#), the unit owner shall be compensated by the unit owners' association (the "owners' association") for the damage and, if no damage is caused, by the co-owners of the building on a pro rata basis. However, if only one unit owner carried out the work in his interest, he shall compensate the damage himself.

§ 1184

(1) On motion of the person responsible for the management of the building, the court may order the sale of the unit of an owner who, despite written warning from the person responsible for the management of the building, is violating his or her obligations in a manner that substantially limits or prevents the exercise of the rights of other unit owners.

(2) The warning under [paragraph 1](#) shall state the reason for giving it, a warning of the possibility of an application for an order for the sale of the unit and a request that the owner refrain from the breach of duty or remedy the consequences of the breach of duty; the owner shall always be given a reasonable period of time, but not less than 30 days, to do so.

(3) A majority of all unit owners must consent to the filing of a motion under [paragraph \(1\)](#); in determining the majority required for consent, the vote of the owner under [paragraph \(1\)](#) shall be disregarded.

§ 1185

Co-ownership of a unit

(1) A unit owner may divide his or her interest in a unit into shares unless excluded.

(2) The co-owners of the unit shall appoint a common agent to exercise their rights against the person responsible for the management of the building. This also applies in the case of spouses who hold the unit in community of property.

Special provisions on the transfer of a unit

§ 1186

(1) On transfer of ownership of a unit, the person responsible for the management of the unit is not obliged to settle contributions for the management of the unit and deposits for benefits connected with or incidental to the use of the unit.

(2) On transfer of ownership of a unit, the transferor's debts to the person responsible for the management of the building in respect of contributions for the management of the building and the land and in respect of benefits connected or related to the use of the dwelling and advances for such benefits, if the transferor had them and if the transferee could have discovered them, pass with the unit to the transferee. The transferor shall be liable to the person responsible for the management of the house for the debts which have passed to the purchaser of the unit.

(3) Where the owner transfers ownership of the unit, he shall prove to the transferee by a certificate of the person responsible for the management of the house what debts he has under paragraph 2 or that there are no such debts; the certificate shall also be issued to the transferee by the person responsible for the management of the house with the consent of the transferor. The transferee shall be deemed not to have been able to ascertain such debts if he could not have ascertained them from the certificate of the person responsible for the management of the house or if that person did not issue the certificate without undue delay, although he was requested to do so.

§ 1187

(1) Where a unit has been created by the division of the title to the house or land into ownership of units, the tenant of the flat has a right of first refusal over the unit when it is first transferred. This also applies in the case of a lease of non-residential space if it was leased in connection with a flat in the same building. The right of pre-emption will expire if the tenant does not accept the offer within six months of its effectiveness.

(2) If the tenant is a legal person, the provisions of [paragraph 1](#) shall not apply.

§ 1188

If a unit in a house is owned or co-owned by a legal person and if the tenant is a member or partner of that legal person who has contributed by work or property to the acquisition of the immovable property, ownership of the unit may be transferred only to him. This applies even if the legal predecessor of the partner or member participated in the acquisition of the immovable property.

Subsection 5

Administration of a building and tract of land

§ 1189

(1) The management of the house and grounds includes everything not belonging to the unit owner which is necessary or expedient in the interest of all the co-owners for the proper care of the house and grounds as a functional unit and the preservation or improvement of the common areas. The management of the house and land includes activities related to the maintenance and repair of the common areas, the preparation and implementation of changes to the common areas by addition, extension, alteration or change in use, and the establishment, maintenance or improvement of facilities in the house or on the land serving all co-owners of the house.

(2) The administration is deemed to extend to common parts which are for the exclusive use of a co-owner.

§ 1190

The person responsible for the management of the house is the community of owners. If no community of owners has been established, the person responsible for the management of the house is the administrator.

Administration in the absence of the association of unit owners

§ 1191

(1) Where no community of owners has been formed, the rules for the management of the house and grounds and the use of the common parts specified in the declaration shall apply to the management; where a community of owners has been formed and no such rules are specified in the declaration, the rules contained in the statutes shall apply to the management.

(2) The provisions of this Act relating to the assembly shall apply mutatis mutandis to the determination of matters relating to the management of the house and grounds. The unit owners shall be convened by the manager. The affirmative vote of a majority of all unit owners and the consent of a majority of all unit owners shall be required for a decision to be made unless the declaration or bylaws require a greater number; the provisions of § 1209 are not affected.

§ 1192

Unit owners are jointly and severally entitled and obligated for legal actions of the manager; however, if the legal action is on a matter within the authority of the assembly, they are entitled and obligated only if consent is given under § 1191(2).

§ 1193

(1) The first trustee is identified in the declaration. When a new trustee is elected, the procedure in § 1191(2) is followed. A trustee can only be removed with the simultaneous election of a new trustee.

(2) If any unit owner has more than a one-half interest in the common areas at the time the units are created, it is the majority owner who is always the trustee. If the trustee ceases to be the majority owner, the unit owners may elect a new trustee.

(3) If there is good cause for doing so, the court, on the petition of any unit owner, shall remove the trustee who is the majority owner and appoint a new trustee; this applies even in the case of a court-appointed trustee. A court-appointed trustee may petition the court to remove the trustee if the trustee proves that he cannot fairly be required to remain as trustee. If the court-appointed trustee ceases to be the majority owner, the unit owners shall elect a new trustee without undue delay. Upon the election of a new trustee, the court-appointed trustee shall cease to be a trustee.

Association of unit owners

§ 1194

(1) A community of owners is a legal person established for the purpose of providing management of a house and land; in pursuance of its purpose it is entitled to acquire rights and undertake obligations. An association of owners may not carry on business or participate directly or indirectly in the business or other activities of businessmen or be a partner or member thereof.

(2) Membership of an owners' association is inextricably linked to ownership of a unit. A member is liable for the debts of the owners' association in proportion to the size of his share of the common parts.

§ 1195

(1) The community of owners may acquire and dispose of property only for the purpose of managing the house and grounds.

(2) The rights and obligations arising from the obligations related to the management of the house and land arising before the establishment of the community of owners, from which the unit owners are jointly and severally entitled and obliged, shall pass to the community of owners on the date of the establishment of the community of owners. The community of owners shall notify without undue delay after its formation all creditors and debtors who are entitled to and obliged on such claims and debts that the community of owners has been formed. The unit owners shall be jointly and severally liable for the performance of the debt, unless the creditor has consented without undue delay to the unit owners being liable pursuant to § 1194(2).

(3) A legal act by which a community of owners secures the debt of another person shall be disregarded.

(4) An owners' association formed after the transfer of units from the ownership of a body corporate under § 1188 to the ownership of its members may assume, accede to, or secure a debt arising from a loan made to that body corporate for the repair, maintenance, or alteration of the building if all its members consent; the consent must be in writing and must be signed by a notary public. If there is good cause for doing so and if the member can fairly be required to do so, the owners' association may apply to the court for a declaration of the will of a member who has not consented to assume, accede to or secure such debt to be substituted by a court order.

§ 1196

(1) The owners' association legally deals within the scope of its purpose with unit owners and third parties.

(2) If the unit owners' rights are created by a defect in the unit, the owners' association represents the unit owners in exercising those rights.

§ 1197

If a community of owners associates with another community of owners to cooperate in the fulfilment of its purpose or becomes a member of a legal person associating a community of owners or unit owners or otherwise operating in the field of housing, it may not commit itself to any property participation other than the provision of a membership contribution or the provision of membership fees. If an owners' association undertakes to share in the losses of another person, to pay its debts or to provide for them, this shall not be taken into account unless it is a case referred to in § 1195(4)

§ 1198

(1) Unless the owners' association has been previously established, it shall be established by the owners of units in a building where there are at least five units, at least four of which are owned by four different owners.

(2) The ownership of a unit being transferred to another owner shall not be entered in the public register unless there is evidence of the formation of a community of owners.

§ 1199

If there are fewer than five units in a building, an owners' association may be established if all unit owners consent.

§ 1200

Formation of an association of unit owners

(1) An owners' association shall be formed by the approval of bylaws; an owners' association may be formed by a single owner of all units. Approval of the bylaws requires adoption at a constituent meeting by a majority vote of all unit owners, or the agreement of all unit owners on their contents; the provisions of § 1209 are not affected.

(2) The bylaws shall contain at least

- a)** a name containing the word "Owners' Association" and a designation of the building for which the Owners' Association was formed,
- b)** the registered office designated in the house for which the community of owners was formed; if that is not possible, in another suitable place,
- c)** the membership rights and obligations of the unit owners,
- d)** determination of the bodies, their powers, the number of members of the elected bodies and their terms of office, and the manner of convening, meeting and passing resolutions,

e) determination of the first members of the statutory body,

f) rules for the management of the house and grounds and the use of the common parts.

(3) The entry under paragraph 2(e) may be deleted from the statutes after the formation of the community of owners; the statutes may delegate this decision to the statutory body. Such a decision shall not be deemed to be a decision to amend the statutes.

(4) The decision of the constituent meeting to adopt the statutes shall be evidenced by a public deed containing the approved text of the statutes. Where an owners' association is established by the adoption of the statutes by all unit owners, the statutes shall require the form of a public deed. Where the owners' association is established by a single owner of all the units, the statutes do not require the form of a public deed.

(5) When the bylaws are amended, the form of a public instrument is not required.

§ 1201

A majority vote of all unit owners is required to amend the bylaws prior to the formation of the owners' association, unless the bylaws require a greater number.

§ 1204

Incorporation of an association of unit owners

A community of owners comes into existence on the date of registration in the public register.

§ 1205

Bodies of an association of unit owners

(1) The highest organ of the community of owners is the assembly. The statutory body is the committee, unless the statutes provide that the chairman of the owners' association is the statutory body. If the statutes establish other bodies, the powers reserved to the assembly or the statutory body may not be conferred on them.

(2) A person is eligible to be a member of an elected body, or to represent a body corporate as a member of such a body, if he or she is of full legal capacity and is of good character within the meaning of any other provision of law governing the conduct of a trade.

Assembly

§ 1206

(1) The assembly shall consist of all unit owners. Each of them shall have a number of votes corresponding to the size of his share of the common parts; but if the unit is owned by a community of owners, his vote shall not be counted.

(2) The assembly shall be qualified to act in the presence of the unit owners having a majority of all the votes. The affirmative vote of a majority of the unit owners present shall be required for the adoption of a resolution, unless a greater number of votes is required by the bylaws or by law.

(3) The powers of the meeting shall be exercised in a community of owners with a single owner by that owner.

§ 1207

(1) The statutory body shall convene the assembly to meet so that it is held at least once a year. The statutory body shall also convene the meeting at the initiative of unit owners holding more than one quarter of the total votes, but not less than two of them; failing this, such owners shall convene the meeting themselves at the expense of the owners' association.

(2) If the invitation is not accompanied by materials relating to the agenda for the meeting, the convener shall give each unit owner an opportunity to review them in a timely manner.

(3) If, before the invitation to the meeting is sent out, the unit owners request it under paragraph 1, the statutory body shall include on the agenda of the meeting a matter specified by them, provided that a resolution is proposed on such matter or a reason is given for its inclusion.

§ 1208

The powers of the Assembly include

- a) amendment of the constitution,
- b) electing and removing members of elected bodies and deciding their remuneration,
- c) approval of the budget, the financial statements, the management accounts and the report on the management of the owners' association and the management of the house and the land, as well as the total amount of the contributions for the management of the house and the land for the following period and the decision on the settlement or settlement of unspent contributions,
- d) approval of the type of services and the method of allocating the prices of services to the units,
- e) decision making
 - 1. on the membership of a community of owners in a legal entity operating in the field of housing,
 - 2. on the repair or maintenance of the common area or on the structural alteration of the common area which does not require a change in the declaration, if the costs exceed the amount laid down by the implementing legislation; this does not apply if the statutes provide otherwise,
- f) granting of prior consent
 - 1. to acquire, dispose of or otherwise dispose of immovable property,
 - 2. to acquire, dispose of or encumber movable property the value of which exceeds the amount laid down by the implementing legislation, or to otherwise dispose of it; this shall not apply if the statutes provide otherwise,
 - 3. to conclude a loan agreement by the community of owners, including approval of the amount and terms of the loan,
 - 4. to enter into a contract for the creation of a lien on the unit if the unit owner concerned has agreed in writing to enter into the lien contract,
- g) the designation of a person to carry out certain house and land management activities and a decision to change that person,
- h) deciding on other matters specified by law, the statutes, or matters reserved for decision by the assembly.

§ 1209

(1) If there is good cause, the unit owner being outvoted may petition the court to decide the matter concerning the management of the house and grounds; as part of that petition, the unit owner may also petition the court to temporarily enjoin the unit owner from acting on the challenged decision. If the application is not made within three months of the date on which the unit owner became aware or could have become aware of the decision, his or her right is extinguished.

(2) The court shall arrange the legal relations of the unit owners in accordance with its sound discretion. In particular, the court may decide whether the decision should be

made without reservation, with reservation or against security, or whether it should not be made at all.

(3) If there is good cause for doing so, any unit owner may move the court to decide a matter which has been properly submitted to the meeting for decision but which has not been decided because the meeting is incompetent to transact business.

§ 1210

Supervisory Assembly

If the by-laws permit the holding of a substitute meeting, the substitute meeting shall be qualified to act with the presence of unit owners holding at least 40 % of the total votes.

Decision-making outside meetings

§ 1211

(1) If the called meeting is not quorate, the person entitled to call the meeting may propose in writing that the unit owners decide the same matters outside the meeting. In other cases, it may be moved that a decision be taken outside the meeting if the by-laws so permit.

(2) If the law or the bylaws require that the adoption of the resolution of the meeting be evidenced by a public instrument, the motion shall be in the form of a public instrument; in such case, a copy of the public instrument proposing the resolution shall be mailed to the unit owners. The adoption of the resolution shall be evidenced by a public deed.

(3) The proposal shall include, at a minimum, the draft decision, the documents necessary for its consideration or an indication of where they are published, and an indication of the time within which the unit owner is to comment. Unless the statutes specify a longer period, the period shall be fifteen days.

§ 1212

A statement by the unit owner stating the day, month and year on which the vote was taken, signed in his or her own hand on the document containing the full text of the proposed resolution, is required to be valid. If the law or the bylaws require that the adoption of the decision of the assembly be evidenced by a public document, the signature of the unit owner on the statement must be notarized.

§ 1213

The statutory body shall notify the unit owners in writing of the result of the vote and, if the resolution has been adopted, the full content of the resolution adopted. If it fails to do so without undue delay, the notification may be made at the expense of the owners' association by the person who proposed the resolution.

§ 1214

Majority is calculated from the total votes of all unit owners, unless the law provides that it is calculated from the total number of unit owners.

Dissolution of an association of unit owners

§ 1215

(1) The community of owners shall be dissolved on the date of termination of ownership of all units in the building.

(2) By resolution of the unit owners, an owners' association may be dissolved if it was established voluntarily or if the number of units in the building or the number of unit owners has decreased to less than five. In such a case, the unit owners shall adopt rules for the management of the house and grounds and the use of the common areas.

§ 1216

When the owners' association is dissolved, there is no liquidation. The rights and obligations of the community of owners shall pass on the date of its dissolution to the owners of the units in the proportion determined by the share of each unit owner in the common parts.

Subsection 6

Cancellation of residential co-ownership

§ 1217

(1) Where the unit owners agree to convert a condominium into a fractional ownership of immovable property, the condominium shall be converted into a fractional ownership by registration in the public register. The size of each co-owner's share shall be deemed to be equal to the size of the share he or she had as a unit owner in the common parts.

(2) Where all the units in the house are held in common ownership and the spouses agree to convert the condominium ownership into ownership of the immovable property held in common, the condominium ownership shall be converted into ownership of the immovable property held in common by registration in the public register.

(3) An agreement under paragraphs 1 and 2 requires a written form.

§ 1218

(1) If a single owner has title to all the units in a building and declares that he or she is changing the title to the units to a title to immovable property, the condominium will terminate upon entry in the public register.

(2) The declaration requires a written form.

§ 1219

If the unit is encumbered, the consent of the person entitled to the easement, given in writing, is required for the agreement or declaration to terminate the condominium to be valid.

Subsection 7

Common Provisions

§ 1220

(1) If the declaration is amended, the person responsible for the management of the house shall draw up a complete version of it and file it without undue delay in the collection of documents with the authority with which the immovable property is registered in the public register; this shall apply even if the particulars of the declaration are contained in the building contract.

(2) If the person responsible for the management of the house is registered in the public register, he shall without undue delay also file the declaration in full in the collection of deeds with the authority which keeps the public register.

§ 1221

(1) Unless otherwise follows from the provisions on the community of owners, the provisions on the association, in particular the provisions on the convening, meeting and decision-making of collective bodies, on the nullity of a decision or on the consequences of its conflict with good morals, shall apply *mutatis mutandis*. However, the provisions on the assembly of delegates and on partial membership meetings shall not apply.

(2) If the law provides for the power of the unit owners in matters of condominium ownership, it may also be exercised by a decision of the unit owners taken at an assembly.

§ 1222

The implementing legislation sets out how the floor area of the flat in a unit is calculated, which parts of the immovable property are deemed to be common, and details of the activities relating to the management of the house and land.

Section 6

Co-ownership of an accessory thing

General Provisions

§ 1223

(1) A thing belonging jointly to several owners of separate things intended for such use that they form a unit defined in place and purpose, and which serves a common purpose so that without it the use of the separate things is not well possible, is held in the additional joint ownership of those owners. Where the additional co-ownership relates to immovable property entered in the public register, the additional co-ownership shall also be entered in the public register.

(2) The provisions relating to additional joint ownership shall apply *mutatis mutandis* to equipment acquired or otherwise acquired by the owners referred to in [paragraph 1](#) at their joint expense so as to serve them all.

§ 1224

(1) A thing held in joint ownership shall not be taken away from its common purpose against the will of any of the joint owners.

(2) An encumbrance may be placed on a thing held in joint ownership only in a manner which does not prevent its use for a common purpose.

§ 1225

(1) No co-owner may be prevented from participating in the use of an item of property held in additional co-ownership in a manner consistent with the common purpose and which does not prevent its use by the other co-owners.

(2) The waiver by a co-owner of the right to participate in the use of the thing in the additional co-ownership shall have no effect on his successors in title.

§ 1226

Where a thing held in joint ownership serves the common use of land, the shares of the joint owners in the common thing shall be determined by the proportion of the area of the land. This shall not prevent the co-owners from agreeing on the size of the shares otherwise.

§ 1227

(1) An interest in a thing held in joint ownership may be transferred only with the simultaneous transfer of title to the thing for the use of which the thing held in joint ownership serves. If the ownership of such a thing is transferred, the transfer shall also apply to the share in the thing held in joint ownership.

(2) This also applies to encumbrances by right of pre-emption, right of redemption or similar means, as well as to the creation of a pledge or similar security.

§ 1228

(1) Separation from the joint ownership may be effected provided that the thing for the use of which the thing in the joint ownership has hitherto served has ceased to exist or has changed its purpose so that the thing in the joint ownership is no longer needed.

(2) By the same token, any of the other co-owners may petition the court to cancel the participation of the co-owner in the additional co-ownership and to assign his share in compensation to the remaining co-owners according to the proportion of their shares.

§ 1229

If the thing in the additional co-ownership ceases to serve its purpose, the additional co-ownership shall cease and the co-owners shall settle according to the general provisions on the dissolution of co-ownership. As long as this purpose continues, the co-ownership cannot be dissolved.

Administration of a co-owned accessory thing

§ 1230

Unless the co-owners agree otherwise, they shall elect one of the co-owners as trustee for the ordinary administration of the property under the additional co-ownership. If the administrator is not elected by the co-owners after three months, the court shall appoint him on the application of any co-owner.

§ 1231

(1) Unless otherwise agreed, the co-owners shall elect a trustee by majority vote; each co-owner shall have one vote.

(2) A co-owner who has not voted for the election of a trustee may petition the court to remove the trustee if there are compelling reasons for doing so and to appoint another co-owner as trustee. If the motion is not filed within thirty days of the decision, the right to file it shall lapse.

§ 1232

If a co-owner assumes the ordinary administration of a thing held in joint ownership of his own free will and none of the other co-owners opposes it for three months, nor files a petition under § 1230, he shall be regarded as having been elected administrator.

§ 1233

(1) Unless otherwise agreed, a majority vote of the co-owners shall be sufficient to remove the trustee; but if the trustee has been appointed by the court, the co-owners may remove him by at least two-thirds of the votes of the co-owners.

(2) However the administrator may have been called, he shall be removed for good cause by the court on application made by the co-owners holding at least one-third of the votes.

§ 1234

The co-owners and the trustee shall be jointly and severally entitled and obligated for the legal actions of the trustee in matters of ordinary administration.

§ 1235

(1) The co-owners shall contribute to the administration of the property in the additional co-ownership in proportion to the size of their shares. The co-owners shall make a reasonable advance payment to the administrator for the costs of the administration of the additional co-ownership; in the absence of any other agreement, the advance payment shall be due on 31 January.

(2) The co-owners shall decide by majority vote how much the total of the advances should be. If the co-owners have not taken such a decision by the end of the preceding year, the amount of the advances for the following year shall be deemed to be the amount of the advances made in the last year plus one tenth. If it is not possible to determine the amount of the advances in this way, it shall be determined by the court on the application of the administrator.

Section 7

Special provisions on community of property

§ 1236

If a thing comes into the possession of more than one person united by contract, statute, or other legal fact in a community, whether they be spouses, persons united in a family

community, a community of heirs, or other similar communities, each of those persons shall be deemed to have a right to the whole thing.

§ 1237

The rights and obligations of the owners associated in a community are governed by the provisions under which the community was established. The provisions of § 1238 and 1239 shall apply unless otherwise provided.

§ 1238

(1) Unless otherwise agreed, a unanimous decision of all parties is required to exercise ownership rights and dispose of the common property.

(2) Unless otherwise agreed, no partition of the common property may be claimed while the community lasts, nor may any share in the common property be disposed of.

§ 1239

Ownership of the common property shall be extinguished by its disposal or by the dissolution of the community; the provisions on co-ownership shall apply to the settlement.

Volume 5

Rights in rem in things of others

Section 1

Right of superficies

Subsection 1

General Provisions

§ 1240

(1) Land may be encumbered by an easement of another person (the developer) to have a structure on or under the surface of the land. It does not matter whether the building is already established or not yet established.

(2) The right to build may be established so that it extends to land which, although not required for the building, is used for its better use.

§ 1241

A building right cannot be established over land on which a right adverse to the purpose of the building is attached. If the land is encumbered by a mortgage, it may be encumbered by a building right only with the consent of the mortgagee.

§ 1242

A building right is an immovable thing. A building complying with a building right is part of it, but is also subject to the immovable property provisions.

Subsection 2

Creation and extinction of the right of superficies

§ 1243

(1) The right to build is acquired by contract, by inheritance or, if the law so provides, by a decision of a public authority.

(2) The right of construction established by contract is created by registration in the public register. A building right created by a decision of a public authority is also subject to entry in the public register.

§ 1244

(1) A building right may only be established as temporary; it may not be established for more than 99 years. The last day of the period for which the building right is established must be shown on the public register.

(2) If the builder has acquired the building right by inheritance, he acquires it for a period of 40 years. If there are just reasons for doing so, the court may, on application by the party concerned, shorten or extend the period for which the building right is established.

§ 1245

The duration of the right to build may be extended with the consent of the persons for whom encumbrances are registered on the land in order of priority after the right to build.

§ 1246

A building right cannot be restricted by a tie-breaker condition; if a tie-breaker condition has been agreed, it is disregarded.

§ 1247

If the building right has been established for consideration and the consideration has been negotiated in repayable instalments as a building fee, it encumbers the building right as a real burden. An arrangement under which changes in the amount of the construction payment depend on an uncertain future event shall be disregarded; this does not apply if the amount of the construction payment is agreed to depend on the rate of appreciation and depreciation of money.

§ 1248

If the builder relinquishes the right to build, the owner of the encumbered land may, by virtue of deeds evidencing that fact, transfer the right to build for a period not yet expired to himself or to another person.

§ 1249

Where a building right is extinguished before its term has expired, the legal consequences of the extinguishment of the building right against the easement belonging to the person for whom an easement has been registered in the public register in respect of the building right shall not take effect until the extinguishment of that easement. However, if that person consents to the deletion, the legal consequences of the deletion of the building right in respect of his/her right in rem shall already arise from that deletion.

Subsection 3

Legal relations arising from the right of superficies

§ 1250

As to a building complying with a building right, the builder has the same rights as the owner; as to other uses of land encumbered by a building right, he has the same rights as the occupier, unless otherwise agreed.

§ 1251

- (1) A contract may require the builder to complete the construction within a certain time.
- (2) Unless otherwise agreed, the builder has a duty to keep the building in good repair. The contract may require the builder to insure the building.
- (3) The landowner may be reserved the approval of a particular factual or legal action by the builder, but even if the landowner is so reserved, the landowner may not withhold approval of a legal action that is not to his detriment.

§ 1252

- (1) The right to build can be transferred and encumbered.
- (2) If the landowner reserves consent to encumber the building right, the reservation shall be recorded in the public register. In such a case, the encumbrance of the building right may be entered in the public register only with the consent of the landowner.

§ 1253

The right of construction passes to the heirs and other general successors in title.

§ 1254

The builder has a right of first refusal over the land and the owner of the land has a right of first refusal over the building. If the parties agree otherwise, it shall be entered in the public register.

§ 1255

If nothing else is agreed, the owner of the building land shall, on the termination of the building right by the expiry of the period for which it was established, give the builder compensation for the building. The compensation shall be half the value of the building at the time of the termination of the building right, unless the parties agree otherwise.

§ 1256

Lien and other rights attaching to the construction right shall affect compensation.

Section 2**Easements****Subsection 1****General provisions on servitudes****§ 1257**

(1) A thing may be encumbered by an easement which affects the owner of the thing as a right in rem so that he must suffer or refrain from doing something for the benefit of another.

(2) An owner may encumber his land with an easement for the benefit of another of his land.

§ 1258

An easement includes whatever is necessary for its exercise. If the content or extent of the easement is not specified, it is to be judged by local custom; if neither, the extent or content is presumed to be less rather than greater.

§ 1259

Whoever is entitled to an easement may seek protection of his right; § 1040 to 1043 shall apply mutatis mutandis.

Subsection 2**Acquisition of servitude****§ 1260**

(1) An easement is acquired by contract, by acquisition on death, or by inheritance for the period necessary to vest title to the thing to be encumbered by the easement. An easement shall be acquired by operation of law or by decision of a public authority in the cases provided for by law.

(2) When an easement corresponding to a public good is held, the municipality in whose territory the thing is located is the holder.

§ 1261

Land intended for the performance of forest functions may be encumbered by a land easement, grazing easement or forest fruit harvesting easement only by contract, by acquisition on death or by decision of a public authority. Such an easement may be established only as a redeemable easement and the terms of the redemption must be determined in advance when the easement is established.

§ 1262

(1) Where an easement is created by legal action over a thing entered in a public list, it is created by entry in such list. Where an easement over a thing entered in the public

register is created by another legal fact, it shall also be entered in the public register in that case.

(2) Where an easement is created in respect of a thing not entered in the public register, it shall arise on the effectiveness of the contract.

Subsection 3

Legal relations arising from a servitude

§ 1263

The person entitled to the easement shall bear the cost of maintaining and repairing the property designated for the easement. If, however, the person burdened by the easement also uses the thing, he is obliged to contribute proportionately to the expense or to refrain from using it.

§ 1264

(1) If the extent of the easement is not determined, the need of the dominant estate shall govern.

(2) An easement is not altered by a change in the extent of the easement or the servient estate or by a change in the management of the servient estate.

§ 1265

(1) A land easement cannot be combined with another overlying land.

(2) A personal easement cannot be transferred to another person.

(3) Easements may be created as alienable and heritable rights of use in fee simple in the space beneath the surface.

§ 1266

Multiple easements may be created to an asset, provided that the newer right is not detrimental to the older rights.

Subsection 4

Certain predial servitudes

A servitude of public utilities

§ 1267

(1) A utility easement creates the right to establish, operate and maintain water, sewer, power or other lines on or across the easement property at its own expense and in a suitable and safe manner. The owner of the land shall refrain from anything that leads to endangerment of the utility and, if this is discussed with him in advance, shall allow the authorised person to enter the land for the necessary time and to the necessary extent for the purpose of inspection or maintenance of the utility.

(2) Where expressly agreed, the easement shall include the right to establish, have and maintain on the easement land also the necessary service facilities, as well as the right to carry out modifications to the utility network in order to upgrade it or improve its performance.

(3) The authorized person shall make available to the landowner the documentation of the utility to the extent agreed upon, and if not agreed upon, to the extent necessary to protect the landowner's legitimate interests.

§ 1268

If the matter of sudden damage to a utility is not to be delayed, the authorised person shall arrange for its repair without prior consultation; however, he shall immediately notify the persons concerned of the repair, mark its location and secure it. On completion of the work, the utility shall restore the servient land to its previous

condition at its own expense and shall compensate for the damage caused by the work.

§ 1269

Support of a structure of another

He who is obliged to bear the burden of another's building shall also contribute proportionately to the maintenance of the walls or supports, but is not obliged to support the dominant estate.

§ 1270

Servitude of eavesdrip

(1) One who has an easement of eaves has the right to bring rainwater from his roof onto another's real property, either freely or in a gutter; he may raise his roof only if he does not thereby encumber the easement.

(2) He who has a gutter easement must keep the downspout, if established, in good repair. He must also, if much snow falls, clear the snow in good time.

§ 1271

Right to channel rainwater from the roof of another

(1) Those who have the right to drain rainwater from a neighbouring roof onto their property shall bear the cost of the facilities required for this purpose.

(2) Where a gully or similar facility is required for the downpipe, the owner of the dominant land shall bear the cost of its establishment and maintenance.

§ 1272

Right to draw water

(1) Those who have a right to water on someone else's land also have access to it.

(2) Whoever has the right to carry water from another's land to his own or from his own land to another's may, at his own expense, establish and maintain the facilities necessary for that purpose; the extent of which shall be governed by the necessities of the servient estate.

§ 1273

Servitude of flooding

(1) A spillway easement gives the owner of a water body that allows controlled flood spill the right to spill water on the easement. The easement also includes the right of the owner of the water works to have and maintain service facilities on the easement land and, if expressly agreed, to make alterations to them and to the water works for the purpose of upgrading them or improving their performance.

(2) The owner of the land shall refrain from doing anything that will result in a hazard to the water works and service facilities and, if previously agreed with the owner, shall allow the authorised person to enter the land for the necessary period and to the extent necessary.

(3) The provisions of § 1267(3) and § 1268 shall apply mutatis mutandis.

Servitudes of footpath, cattle path and passage

§ 1274

(1) An easement of a trail creates a right to walk or be transported by human power on the trail and a right for others to come to and go from or be transported by human power on the trail.

(2) A trail easement does not include the right to ride animals onto the easement land or to haul burdens across the easement land.

§ 1275

(1) An easement of passage creates the right to drive animals across the easement land. The right to drive vehicles other than motor vehicles is also associated with the right of way easement.

(2) If the easement land is land intended to perform forest functions, a cattle passage easement is prohibited. If the public authority decides that the easement land is intended to perform the functions of a forest after the establishment of such an easement, the easement shall cease to exist.

§ 1276

(1) A road easement creates the right to drive any vehicles over the easement.

(2) A right-of-way is not included in an easement of way.

(3) The person to whom the road easement belongs shall contribute proportionately to the maintenance of the road, including footbridges and bridges. The owner of the easement contributes only when he or she uses the facilities.

§ 1277

The area for the exercise of an easement for a trail, road, or right-of-way shall be adequate for the need and location. If a trail, road or culvert becomes impassable by the operation of chance, it may be claimed that a substitute area may be shown before it is restored to its former condition.

Right of pasture**§ 1278**

If the species, number of cattle, or extent and time of grazing is not specified when the grazing right is established, a peaceful ten-year tenure is protected. When in doubt, the provisions of [§ 1279 to 1282](#) shall apply.

§ 1279

(1) The right to graze applies to any species of livestock, but not to pigs and poultry. Animals that are excessively polluted, diseased or foreign are excluded from grazing.

(2) If the easement land is forested land, a livestock grazing easement is prohibited.

§ 1280

(1) If the number of cattle grazed has varied over the last ten years, the average over the first three years of grazing is the determinative factor. If even this number is not apparent, it shall be determined in accordance with the principles of propriety in proportion to the extent and quality of the grazing; however, the person entitled may not graze more cattle on the servient estate than can be overwintered with the forage supplied by the dominant estate.

(2) Suckling young shall not be counted in the count under [paragraph 1](#).

§ 1281

Grazing hours shall be governed by local custom; however, proper management of the land shall not be restricted or impeded by grazing.

§ 1282

(1) The right to graze does not include any other use. Nor does it generally exclude the owner of the servient estate from the right of joint grazing.

(2) If damage is imminent, the cattle must be guarded.

Subsection 5**Right of use****§ 1283**

A usufruct grants the user the right to use another's property for his own use and that of his household. If these needs change after the easement has been granted, this does not give the user the right to extend it.

§ 1284

The owner of the thing is entitled to all the benefits which he may take without abridging the right of the user. However, the owner bears all its defects and must keep the thing in good condition. If the cost exceeds the benefit remaining to the owner, the user must either bear the increased cost or abandon the use.

Usufruct

§ 1285

A usufruct grants the usufructuary the right to use another's property and to take the fruits and benefits thereof; the usufructuary is also entitled to an extraordinary return on the property. In exercising these rights, the usufructuary is obliged to respect the substance of the thing.

§ 1286

The usufructuary has no right to a hidden object found in the land.

§ 1287

The usufructuary assumes all defects that were binding on the thing at the time the easement was created. He shall also bear the costs without which the fruits and benefits would not have been obtained.

§ 1288

The user shall maintain the item in the condition in which it was received and shall pay the usual maintenance costs of the item, including restoration and the usual insurance against damage. If the proper use of the thing nevertheless diminishes its value through no fault of the user, the user shall not be liable.

§ 1289

(1) The owner may, after notice to the usufructuary, carry out at his own expense any works made necessary by accident or the age of the building; in such case the usufructuary shall pay to the owner a consideration determined according to the extent to which the usufruct has been improved.

(2) If the owner is unable or unwilling to carry out the works, the usufructuary shall be entitled to carry them out himself, and to claim the same compensation as a bona fide possessor after the enjoyment has ceased.

§ 1290

A usufructuary is obliged to endure the works, even if they are not necessary, if his right is not thereby injured, or if he is compensated for all damages.

§ 1291

The owner shall pay to the usufructuary the expense by which the thing has been improved on the same terms as if he had been obliged to pay it to the non-executive. If the usufructuary has incurred the expense for pleasure or for ornament, the usufructuary has the same rights and obligations as an honest possessor.

§ 1292

It shall be presumed that the thing, when received by the usufructuary, was of average quality, in a condition fit for proper use, and that everything necessary for such use was present.

§ 1293

When enjoyment ceases, the fruits not yet separated belong to the owner. However, the owner shall reimburse what the usufructuary has spent on them, according to the

provisions of the fair holder. The usufructuary shall be entitled to other benefits according to how long the usufruct has lasted.

Common Provisions

§ 1294

Where a right of use or enjoyment is established in respect of usable fungible things, the user or enjoyer may dispose of the things as he pleases. When his or her right ends, he or she shall return an equal quantity of goods of the same kind and quality.

§ 1295

(1) The user or beneficiary of the principal deposited at interest shall be entitled only to such interest. Interest shall also accrue to the user or beneficiary on principal which, as a result of any change, takes the place of the earlier principal.

(2) The user or usufructuary and the creditor shall decide jointly whether any action is to be taken in respect of the principal. If they do not agree, the court shall decide.

(3) The debtor shall be discharged from the debt only by paying the principal jointly to the creditor and the user or usufructuary. Each of the creditor and the user or usufructuary may only require that the principal be deposited in a notarial or judicial depository for both.

§ 1296

An owner cannot require a user or usufructuary to secure the principal unless it is in danger. If security is not given, the owner may, if necessary, demand the delivery of the substance for a fair compensation.

Habitation

§ 1297

If an easement of dwelling is established, it shall be deemed to have been established as an easement of use.

§ 1298

The owner shall have the right to dispose freely of all parts of the house not covered by the easement of the dwelling and shall not be prevented from exercising the necessary supervision.

Subsection 6

Extinction of servitude

§ 1299

(1) An easement terminates by a permanent change for which the easement can no longer serve the servient estate or the grantee.

(2) Upon a permanent change causing a gross disproportion between the burden of the easement and the benefit of the servient estate or beneficiary, the owner of the easement may seek to limit or terminate the easement for reasonable compensation.

§ 1300

(1) If the parties agree to cancel an easement recorded on the public record, the easement shall terminate upon deletion from the public record.

(2) The period for which an easement has been granted to someone may also be agreed that the easement will terminate if another person reaches a certain age. In such a case, the earlier death of that person shall not be deemed to affect the duration of the easement.

§ 1301

The combination of the ownership of the servient and the servient estate in one person

does not extinguish the easement.

§ 1302

(1) A personal easement terminates on the death of the beneficiary; in extending the easement to heirs, the heirs are deemed to be the legal heirs of the first class. Where a legal person has acquired a personal servitude, the servitude shall continue so long as that person continues to exist.

(2) Where an easement serves the operation of a plant, it does not cease on the transfer or passing of the plant or such part of it as is to be operated as a separate plant.

Subsection 7

Real burdens

§ 1303

(1) If a thing is entered on the public register, it may be encumbered by a real burden so that the temporary owner of the thing is obliged as debtor to the person entitled to it to give or do something to it.

(2) Several things may be encumbered for the same real burden.

§ 1304

An indefinite real burden can only be established as a redeemable one and the terms of the redemption must be determined in advance when the real burden is established.

§ 1305

If a real burden is created by legal action, it is created by registration in the public register.

§ 1306

When a real burden is repeated, the withheld benefit or its compensation may be sought both from the person in whose possession the benefit accrued and from the present owner, but only from the thing burdened by the real burden.

§ 1307

(1) The owner of the encumbered thing shall refrain from anything which would impair the thing to the detriment of the person entitled to the real burden.

(2) If the thing is insufficient for the real burden through the fault of its owner or because of a deficiency which comes to light only later, to the extent that it was deemed to be when it was created, the owner shall remedy the condition by posting a bond or otherwise, so that the person entitled to the real burden does not suffer prejudice.

§ 1308

The provisions on the extinction of real burdens apply mutatis mutandis to the extinction of easements.

Section 3

Pledge

Subsection 1

General Provisions

§ 1309

(1) When a debt is secured by a pledge, the creditor is entitled, if the debtor fails to perform the debt in due and timely manner, to satisfy himself from the proceeds of the realisation of the pledge up to the agreed amount, and if no such amount is agreed, up to the amount of the claim with its accessories on the date of realisation of the pledge.

(2) An arrangement prohibiting the creation of a pledge shall have effect against a third party only if the prohibition is entered in the register of pledges pursuant to another legal

regulation or in a public list or if it is known to the third party.

§ 1310

(1) A security may be any thing capable of being dealt with.

(2) A lien may also be created on a thing to which the lienor will only acquire title in the future. If such a thing is entered in the public list or in the register of pledges, a lien shall be registered on it if the owner of the thing consents to it.

§ 1311

(1) A lien may secure a debt of a certain amount or a debt the amount of which may be determined at any time during the term of the lien. A lien may secure a debt, whether pecuniary or non-monetary, contingent or to be incurred in the future.

(2) A lien may also secure debts of a particular kind incurred by the debtor against the mortgagor at a particular time or even different debts incurred against the mortgagor for the same legal reason.

Subsection 2

Establishment of a pledge

§ 1312

(1) The lien is created by a lien agreement. In it, the parties shall stipulate what is pledged and for what debt the pledge is established; if the debt to be secured is a juvenile debt or several debts, it is sufficient to stipulate up to what maximum principal amount the security is granted.

(2) The security may be designated individually, or in such other manner as to be determinable at any time during the term of the security interest.

§ 1313

The lien secures the debt and its accessories; if separately agreed, it also secures the contractual penalty.

§ 1314

(1) If the movable thing as security is not surrendered to the pledgee or to a third party to hold it for the pledgee, a written form is required for the pledge agreement.

(2) A pledge agreement requires the form of a public deed,

- a) if the pledge is a plant or other thing in bulk,
- b) if the mortgage is an immovable property not subject to registration in a public register, or
- c) if the lien on the movable thing is to arise by registration in the register of liens.

§ 1315

Prohibited stipulations

(1) Arrangements under which the borrower or pledgor may not redeem the collateral are prohibited.

(2) Until secured debt matures, arrangements that

- a) the secured creditor shall not seek satisfaction from the collateral,
- b) the pledgee may monetize the pledge in any manner or retain it for any price, or a predetermined price; or
- c) the creditor may take the fruits or benefits of the pledge.

(3) If the pledgor or pledgee is a consumer or a person who is a small or medium-sized business, an arrangement with the content of [paragraph 2\(b\)](#), whether it occurred before the secured debt matured or even after the secured debt matured, is disregarded.

§ 1316

A lien on a thing entered in a public list arises on entry in that list, unless another enactment provides otherwise.

§ 1317

(1) A lien on a movable thing arises on surrender to the mortgagee. If the pledgee so requests, the pledgee shall be given a pledge certificate by the pledgee, in which the pledge shall be described in such a way as to distinguish it sufficiently from other things.

(2) The surrender of the movable thing may be replaced by a sign indicating that the thing is pledged. If the lien has been created by the marking, it may be enforced against a third party unless the third party was in good faith; otherwise the thing shall be deemed not to have been marked.

§ 1318

Where a pledge agreement so provides, a lien on a chattel is created when the pledgee or pledgor gives the chattel to a third party to hold it in trust for the pledgee and the pledgor. Unless otherwise agreed, the pledgee shall bear the costs thereof.

§ 1319

(1) If the pledge agreement so provides, the pledge right to the movable property shall be created by registration in the register of pledges.

(2) A right of pledge over immovable property not registered in the public register, a factory and movable property in bulk shall arise by registration in the register of pledges.

(3) The entry in the register of pledges shall be made by the notary who drew up the pledge agreement without undue delay after the conclusion of the pledge agreement.

Pledging a share in a corporation**§ 1320**

(1) If a share in a corporation can be freely transferred, a lien may be created on it; if the share can be transferred only under certain conditions, the same conditions are required to be met when the share is pledged. This does not apply if the pledge of the share is prohibited or restricted by the articles of incorporation.

(2) If the share is represented by a security, only that security is an eligible pledge.

§ 1321

A contract by which a corporation accepts its own shares as security is not taken into account.

§ 1322

(1) A lien on a share is created by the entry of the share in the public register in which the corporation is registered.

(2) The pledgee or pledgor shall notify the corporation of the creation of the lien without undue delay; however, notice is not required if the appropriate body of the corporation has consented to the pledge of the share.

§ 1323

If voting rights are attached to the share, the pledgee may exercise them only if agreed.

§ 1324

(1) If the claim matures, the pledgee acquires the right to monetary and other benefits in kind arising from the participation in the corporation up to the amount of the secured debt. These benefits are set off against the debt, unless the parties agree otherwise.

(2) If the personal debtor or mortgagee denies the amount or existence of the debt in a court proceeding, the performance shall be provided under [paragraph 1](#) without undue

delay after the amount or existence of the debt has been determined by the court; until such time, the person who is to provide the performance is not in default.

§ 1325

The lien creditor shall give notice of the commencement of the enforcement of the lien to all partners. If those partners have a pre-emptive right to the share, the pre-emptive right shall lapse if the partners do not exercise it when the pledge is realised.

§ 1326

If so agreed, the pledgee acquires the pledged share at the time his attempt to realise the share in enforcement of the pledge is unsuccessful. If it has not been agreed that the pledgee already acquires the pledged share at that moment, the pledgee may exercise the rights of the company attached to the share from that moment.

§ 1327

(1) If the pledgee has been unsuccessful in its attempt to realise the share, it may require the pledgor to transfer the pledged share to it on normal commercial terms in satisfaction of the debt. If the pledgor fails to exercise his right within one month of the date on which his attempt to realise the share was unsuccessful, his right shall be extinguished.

(2) If the pledgor fails to transfer the share to the pledgee within one month from the date on which the pledgor was requested to do so, the pledgee may request the court to determine the contents of the contract.

Pledge of securities or book-entry securities

§ 1328

(1) A lien on a security arises on surrender of the security to the pledgee. If the pledge agreement so provides, the pledge of the security is created when the pledgor or the pledgee delivers the security and a counterpart of the pledge agreement to a third party to hold the security for them.

(2) A pledge endorsement containing the clause "to pledge" or other words of the same meaning and the name of the pledgee is also required to create a lien on the security in series.

(3) If the parties agree that a bearer security interest is created by recording the lien in the register of liens, surrender of the lien to the person who records the lien in the register of liens is required for the duration of the lien.

§ 1329

(1) If the security is already in custody, the lien is created by a notice of the pledgee or pledgor delivered to the custodian together with a copy of the pledge agreement. From the delivery of the notice, the security shall be deemed to be held jointly for the pledgee and the pledgor. The provisions of § 1328(2) are not affected.

(2) Whoever has custody of a security by way of business shall mark the pledge in his records so as to show who is the pledgee; he shall deposit it separately unless it is a collective custody.

§ 1330

If the security is already in the custody of a third party under contract with its owner, the security may be delivered to the pledgee during the pledge only with the consent of the pledgor.

§ 1331

(1) A lien on a book-entry security is created by the entry of the owner's account in the relevant register. The entry shall be made by a person authorised to keep such records on the order of the pledgee to the credit of his account. If the order is given by the

pledgee, the personal debtor or the pledgee, the lien shall be registered if the principal provides evidence of the creation of the lien.

(2) The lien shall be removed from the relevant records by the person authorised to keep those records. If the order is made by the mortgagee, personal debtor or pledgee, the lien shall be expunged if the principal proves that a fact has occurred which would otherwise cause the lien to be extinguished.

§ 1332

(1) During the pledge of a security, the pledgee may exercise the rights associated with the pledged security to the extent agreed by the parties.

(2) The provisions on performance of the pledged claim shall apply to the proceeds and other monetary benefits from the security, unless the pledgee waives this right in favour of the pledgee.

Pledging the account of an owner of book-entry securities

§ 1333

A lien is created on a book-entry securities account by recording a lien on that account in the appropriate records. The § 1331 shall apply to the registration and cancellation of the lien in a similar manner.

§ 1334

(1) A lien on the account of the owner of book-entry securities extends to all securities that are registered in the account at the time the lien is created, as well as to securities transferred to the pledged account during the pledge period. The provisions governing the lien on individual securities shall apply mutatis mutandis to securities registered in the pledged account.

(2) If a security is transferred from the pledged account with the prior consent of the pledgee, the pledge of that security shall also be extinguished by the transfer.

Pledge of Claim

§ 1335

(1) A claim may be stopped which may be assigned to another. If the pledge is a claim of the pledgee against the pledgee's creditor, the claim and the debt are not extinguished by the merger of the persons of the creditor and the debtor.

(2) A lien on a claim arises on the effective date of the pledge agreement, unless a later time is agreed, but the lien takes effect against the debtor of the pledged claim when the pledgee notifies the pledgee or the pledgee proves it. This does not apply if the parties have agreed to enter the pledge in the register of pledges.

§ 1336

(1) Prior to the maturity of the secured debt, the debtor may only make payments on the pledged debt to the pledgee and the pledgee in undivided shares. Each of them shall have the right to demand that the debtor deposit the performance in favour of both of them in a third party custodian; if the pledgee and the pledgee fail to agree on the custodian, the court shall appoint the custodian on the motion of either party. If the secured debt has reached maturity, the custodian shall deliver to the pledgee everything necessary to satisfy it.

(2) If the secured debt is due, the pledgee shall have the right to have the pledgee pay only to it; if it exercises it, it shall report to the pledgee's creditor. If the pledged claim has not yet become payable, the pledgee shall have the right to have it assigned to him.

§ 1337

If the pledged claim is to be paid in cash, the pledgee shall deliver to the pledgee everything in excess of the secured claim, including any accessories and costs to

which the pledgee is entitled. If another thing is performed, the lien shall pass to that thing.

§ 1338

(1) If a legal act of the creditor, in particular termination or withdrawal, is required to pay the pledged claim, the consent of the pledgee is not required. The pledgee may request that the creditor take legal action if the security is at risk.

(2) If legal action by the debtor is required, such legal action is effective if notice is also given to the pledgee.

§ 1339

If a lien has been perfected on an account receivable, the lien creditor has the right to order the person who maintains the account to pay him the balance of the account up to the amount of the secured debt, provided that he notifies the amount and maturity of the secured debt.

§ 1340

The provisions of § 1336 and 1338 shall apply unless the parties agree otherwise. If it is agreed that the lender needs the consent of the mortgagee for the termination or other legal action, the lender may seek consent if the security is at risk.

§ 1341

Future pledge

(1) If a thing in respect of which the mortgagor is to acquire a lien only in the future is to become a lien, the lien arises upon the acquisition of title by the mortgagee.

(2) Where registration in a public register or in the register of mortgages is required for the creation of a lien and a future lien has been registered therein, the lien shall arise on the acquisition of title by the mortgagee.

§ 1342

Pledge established by a decision of a public body

Where a lien is created by a decision of a public authority, the lien arises on the execution of the decision, unless the decision provides for a later period. Otherwise, if registration in the register of pledges or in a special public list is required for the creation of the lien, the lien shall be registered there.

§ 1343

Pledge of a thing of another

(1) A pawnbroker may only give as a pledge of another's property with the consent of the owner.

(2) If the pledgee gives as security a movable thing of another without the consent of the owner, the pledge arises if the thing is delivered to the pledgee and the pledgee accepts it in good faith that the pledgee is entitled to pledge the thing.

(3) If someone has a right in rem over the thing to be pledged that is incompatible with the lien, paragraph 1 and paragraph 2 apply mutatis mutandis.

§ 1344

If a pawnbroker pawns another's movable property at a pawnshop and it is not property entrusted to the pawnbroker by the owner, the owner has a right against the pawnbroker to recover the property if he proves that he lost the property by loss or by an act in the nature of an intentional crime. The pawnbroker shall not have the right to require the owner to pay him the amount paid to the pawnbroker or accrued interest before delivering the thing.

§ 1345

Multiple pledge

Several things can be liened together for the same debt. If several separate pledges secure the same debt, the pledgor may satisfy himself on any one or all of them.

Subsection 3

Scope of a pledge

§ 1346

(1) The lien extends to the collateral, its appurtenances and accessories, unless the pledge agreement provides otherwise. Of the fruits and benefits, the lien applies only to those which are not severed.

(2) If a claim is pledged, any right securing the claim is also vested in the pledgee.

§ 1347

When a pledge of a bulk item is made, the lien attaches to the pledgee's individual items belonging to and serving the pledge, wherever they may be. The lien attaches to each individual item that is added to the bulk item and terminates as to each individual item that is detached from the bulk item.

§ 1348

If, during the term of the lien on the bulk item, a separate lien is created on an individual item belonging to the lien, the lien does not arise. If a lien has arisen on an individual item before it has been added to the bulk item or before the bulk item has been pledged, the provisions on the order of the lien shall apply.

§ 1349

The duration and extent of the lien on a security shall not be affected by the exchange of the pledged security by the issuer to the pledgee for another security, or by the conversion of a security into a book-entry security, or by the conversion of a book-entry security into a security. If the exchange or conversion results in a security in series, the issuer shall endorse the security with a pledge endorsement before delivering the security to the person entitled to hold the security.

§ 1350

(1) If a security interest is converted into a new thing, the security interest encumbers the new thing.

(2) If the pledge is joined with another thing, the pledgee has the right to have the previous state restored at the expense of the pledgee. If this is not possible, the pledge shall encumber the whole thing, but only up to the value of the pledge at the time of the merger. If the pledge has been valued, the value of the pledge shall be deemed to be determined by the amount of the valuation.

§ 1351

When a mortgaged property is divided, the lien encumbers all the property created by the division.

§ 1352

When two pledges are joined, they are to be regarded for the purposes of the lien as if the joinder had not occurred; this does not apply if the joined pledges secure the performance of the same debt.

Subsection 4

Rights and duties arising from a pledge

§ 1353

The mortgagee shall refrain from anything that impairs the mortgage to the detriment of the mortgagor. If by the act of the pledgee the pledgee's security becomes insufficient or

the insufficient security is diminished, the pledgee shall make it up accordingly.

§ 1354

(1) If the pledge is insured and an insured event occurs, the insurance company shall pay the pledgee under the insurance policy if the pledgee proves to the insurance company in a timely manner that its lien attaches to the property or if the pledgor or the pledgee gives timely notice to the insurance company.

(2) The pledgee shall have the right to withhold the benefit of the insurance policy and to satisfy itself therefrom if its claim is not duly and timely discharged, unless otherwise agreed. The pledgee shall deliver to the pledgor what exceeds the claim, including accessories and costs to which the pledgee is entitled.

§ 1355

If the pledge is assigned for use by another without the consent of the pledgee, it shall have no legal effect against the pledgee. This does not apply if the parties agree that no consent is required.

§ 1356

(1) The pledgee to whom the pledge has been surrendered is entitled to keep it in his possession for the whole duration of the pledge. He is obliged to take care of it as a good steward and is entitled against the pledgor to be indemnified for the costs thereof as a bona fide holder.

(2) The pledgee may use the pledge only with the consent of the pledgor and in a manner not prejudicial to the pledgor; if the pledgee has a good faith belief that the pledgor is the pledgor, the consent of the pledgor is sufficient. In the absence of any other arrangement, the benefit of the pledge shall be set off against the costs in accordance with [paragraph 1](#).

§ 1357

If a pledged item has been given to a third person for custody, that person may not use the pledge or allow another to use it, or give it to another person; if he does so, he is also liable for any contingency that would not have affected the pledge in his possession.

§ 1358

If a material fact recorded in the register of pledges or in the public list of pledges changes and if no other legal provision imposes an obligation to request another person to amend the registration, the person affected by the change shall request the amendment without undue delay; if he cannot be identified, the pledgee shall request the amendment. If more than one person has this obligation, it shall be sufficient if at least one of them complies with it.

Subsection 5

Exercise of a pledge

§ 1359

(1) Once the secured debt is due and payable, the pledgee may satisfy it in the manner agreed in writing with the pledgor or pledgee, as the case may be, otherwise from the proceeds of the realisation of the pledge at a public auction or from the sale of the pledge under any other law. If the pledge is a security admitted to trading on a European regulated market, it shall be sold on that market or outside that market at least at a price determined by the European regulated market.

(2) The pledgee shall be entitled against the pledgor to compensation for the necessary costs incurred in enforcing the pledge.

§ 1360

If it has been agreed that the pledgee may sell the pledge in a manner other than at a public auction, this also binds the pledgor's successor in title. The pledgee shall, when

transferring the pledge, notify the transferee of the creditor's right to sell the pledge in such a manner.

§ 1361

If special acts are required against the debtor to ripen the claim, such acts must also be directed against the pledgee, given the difference in the personality of the personal and pledgee debtors, in order for the pledgee creditor to satisfy the pledge.

§ 1362

(1) The pledgee shall notify the pledgor in writing of the commencement of the enforcement of the pledge; the notice shall state how the pledgee will satisfy the pledge.

(2) If the pledge is entered in a public list or register of pledges, the pledgee shall ensure that the commencement of enforcement of the pledge is also entered in that register.

§ 1363

If the mortgagee has been notified of the commencement of the enforcement of the pledge, it may not dispose of the pledge without the consent of the pledgor. The violation of the prohibition does not affect the rights of the transferee to whom the pledgor has transferred the title to the property in the ordinary course of business, unless the transferee knew or should have known from the circumstances that the enforcement of the pledge had been commenced.

§ 1364

(1) A lien creditor may not monetize a lien until thirty days after it has given notice to the lienor of the commencement of the lien.

(2) If the commencement of the enforcement of the lien has been entered in the public register or in the register of mortgages only after the mortgagor has notified the mortgagee of the commencement of the enforcement of the lien, the period of thirty days shall run only from the date of entry in the public register or in the register of mortgages.

(3) If a shorter period of time has been agreed before the notification, it shall be disregarded.

§ 1365

(1) If it is agreed that the pledgor may sell the pledge in a manner other than at a public auction, the pledgor shall exercise professional care in the sale, in his own interest and in the interest of the pledgee, so as to sell the pledge at the price at which a comparable item may ordinarily be sold in comparable circumstances at the place and time in question. If the pledgor breaches this obligation, this shall be without prejudice to the rights of third parties acquired in good faith.

(2) If it has been agreed how the pledgor shall monetize the pledge, the pledgor may at any time during the exercise of the pledge change the method by selling the pledge at public auction or by monetizing it under another law. The creditor shall notify the pledgor in writing in a timely manner of the change in the manner of enforcement of the pledge.

§ 1366

If the prospective purchaser of the pledged property or the auctioneer so requests, the pledgor shall demonstrate to the pledgee that it has notified the pledgee of the commencement of the enforcement of the pledge.

§ 1367

(1) The mortgagee shall suffer the enforcement of the mortgage, deliver the mortgage to the mortgagor together with the documents necessary for the taking, sale and use of the mortgage, and provide the mortgagor with other necessary assistance. If a third party has the pledge or the documents in his possession, he shall have the same obligation.

(2) He who has the pledge in his possession shall refrain from anything which would diminish the value of the pledge; ordinary wear and tear shall not be taken into account.

§ 1368

(1) The proceeds of the realisation of the pledge shall be used to pay the claim, including the accessories and costs to which the pledgee is entitled. If a nonmonetary debt has been secured, the creditor shall be deemed to be entitled to a monetary benefit up to the amount of the normal value of the claim at the time of the creation of the pledge; this shall also apply if the accessories of the secured debt are nonmonetary.

(2) The payment of a claim from a monetised pledge gives the pledgee the same rights as if it had discharged the debt itself.

§ 1369

The pledgee shall report in writing to the pledgor without undue delay after the pledge has been monetised, giving details of the sale of the pledge and the costs associated with it, as well as any other costs to which the pledgee is entitled to reimbursement, the proceeds of the sale and their use.

§ 1370

The personal debtor pays what is not received unless the realization of the collateral does as much as the claim. The pledgee is entitled to what is spent in excess.

Subsection 6**Exercise of a pledge with several pledgees****§ 1371**

(1) Where more than one lienholder has a lien on the mortgage, the order of their liens shall be determined according to the time of creation of the lien. If the creation of the lien is to be registered in the public register, the time of filing the application for registration shall determine the order.

(2) If the pledge is a thing in respect of which the pledgee is to acquire title only in the future, the order of the pledges shall be determined according to the time of conclusion of the pledge agreement; if the future pledge is to be entered in the register of pledges or in the public register, the order in which the applications for registration were filed shall govern.

(3) Where more than one lien attaches to a movable thing, the right of the lien creditor registered in the register of pledges or in the public register shall be satisfied in accordance with the order of registration in priority to the right arising in another manner. The right arising from the surrender of the pledge to the pledgee or to a third party shall be satisfied in priority to the right arising from the marking of the thing with a sign.

§ 1372

(1) If more than one lien arises on the mortgage, the mortgagees may agree in writing on the order of their liens. The arrangement shall be effective against third parties from the time of entry in the register of pledges or in a public list if entry in such a list is required for the creation of the pledge. The registration shall be proposed jointly by all the pledgees who have agreed on the order of the pledges.

(2) If the arrangement is intended to prejudice the rights of a lien creditor who has not agreed to the arrangement, it shall have no legal effect against him.

§ 1373

(1) The pledgee shall also give notice of the commencement of the enforcement of the pledge to those pledgees who are entitled to satisfaction in the order of priority to the pledgee. The provisions of [§ 1362](#) shall apply *mutatis mutandis*.

(2) A pledgee may foreclose the pledge no earlier than thirty days after notice to all pledgee creditors under [paragraph 1](#). This shall not apply if, within that period, a lien creditor who is entitled to satisfaction in the order preceding his order notifies him that he

himself is commencing the enforcement of his lien; if that creditor does not commence the enforcement of his lien without undue delay, his notification shall be disregarded.

§ 1374

(1) If a lien creditor exercises a lien that is first in order of priority for satisfaction of the lien (hereinafter referred to as the "senior lien creditor"), the lien passes to the transferee unencumbered by other liens.

(2) If the proceeds from the sale of the pledge exceed the claim, including the accessories and costs to which it is entitled, the Priority Pledgee shall deposit the excess in court custody for the benefit of the creditors of the other claims subject to the pledge and the pledgee, unless otherwise agreed with them.

(3) From the surplus, the creditors of the other claims subject to the lien shall be satisfied in the order determining the satisfaction of the liens. What remains shall be delivered to the pledgee.

§ 1375

(1) If a lien is exercised by a lienor other than the senior lienor, the lien encumbered by the liens of those lienors whose right to satisfaction precedes its ranking shall pass to the transferee. The pledgee shall give timely notice of the transfer of the pledge, including the encumbrance, to the pledgee.

(2) The pledgee exercising its right of pledge and the pledgee shall ensure that the change in the person of the pledgee is entered in the register of pledges or in the public register, if such entry is required for the creation of the pledge, or shall compensate for the damage caused thereby.

(3) The rights of pledgees whose right to satisfaction follows the order of the creditor exercising the pledge under [paragraph 1](#) shall apply mutatis mutandis to [§ 1374](#).

Subsection 7

Extinction of a pledge

§ 1376

If the secured debt is extinguished, so is the lien.

§ 1377

(1) Lien extinguished but claim continues,

- a) if the lien is extinguished,
- b) if the pledgee waives the lien,
- c) if the pledgor returns the pledge to the pledgee or the pledgee,
- d) if the pledgor or the pledgee deposits the price of the pledged property with the pledgee, or
- e) if the period for which the lien was created expires.

(2) The effects under [paragraph 1](#) shall also apply if another person has acquired title to the pledged item in good faith that the item is not encumbered by a lien. This does not apply if the pledge is registered in the register of pledges or in a public list.

(3) If the thing and the lien are not registered in the public register, the effects under [paragraph 1](#) shall arise even if the lien, or part of it, has been transferred

- a) and the pledge agreement specifies that the pledge, or part of it, may be transferred free and clear of the lien, or
- b) in the ordinary course of the grantor's business.

§ 1378

If the lien is recorded in the register of liens or in the public list after its extinguishment, it is a defect attaching to the lien.

§ 1379

(1) If a lien entered in the register of liens has been extinguished, the lien creditor shall without undue delay request its deletion and the lien shall be deleted. This applies even if the lien has been entered in the public register, unless the parties have agreed that the lien creditor shall not request the deletion of the lien or the owner has requested the registration of the released lien.

(2) The mortgagee shall have the right to apply for the expungement of the lien; if the lien has not expired by lapse of time, it shall be expunged from the register of mortgages or from the public list if the mortgagee proves the expiration of the lien by a deed confirmed by the mortgagor or by a court decision or other public document. If the pledgee fails to certify the termination of the pledge to the pledgee at the pledgee's request, the pledgee shall compensate the pledgee for the damage resulting therefrom.

Subsection 8

Rights of an owner in the release of a pledged thing

§ 1380

If a lien is released by extinguishment of the lien and if the entry of the lien in the public register has not yet been deleted, the lien is deemed released and the owner of the property may combine the released lien with another debt that does not exceed the original debt.

§ 1381

If the owner so requests, the lien shall be recorded in the public record that the lien has been released and that the security for the original debt has been extinguished, if he proves the extinguishment of the lien by a deed acknowledged by the lien creditor or by a judgment of the court or other public record. If the owner does not secure another debt with the released lien within ten years from the registration of the release of the lien, his right to do so shall be extinguished.

§ 1382

If a release of lien has been entered in the public register, it can only be expunged together with the lien before the expiration of ten years.

§ 1383

If the owner has not secured a new debt with the released lien, the released lien shall not be taken into account in the distribution of the proceeds after the collateral has been monetized.

§ 1384

If the owner covenants, at the time of the creation of the lien or later, not to secure a new debt with a lien recorded in a more favorable order, and if it is so recorded in the public records, the released lien cannot secure a new debt so long as the lien continues for the creditor for whose benefit the owner has covenanted.

Subsection 9

Replacement of a pledge

§ 1385

If a lien has been entered on the public register, the owner of the property may request that a lien be entered in the order of the lien attaching to the property and to secure a debt not exceeding the original debt, provided that within one year after the entry of the new lien, the old lien is extinguished.

§ 1386

The owner of the goods or the creditor in whose favour the new lien is to be created may apply for the old lien to be deleted. If he fails to do so successfully within one year, the new lien shall expire on the expiry of that period. The competent public authority shall also delete the new lien without an application, together with all entries relating to it.

§ 1387

If any other right or restriction recorded in the public register attaches to the old lien, the new lien may be entered in that register on condition that the defect is removed or, with the consent of the parties, transferred to the new lien.

§ 1388

If the owner undertakes, at the time of the creation of the lien or thereafter, not to allow a new lien to be registered in place of the old one, and if this is recorded in the public register, the old lien cannot be converted into a new one.

§ 1389

If a new lien is to be registered in lieu of several liens registered in direct succession, the provisions of this subsection shall apply *mutatis mutandis*.

Subsection 10

Subpledge

§ 1390

A lien arises from the pledge of the claim to which the lien attaches.

§ 1391

(1) The consent of the pledgee is not required to pledge the claim. The sub-pledge shall take effect against him,

- a) if notice of its creation has been served on it, or
- b) if the pledge is a thing in respect of which a lien arises by registration in the register of pledges or in a special public list, by registration in that list; by such registration the sub-pledge arises.

(2) The notification under [paragraph 1](#) may be made by the sub-pledgee or by the sub-pledgee's creditor; however, the latter must prove the creation of the sub-pledge to the sub-pledgee.

§ 1392

The subordinate lender is not relieved of its obligations under [§ 1353](#) by delivery of the property to the subordinate lender.

§ 1393

A subprime lender may seek satisfaction of a subprime debt in lieu of the subprime lender once the debt secured by the subprime is due.

§ 1394

The provisions of the lien shall apply *mutatis mutandis* to the subordinate lien.

Section 4

Retention right

§ 1395

(1) One who is under a duty to deliver a chattel which he has in his possession may, of his own volition, detain it to secure a debt due from the person to whom he would otherwise have delivered it.

(2) An unpayable debt may be secured by a lien,

- a) if the debtor does not otherwise secure the debt when he should have secured it by contract or by law,
- b) if the debtor declares that he or she will not perform the debt; or
- c) if it otherwise becomes apparent that the debtor will not perform the debt as a result of a circumstance that has arisen in the debtor's case and that was not or could not have been known to the creditor when the debt was incurred.

§ 1396

(1) A person may not detain another's property who has it in his possession unjustly, especially if he has seized it by force or fraud.

(2) Neither may he who has been ordered to dispose of the thing in a manner incompatible with the exercise of the right of retention detain it; this does not apply if he had the thing in his possession at the time of the opening of insolvency proceedings in which the debtor's bankruptcy or threatened bankruptcy is being resolved.

§ 1397

(1) Whoever has detained another's property shall notify the debtor of the detention and the reason for it. If the creditor has the thing in his possession by virtue of a contract in writing, the notice shall also be in writing.

(2) The creditor shall take care of the thing detained as a proper holder and shall be entitled to recover costs against the debtor as a proper holder. The creditor may use the seized thing only with the debtor's consent and in a manner that is not harmful to the debtor. In the absence of any other agreement, the benefit of the thing shall be set off against the costs in accordance with [paragraph 1](#).

§ 1398

A creditor who has secured his claim by a lien is entitled to priority satisfaction from the proceeds of the realisation of the seized property over any other creditor, including the lien creditor. The [§ 1359](#) shall apply mutatis mutandis to the realisation of the seized asset by the creditor.

§ 1399

Lien Expires

- a) upon the extinguishment of the secured debt or the thing seized,
- b) if the creditor waives the right of retention unilaterally or by agreement with the owner of the thing retained,
- c) if the thing is permanently out of the creditor's power, or
- d) if sufficient security is given to the creditor.

Volume 6

Administration of property of others

Section 1

General provisions on administration of property of others

Subsection 1

General Provisions

§ 1400

(1) Anyone who is entrusted with the management of property not belonging to him for the benefit of another (hereinafter referred to as the "beneficiary") is a trustee of another's property.

(2) A trustee is considered to be acting legally as the owner's agent.

§ 1401

(1) The trustee shall perform his duties in his personal capacity. He may delegate his powers to another person or otherwise represent himself only in an individual legal action; in doing so, he shall carefully select such person and give him sufficient instructions.

(2) If the trustee improperly allows himself to be represented by another person, or improperly delegates to another person the exercise of his powers, he is jointly and severally liable with that person to the beneficiary for all that he has done.

§ 1402

(1) The trustee shall be deemed to be entitled to the usual remuneration according to the nature of his services.

(2) Whoever administers another's property without legal justification is not entitled to remuneration.

§ 1403

The trustee shall apportion the profits and expenses among the beneficiaries according to the statutes or other agreement, otherwise as equitably as possible having regard to the nature and object of the trust and the circumstances of its creation, having regard to general practice. If no other proportion can be fixed for the apportionment of the profits and expenses among the beneficiaries, the shares shall be deemed to be equal.

§ 1404

If the beneficiary's consent is required for a particular action, the court may substitute its decision if the beneficiary is unknown or if the beneficiary's position cannot be ascertained in time. This applies even if the beneficiary refuses to give consent without just cause.

Subsection 2**Simple administration of property of others****§ 1405**

He who exercises simple management of another's property does whatever is necessary to preserve it.

§ 1406

In simple administration, the trustee exercises all rights relating to the property under administration and manages it properly. The trustee shall not change the purpose of the property under trust without the consent of the beneficiary.

§ 1407

If a trustee manages funds, he must spend them prudently. If any of the assets under trust have been spent in a particular way before, the trustee may change the way chosen later.

§ 1408

(1) A trustee may dispose of property under administration if it is in the interests of preserving the value, substance and purpose of the property under administration or if it is necessary to pay debts connected with that property; otherwise only for consideration. For the same purpose, the administrator may pledge or otherwise use the administered property as security. The trustee must obtain the consent of the beneficiary to such acts.

(2) Consent is not required for the trustee to dispose of property if it is in danger of rapid destruction or is likely to lose value rapidly.

Subsection 3**Full administration of property of others**

§ 1409

Whoever is entrusted with the full management of someone else's property takes care of its multiplication and application in the interest of the beneficiary.

§ 1410

The trustee may do whatever is necessary and useful with the trust property.

Section 2**Rules of Administration****Subsection 1****Duties of an administrator to the beneficiary****§ 1411**

The trustee of another's estate shall exercise his or her powers and perform his or her duties with due care.

§ 1412

(1) Where there are more than one beneficiary, whether concurrently or successively, the trustee must act impartially towards all of them and have regard to their respective rights.

(2) If the trustee is himself a beneficiary, he must have regard to his own interests as well as those of the other beneficiaries and must exercise his powers in the common interest.

§ 1413

If the interest or right is not one arising from the legal action out of which the administration arose, the trustee must give the beneficiary and the person supervising the administration of the estate or the beneficiary's interest notice without undue delay

- a)** any interest of the trustee in the business or activity pursuing the estate that may conflict with the interest of the beneficiary, and
- b)** any right he may have against the beneficiary or in respect of the property under trust.

§ 1414

The trustee shall keep reliable records of the property under trust and shall not commingle his own property with property under his trust.

§ 1415

(1) A trustee may become a party to a contract relating to property under trust, contract to acquire a right in that property, or acquire a right against the beneficiary only with the consent of the beneficiary.

(2) A trustee may use the property under trust or information obtained in the course of the trust for its own benefit only with the consent of the beneficiary, unless the possibility of such use is provided for in the articles of incorporation or other agreement or provided by law.

§ 1416

A trustee may transfer trust property gratuitously only if it is directly in the nature of the trust or if it is property of insignificant value which the trustee is disposing of in the interest of the beneficiary or in furtherance of the purpose of the trust.

§ 1417

The trustee shall not pay for damage to property caused by force majeure, aging or other natural development and normal wear and tear of proper use.

§ 1418

In determining the trustee's damages, the court may reduce the extent of compensation only in light of the circumstances under which the administration was undertaken, or where the trustee exercises the administration gratuitously, or where the trustee is a minor or where the trustee's capacity is limited.

Subsection 2

Duties of an administrator and beneficiary to third persons

§ 1419

(1) A trustee does not incur a personal obligation under an obligation that it has contracted with another person on behalf of a beneficiary. This applies even if it is clear that the trustee is acting on behalf of the trust.

(2) If the trustee acts on his own behalf in the exercise of his powers on behalf of the beneficiary, he is jointly liable with the beneficiary; however, the beneficiary may be required to perform only out of the assets under trust. This applies even if the trustee was acting on behalf of the trust, although this was not apparent.

§ 1420

If a trustee exceeds his powers, he is personally liable for his actions. If, however, a third party has relied in good faith on the proper exercise of the trustee's powers, or if the beneficiary has confirmed, even tacitly, the trustee's legal action, the trustee and the beneficiary are jointly and severally liable, but the beneficiary may be required to perform only out of the property under trust.

§ 1421

A trustee exceeds his power if he exercises it alone when he ought to have exercised it jointly with another person; this does not apply if, by that act, more benefit has been obtained for the property under trust than what is to be delivered out of it.

§ 1422

When a self-settled person pretends to a third party that another person is the trustee of his property, the parties incur the same obligations under a contract made in good faith with that other person as if the pretender's property were under trust.

Subsection 3

Inventory, Security and Insurance

§ 1423

(1) The trustee shall make an inventory, give security for the proper performance of the trust, or insure the property held in trust if the articles or other agreement so provide or if the law so provides.

(2) On the application of a beneficiary or other person having a legal interest, the court may impose a duty on the trustee under [paragraph 1](#), taking into account the value of the property to be administered, the position of the parties and other circumstances of the case. The application cannot be granted if it is contrary to the trust deed between the trustee and the beneficiary.

§ 1424

(1) If the trustee is required to prepare an inventory, he shall set forth therein a true and accurate list of the property included in the trust, including a list of significant documents.

(2) Items of personal property included in the inventory may be described only in general terms unless they include items of value not insignificant.

§ 1425

The property described in the inventory is deemed to be in good condition at the date of the inventory.

§ 1426

The inventory shall be delivered by the trustee to the person who has entrusted the trustee with its administration, to the beneficiary, and to the person agreed upon or provided for by law. The beneficiary or any other person having a legal interest therein shall have the right to object to the incorrectness of the inventory in any of its items or to demand that a new inventory be made.

§ 1427

(1) The trustee is authorized to insure the assets under trust against common risks at the expense of the beneficiary.

(2) The trustee is entitled to insure its property liability on the trust at the expense of the beneficiary if it exercises the trust without charge.

Subsection 4**Joint administration****§ 1428**

Multiple trustees charged with joint administration shall decide and act by majority vote, unless the agreement specifies or the law provides otherwise. Each of the joint trustees shall be deemed to have one vote.

§ 1429

(1) If the Joint Trustees are unable to act under § 1411 because of an impediment caused by a legal event, because of the continued inaction or continued resistance of any Trustee, or for any other similar reason, the other Trustees may decide and act separately on matters necessary to maintain the status quo. In other matters they may do so with the consent of the court.

(2) If the condition under paragraph 1 continues, the court may, on the application of a person having a legal interest therein, order that the trustees may decide and act in other ways, than that provided for in § 1428, that any of the trustees shall have a casting vote, or to decide on the further exercise of the administration in any other manner appropriate to the circumstances of the case.

§ 1430

The trustees are jointly and severally liable for the joint administration, unless the law provides otherwise.

§ 1431

(1) If any of the joint trustees does not promptly notify the other trustees that it disagrees with the decision and does not promptly notify the beneficiary, it shall be deemed to have approved the decision.

(2) If the joint trustees have made the decision in the absence of any of them, the absent trustee shall be deemed to have approved the decision unless he notifies the other trustees and the beneficiary of his disapproval without undue delay after he becomes aware of the decision.

Subsection 5**Prudent investments****§ 1432**

The manager shall make investment decisions with regard to yield and expected profit; where possible, he shall allocate investment risk so as to achieve a ratio between fixed income and variable returns that is reasonably consistent with economic conditions.

§ 1433

A solicitor is prohibited from acquiring for the beneficiary more than 5 % of the shares of the same issuer. A trustee is also prohibited from acquiring for a beneficiary a share,

bond or other debt security of a person who has breached an obligation to pay the proceeds of the security; nor may the trustee extend credit to such a person.

§ 1434

The trustee may deposit the funds under trust in an account with a bank, foreign bank, or savings and loan association, subject to withdrawal on demand or within thirty days.

§ 1435

An investment made before the trustee took over may be maintained by the trustee even if it was not prudent.

Subsection 6

Presenting accounts

§ 1436

(1) The Trustee shall provide the Beneficiary with an accounting of the administration at least annually. If there are several trustees, they shall submit an account jointly, unless, because of the division of their responsibilities, the agreement specifies or the law provides otherwise.

(2) The account shall be in such detail that its accuracy can be verified.

§ 1437

The trustee shall at all times enable the beneficiary to examine the books and records relating to the administration and shall, on request, furnish the beneficiary with the necessary information as to how the administration is conducted.

Section 3

End of administration

§ 1438

The trustee's duties will terminate upon resignation, removal, limitation of the capacity of the person still competent, or certification of the trustee's bankruptcy.

§ 1439

A trust terminates on the expiration of the period for which it was created, the accomplishment of its purpose, or the termination of the beneficiary's right to the property under trust.

§ 1440

(1) If a trustee declares that he or she is resigning, the trustee's duties cease on delivery of the declaration of resignation to the person entitled to call a new trustee, unless the declaration relates to a resignation at a later date. The trustee shall also deliver the declaration of resignation to the other trustees, the beneficiary and the person supervising the administration.

(2) A trustee shall not resign from the trust at an inconvenient time or otherwise by resigning breach his duties to the trustee for proper administration, or he shall make good the loss under Part Four of this Act.

§ 1441

He who has appointed a trustee may remove him by a declaration in writing.

§ 1442

Acts of one who has acted as trustee in good faith that the administration has not yet ended bind the beneficiary. A beneficiary is also bound by the legal conduct of a person who has ceased to be a trustee if the other party acted in good faith that the administration was continuing.

§ 1443

On termination of the administration, the trustee shall, with effect binding on the beneficiary, do all that is necessary in relation thereto or that is necessary to prevent loss.

§ 1444

(1) If the trustee dies or ceases to exist, the person who has the duty to administer the trustee's affairs shall, without undue delay after becoming aware of the trustee's death or ceasing to exist, notify the person who appointed the trustee to administer the trustee's affairs, as well as the beneficiary and such other person as may have been agreed or provided by law. This applies even if the administration has terminated because the trustee has been reduced in capacity.

(2) Whoever is required to give notice under [paragraph 1](#) shall do all that he is otherwise entitled or required to do on the termination of the administration of the trustee.

§ 1445

The trustee shall render an accounting to the beneficiary upon termination of the trust. He shall also submit the account to the trustee who succeeds him. The provisions of [§ 1426](#) and [1427](#) shall apply mutatis mutandis.

§ 1446

(1) The trustee, on termination of the administration, shall deliver the property under administration to the beneficiary or to the incoming trustee in the place where the property is located, unless otherwise agreed.

(2) The obligation to surrender the administered property includes the surrender of anything acquired by the trustee for the beneficiary during the administration, including any compensation to which the trustee is liable under the preceding provisions.

§ 1447

The trustee shall have a lien on the property which he is required to deliver to secure his claims under the administration. However, if the trustee is required to deliver the funds, he shall set off his claim, if any, against the counterclaim of the beneficiary.

Section 4

Trust

Subsection 1

Definition of a trust and its creation

§ 1448

(1) A trust is created by setting aside property from the settlor's estate so that the settlor entrusts the trustee with property for a specific purpose by contract or by acquisition on death, and the trustee undertakes to hold and administer the property.

(2) The creation of a trust creates separate and independent ownership of the property set aside, and the trustee is obligated to take charge of and administer that property.

(3) Ownership of the property in the trust is exercised by the trustee in his or her own name on behalf of the trust; however, the property in the trust is neither the property of the trustee, nor the property of the settlor, nor the property of the person to be paid out of the trust.

§ 1449

(1) The purpose of the trust fund may be public benefit or private benefit.

(2) A trust established for a private purpose is for the benefit of or in memory of a particular person. Such a trust may also be established for the purpose of investing for profit for distribution to the settlor, employees, partners or other persons.

(3) The primary purpose of a public benefit trust cannot be to make a profit or to operate a plant.

§ 1450

- (1) The trust must have its own designation.
- (2) The designation of the trust fund must reflect its purpose and include the words "trust fund."

§ 1451

- (1) A trust fund is established when a trustee accepts a trust mandate to administer it; if there are more than one trustee, it is sufficient if at least one of them accepts the mandate.
- (2) A trust fund is created on the date of registration in the register of trusts.
- (3) However, if the trust has been established by a death benefit, it comes into existence on the death of the settlor. It shall be entered in the register of trusts after its creation.

§ 1452

- (1) Every trust must have a statute. The statutes of the trust shall be issued by the settlor. Where a trust is established by a death benefit, [§ 311](#) shall apply mutatis mutandis.
- (2) The statute contains at least
 - a) designation of the trust,
 - b) the designation of the property constituting the trust at its inception,
 - c) a statement of the purpose of the trust,
 - d) the terms and conditions for performance from the trust fund,
 - e) an indication of the duration of the trust; if not stated, the trust is deemed to have been established for an indefinite period,
 - f) if the trust fund is to be paid to a person as a donee, the designation of that person or the manner in which the donee is to be designated, and
 - g) the number of trustees of the trust and the manner in which they are to act.
- (3) The statute requires the form of a public instrument.

Subsection 2**Administration of a trust****§ 1453**

- (1) Any person of his or her own legal capacity may be a trustee of a trust.
- (2) A legal person may be a trustee if the law so provides.

§ 1454

The settlor of a trust fund or a person to whom payments are to be made from the trust fund may also be a trustee, subject to the conditions set out in [§ 1453](#). However, in such a case, the trust must have another trustee, who is a third party, and the trustees must legally act together.

§ 1455

- (1) The trustee shall be appointed and removed by the settlor. The founder may specify in the statutes a different method of appointment or removal of the trustee.
- (2) On the application of a person having a legal interest, the court shall appoint a trustee if the person entitled to do so fails to appoint one within a reasonable time or if one cannot be appointed in accordance with [paragraph 1](#).

§ 1456

The trustee has full management of the assets in the trust. The trustee shall be entered in the public register or other records as the owner of the property in the trust with the

notation "trustee".

Subsection 3

Ultimate beneficiary

§ 1457

(1) The settlor has the right to appoint the obligee and to determine the benefits of the trust fund to the obligee, unless the trust fund statute provides otherwise.

(2) If the settlor does not exercise the right under [paragraph 1](#), the trustee shall appoint the obligee and determine the benefits of the trust fund. Where the trust is a trust established for a private purpose, the trustee may exercise this right if the statutes specify the class of persons from which the obligee may be appointed.

(3) The appointment or other designation of a donee of a trust established for a private purpose is effective on the date on which the donee is entered in the register of trusts.

(4) A bystander may be granted a right to the fruits or benefits of the trust or a right to the property of the trust or to an interest therein.

§ 1458

(1) Whoever is entitled to appoint a trustee or to determine the benefits of the trust fund for him shall act in accordance with the statute and his own discretion. He or she may modify or revoke his or her decision under the conditions specified in the statute.

(2) No person is entitled to appoint a trustee or to determine the benefits of a trust fund for his own profit.

§ 1459

The right of the obligee to receive benefits from the trust fund arises under the conditions specified in the statute.

§ 1460

(1) If the trust was established for a private purpose, the right of the obligee to benefit arises at the latest on the expiry of one hundred years from the establishment of the trust, even if the statute specifies a later period. However, even after the expiration of one hundred years, the right to benefit may arise for a person who, according to the statute, is to receive a share in the property at the latest on the termination of the last right to the fruits or benefits, as well as for a person who was a contemporary of the settlor or a child of the settlor or his contemporary, if, according to the statute, he is to succeed at the latest on the death or termination of the person with the earlier right to receive the fruits or benefits; during his lifetime, other persons may acquire the fruits or benefits together with him.

(2) If the trust was established for a private purpose, the right of the donee to the fruits or benefits shall cease not later than the expiration of one hundred years from the creation of the trust; but in the case of a person such right may continue until his death.

§ 1461

(1) During the life of the trust fund, the obligee has the right to demand appropriate benefits in accordance with the statute.

(2) The obligee of a trust established for a private purpose may waive the right under [paragraph 1](#) by a declaration made in the form of a public deed.

§ 1462

If there is a right to fruits or benefits and there is no other obligee to whom such right may pass, it passes to the obligees to whom the right to the trust property is vested.

Subsection 4

Supervision over the administration of a trust

§ 1463

(1) Supervision of the administration of the trust fund shall be exercised by the settlor and the person named as a trustee, or such other persons as the statute may so determine.

(2) In the cases provided by law, another person or group of persons or a public authority shall supervise the administration of the trust fund.

§ 1464

If a trust fund is established for the benefit of a beneficiary who does not exist on the date of the creation of the fund or who cannot be identified on the date of the creation of the fund, the settlor shall appoint a person authorized to supervise the administration of the trust fund in the interest of the beneficiary. If this is not possible or if the settlor is inactive, the court shall appoint such a person on the application of the trustee or of the person interested.

§ 1465

(1) The trustee shall, without undue delay, serve on whoever has the right to supervise the administration of the trust under the Act a notice stating at least the name, purpose and duration of the trust and his name and address. No notice need be given if these facts are already known to the person entitled to supervise.

(2) At the request of the person who has the right to supervise the administration of the trust fund, the trustee shall allow the trust fund to inspect the records of the trust fund and shall provide the requested account, report or other information.

§ 1466

(1) The settlor, a ward or any other person having a legal interest may apply to the court to enjoin or prohibit a trustee from doing a particular act, or to remove the trustee or appoint a new trustee. Such persons may also claim that a legal act by which the trustee prejudices the trust fund or the right of a defendant is void; however, if the third party has acquired the right in good faith, this must not result in prejudice to the third party.

(2) The court shall, on its application, authorise a person referred to in [paragraph 1](#) to institute or conduct proceedings in the interests of the trust in place of and on behalf of the trustee if the trustee is inactive without sufficient cause.

§ 1467

If the trustee, settlor, or obligee engage in acts intended to intentionally injure the rights of the settlor's creditors or to injure the trust, they are jointly and severally liable.

Subsection 5**Changes of a trust****§ 1468**

Whoever increases the assets of a trust by contract or by acquisition on death is not the settlor. The property so acquired is subject to administration under the statute and the Act.

§ 1469

(1) The court may, on the application of a person having a legal interest therein, order that the trust be dissolved if the achievement of the purpose of the trust is impossible or difficult to achieve, in particular as a result of circumstances unknown to or unforeseeable by the settlor. Where the trust is a trust established for a public benefit purpose, the court may decide to replace its original purpose with a similar purpose.

(2) If, consistent with the settlor's original intent, the purpose of the trust can be achieved or better served by amending the trust's statute, the court shall modify the statute.

§ 1470

Before making a determination under § 1469, the court shall seek the views of the settlor or his successor in interest, the trustee, the obligee, and whoever has oversight of the administration of the trust, if they are not petitioners.

Subsection 6

Extinction of a trust

§ 1471

If the period for which the trust was established expires, the purpose for which the trust was established is achieved, or the court so orders, the administration of the trust shall terminate. If the trust was established for a private purpose, its administration shall end even if all the beneficiaries waive their right to benefit from the trust.

§ 1472

On termination of the trust, the trustee shall deliver the trust property to the person entitled to it. It shall be presumed that the settlor is entitled to the property and, if he is not, the settlor of the trust; if neither is, the property shall become the property of the State.

§ 1473

(1) If the administration of a trust fund established for a public benefit purpose ceases because that purpose cannot be fulfilled, the court shall order, on application by the trustee, that the property be transferred to another trust fund or to a legal person pursuing a purpose as nearly as possible the original purpose of the trust fund. Before giving its decision, the court shall obtain the opinion of the person who is responsible for supervising the administration of the trust fund.

(2) An order under paragraph 1 may not be made if the trust's statutes specify how the property is to be disposed of on the trust's dissolution.

§ 1474

If the trustee disposes of the trust property on termination in accordance with the statute, or if the trustee surrenders the property in accordance with § 1472 or transfers it in accordance with § 1473, the trust fund shall terminate. The trustee shall file a petition to remove the trust from the trust fund register within thirty days of the termination of the trust fund.

TITLE III

LAW OF SUCCESSION

Volume 1

Right to decedent's estate

§ 1475

(1) The right of inheritance is the right to the estate or to a proportionate share of it.

(2) The estate consists of the entire estate of the testator, except rights and obligations attached solely to his person, unless they have been acknowledged as a debt or asserted before a public authority.

(3) To whom the right of inheritance belongs is the heir, and the estate in relation to the heir is the estate.

§ 1476

Inheritance by contract of succession, by will or by operation of law. These grounds may operate alongside each other.

§ 1477

(1) A legacy establishes a claim against the legatee for the delivery of a particular thing, or one or more things of a particular kind, or for the creation of a particular right.

(2) A legatee is not an heir.

§ 1478

A legal entity yet to be formed may also be called as an heir or legatee. Such a legal person is an eligible heir or legatee if it is formed within one year of the death of the testator.

Moment of creation of succession right

§ 1479

Ancestry law arises on the death of the testator. One who dies before or at the same time as the testator does not inherit.

§ 1480

A right of inheritance yet to accrue can only be renounced; it cannot be transferred or otherwise disposed of.

Incapacity to inherit

§ 1481

A person is disqualified from the right of inheritance who has committed an act in the nature of a deliberate criminal offence against the testator, his ancestor, descendant or spouse, or a reprehensible act against the testator's will, in particular by forcing or deceiving the testator to make a will, by preventing the testator from making a will, or by concealing, falsifying, forging or intentionally destroying the testator's will, unless the testator has expressly excused the act.

§ 1482

(1) If, at the date of the testator's death, divorce proceedings initiated on the testator's petition as a result of the spouse's commission of an act of domestic violence against the testator are pending, the testator's spouse is disqualified as a legal heir.

(2) If a parent has been deprived of parental responsibility because he or she abused it or its exercise, or because he or she seriously neglected the exercise of parental responsibility through his or her own fault, he or she is excluded from the right of inheritance from the child according to the legal succession.

§ 1483

The descendant of one who is excluded from the right of inheritance succeeds in his place in the legal succession of succession, even if the excluded survives the testator. This does not apply in the case set out in § 1482(1).

§ 1484

Renunciation of succession right

(1) The right of inheritance may be waived in advance by agreement with the testator; unless otherwise agreed, the waiver shall operate against descendants. Whoever waives the right of inheritance also waives the right to the obligatory share; but whoever waives only the right to the obligatory share does not thereby waive the right of succession.

(2) If a person renounces the right of succession in favour of another person, the renunciation is deemed to be valid only if that person becomes an heir.

(3) A contract requires the form of a public deed; however, rights and obligations under it may be waived if the parties comply with the written form.

Refusal of inheritance

§ 1485

(1) An heir has the right to refuse an inheritance after the death of the testator; however, a contracting heir only if not excluded by the contract of succession. If a non-nominative heir refuses the inheritance, he may refuse the inheritance subject to the obligatory share.

(2) A proxy may declare for the heirs that he rejects or does not reject the succession, or that he accepts the succession, only if he is expressly authorised to do so under the power of attorney.

§ 1486

If the heir refuses the inheritance, he shall be regarded as if he had never acquired the inheritance.

§ 1487

(1) Rejection of inheritance requires an express declaration to the court. The succession may be refused within one month from the date on which the court has informed the heir of his right to refuse the succession and of the consequences of refusal; if the heir has his sole residence abroad, the time limit for refusal is three months. Where there are compelling reasons for doing so, the court shall grant the heir a reasonable extension of the time limit for refusing the succession.

(2) On expiry of the time limit for refusing the succession, the right to refuse the succession shall lapse.

§ 1488

If an heir dies before the expiration of the time limit for refusal of inheritance, his right to refuse inheritance passes to his heirs and is not extinguished before the time limit for refusal of inheritance also expires for that heir after the preceding heir.

§ 1489

(1) If an heir rejects the succession conditionally, with reservation or only in part, the rejection is void.

(2) A refusal of inheritance shall be disregarded if the heir has already indicated by his conduct that he wishes to accept the inheritance. Nor shall a declaration of intent by which the heir revokes his declaration that he does or does not refuse the succession or that he accepts the succession be taken into account.

§ 1490

Waiver of inheritance

(1) An heir who has not refused an inheritance may renounce it before the court in the succession proceedings in favour of the other heir; if the non-nominee heir does so, he also renounces the right to the obligatory share with effect for his descendants. If the other heir consents, the provisions of § 1714 to 1720 shall apply mutatis mutandis; if he does not consent, the renunciation shall not be taken into account.

(2) If the renouncing heir has been burdened by an order, bequest, or other measure which, according to the testator's will, he can and ought only to execute personally, he is not thereby relieved of the obligation to execute such measure.

Volume 2

Disposition mortis causa

Section 1

General Provisions

§ 1491

The provisions for death are a will, a succession agreement or a codicil.

§ 1492

A death proceeding may not reduce the obligatory share of a non-nominee heir who has not renounced the right to the obligatory share and where there has been no disinheritance. If the acquisition on death contradicts this, the non-nominal heir is entitled to the mandatory share.

§ 1493

(1) If the testator made a will for his death while he was in the care of, or otherwise receiving the services of, a health or social services institution and he called as heir or legatee a person who administers or is employed by or otherwise acts in such an institution, the calling of such persons as heirs or legatees is void unless it is by a will made in the form of a public instrument.

(2) If the testator, after leaving the care of such an establishment or after the expiration of the time when he otherwise received its services, could easily have made a will in the form of a public deed, [paragraph 1](#) shall not apply as to the invalidity of the will or testamentary instrument.

Section 2

Testament

Subsection 1

General Provisions

§ 1494

(1) A will is a revocable instrument by which the testator, in the event of his or her death, leaves to one or more persons personally at least a share in the estate, and, if applicable, a legacy. If it is not clear on which day, month and year the will was made and if the testator made several wills which contradict each other or if the legal effects of the will otherwise depend on the determination of the time of its making, the will is invalid.

(2) A will must be construed so as to give effect as far as possible to the testator's wishes. Words used in a will shall be interpreted according to their ordinary meaning, unless it is shown that the testator was accustomed to associate with certain expressions a special meaning peculiar to himself.

§ 1495

If the testator refers in the will to the contents of another instrument, that other instrument has the same legal effect if it meets the requirements of a will. If it does not, its contents may be used only to explain the testator's will.

§ 1496

The right to call heirs is a personal right of the testator. The testator cannot entrust the calling of an heir to another, nor can heirship be acquired jointly with another person.

§ 1497

The testator must make his will so definite that it is not enough for him merely to assent to the proposal made to him.

§ 1498

Testamentary clause on legacy

By a bequest, the testator may direct a legatee, impose a condition on a legatee or heir, or prove time or impose a direction on a legatee or heir. What is provided for in a will applies *mutatis mutandis* to a codicil.

Devolution of decedent's estate to heirs

§ 1499

The whole estate shall vest in the heir if he is called as sole heir. If only a share is left to the called heir, the remainder of the estate goes to the heirs at law.

§ 1500

(1) If several heirs are called and the shares are not determined, they are entitled to the estate equally.

(2) If several heirs are called so that shares are determined for all but the estate is not exhausted, the legal heirs are entitled to the remainder of the estate. The legal heirs do not have this right if the testator has apparently left the entire estate to the heirs called upon, even if he has overlooked something in the enumeration of shares or things.

§ 1501

(1) If the testator apportions certain shares to some of the called heirs and not to others, the remainder of the estate falls equally to the heirs called without shares.

(2) If there is nothing left, there shall be deducted for the heir who has been called without a share proportionately from all the shares assessed so that he receives a share equal to that of the heir who has been assessed the least. If the shares of the other heirs are equal, there shall be deducted from them so much as will give to the heir who has been appointed without a share a share equal with them.

§ 1502

In all cases where the testator has apparently miscalculated, a division shall be made so as to give the best effect to his will.

§ 1503

(1) If there are among the called heirs persons regarded as one person in the legal succession of succession in relation to the others, they shall be regarded as one person in the division under the will; this shall not apply if the testator's will is manifestly to the contrary.

(2) If the testator names a group of persons as heirs without specifying them, the heirs shall be deemed to be those who belonged to the designated group at the time of the testator's death.

(3) If the testator calls as heirs without specification a poor or similarly designated group of persons, the municipality in whose territory the testator was last domiciled shall be deemed to have been called as heirs to apply the inheritance for the benefit of the designated group.

Vacant share

§ 1504

The share of an heir who does not inherit and has no substitute shall be released and added proportionately to the shares of the other called heirs only if all the heirs are called to inherit either equally or by a general expression signifying equal sharing.

§ 1505

(1) No person to whom a particular share of the estate has been bequeathed is entitled to an increment.

(2) If some heirs are called with a share and others without such a designation, the share released accrues to those called without a share.

§ 1506

With a released share, the restrictions attached to it pass to the person to whom it accrues, unless the testator has expressed a will that the restrictions apply only to the person of the called heir, or unless the nature of the case so requires.

Substitution of heirship

§ 1507

The testator may, in case the person whom he has called as heir does not succeed, call a substitute for that person; he may also call successive substitutes. If the testator so calls several substitutes, the one nearest in the list to the person who has not acquired the succession shall inherit.

§ 1508

If the testator establishes a substitution in case the called person does not wish to inherit or in case the called person cannot inherit, the substitution shall be deemed to have been established for both cases.

§ 1509

Restrictions imposed on the heir also affect the substitute unless the testator has manifested his intention that the restrictions apply only to the person of the heir, or unless it follows from the nature of the case.

§ 1510

If the joint heirs themselves are called as substitutes, it is presumed that the testator intended to divide the substitutes in the same proportion as he divided the heirs. If, however, someone other than the co-heirs is called as substitute, then, unless the testator expresses a different intention, the share released shall fall to all of them equally.

§ 1511

(1) If the called heir acquires the inheritance, the substitution ceases.

(2) Unless the testator expresses a different will, a substitute estate which the testator has established for his child at a time when the child has no descendants shall be extinguished if the child leaves descendants eligible to inherit. This shall also apply if the testator establishes a substitute for another of his descendants at a time when he has no descendants.

Succession by fideicommissum**§ 1512**

(1) The testator may direct that the succession should pass on the death of the testator or in certain other cases to a trustee as a subsequent heir. The appointment as successor trustee shall also be deemed to be an appointment as substitute.

(2) If the testator's decree is so indefinite that it cannot be ascertained whether he has called a substitute or a successor trustee, his decree shall be deemed to be a call for a substitute.

§ 1513

If the testator calls an heir to his estate, prohibits the heir from making any disposition of the estate left to him, calls as heir one who is not yet heir at the time of the death of the testator, or calls an heir with conditions or for a specified period, it shall be deemed to be the establishment of a fiduciary succession.

§ 1514

If all the trust successors are contemporaries of the testator, there is no limitation on the order in which the trust successors are to succeed each other.

§ 1515

(1) If more than one successor trustee is called, some of whom are not yet in existence as persons at the time of the testator's death, the trust succession ceases when the first of those who were not contemporaries of the testator acquires the property.

(2) The fiduciary succession shall terminate no later than one hundred years after the death of the testator, even if he has directed a longer period. If, however, the successor trustee is to acquire the succession at the latest on the death of an heir living at the time of the testator's death, the trust succession shall not terminate until the first of the successors trustee has acquired the succession from that heir.

§ 1516

A trust succession also terminates if there is no longer any successor trustee or if the event for which it was created does not occur.

§ 1517

If the testator has appointed a successor trustee for his minor child who is incapable of acquiring, and if the child thereafter acquires capacity, the trust succession terminates to the extent of the obligor's share.

§ 1518

Unless the will of the testator otherwise appears, a trust succession which the testator established for his child at a time when the child had no descendant shall be extinguished if the child leaves a descendant capable of inheriting. This shall also apply if the testator establishes a trust succession for another of his descendants at a time when he has no descendant.

§ 1519

If the testator has appointed a testamentary successor to a person who is incapable of acquiring because of a disability, the testamentary succession ceases forever if that person acquires capacity, unless the testator has manifested a different intention.

§ 1520

(1) If the successor trustee so requests, the heir shall, without undue delay and in his presence, draw up an inventory in writing of all that he has acquired by inheritance, stating in it the date on which it was drawn up and deliver it to the successor trustee. At the request of the successor trustee, the heir's signature on the inventory shall be authenticated.

(2) The successor trustee shall have the right to require that the inventory be made in the form of a public deed.

(3) The cost of compiling the inventory is the responsibility of the estate.

§ 1521

If the testator, in ordering the trust succession, has not entrusted the heir with the right to dispose freely of the inheritance, the heir's ownership of what he has acquired by inheritance, as well as of what he has acquired by way of compensation for the destruction, damage or removal of the thing from the estate, is limited to the rights and obligations of the beneficiary. This shall not apply if the thing of the estate is alienated or encumbered for the purpose of paying the debts of the testator.

§ 1522

(1) If the testator, in ordering a trust succession, has not entrusted the heir with the right to dispose freely of the inheritance, the heir may dispose of or encumber the property out of what he has acquired by inheritance only with the consent of the trust successor; the consent requires the form of a public deed.

(2) If, in the exercise of due care, it is necessary to encumber or alienate the property, the court may, on the application of the heir, substitute the consent of the successor trustee. If the court decides that the thing shall be encumbered or disposed of for consideration, it shall determine how the proceeds are to be disposed of; in doing so, it shall have regard to the legitimate interests of the successor trustee.

§ 1523

If the estate includes a thing producing fruits or benefits, the successor trustee may request the court to determine the manner and extent of the management or enjoyment of the thing.

§ 1524

(1) Where a thing and its owner are entered in the public list, the trust succession shall also be entered in the public list. If the thing and the trust succession are entered in

the public register and if the heir disposes of the thing acquired by inheritance in a manner that impairs or restricts the rights of the trust successor without the consent of the trust successor, this shall have no legal effect against the trust successor.

(2) If the property or the trust succession is not entered in the public register and if the heir disposes of the property acquired by him by inheritance in a manner which frustrates or restricts the rights of the successor trustee without the consent of the successor trustee, the successor trustee has the right to apply under the relative ineffectiveness provisions for a court to declare that the heir's act is not legally effective against him.

Incapacity to make dispositions mortis causa

§ 1525

An incompetent is not eligible to procure, except in the cases listed in § 1526 to 1528.

§ 1526

Anyone who has reached the age of fifteen and has not yet acquired full legal capacity may make a public record without the consent of a legal guardian.

§ 1527

One who has been so limited in capacity as to be incapable of making an acquisition may nevertheless validly make an acquisition in any form if he has recovered to the extent that he is capable of manifesting his own will.

§ 1528

(1) Whoever has been limited in capacity may make only a public document as part of the limitation.

(2) Whoever has been limited in capacity because of a morbid addiction to the use of alcohol, the use of psychotropic or similar drugs or poisons, or a morbid addiction to the gambling passion constituting a serious mental disorder, may, within the limitation, make an estate in any prescribed form, but not more than one-half of the estate. The remainder of the estate shall go to the legal heirs; but if only the State should inherit as legal heir, the testator may make an order for the whole of the estate.

Effects of error

§ 1529

Substantial mistake by the testator renders the provision of the will to which it relates invalid.

§ 1530

(1) A mistake is material if it relates to the person to whom something is left, or to the share or thing to be left, or to the essential characteristics of the thing. The properties are material if it is clear that the testator would not have so designated them in the will if he had not made a mistake about them.

(2) A provision of a will is valid if it appears that the person or thing was merely misdescribed.

§ 1531

If the testator's will is based only on a mistaken inducement, it renders the provision of the will to which it relates invalid.

Subsection 2

Form of testament

§ 1532

Written form of testament

A will requires a written form unless it was made with dispensations.

Testament made by means of a private instrument

§ 1533

Whoever wishes to make a will in writing without witnesses shall write the entire will in his own hand and sign it with his own hand.

§ 1534

A will not made by the testator in his own hand shall be signed by him in his own hand and shall expressly declare before two witnesses present at the same time that the instrument contains his last will.

§ 1535

(1) If the testator is blind, he or she shall make a last will before three witnesses present at the same time in a deed which shall be read aloud by a witness who did not make the will. The testator shall certify before the witnesses that the instrument contains his last will.

(2) If the testator is a person with a sensory impairment and cannot read or write, he shall make his last will before three witnesses present at the same time in a document, the contents of which shall be interpreted by a special mode of communication chosen by the testator by a witness who did not write the will; all the witnesses shall be competent in the mode of communication by which the contents of the document are interpreted. The testator shall confirm to the witnesses by the chosen mode of communication that the instrument contains his last will.

§ 1536

(1) In a will made by a person with a sensory impairment who cannot read or write, it shall be stated that the testator cannot read or write, who wrote the will, who read or interpreted it and how the testator acknowledged that the instrument contains his last will. If the contents have been interpreted by a special mode of communication, this shall be stated in the instrument, including an indication of the mode of communication chosen by the testator.

(2) The testator shall also sign the instrument; if he cannot write, § 563 shall be used similarly.

Testament made by means of a public instrument

§ 1537

A settlor may execute a will in a public deed

§ 1538

Whoever makes a public instrument of probate makes sure that the expression of the will is done judiciously, seriously and without compulsion.

Witnesses to a testament

§ 1539

(1) Witnesses shall attend the making of the will in such a manner as to be able to confirm that the testator and the testator are one and the same person. The witness shall sign the instrument containing the will; he shall normally add to his signature a clause indicating his character as a witness and the particulars by which he can be identified.

(2) A witness cannot be a person who is incompetent, or a person who is ignorant of the language or the mode of communication in which the will is made.

§ 1540

(1) An heir or legatee is not competent to testify as to what is left to him. Nor is a person close to the heir or legatee, or an employee of the heir or legatee, qualified to be a witness.

(2) For the validity of a provision of a will made in favour of any of the persons mentioned in [paragraph 1](#), it is required that the testator write it in his own hand or that three witnesses attest it.

§ 1541

The provisions of [§ 1540](#) apply mutatis mutandis to one whom the testator has called as executor of the will or who acts as a scrivener, reader, interpreter or official person in making the will.

Concessions in the making of a testament

§ 1542

(1) Whoever is in apparent and imminent danger of life by reason of a sudden event has the right to make a will orally before three witnesses present at the same time. The same right shall be given to one who is in a place where ordinary social intercourse is paralysed as a result of the emergency and cannot reasonably be required to make a will in any other form.

(2) If the witnesses do not make a record of the testator's will, the court record of the examination of the witnesses shall be the basis of the succession.

§ 1543

If there is a reasonable apprehension that the testator will die before he can make a will in the form of a public instrument, his last will may be recorded by the mayor of the municipality in whose territory the testator is located in the presence of two witnesses. Under the same conditions, the testator's last will may also be recorded by a person who, under another legal provision, is entitled to exercise the powers of mayor.

§ 1544

(1) If the testator has a serious reason for doing so, the master of a naval vessel flying the national flag of the Czech Republic or an aircraft registered in the air register in the Czech Republic may record the testator's last will in the presence of two witnesses, unless he is prevented from doing so by the safety of navigation or flight. The validity of a will may not be denied on the ground that the testator had no good reason for making the will.

(2) If the will was made under [paragraph 1](#) on board

a) of a seagoing vessel, the master shall record this in the logbook and shall transmit the will without undue delay to the embassy of the Czech Republic nearest to the port of call of the seagoing vessel or to the public authority with which the seagoing vessel is registered in the maritime register; or

b) of the aircraft, the commander shall record this in the logbook and forward the will without undue delay to the embassy of the Czech Republic nearest to the place where the aircraft landed abroad, or to the public authority with which the aircraft is entered in the air register.

§ 1545

(1) When participating in armed conflict and military operations, the last will of a soldier or other person belonging to the armed forces may be recorded by the commander of a military unit of the Czech Republic, or by another soldier of the rank of officer or higher, in the presence of two witnesses. If a will has been so made, its validity cannot be denied.

(2) A will made under [paragraph 1](#) shall be handed over by the commander without undue delay to the commander of the superior command, from where it shall be forwarded without undue delay to the Ministry of Defence of the Czech Republic.

§ 1546

If the will was made under § 1543, the municipality shall arrange for its safekeeping with a notary without undue delay. If the will has been made under § 1544 or 1545, the authority to which the will has been transmitted shall arrange the same.

§ 1547

(1) If the testator has made a will under § 1543, 1544 or 1545, it is required that the person who made the record also sign it with both witnesses and read it to the testator in the presence of both witnesses and that the testator acknowledge that it is the testator's last will. A will so made shall be deemed to be a public instrument.

(2) If, in making a will under § 1543, 1544 or 1545, there has been a breach of the prescribed formalities, in particular if the deed lacks the signatures of the witnesses present, although they are required, but it is nevertheless certain that the deed reliably records the testator's last will, this does not invalidate the will; such a deed shall not, however, be deemed to be a public instrument.

§ 1548

(1) In the making of a will with dispensations, persons who have attained the age of fifteen years and persons who have been reduced in capacity may be witnesses, provided that they are able to give a credible account of the facts relevant to the validity of the will.

(2) If a will is made with dispensations, its validity is not impaired by the fact that the testator or a witness did not sign it because he could not write or because of any other serious impediment, if the instrument expressly so states.

§ 1549

If the testator is alive, a will made under § 1542 ceases to be valid on the expiry of two weeks and under § 1543, 1544, or 1545 by the expiration of three months from the date of acquisition. However, these periods do not begin to run or run until the testator can make a will in the form of a public deed.

§ 1550

Confidentiality

Whoever, in the making of a will or in any other act for which this Act requires the requisites as for a will, acted as a writer, witness, reader, interpreter, concealer or official, shall keep the contents of the testator's will confidential, unless the contrary intention of the testator is apparent; if he breaches this duty, he shall make good to the testator the injury thereby caused him.

Subsection 3

Clauses of lesser importance in a testament

§ 1551

(1) A testator may include a condition, time endorsement, or direction in the will.

(2) If the ancillary clause is directed only to the apparent annoyance of the testator's heir or legatee by the apparent arbitrariness of the testator, it is disregarded. Nor shall an incidental clause which is manifestly contrary to public policy or unintelligible be disregarded.

§ 1552

A minor clause by which the testator directs the heir or legatee to contract or not to contract a marriage, or, as the case may be, to remain in the marriage, or to dissolve the marriage, shall be disregarded. However, the testator may grant a right to someone for a period of time before he or she enters into the marriage.

Executor of testament

§ 1553

(1) The testator can call an executor by will and, if necessary, specify what his duties are and whether and how he will be remunerated.

(2) If the court discovers at the probate hearing that the executor of the will has been called, it shall notify him. The executor of the will may resign at any time; the resignation shall be effective if it reaches the court.

§ 1554

(1) The executor of a will shall take care to execute the testator's will with due care. He or she shall have all the rights necessary for the performance of his or her duties, including the right to defend the validity of the will in court, to contest the incapacity of the heir or legatee, and generally to take care that the testator's instructions are carried out.

(2) If the testator has not appointed an administrator of the estate, the executor of the will is also entitled to administer the estate until the court orders a different arrangement. The provisions concerning the administrator of the estate shall apply *mutatis mutandis* to the executor of the will if he has been called by a public deed; otherwise they shall apply *mutatis mutandis*.

§ 1555

On a challenge to the invalidity of a call to office, the executor of the will may exercise his rights and perform his duties until a decree that the testator's will is invalid is final, unless the court makes other provision.

Administrator of the decedent's estate**§ 1556**

(1) The testator may appoint an administrator of the estate or any part of it (the "estate administrator") and, where appropriate, determine what his duties are and whether and how he is to be remunerated. The appointment of an administrator of the estate requires the form of a public deed.

(2) The will by which the administrator of the estate has been called may be revoked in the same way as a will is revoked.

§ 1557

The administrator of the estate shall take charge of the administration if he is aware that he has been called as soon as he learns of the testator's death. If the court does not become aware that the administrator of the estate has been summoned, it shall notify him of that fact.

§ 1558

If an executor of the will has been summoned, the administrator of the estate shall follow his instructions; their mutual rights and obligations shall be judged in accordance with the provisions of the order.

§ 1559

The administrator of the estate may resign at any time; the resignation is effective if it reaches the court.

§ 1560

If the executor of a will or administrator of an estate seriously breaches his duties, is unable to perform his duties properly, or otherwise has good cause, the court shall remove him without a petition.

Conditions**§ 1561**

If the condition is directed to an act of the heir or legatee which may be repeated by him, it must be re-executed after the death of the testator, even though it was done during the testator's lifetime, unless the testator's will is otherwise evident.

§ 1562

To acquire what has been left with a condition precedent, it is necessary that the person to whom something has been so left should survive the testator and be capable of inheriting.

§ 1563

(1) If a right is granted to someone with an impossible severance condition, it is disregarded.

(2) A provision in a will granting someone a right with an impossible condition precedent is void.

Determination of time

§ 1564

If the testator limits someone's right by proving time and it is uncertain whether the time will occur, the right is deemed contingent.

§ 1565

If the time is so fixed that the decisive moment must occur, the vested right passes, like other unconditional rights, to the heirs of the person to whom it is so vested.

§ 1566

If it is certain that the time measured in the will can never occur, this proof of time is to be treated as an impossible condition. If, however, it be beyond doubt that the testator was only mistaken in fixing the time, the decisive moment shall be determined according to his probable will.

Special Provisions

§ 1567

(1) So long as the right of the subsequent heir remains postponed until the condition is fulfilled or until the time proved has arrived, the right of the heir in front to whom the inheritance has devolved is limited as that of the beneficiary; the provisions of § 1520 to 1524 shall apply mutatis mutandis.

(2) An heir whose right has been postponed by the imposition of a condition or by proof of time shall acquire what has been left to him, with the obligation to contribute proportionately to the leading heir what he has paid on the testator's debts or to the non-minor heir on the obligatory share.

§ 1568

If a leading and succeeding legatee has been called, § 1567 is used similarly.

Mandate

§ 1569

(1) If the testator leaves something to someone with a command attached, the command is treated as a severance condition, so that the bequest is defeated if the command is not carried out unless the testator expresses a different will.

(2) A prohibition against alienation or encumbrance binds the burdened person only if it is ordered for a certain reasonable time and is justified by a serious interest worthy of legal protection, otherwise the court may, on the application of the burdened person, decide that the prohibition shall not be taken into account. If the prohibition has been entered in a public register, the person aggrieved may apply to the court to have the

prohibition lifted; the court shall not grant the application unless it is shown that the interest in lifting the prohibition clearly outweighs the interest in maintaining it.

§ 1570

If the order cannot be complied with exactly, let it at least be complied with as approximately as possible. If even this is impossible, the person burdened by the order shall be entitled to what has been left to him, unless the testator has manifested a different will. But he who has made himself unable to comply with the order, knowing that he will thereby frustrate it, shall forfeit what has been left to him.

§ 1571

In addition to the person to whom the order is for the benefit of, the executor of the will or other person called upon to do so in the will has the right to enforce the order.

§ 1572

(1) If the order is for the benefit of more than one person without specification, the burdened person shall execute the order against the legal person entitled to protect the interests of those persons. If there is more than one such legal person and if the testator's will is not otherwise apparent, the choice shall be with the person burdened by the order; if he does not make it without undue delay, the court shall designate the person entitled on the application of the person who has a legal interest therein.

(2) If the order is for the public benefit, the competent public authority may enforce the order.

§ 1573

If the testator expresses the purpose for which he or she is leaving something to someone, but does not impose an obligation to use the things left for that purpose, his or her expression of intent is viewed as a wish without legal binding force.

§ 1574

A provision by which the testator enjoins the heir or legatee, on pain of forfeiting some advantage, not to contradict the will, has no legal effect if it is only a contradiction of the authenticity of the will or of the interpretation of its meaning.

Subsection 4

Cancellation of testamen

§ 1575

(1) The testator has the right to revoke the will or individual provisions of the will at any time.

(2) A will is revoked by revocation or by making a later will.

§ 1576

Making a new testament

The making of a later will revokes the earlier will to the extent that it cannot stand alongside the later will.

Revocation of a testament

§ 1577

To expressly revoke a will, an expression of intent made in the form prescribed for the making of a will is required.

§ 1578

(1) To revoke a will by silence, the destruction of the instrument on which the will was made is required. If the testator destroys only one of several copies of the will, it cannot yet be inferred that the will has been revoked.

(2) If the testator has otherwise violated the instrument or has not renewed the will, although he knows that the instrument has been destroyed or lost, the will is thereby revoked if the circumstances show beyond doubt the testator's revocation intention.

§ 1579

(1) Where a will has been made in the form of a public instrument, the testator has the right to require the will to be delivered to him at any time; the will may be delivered only to the testator in person. If a will is issued to the testator, it shall be deemed to have been revoked; the person who issued the will shall inform the testator of this fact and shall note the revocation of the will and the instruction on the document issued and in his or her file.

(2) If the will has been deposited in official custody, the testator shall have the right to demand its release; the release of the will shall not have the legal consequences provided for in the second sentence of [paragraph 1](#).

§ 1580

If the testator revokes a more recent will but preserves an earlier one, the earlier will shall be deemed not to have lapsed and shall be treated as if it had not been revoked.

§ 1581

Ineffective cancellation clause

If the testator declares that all future acquisitions by him shall be void on his death, or that such acquisitions as are not made in a particular form shall be void, it shall be disregarded.

Section 3

Inheritance contract

§ 1582

(1) By a contract of inheritance, the testator calls the other party or a third person as heir or legatee and the other party accepts it.

(2) A succession agreement requires the form of a public deed.

§ 1583

What is provided in this section about a treaty heir applies *mutatis mutandis* to a treaty legatee.

§ 1584

(1) A contract of inheritance may be concluded by an adult testator who is fully competent; if the testator is limited in his or her capacity, he or she may conclude the contract of inheritance and modify the obligation thereunder with the consent of the guardian.

(2) A contract of succession may be concluded and its obligation modified by the parties only by personal negotiation.

§ 1585

(1) A succession agreement cannot be made for the entire estate. A quarter of the estate must remain vacant so that the testator can make an order about it according to his or her separately expressed will. If the testator wishes to leave even this quarter to the contracting heir, he may do so by will.

(2) Whoever has been reduced in his capacity for a morbid addiction to the use of alcohol, the use of psychotropic substances or similar preparations or poisons, or a morbid addiction to the gambling passion constituting a serious mental disorder, may make a testamentary disposition only of the property about which he is competent to make a will. Of such property, the quarter reserved for acquisition under his specially expressed will shall be counted.

§ 1586

If the succession contract was concluded with the understanding that the other heirs had renounced their right to inherit, the renunciation shall cease to have effect unless the heir called for in the succession contract inherits.

§ 1587

The terms in the succession agreement apply § 548 and 549.

§ 1588

(1) A testator is not prevented by the testamentary contract from disposing of his property as he wishes during his lifetime. Unless otherwise agreed, the party called as heir cannot transfer his right to another person.

(2) If, however, the testator makes a provision for death or enters into a deed of gift in a way that is incompatible with the contract of inheritance, the contracting heir may invoke the ineffectiveness of these legal acts.

§ 1589

(1) If the parties agree that the testator will transfer property to the contracting heir during his lifetime, that property may be executed in the form of a public deed. In such a case, if the testator does not transfer all his property or if he acquires additional property after the transfer, the contract of succession shall apply only to the property so devised, unless otherwise agreed.

(2) If the surrender took place during life, the rights and obligations under the contract of succession pass to the heirs of the contracting heir, unless otherwise agreed.

§ 1590

The testator may also cancel his obligations under the contract of inheritance by making a will. The consent of the contracting heir, given in the form of a public deed, is required for the revocation to take effect.

§ 1591

A testamentary contract void for want of form or void for failure to comply with the conditions in § 1584 and 1585 or because it does not comply with the provisions relating to contracts under Part Four of this Act may nevertheless have the force of a will if it otherwise has all the requisites of a will.

Special provisions on an inheritance contract concluded between spouses**§ 1592**

(1) Spouses may enter into a contract of inheritance under which one party calls the other as heir or legatee and the other party accepts the call, or they may so call each other as heirs or legatees.

(2) Such a contract may also be made by the betrothed in case of marriage, but the contract does not take effect until the marriage is solemnized.

§ 1593

(1) The dissolution of the marriage does not terminate the rights and obligations under the succession contract, unless the succession contract provides otherwise. After the dissolution of the marriage, either party may seek to have the contract of succession annulled by the court. The court shall not grant the application if it is directed against the person who did not cause the dissolution of the marriage and did not consent to the dissolution.

(2) A declaration of nullity of the marriage shall extinguish the rights and obligations under the contract of succession, unless such marriage has already been dissolved by the death of one of the spouses.

Legacy

Section 1

General Provisions

Allocation of legacy

§ 1594

(1) A legacy is established by the testator directing a person in a death provision to deliver the subject matter of the legacy to the legatee. The legatee may only be a person who is qualified to inherit. If the testator authorises an heir with a direction that he or she is not to inherit a certain thing, this is deemed to constitute a bequest to the legal heirs.

(2) A gift conditional on the survival of the donee is deemed to be a bequest unless the donor has waived the right to revoke the gift.

§ 1595

A bequest may be made by a person competent to make a will. A testator incapable of making a will may bequeath only items of small value from his estate to another.

§ 1596

A settlor may also leave a preferential bequest to heirs or joint heirs; they will be treated as legatees in respect of that bequest.

Charging with legacy

§ 1597

Levies are chargeable to all heirs according to the proportion of their shares, even where a bequest has been made to one of the co-heirs. This does not apply if the testator specifically directs the execution of the legacy to an individual co-heir or legatee.

§ 1598

Each heir must leave at least a quarter of the value of the bequest unencumbered. If the testator burdens the heir more, the heir is entitled to a pro rata reduction of the bequest.

§ 1599

Sub-legacy

(1) If the testator directs the legatee to execute another bequest, the fact that the value of the additional bequest exceeds the value of the bequest does not relieve the legatee of the obligation to execute the additional bequest.

(2) If the legatee does not make a bequest, the person to whom the bequest is made shall make the next bequest. He shall be relieved of this obligation if he leaves the legacy which has devolved on him to the person to whom the next legacy was bequeathed.

§ 1600

A testator who by a legacy remembers a particular group of persons, such as relatives or the poor in particular, or a public benefit, charitable or similar purpose, may leave it to the testator or someone else to determine how and which of those persons or purposes are to be shared. If the testator does not so decide, the heir shall have the choice. If the heir is unable to exercise the choice, the court shall appoint the legatees.

§ 1601

Substitution with respect to legacy

A settlor may order substitution or trust succession on a legacy. For such cases, the provisions of § 1507 to 1524 shall apply mutatis mutandis.

Revocation of legacy

§ 1602

A bequest is deemed to have been revoked if the testator

- a) destroys the bequest or disposes of it and does not recover it,
- b) alters the bequeathed item in such a way that it is now a different item, or
- c) recover and collect the bequest.

§ 1603

A bequest is not deemed to have been revoked if the bequest was acquired by another person or if the bequest was altered or destroyed outside the testator's will. This also applies if the debtor has settled the bequeathed claim against the testator of his own accord.

Section 2**Special rules on the different types of legacies****Subsection 1****Legacy of a particular kind of things****§ 1604**

(1) When bequeathing a thing of a particular kind, if there are more than one such thing in the estate, the person burdened by the bequest shall decide which thing shall be given to the bequeather. However, he or she must choose the thing which the legatee will be able to use.

(2) If the legatee is left to choose among several things, he may also choose the best thing.

§ 1605

(1) When a bequest is made of a thing of a certain kind but not in the estate, the bequest is not valid. If the testator bequeaths several things of a certain kind and there is not a specified number of them in the estate, the legatee shall be satisfied with those which are in the estate.

(2) If, however, the testator does not expressly bequeath a thing of a particular kind out of his possession, and if there is no such thing in the estate, the person burdened by the bequest shall provide it to the legatee in a quality commensurate with the personal circumstances and needs of the legatee.

§ 1606

(1) The testator may also instruct another person to choose which of several items the legatee should receive. If that person does not make the choice, the court shall determine the bequest taking into account the personal circumstances and needs of the testator.

(2) The court shall also determine the legacy if the legatee fails to exercise the choice left to him within the time allowed for the request of the person burdened by the legacy.

§ 1607

A bequest of money obligates the person burdened by the bequest to pay it out, whether or not the ready money is in the estate.

Subsection 2**Legacy of a determined thing****§ 1608**

When a reference to a thing is repeated in one or more provisions, the legatee is not entitled to the thing referred and its price at the same time. Other references, even if they contain a thing of the same kind or the same sum of money, belong to the legatee as many times as they are repeated.

§ 1609

A bequest of property belonging to the legatee at the time of making the will is disregarded. If he acquired it later, he shall be paid the usual value of the thing; but if he received it free of charge from the testator himself, the legacy shall be deemed to have been revoked.

§ 1610

(1) A bequest of an alien thing belonging neither to the testator nor to the heir or legatee who is to give it to someone else is disregarded. If the persons mentioned have an interest or right in the thing bequeathed, the bequest shall relate only to that interest or right.

(2) If the testator has directed that the alien thing be bought and given to the legatee, but the owner of it does not wish to sell it at the usual price, the legatee shall be paid that price.

§ 1611

Suspension or other encumbrance of the bequest affects the recipient as a defect of the bequest.

Subsection 3**Legacy of a claim****§ 1612**

In the case of a legacy of a claim due to the deceased from someone else, the person burdened by the legacy shall assign the claim, with any attachments and any security, to the legatee, shall issue the necessary documents of the claim to the legatee, and shall disclose to the legatee all that is necessary to assert the claim against the debtor.

§ 1613

Although a bequest of all claims includes all claims subsisting after the creation of the bequest, it does not include claims arising from negotiable securities and books of deposit, nor claims attaching to immovable property, nor claims arising from rights in rem.

§ 1614

Acknowledgement of a claim held by the testator against the legatee obligates the burdened person to issue a receipt to the legatee or to return the promissory note.

§ 1615

Debt forgiveness does not apply to debts incurred after the establishment of the legatee. If a bequest discharges a secured debt, it does not follow that the debt has also been discharged. If only the time for payment is extended, it does not follow that interest is waived.

§ 1616

(1) A legacy of a debt to be paid by the testator to the legatee has the legal effect of obliging the person burdened by the legacy to acknowledge the debt, which the testator definitely expresses or the legatee proves, and to pay it not later than the time for the fulfilment of the other legacies, without regard to the terms and conditions which the burdened person has agreed with the testator.

(2) If the testator directs that the legatee's claim be secured, sufficient security must be given.

§ 1617

If the testator gives someone the same amount as he himself is owed, it is presumed that he did not intend the bequest to discharge the debt. The legatee receives both the debt and the legacy.

Subsection 4

Other legacies

§ 1618

Legacy to children and relatives

Children means only sons and daughters if the testator remembered someone else's children. However, if they are the testator's own children, it shall be understood to include descendants entering in their place.

§ 1619

And for legacies other than § 1594 to 1618, § 1503 shall be used similarly.

Section 3

Acquisition of legacy

§ 1620

(1) A legatee acquires the right to a legacy for himself and his successors on the death of the testator.

(2) A right of survivorship that has yet to accrue applies § 1480 similarly.

§ 1621

(1) The legatee acquires the bequest in the manner in which title is acquired.

(2) If the right of bequest accrues, the legatee may seek delivery of the thing bequeathed. If the bequeathed thing is entered in the public register, a declaration by the executor of the will, otherwise a person burdened, with a certified signature, shall replace the delivery of the thing; if the due date of the bequest has not been postponed, the legatee shall be entered in the public register directly after the testator.

§ 1622

Before the death of the testator, the legatee cannot transfer the right to the bequest or make a bequest about it.

§ 1623

If the legatee declares, in the manner provided for the rejection of a legacy, that he does not want the legacy, he shall be regarded as not having acquired the right to the legacy at all.

§ 1624

(1) The legacy of individual items of property of the estate and the legacy of rights relating to such items may be claimed immediately. This also applies to bequests of minor awards to employees and bequests to public benefit, charity and the like. Other bequests are payable one year after the death of the testator.

(2) The provisions of paragraph 1 shall apply unless the testator's wishes to the contrary are clear.

§ 1625

When a single thing is bequeathed, the fruits and benefits and everything that accrues to the thing, including the rights attached to the thing, belong to the legatee from the date when the bequest is due. From the same date, defects in the bequeathed property, as well as its deterioration or destruction resulting from facts for which no one is liable, also affect the legatee.

§ 1626

(1) When bequeathing benefits payable annually, monthly, or otherwise, the bequeather becomes entitled to the amount accruing for the entire term if he lives to see the beginning of it; but the installment does not become payable until the time specified for payment.

(2) When alimony is bequeathed, § 922 applies similarly.

§ 1627

Right of a legatee to security

(1) In a legacy of repeated performance or a legacy the performance of which cannot yet be claimed because of a statutory time limit or because of a time limit or condition specified by the testator, the legatee has a right against the person burdened by the legacy to the provision of sufficient security. This does not apply if it is clear that security is not required.

(2) Otherwise, the legatee has the same rights against the legatee as any other creditor.

Vacant legacy

§ 1628

(1) If the linker cannot accept the link or refuses it, the link goes to the alternate. If there is no substitute, and if the entire bequest is made in memory of several persons either without specifying shares or by a general expression meaning an equal division, the vacated share shall accrue pro rata to the other shareholders.

(2) Where a legatee is left a specific share, he is not entitled to accrue under paragraph 1 unless it is clear that the testator intended to leave the entire legacy to the named legatees and that, in designating the shares, he intended nothing more than to restrict the legatees from each other.

(3) In other cases, the obligation to fulfil the bequest ceases.

§ 1629

Whoever benefits from the release of the reference or from the fact that the obligation to comply with the reference ceases, is also affected by the burdens associated with the reference. This is not the case if it is only the personal acts of the person originally burdened by the legacy.

Rights of an heir having reserved estate inventory

§ 1630

(1) Where the net estate is so encumbered by legacies that it is almost exhausted and the heir does not exercise a right under § 1598, the heir is only entitled to reimbursement of expenses incurred in complying with the legacies and to reasonable remuneration for his efforts. If the estate is insufficient to pay them, the costs and remuneration shall be paid by the legatees in proportion to the value of the legacies, and the heir shall have a lien to secure his right to the objects bequeathed; without sufficient security, the heir shall not be bound to execute the legacies.

(2) If, however, the legatee has already received the legacy, a deduction shall be made according to the value which the legacy had at the time of receipt and according to the benefits which he has already derived from it. The legatee shall be relieved of the obligation to make a contribution by giving the legacy and its benefits or their value to the heir. In all other respects, the legatee shall be regarded as an honest possessor.

§ 1631

(1) If the net estate is not sufficient to pay all debts and other mandatory expenses, the bequests are reduced proportionately.

(2) If the net estate is insufficient to satisfy all bequests, the bequest of support, maintenance and maintenance shall be satisfied before all others; the other bequests shall be reduced proportionately.

§ 1632

Fulfilment of last will by an administrator of the decedent's estate

If an executor has not been appointed and the heir does not wish to devote his time and effort to the execution of the will, the court shall, on his motion, appoint an administrator

of the estate for that purpose, or order the execution of the will by an administrator of the estate already called.

Volume 4

Statutory succession of heirs

§ 1633

(1) Where there is no succession under a succession agreement or under a will, there is a statutory succession to the estate or part of it. If there is no legal heir, or if no heirship is acquired, the legatees become heirs in proportion to the value of their legacies.

(2) Whoever has acquired an inheritance because neither the heir nor the substitute called by the testamentary contract or will was willing or able to inherit shall comply with the other decrees of the testator.

§ 1634

Escheat

(1) If no heir inherits, even according to the legal succession, the inheritance falls to the State and the State is looked upon as if it were the legal heir; but the State has no right to refuse the inheritance, nor any right of bequest under § 1594(1) sentence three.

(2) With respect to other persons, the state has the same status as an heir who has a reservation of inventory.

§ 1635

First class of heirs

(1) In the first class of heirs, the testator's children and his spouse inherit, each of them equally.

(2) If a child does not inherit, his children acquire his share equally; the same applies to more remote descendants of the same ancestor.

§ 1636

Second class of heirs

(1) If the testator's descendants do not inherit, the spouse, the testator's parents, and those who have lived in the same household with the testator for at least one year before his death and who, for that reason, have cared for the joint household or have been dependent on the testator for support, inherit in the second class.

(2) The heirs of the second class inherit equally, but the spouse always inherits at least half of the estate.

§ 1637

Third class of heirs

(1) If neither the spouse nor either parent inherits, the siblings of the deceased and those who lived in the same household with the deceased for at least one year before his death and who, for that reason, cared for the joint household or were dependent on the deceased for support, inherit in the third class.

(2) If any of the testator's siblings do not inherit, his children shall acquire his share of the inheritance equally.

§ 1638

Fourth class of heirs

If no heir in the third class inherits, the grandparents of the testator inherit equally in the fourth class.

§ 1639

Fifth class heirs

(1) If no fourth class heirs inherit, only the grandparents of the testator's parents inherit in the fifth class. The grandparents of the testator's father receive half of the inheritance, the grandparents of the testator's mother receive the other half. Both sets of grandparents share equally the half that accrues to them.

(2) If a single member of the pair does not inherit, the vacant eighth goes to the other member. If the pair fails to inherit, the quarter goes to the other pair of the same side. If neither of the couples of the same party inherits, the inheritance shall accrue to the couples of the other party in the same proportion as they share the half of the inheritance which accrues directly to them.

§ 1640

Sixth class of heirs

(1) If no heirs of the fifth class inherit, the children of the testator's siblings and the children of the testator's grandparents inherit in the sixth class, each in equal shares.

(2) If any of the children of the testator's grandparents do not inherit, the children of the testator's grandparents shall inherit.

§ 1641

Multiple family relationship

If a person is related to the testator on more than one side, he has the right of inheritance on each side that would be due to him as a relative on that side.

Volume 5

Mandatory Part

Inclusion in forced share and inheritance share

Section 1

Forced heir

§ 1642

The non-nominal heir is entitled to a compulsory share of the estate.

§ 1643

(1) The children of the testator are the non-passing heirs and if they do not inherit, then their descendants are.

(2) If the non-minor heir is a minor, he must receive at least as much as three-quarters of his legal inheritance share. If the non-minor heir is an adult, he shall receive at least as much as one quarter of his legal share of the inheritance.

§ 1644

(1) The statutory share may be left in the form of a legacy share or bequest, but must remain wholly unencumbered to the intestate heir.

(2) Decrees of the testator which limit the mandatory share are disregarded. If more than the obligatory share is left to the intestate heir, such decree, if made by the testator in the acquisition for death, shall apply only to the part exceeding the value of the obligatory share. This shall not apply if the non-minor heir dies before the testator or if he does not inherit for any other reason.

(3) The testator may also direct the intestate heir to elect for what is left to him with a limitation or for the obligatory share.

§ 1645

He who has renounced the inheritance or the obligatory share, who is incapable of inheriting, or who has been disinherited by the testator, is not entitled to the obligatory share, but in calculating the obligatory shares of the other heirs he is treated just as if he had not been excluded from the right of inheritance.

Section 2

Disinheritance

§ 1646

(1) For legal reasons, a non-nominee heir may be excluded from his right to the obligatory share by disinheritance or be reduced in his right. The testator may disinherit a non-minor heir who

- a) failed to provide him with the necessary assistance in his distress,
- b) has not shown the genuine interest in the testator that he or she should have shown,
- c) was convicted of a crime committed under circumstances indicative of his or her depraved character; or
- d) has led a persistently disorderly life.

(2) The testator may disinherit even a non-nominee who is incapable of inheriting and therefore excluded from the right of inheritance.

(3) If a disinherited descendant of the testator survives, the descendants of the disinherited descendant do not inherit unless the testator expresses a different will. If the disinherited descendant does not survive the death of the testator, his descendants shall inherit except those who are separately excluded from the right of inheritance.

§ 1647

A settlor may disinherit even a non-minor heir who is so indebted or who is acting so prodigally that there is a fear that the obligatory share will not be preserved for his descendants. But he may do so only by leaving his obligatory share to the children of that non-minor heir or, if there are none, to their descendants.

§ 1648

If the testator does not state a reason for the disinheritance, the non-passing heir is entitled to a compulsory share unless a legal reason for the disinheritance is proved against him.

§ 1649

(1) A declaration of disinheritance may be made or may be altered or revoked in the same manner as a will is made or revoked.

(2) In the same manner, the testator may declare any of the heirs not intestate to whom the legal succession is to be witnessed that he will not acquire the estate.

Section 3

Protection of a forced heir

§ 1650

A non-nominative heir disinherited by void disinheritance is entitled to the obligatory share; if he has been deprived of the net value of the obligatory share, he is entitled to supplement it.

§ 1651

(1) A non-passing heir who was known to the testator to be alive and yet was omitted from the will is also entitled to the mandatory share.

(2) If the one who was omitted, not by mistake, has done something which fulfils the statutory ground of disinheritance, the omission is to be regarded as a disinheritance made tacitly and rightfully.

§ 1652

If an intestate heir proves that his omission arises solely from the testator's ignorance of it at the time of the acquisition for death, such heir shall be entitled to the compulsory share due to him under the law.

§ 1653

If a non-passing heir has been abridged or omitted, the heirs and legatees shall contribute proportionately to the satisfaction of his right.

Section 4

Calculation of the forced share

§ 1654

(1) A non-probate heir is not entitled to a share of the estate but only to a sum of money equal to the value of his or her obligatory share. If there are particularly compelling reasons on the part of the heirs and if the non-minor heir can reasonably be required to do so, the court may authorise repayment of the mandatory share or deferment of its payment; however, the claim shall bear interest from the date on which it was originally due.

(2) The provisions of [paragraph 1](#) shall not prevent the non-nominative heir from agreeing otherwise with the heirs of the will or of the contract of succession; but if the rights of other creditors are thereby impaired, the agreement shall be ineffective against them. If, in the course of the succession proceedings, it is arranged that a thing entered in the public register shall be released from the estate to the intestate heir in lieu of payment, the intestate heir shall be entered in the public register directly after the deceased.

§ 1655

(1) To determine the obligatory share, the property in the estate shall be inventoried and appraised; the debts of the testator and defects already attached to the property at the time of the testator's death shall be deducted from the value of the property. In calculating the obligatory share, what counts towards the obligatory share under [§ 1660](#) and [1661](#) shall be added to the estate.

(2) The non-passing heir has the right to be present at the appraisal, to raise questions and to make comments.

§ 1656

Mandatory share is determined without regard to bequests and other defects arising from the acquisition for death. Pending the determination of the obligatory share, the non-passing heir shall share proportionately in the gains and losses of the estate. Whoever is entitled to the obligatory share shall also be entitled to a pro rata share of the profits and losses of the estate from the death of the testator until the obligatory share is determined.

§ 1657

If the non-passing heir and the heirs agree on a residuary benefit and the court approves the agreement, the provisions of [§ 1655](#) and [1656](#) do not apply.

Section 5

Inclusion in forced share and inheritance share

§ 1658

Accounting for a compulsory share or for an inheritance share does not create an obligation to deliver anything unless it is a case listed in [§ 2072](#).

§ 1659

When offsetting, the value of what has been provided and what is subject to offset is calculated according to the time of surrender. In exceptional cases the court may decide otherwise.

Inclusion in forced share

§ 1660

(1) Anything actually acquired by the non-passing heir by bequest or other provision of the testator shall be counted towards the mandatory share.

(2) What the non-minor heir received gratuitously from the testator in the three years preceding his death shall be counted towards the obligatory share, unless the testator directs that the counting be made over a longer period; in addition, what the testator's ancestor received gratuitously from the testator shall be counted towards the descendant. However, the usual gifts shall not be taken into account in the set-off.

§ 1661

(1) What the testator gave to the descendant during his or her lifetime to relieve him or her of the costs of setting up an independent household, of marital or similar cohabitation, or of entering a profession or business, shall be counted towards the descendant's obligatory share; what the testator used to pay the debts of the adult descendant shall also be counted towards the obligatory share. If this occurred earlier than within the last three years before the testator's death, the set-off shall be made unless the testator expresses a contrary wish.

(2) A descendant who takes the place of his ancestor shall be credited with the obligatory share of what his parents, in whose place he takes, have received from the testator.

Inclusion in inheritance share**§ 1662**

Inheritance shares are calculated in the same way as the mandatory share.

§ 1663

In the case of a succession of heirs according to a succession on death or a succession by intestate succession, a set-off against the share of the heirs shall be made only if the testator has so ordered by an instrument of will made in the form prescribed for the making of a will.

§ 1664

The court may make a set-off against a share of the estate, even if the testator did not direct it, if an otherwise non-nominative heir would be unreasonably disadvantaged; but customary gifts are disregarded.

Volume 6**Right of certain persons to provision for life****§ 1665**

A person who would otherwise be a non-passing heir, but who is not entitled to a compulsory share, is entitled to necessary maintenance, if he is not in receipt of it and is unable to support himself; but he cannot thus receive more from the estate than his compulsory share would amount to. However, he shall not be entitled to necessary maintenance if his descendant inherits in his place, or if his descendant in his place is called upon to pay the obligatory share.

§ 1666

(1) The surviving spouse is entitled to reasonable maintenance out of the estate for six weeks after the death of the spouse. If the widow is pregnant, she shall have the right to adequate maintenance until the end of the sixth week after the birth; the same right shall be enjoyed by the mother of the testator's child who was not married to the testator.

(2) If the surviving spouse's legal share of inheritance has been denied or curtailed, the surviving spouse shall be entitled to the necessary provision until remarriage, if he is not otherwise so provided for and if he is unable to support himself; but he shall not thereby receive from the estate more than half of his legal share of inheritance. However, the right to the necessary provision shall not be conferred on a spouse who, without serious reasons, did

not share the family household with the testator, on a spouse who is unfit to be an heir or on a spouse who has renounced or refused the inheritance.

(3) If the right to adequate maintenance under [paragraph 1](#) would curtail the right to necessary maintenance under [§ 1665](#), all such rights shall be curtailed so that all beneficiaries receive equally. Necessary maintenance under [paragraph 2](#) may not be provided if it would curtail the right to necessary maintenance under [§ 1665](#).

§ 1667

The surviving spouse acquires ownership of movable property that constitutes the basic equipment of the family household, even if he or she is not an heir. This does not apply if the surviving spouse did not share the family household with the deceased without serious reasons.

§ 1668

(1) If the surviving parent's legal share of inheritance has been denied or curtailed, the surviving parent is entitled to necessary provision if he is not otherwise receiving such provision and if he is unable to support himself; but he cannot receive more from the estate in this way than one-third of his legal share of inheritance. The right to the necessary provision shall not extend to a parent who is incapable of being an heir, to a parent who has renounced or refused the inheritance, or to a parent who has committed an act giving rise to disinheritance.

(2) Necessary maintenance cannot be provided to a parent if it would curtail the right to necessary maintenance under [§ 1665](#).

§ 1669

Persons who enjoyed free provision in the testator's home until the death of the testator are entitled to the same provision for three weeks after the death of the testator.

Volume 7

Devolution of the decedent's estate to an heir

Section 1

Acquisition of inheritance

§ 1670

Acquisition of inheritance is confirmed by the court. The court shall confirm the acquisition of the inheritance to the person whose right of inheritance has been established.

§ 1671

(1) If the heir has not established the right of inheritance before the court within the time limit fixed by the court, the heir's right of inheritance shall not cease, but shall not be taken into account in the consideration of the estate. This shall also apply to the right of succession of an unknown heir or an heir of unknown residence who has been notified of his right by a decree of the court and has not made himself known within the time limit set.

(2) If the unknown heir or heir of unknown residence has a guardian, the guardian cannot make a declaration that the heir refuses or does not refuse or accepts the inheritance.

§ 1672

If more than one person asserts a right to inheritance and they are in conflict, the court shall refer the one whose cause of action is weaker to the heir to assert his right by action. If that heir fails to bring an action within the time limit set by the court, his right of succession shall not be extinguished, but shall not be taken into account in the consideration of the estate.

§ 1673

(1) Any testamentary or legal heir shall be referred to bring an action against an heir who relies on a contract of inheritance unchallenged as to genuineness. Against an heir who

relies on a will not contested as to authenticity, any heir at law shall be referred to bring the action.

(2) If the testator states a reason for the disinheritance, the descendant who claims to have been disinherited wrongfully shall be referred to bring the action. If the reason for the disinheritance is not stated, the person who is to succeed in his place shall be referred to bring the action.

Reservation as to estate inventory

§ 1674

(1) The testator cannot withdraw the right of the heir to reserve the inventory of the estate. If the parties to the succession contract waive this right, it shall be disregarded.

(2) The right to reserve the inventory may be exercised by a declaration made orally before the court or by a declaration sent to the court in writing. If the heir reserves the inventory with reservations or conditions, they shall be disregarded. This shall also apply to a declaration by the heir that he does not make a reservation of the inventory.

§ 1675

The heir has the right to reserve the inventory of the estate if he exercises it within one month from the date on which the court notifies him of this right. If there are important reasons for doing so, the court shall extend the time limit for the heir.

§ 1676

(1) A heir of his own right, known and present, who is not the spouse, descendant, or ancestor of the testator, and who fails to make an inventory objection within the time limit under § 1675, shall be deemed not to have made an inventory objection. The court shall, after summoning and instructing the other heirs, request an express statement from them, unless the effect under § 1681 has occurred in respect of the heir's spouse, descendant or ancestor.

(2) One who has not reserved an inventory of the estate, or has declared that he or she does not exercise the right to reserve an inventory, may not subsequently reserve an inventory.

Section 2

Administration of the decedent's estate and the decedent's estate inventory

Administration of the decedent's estate

§ 1677

(1) If the testator has appointed an administrator of the estate or an executor of the will, the administrator of the estate administers the estate until the confirmation of the acquisition of the estate, otherwise the executor of the will. If the testator has not appointed any of them, the heir shall administer the estate; if there are several heirs and they do not agree otherwise, all the heirs shall administer the estate.

(2) If there is good reason for doing so, the court shall order another measure.

§ 1678

(1) Whoever administers the estate exercises simple administration.

(2) Whoever administers the estate shall make payments out of it for the provision of the persons entitled thereto and shall deliver to the legatees notice of the legacies to them. He shall settle the adult legacies if the court approves.

§ 1679

(1) In administration, something may be alienated from the estate or used as security if the interest in preserving the value or substance of the property administered requires it, otherwise for consideration. This applies even if the purpose of the property to be administered is to be changed.

(2) An administrator of an estate or executor of a will may do an act beyond the scope of simple administration if the heirs consent. If the heirs do not agree or if the heir is a person under special protection, the consent of the court is required.

§ 1680

(1) An heir whose right of inheritance is already clearly established may be permitted by the court, even before the conclusion of the succession proceedings, to dispose freely of certain objects of the estate if the execution of the testator's will is secured or if the other co-heirs, non-nominal heirs and legatees agree.

(2) If more than one person exercises a right to inheritance which is in conflict, the measure under [paragraph 1](#) cannot be made. However, if the heir has already received the benefit, it cannot be withdrawn from him.

§ 1681

(1) If the heir, without being entitled to do so, takes full administration of the estate, the effects of the reservation of inventory, if any, are thereby cancelled from the outset. This shall also apply if it is proved that the heir has intentionally concealed the property of the estate, if the heir mixes parts of the estate with parts of his own property without being able to distinguish to whom they belong, unless this was already the case before the death of the testator. The same effect, with regard to the reservation of inventory, shall also be produced against the heir on whose behalf, directly or indirectly, someone else has administered the estate in this way. If a person close to the heir administers the estate in this way, he shall be deemed to be acting also as his representative.

(2) The effect under [paragraph 1](#) does not arise if, before the confirmation of the acquisition of the estate, the heirs divide only documents, likenesses or records and other things of a family or souvenir nature.

Closure of the decedent's estate

§ 1682

(1) The court shall, without delay, make arrangements to secure the estate (probate) if

- a) any of the heirs is not competent,
- b) any of the heirs is of unknown residence,
- c) there is concern that the estate is over-indebted,
- d) the creditor has proposed a separation of the estate, or
- e) if there is some other compelling reason for special caution.

(2) If only some of the heirs are incompetent, absent or unknown, it may be content with probate of so much of the estate as is sufficient to satisfy his right of succession. This applies even if there is a person who is entitled to the obligatory share.

§ 1683

No probate is required if there is an immovable property in the estate providing sufficient security.

Decedent's estate inventory

§ 1684

(1) The purpose of an inventory of the estate is to ascertain the estate's assets and determine the net value of the estate at the time of the decedent's death.

(2) Unless it seriously jeopardizes the timely completion of the inventory, the decedent may be present at the inventory and may make inquiries and comments

- a) the executor of the will,
- b) the administrator of the estate,

- c) any person who claims and certifies a right of inheritance or a right to an obligatory share, or who is known to be apparently entitled to such a right,
- d) a creditor who has requested the separation of the estate,
- e) if the court agrees, and any other person who shows a legal interest therein; but only if the legatee threatens to be required to make a pro rata contribution to the obligor.

§ 1685

- (1) The court shall order an inventory of the estate if the heir exercises the right to reserve the inventory or if it is necessary for the computation of the mandatory share.
- (2) The court shall also order an inventory of the estate,
 - a) if among the heirs there is a person who is not fully competent or who is unknown or absent, or a legal person of public utility or established in the public interest (hereinafter referred to as a "person under special protection"),
 - b) where there is uncertainty as to whether someone is an heir or who is an heir,
 - c) if a creditor requests it under § 1709, or
 - d) if the creditor of the decedent certifies that there is some other compelling reason for making the inventory.

§ 1686

- (1) The cost of making the inventory is paid out of the estate and is charged proportionately to the shares of those heirs who benefit from the inventory. If it is not reasonably practicable to pay the costs of the inventory out of the estate, the court shall order those heirs to contribute proportionately to the costs.
- (2) Where the court has ordered an inventory for the purpose of calculating the obligatory share, the costs shall be paid out of the estate and shall be borne proportionately by all the heirs and the person entitled to the obligatory share. If it is not reasonably practicable to pay the costs of the inventory out of the estate, the court shall order those persons to contribute proportionately to the costs.
- (3) If a person requests an inventory without good cause, the court shall order him to bear the cost of the inventory out of his own pocket.

§ 1687

- (1) If the circumstances of the case so warrant, the court may order that the inventory of the estate be replaced by a list of the property of the estate drawn up by the administrator of the estate and certified by all the heirs. If no administrator of the estate has yet been appointed, the court may appoint one for that purpose.
- (2) In simple cases, the court may decide, if the heirs do not object, to replace the inventory of the estate by a joint declaration of the heirs of the estate.

§ 1688

- (1) If it is shown that the declaration or list under § 1687 does not correspond to the facts to an extent not immaterial,
 - a) the effect of the inventory reservation, if any, is thereby cancelled as of the beginning of the heirs,
 - b) a person named in § 1685(2) has the right to request that the court order a new inventory of the estate if he or she demonstrates a legal interest in doing so.
- (2) The effect under paragraph 1(a) does not arise against a person under special protection unless it is shown that he or she has intentionally concealed the estate property. Nor shall this effect arise against an heir who proves that he or she was not at fault for the incompleteness of the declaration or list.

(3) If the trustee caused the list under § 1687 to be incomplete, he or she shall make good the loss resulting therefrom.

§ 1689

If the creditor is known, the court shall notify him that an inventory of the estate has been made and give him an opportunity to comment on the inventory.

Section 3

Confirmation of inheritance

§ 1690

(1) The court shall confirm the succession to the person who has not refused the succession and who, according to the course of the succession proceedings, has the best right to inherit, after it is assured that the will of the testator will be duly executed.

(2) If the executor of the will has been called, he shall certify to the court the execution of the testator's decrees; if he has not been called, the heirs shall prove it to the court. If the heirs disagree or contradict what the executor of the will has certified, the court shall decide how to obtain the evidence.

§ 1691

(1) If legacies have been ordered, the court will confirm the succession only after it has been shown that

- a)** the legatees have been given notice of the bequest,
- b)** outstanding legacies to persons not in full capacity, to bodies corporate or established in the public interest, or to legacies made for charitable and public benefit purposes have been complied with and that compliance with outstanding legacies has been secured,
- c)** the fulfillment of bequests to unknown or absent persons has also been secured.

(2) The court may dispense with the security if it is obviously unnecessary.

§ 1692

(1) The court shall confirm to the sole heir that he has acquired the inheritance. It shall state who is the heir, whose estate he is acquiring, for what reason, and whether or not it is done with or without the reservation of the inventory.

(2) The court will also confirm to some heirs the amount of their share of the inheritance after set-off for any legacies. In the distribution of the estate, the court shall also confirm what inheritance each heir has acquired and the reason for the distribution.

(3) If the succession is ordered by the establishment of a trust, by proof of time, or otherwise, the court shall confirm that it has been ordered, who follows as a subsequent heir, and under what circumstances. If the testator has stipulated that the heir before him may freely dispose of the succession, the court shall confirm this as well.

§ 1693

(1) The heirs can agree before the court in the succession proceedings what their share of the inheritance will be. The court shall approve the agreement if it is not contrary to the interests of the person under special protection.

(2) If the inheritance is based on an acquisition on death, the heirs may agree on a different amount of their shares than that assessed by the testator, provided that the testator has expressly allowed it.

(3) If inheritance is by intestate succession, an heir has the right to claim a settlement from the other heirs if he has cared for the testator for a longer period of time or has contributed substantially to the maintenance or increase of the testator's estate by work, pecuniary support or similar means without being remunerated for it. A settlement shall be made in an amount commensurate with the duration and extent of his services and the value of the estate; his share of the estate shall be increased by that amount. This shall apply even if the

heir who is not the surviving spouse has performed a maintenance or similar obligation towards the deceased.

Section 4

Division of decedent's estate

§ 1694

(1) If the testator has made a provision for death, the estate is to be distributed according to his will. The heirs may agree before the court to divide the estate in whole or in part in another way if the testator has expressly allowed it.

(2) If the testator has allocated to the heirs particular items from his estate without expressly directing that the estate be divided as he has ordered, or that a called heir may accept only what has been allocated to him, or that a particular item is to remain in the joint ownership of the heirs, his expression of will shall be regarded as a wish without legal binding force.

§ 1695

(1) If the testator has not made a provision for death, the heirs may agree before the court how to divide the estate.

(2) If the testator has not arranged for any part of the estate or has not directed how the estate or any part of it is to be divided, or if the division of the estate according to the testator's will is not at all possible, the provisions of [paragraph 1](#) shall apply mutatis mutandis.

§ 1696

(1) The court shall approve the agreement of the heirs on the distribution if it does not contradict the will of the testator and, within its limits, the interests of the person under special protection. If the court does not approve the agreement, it shall confirm to the heirs the acquisition of the inheritance according to the amount of their shares of inheritance.

(2) The validity of an agreement for the distribution of the estate requires that the entire known estate be distributed as a result of its conclusion. An agreement may also create an easement or a pledge or other right in rem, even if the testator did not make a provision for it.

§ 1697

(1) The court shall divide the estate as directed by the testator. If the testator has entrusted a third person with the determination of how the estate is to be distributed, the court shall allow that person a reasonable period of time, not less than two months; however, the court shall disregard the determination if it is manifestly unfair or if it occurs after the time limit.

(2) Unless prevented by the testator's decree, the court shall divide the estate by approving the agreement of the heirs; if no agreement is reached, the court shall divide the estate if all the heirs so request and if there is no dispute among them as to what belongs to the estate. In doing so, the court shall have regard to the interests of the person under special protection.

(3) In other cases, the court shall not divide the estate and shall confirm to the heirs the acquisition of the inheritance according to their shares.

§ 1698

At the time of distribution of the estate, the right to compensation can be settled out of proportion between joint heirs, set-off against the share of inheritance and set-off of legacies.

§ 1699

(1) Depending on the circumstances, the claim or debt may also be allocated to an individual heir. If a debt is allocated to an heir, the rights of the creditor are not affected.

(2) An heir who is deprived of his share by the allocation of a defective item is entitled against his co-heirs to compensation for what he has been deprived of by the defect.

§ 1700

(1) Where the court distributes the estate on the application of the heirs, it shall make a statement based on an inventory of the estate or an inventory certified by all the heirs. If something of the estate has been sold at the will of the heir at law, the purchase price obtained shall be included in the estate, or, in the case of other disposals at the will of the heir, the normal price at the date of the right of succession. Each heir's share, expressed in money, shall be allocated to the individual objects according to the price indicated in the statement.

(2) If the price of an object is not obvious, the court shall determine it by estimation, unless it allocates the object to all the heirs according to their shares.

Section 5**Debts affecting an heir****§ 1701**

(1) Debts of the testator pass to the heirs unless the law provides otherwise.

(2) The heir is liable for the costs of the deceased's burial and the arrangements for the deceased's grave site, unless those costs were paid out of the estate under § 114(2)

§ 1702

An heir may not discharge the obligation created by an acquisition for his death by disclaiming the inheritance from that acquisition, claiming his right as heir at law. He may become an heir of the acquisition on death, or he may refuse to inherit.

§ 1703**Rights of creditors prior to the confirmation of inheritance**

Unless the court confirms the heir's acquisition of the estate, creditors may only enforce against the person administering the estate and seek satisfaction only from the assets belonging to the estate.

Legal effects of not making a reservation as to estate inventory**§ 1704**

If the heir does not apply the inventory reservation, he/she shall pay the debts of the testator in full. If more than one heir has not made a reservation of inventory, they shall jointly and severally pay the debts of the testator.

§ 1705

The making of an inventory has no legal effect for the extent of the obligation to pay debts of an heir who has not claimed the inventory reservation.

Legal effects of a reservation as to estate inventory**§ 1706**

If the heir has exercised the reservation of inventory, he/she shall pay the debts of the testator up to the value of the inheritance acquired. This applies even if the inventory of the estate has been ordered by the court in the interest of a person under special protection.

§ 1707

Each of the heirs who has exercised the inventory reservation shall pay the debts of the testator jointly and severally with the other heirs, but the creditor may only require each heir who has reserved the inventory to pay up to the amount corresponding to his share of the estate.

§ 1708

Accrual between joint heirs is governed by the general provisions on joint debts.

Separation of the decedent's estate

§ 1709

(1) A creditor who certifies a concern about over-indebtedness of an heir may, before the court confirms the acquisition of the estate, move to have the estate severed from the heir's estate and administered as a separate estate. The court shall not grant the motion if it is clear that there is no reason to fear.

(2) A motion to sever the estate does not prevent the court from confirming the acquisition of the estate.

§ 1710

The creditor who requested the separation shall be satisfied from the severed estate. However, that creditor loses the right to be satisfied out of the heir's other assets, even if the heir has not claimed the inventory reservation.

Ascertaining the debts of the decedent

§ 1711

Before the court decides whether to confirm the estate, the heir who reserved the inventory or the one who administers the estate may request the court, in order to locate the debts of the deceased, to invite the creditors to report and prove their claims within a reasonable time. Until the proceedings so instituted have been concluded, neither the heir nor the person administering the estate shall be obliged to satisfy the creditors.

§ 1712

(1) A creditor who fails to file within the time limit has no right to payment against the heir if the estate is exhausted by payment of the reported claims.

(2) The provisions of [paragraph 1](#) shall not apply,

- a) if the creditor proves that the heir knew of the claim, or
- b) if the creditor's claim is secured by a lien or other right in rem on property belonging to the estate.

§ 1713

If a notice to creditors has not been demanded, or if the heir satisfies any of the claiming creditors without regard to the rights of the others, and therefore any creditor fails to obtain full satisfaction of the claim of the estate, the heir shall be liable to the creditor in excess of the amount set out in [§ 1692](#), up to the amount to which the creditor would have been satisfied in the liquidation of the estate under any other law.

Volume 8

Alienation of inheritance

§ 1714

(1) An inheritance may be disposed of after the death of the testator; if the contract is made earlier, it is disregarded. By alienating the inheritance, the acquirer enters into the rights and obligations belonging to the estate.

(2) A succession is disposed of by a bold contract unless a list of rights and obligations was taken as the basis of the contract when the succession was disposed of. If such a list has been taken as the basis, it depends on the content of the contract, it depends on the agreement of the parties as to how far [§ 1716](#) and [1717](#) also apply.

(3) The contract requires the form of a public deed.

§ 1715

The parties shall without undue delay notify the court conducting the probate proceedings that the estate has been disinherited.

§ 1716

(1) The transferee has no right to the property belonging to the dispossessor not as heir but by virtue of any other legal right, nor to writings, likenesses and records of a family nature.

(2) The transferee, on the other hand, is entitled to whatever is added to the estate by the death of the legatee or joint heirs or in any other way, if the disposer would have been entitled to it.

§ 1717

The survivor is also entitled to whatever the alienator has already received by right of inheritance. The transferee shall, however, reimburse the testator for what he has expended out of his own pocket to establish the succession or the estate and, unless the parties have agreed otherwise, for the cost of the testator's funeral and burial arrangements.

§ 1718

If the settlor administered the estate before it was delivered to the transferee, he is liable to the transferee as principal.

§ 1719

The grantor of an inheritance is liable to the grantee for the genuineness of his title as disclosed. If the transferee suffers damage, the alienator shall compensate for it in accordance with Part Four of this Act.

§ 1720

The settlor and the disposer of the estate are jointly and severally liable to creditors for the debts of the testator.

PART FOUR**RELATIVE PROPERTY RIGHTS****TITLE I****GENERAL PROVISIONS ON OBLIGATIONS****Volume 1****Creation of obligations and their content****§ 1721**

According to an obligation, the creditor has a right against the debtor to a certain performance as a claim, and the debtor has an obligation to satisfy that right by fulfilling the debt.

§ 1722

The performance that is the subject of the obligation must be pecuniary in nature and correspond to the creditor's interest, even if that interest is not merely pecuniary.

§ 1723

(1) An obligation arises from a contract, from a wrongful act, or from some other legal fact that qualifies under the law.

(2) The provisions on obligations arising from contracts apply mutatis mutandis to obligations arising from other legal facts.

Volume 2**Contract****Section 1****General Provisions****§ 1724**

(1) By the contract, the parties manifest their intention to bind each other and to be bound by the contents of the contract.

(2) The provisions on contracts apply mutatis mutandis to an expression of will by which one person addresses another, unless the nature of the expression of will or the law precludes it.

§ 1725

A contract is concluded once the parties have agreed on its contents. Within the limits of the legal system, the parties are free to negotiate the contract and determine its content.

§ 1726

If the parties consider the contract to have been concluded, although they have not in fact agreed on a matter which they ought to have agreed in the contract, the manifestation of their intention is to be regarded as a concluded contract if, having regard in particular to their subsequent conduct, it may reasonably be assumed that they would have concluded the contract even without the agreement of that matter. If, however, one of the parties has already made it clear at the time of conclusion of the contract that agreement on a particular term is a prerequisite for the conclusion of the contract, the contract shall be deemed not to have been concluded; in that case the parties shall not be bound by the agreement on the other terms, even if a record of them has been made.

§ 1727

Each of several contracts made at the same meeting or included in the same instrument shall be considered separately. Where it appears from the nature of several contracts, or from their purpose known to the parties at the time of their conclusion, that they are dependent on each other, the formation of each contract is a condition precedent to the formation of the others. The extinction of an obligation under one of them without satisfaction of the creditor shall extinguish the other dependent contracts with similar legal effects.

§ 1728

(1) Every person may freely negotiate a contract and is not liable for failing to enter into it unless he commences or continues such negotiations without intending to enter into the contract.

(2) In negotiating a contract, the parties shall disclose to each other all the facts and legal circumstances of which they know or ought to know so that each party may satisfy itself as to the possibility of entering into a valid contract and so that each party's interest in entering into the contract is apparent.

§ 1729

(1) Where the parties have come so far in the negotiation of a contract that the conclusion of the contract appears highly probable, the party who, despite the other party's reasonable expectation of the conclusion of the contract, terminates the negotiation of the contract without having a just reason for doing so is acting dishonestly.

(2) The party who acts dishonestly shall compensate the other party for damages, but at most to the extent that the loss from the unconsummated contract corresponds to the loss in similar cases.

§ 1730

(1) If the parties provide each other with information and communications in the course of contract negotiations, each party has the right to keep a record of them even if no contract is concluded.

(2) If a party obtains confidential information or communications about the other party in the course of contract negotiations, it shall take care that they are not misused or disclosed without lawful reason. If he breaches this duty and is thereby enriched, he shall give to the other party what he has been enriched.

Section 2

Conclusion of a contract

Proposal for conclusion of contract

§ 1731

A proposal to enter into a contract (hereinafter referred to as an "offer") must make it clear that the person making it intends to enter into a particular contract with the person to whom the offer is made.

§ 1732

(1) A legal act tending to conclude a contract is an offer if it contains the essential elements of a contract so that the contract may be concluded by its simple and unconditional acceptance, and if it implies the offeror's intention to be bound by the contract if the offer is accepted.

(2) A proposal to supply goods or services at a specified price made in the course of business by advertising, cataloguing or displaying goods is deemed to be an offer subject to exhaustion of stock or loss of the businessman's ability to perform.

§ 1733

A letter of intent that does not comply with § 1732 is not an offer and therefore cannot be accepted. If the expression of intent contains a promise to perform for a specific performance or result, it is a public promise, otherwise it is merely an invitation to tender. The same applies to a speech which is directed to an indefinite number of persons or which is in the nature of an advertisement, unless it clearly implies otherwise.

§ 1734

An offer made orally must be accepted without delay, unless the content of the offer or the circumstances in which it was made indicate otherwise. This applies even where an offer made in writing has been made to the person present.

§ 1735

An offer made in writing to an absent person must be accepted within the time specified in the offer. If no time limit is specified, the offer may be accepted at a time commensurate with the nature of the proposed contract and the promptness of the means used by the offeror to send the offer.

§ 1736

The offer is irrevocable if it expressly so states or if the parties so agree. An offer is also irrevocable if it is implied from the parties' negotiations for the conclusion of the contract, from their previous business dealings or from custom.

§ 1737

Cancellation of Offer

Although an offer is irrevocable, it may be cancelled if the cancellation notice reaches the other party before or at least simultaneously with the delivery of the offer.

§ 1738

Revocation of an offer

(1) Although the offer is revocable, it cannot be revoked within the time limit set for acceptance unless the offer so stipulates. A revocable offer may be revoked only if the revocation reaches the other party before the latter has sent its acceptance of the offer.

(2) An offer may not be withdrawn if it expresses irrevocability.

§ 1739

(1) If the offer is rejected, it shall lapse upon the effectiveness of the rejection.

(2) If either party dies or ceases to have capacity to contract, the offer is extinguished if this is apparent from the offer itself or from the nature and purpose of the proposed contract.

Acceptance of the offer

§ 1740

(1) The person to whom the offer is addressed shall accept the offer if he or she consents to the offer in time to the offeror. Silence or inaction is not in itself acceptance.

(2) A manifestation of intent that contains additions, qualifications, limitations or other changes is a rejection of the offer and is treated as a new offer. However, an acceptance of an offer is a response that defines the contents of the proposed contract in different words.

(3) A response with an amendment or variation that does not materially change the terms of the offer is an acceptance of the offer unless the offeror rejects such acceptance without undue delay. The offeror may exclude acceptance of an offer with an amendment or deviation in advance in the offer or in any other manner that does not raise a doubt.

§ 1741

In the case of an offer addressed to more than one person, the contract is concluded if all those persons accept the offer, if the contents of the offer show the intention of the offeror that all the persons to whom the offer is addressed should become parties to the contract, or if such intention can reasonably be inferred from the circumstances in which the offer was made. The same applies, *mutatis mutandis*, where the intention of the offeror to make a certain number of such persons parties to the contract is apparent.

§ 1742

Acceptance of an offer may be rescinded if the rescission reaches the proposer no later than acceptance.

§ 1743

(1) Even a late acceptance of an offer has the effect of a timely acceptance if the offeror promptly notifies the person to whom it made the offer, at least orally, that it considers the acceptance to be timely or begins to act in conformity with the offer.

(2) If it appears from the document expressing acceptance that the offer was sent in such circumstances that it would have reached the offeror in time if it had been transported in the usual manner, late acceptance has the effect of timely acceptance unless the offeror without delay informs the person to whom the offer was addressed, at least orally, that he considers the offer to have lapsed.

§ 1744

Taking into account the contents of the offer or the practice established between the parties or if customary, the person to whom the offer is addressed may accept the offer by acting in accordance with it, in particular by providing or accepting performance. Acceptance of the offer is effective at the time when the act takes place if it is timely.

§ 1745

The contract is concluded at the time when acceptance of the offer becomes effective.

Section 3

Contents of a contract

§ 1746

(1) The statutory provisions governing each type of contract apply to contracts whose content includes the essential elements of the contract set out in the basic provision for each of those contracts.

(2) The parties may also conclude a contract which is not specifically regulated as a type of contract.

§ 1747

If the contract is gratuitous, the debtor is presumed to have intended to commit less rather than more.

§ 1748

It is held that an agreement that some part of the content of the contract will be agreed between the parties after the fact is a condition of the effectiveness of the contract entered into.

§ 1749

(1) Where the parties agree that a particular term of the contract shall be determined by a third party or a court, such determination shall be a condition of the effectiveness of the contract. If the third party fails or refuses to determine the particulars of the contract within a reasonable time, either party may apply to the court to determine those particulars.

(2) In determining the particulars, regard shall be had to the purpose which the contract appears to pursue, the circumstances in which the contract was made and the fairness of the arrangement of the rights and obligations of the parties.

§ 1750

If the entitled party does not propose to supplement the content of the contract within the agreed time limit, otherwise within one year of the conclusion of the contract, the contract shall be deemed to be cancelled from the outset.

§ 1751

(1) Part of the content of the contract may be determined by reference to the terms and conditions which the proposer attaches to the offer or which are known to the parties. Deviating provisions in the contract shall prevail over the wording of the terms and conditions.

(2) If the parties refer in the offer and in the acceptance of the offer to terms and conditions which are contradictory, the contract shall nevertheless be concluded with the content determined to the extent that the terms and conditions are not contradictory; this shall apply even if the terms and conditions exclude this. If one of the parties excludes this at the latest without undue delay after the exchange of the expressions of intent, the contract is not concluded.

(3) When concluding a contract between entrepreneurs, part of the content of the contract may also be determined by mere reference to terms and conditions drawn up by professional or interest organisations.

§ 1752

(1) Where a party in the ordinary course of business with a large number of persons enters into contracts binding it to repeated performance of the same kind over a long period of time with reference to commercial terms and conditions and where the nature of the obligation already shows a reasonable need for their later modification at the time of the negotiation of the contract, it may be agreed that the party may modify the commercial terms and conditions to a reasonable extent. An agreement is valid if it has been agreed in advance at least how the change is to be notified to the other party and if it creates a right for that party to reject the change and to terminate the obligation on that ground within a period of notice sufficient to procure similar performance from another supplier; however, no account shall be taken of an agreement which imposes a special obligation on the terminating party in connection with such termination.

(2) If the extent of any changes to the terms and conditions has not been agreed, no account shall be taken of changes caused by such a change in circumstances which the party referring to the terms and conditions must have foreseen when the contract was concluded, nor of changes caused by a change in his personal or financial circumstances.

§ 1753

A stipulation of terms and conditions which the other party could not reasonably have expected is ineffective if not expressly accepted by that party; a contrary stipulation is disregarded. Whether it is such a provision is to be determined not only by reference to its content but also to the manner in which it is expressed.

§ 1754

(1) Where the parties use in a contract a clause governed by the rules of interpretation in use, it is presumed that they intended by that clause to produce the legal effects provided for by the rules of interpretation to which they referred in the contract or, as the case may be, by those rules of interpretation which, having regard to the nature of the contract, are usually applied.

(2) If one of the parties to the contract is not a business, the meaning of a clause may be invoked against that party only if it is shown that its meaning must have been known to that party.

§ 1755

If a party generally objects to the validity of a contract, it shall be disregarded.

Section 4

Form of Contract

§ 1756

If the contract is not in words, the intention of the parties to agree its terms must be clear from the circumstances; in doing so, account shall be taken not only of the conduct of the parties but also of published price lists, public tenders and other documents.

§ 1757

(1) Once the parties have entered into a contract between themselves in a form other than writing, it is left to the will of the parties to confirm the contents of the contract in writing.

(2) If, in the course of the parties' business, one of them does so against the other in the belief that its acknowledgement faithfully represents the content of the contract, the contract is deemed to have been concluded with the content set out in the acknowledgement, even if it shows deviations from the content actually agreed. This applies only if the deviations in the confirmation alter the actual agreed content of the contract in an insubstantial way and are of such a nature that a reasonable businessman would still approve them, and provided that the other party does not reject the deviations.

(3) Paragraph 2 applies even if the contract was made while one of the parties was doing business and the other party confirms its contents.

§ 1758

If the parties agree to use a particular form for the conclusion, they are deemed not to intend to be bound unless that form is complied with. This applies even if one of the parties expresses a wish that the contract be concluded in writing.

Section 5

Effects of the contract

General Provisions

§ 1759

The parties are bound by the Agreement. It can only be amended or cancelled with the consent of all parties, or for other lawful reasons. It shall only be effective against other persons in the cases provided for by law.

§ 1760

The fact that a party was not entitled to dispose of what is to be performed under the contract when the contract was made does not of itself render the contract void.

§ 1761

An injunction against encumbrance or alienation operates only as between the parties unless it was created as a right in rem. Such a prohibition is valid if it was created for the duration of a trust, trust succession, agency, or other definite and reasonable period of time in such party's interest as is worthy of legal protection.

§ 1762

(1) Where the law provides that a decision of a particular authority is required for a contract to be effective, the contract is effective by that decision.

(2) If no request for a decision has been made within one year of the conclusion of the contract, the contract shall be deemed to be cancelled from the outset. This applies even if the application is rejected.

§ 1763

Where a party by successive contracts grants to different persons the right to use or enjoy the same thing at the same time, the person to whom the transferor first granted the thing for use or enjoyment acquires such right. If there is no such person, the right shall vest in the person with whom the contract which took effect first was made.

Change in circumstances

§ 1764

If circumstances change after the conclusion of the contract to such an extent that performance under the contract becomes more difficult for a party, this does not alter its obligation to perform the debt. This does not apply in the cases set out in § 1765 and 1766.

§ 1765

(1) If there is a change in circumstances so substantial that the change creates a particularly gross disproportion in the rights and obligations of the parties by disadvantaging one of them either by disproportionately increasing the cost of performance or by disproportionately decreasing the value of the subject matter of performance, the party concerned shall be entitled to claim against the other party the right to renegotiate the contract if it proves that the change could not reasonably have been foreseen or influenced by it and that it occurred after the conclusion of the contract or became known to the party concerned after the conclusion of the contract. The exercise of this right does not entitle the party concerned to postpone performance.

(2) The right under paragraph 1 does not arise if the party concerned has assumed the risk of a change of circumstances.

§ 1766

(1) If the parties fail to agree within a reasonable time, the court may, on the application of either party, order that the obligation under the contract be varied by restoring the balance of the rights and obligations of the parties, or that it be cancelled on the date and on the terms specified in the order. The court shall not be bound by the application of the parties.

(2) The court shall dismiss the application to vary the obligation if the party concerned has not exercised the right to renegotiate the contract within a reasonable time after it should have discovered the change of circumstances; this time limit shall be deemed to be two months.

Contract in favour of a third party

§ 1767

(1) If under the contract the debtor is to perform for a third party, the creditor may require the debtor to perform for it.

(2) The content, nature and purpose of the contract will determine whether and when the third party also acquired a direct right to demand performance. A third party shall be deemed to have acquired such a right if the performance is primarily for its benefit.

(3) The debtor also has a contractual claim against the third party.

§ 1768

If a third party objects to a right acquired under the contract, he is regarded as not having acquired the right to performance. If this does not contradict the content and purpose of the contract, the creditor may claim performance for himself.

§ 1769

Contract for the performance of a third person

When a person undertakes to procure for another party that a third party will perform for him, he binds himself by inducing the third party to give the agreed performance. However, if one undertakes that the third party will perform what has been agreed, he indemnifies the creditor for the loss suffered by the creditor if performance does not take place.

Section 6

Special manners of concluding a contract

§ 1770

The provisions on offer and acceptance of offer apply *mutatis mutandis* to cases where the parties agree on a different procedure for the conclusion of the contract.

§ 1771

Auction

(1) At auction, the contract is sealed by bidding.

(2) A bid already made is cancelled if a higher bid is made or if the auction is closed otherwise than by a knock-in.

Public competition for the best bid

§ 1772

Whoever puts out a competition for the most advantageous tender to undefined persons is thereby inviting tenders.

§ 1773

The tendering authority shall specify in writing, at least in general terms, the subject-matter and the principles of the other contents of the intended contract on which it insists, and shall specify the manner of submission of tenders and the time limit within which tenders may be submitted, as well as the time limit for notification of the successful tender. It shall publish the content of the tender conditions in an appropriate manner.

§ 1774

The tenderer may not modify the published terms and conditions of the competition or cancel the competition unless it has reserved this in the terms and conditions of the competition. It shall publish the amendment or cancellation in the same manner as it published the terms and conditions of the competition.

§ 1775

(1) The tenderer shall include a tender in the competition if its content corresponds to the published terms and conditions of the competition. The tender may deviate from them only to the extent permitted by the conditions of the competition.

(2) A tender submitted after the deadline set out in the tender conditions may not be included in the competition.

(3) The proposer shall be entitled to reimbursement of costs associated with participation in the competition, if the terms of the competition so allow.

§ 1776

(1) Unless otherwise specified in the conditions of the competition, a tender cannot be withdrawn after the deadline specified in the conditions of the competition for the submission of tenders.

(2) The terms of the tender may provide that the tender may be amended or supplemented; however, any amendment or supplement to the tender made after the expiry of the time limit specified in the terms of the tender for the submission of tenders shall be disregarded. Correction of errors in the preparation of the tender may be made at any time, unless the conditions of the competition so exclude.

§ 1777

(1) The tenderer shall select the most advantageous of the tenders and announce its acceptance in the manner and within the time specified in the conditions of the competition.

(2) If no method of selecting a tender is specified in the conditions of competition, the tenderer is entitled to select the tender which best suits him.

§ 1778

(1) The tenderer shall accept the tender selected according to § 1777. If it notifies the accepting party of the acceptance of the offer after the deadline specified in the terms of the tender, the contract shall not be concluded unless the selected proposer informs the procuring entity without undue delay that it rejects the acceptance of the offer as late.

(2) The procuring entity may reject all bids submitted if it has reserved this right in the terms of the competition.

§ 1779

The tenderer shall, without undue delay after the end of the competition, notify the unsuccessful tenderers that their tenders have been rejected.

Public offer

§ 1780

(1) A public offer is an expression of intent by which a proposer addresses an unspecified person with a proposal to enter into a contract.

(2) A solicitation that does not imply an intention to enter into a specific contract or that does not have the requisites under § 1732(1) is deemed to be an invitation to tender.

§ 1781

A public tender may be revoked if the proponent has published the revocation before the acceptance of the public tender in the manner in which the public tender was published.

§ 1782

(1) On the basis of the public offer, the contract shall be concluded with the one who first notifies the offeror in due time and in accordance with the public offer that he accepts the public offer. If several persons accept the public offer at the same time, the contract shall be concluded with the one chosen by the proposer.

(2) If the public offer does not specify a time limit for acceptance, the time limit appropriate to the nature of the public offer shall apply.

§ 1783

(1) The proposer shall notify the recipient of the conclusion of the contract without undue delay after the acceptance of the public offer. It shall notify the others that they have not been successful.

(2) If the proposer confirms to the beneficiary the conclusion of the contract later than the time specified in [paragraph 1](#), the contract shall not be concluded if the beneficiary refuses to conclude the contract without undue delay after having received the proposer's confirmation of the conclusion of the contract.

§ 1784

(1) If the public offer expressly so specifies, the contract shall be concluded with a certain number of persons, or with all those who have accepted the public offer within the time limit specified in [§ 1782](#).

(2) If the proponent fails to comply with the notification requirement, it is bound by all acceptances of the public offering whose originators it failed to notify of the outcome.

Section 7

Preliminary contract

§ 1785

Basic Provisions

By a forward contract, at least one party undertakes to enter into a forward contract, the contents of which are agreed in at least a general manner, upon notice within an agreed period of time, otherwise within one year.

§ 1786

The obligated party shall be obligated to enter into the contract without undue delay after being called upon to do so by the authorized party in accordance with the forward contract.

§ 1787

(1) If the obligated party fails to perform the obligation to enter into the contract, the authorized party may request that the court or a person designated in the contract determine the contents of the future contract. If that person fails or refuses to determine the content of the future contract within a reasonable time, the obligor may apply to the court to determine it.

(2) The content of the future contract shall be determined by reference to the purpose which the conclusion of the future contract appears to serve. In doing so, it shall be based on the proposals of the parties and shall take into account the circumstances in which the future contract was concluded, as well as the need for a fair arrangement of the rights and obligations of the parties.

§ 1788

(1) If the authorized party fails to call upon the obligated party to enter into the contract in a timely manner, the obligation to enter into the future contract is extinguished.

(2) If the circumstances on which the parties apparently relied in creating the obligation under the future contract change to the extent that the obligated party cannot reasonably be required to enter into the contract, the obligation to enter into the future contract is extinguished. If the obligated party fails to notify the beneficiary of the change of circumstances without undue delay, the obligated party shall indemnify the beneficiary for the resulting damage.

Volume 3

Content of obligation

General Provisions

§ 1789

Under an obligation, the debtor is obliged to give something, do something, refrain from doing something, or endure something, and the creditor is entitled to require him to do so.

§ 1790

An obligation cannot be changed without the agreement of the creditor and debtor, unless the law provides otherwise.

§ 1791

(1) The creation and continuance of an obligation is not prevented unless the ground on which the debtor is obligated to perform is expressed; however, the creditor has the burden of proving the ground of the obligation.

(2) If the obligation is an obligation under a security, the creditor does not prove the reason for the obligation unless the law specifically so provides.

§ 1792

Consideration for a performance

(1) Where the contract implies an obligation on the part of the parties to provide and accept performance for consideration, without any agreement as to the amount of the consideration or the manner in which the amount is to be determined, the consideration shall be deemed to have been agreed at the amount customary at the time and place of the conclusion of the contract. If the amount of the consideration cannot be determined in this way, the court shall determine it by taking into account the content of the contract, the nature of the performance and the customary practice.

(2) If the consideration was agreed in contravention of the law on prices, the consideration agreed shall be that which is permissible under that law.

Lesion

§ 1793

(1) Where the parties undertake to perform to each other and the performance of one party is grossly disproportionate to that given by the other, the party who has been shortchanged may claim rescission of the contract and restitution of everything unless the other party makes good what he has been shortchanged, having regard to the price customary at the time and place of the contract. This does not apply if the disproportionate performance is based on a fact of which the other party did not know or ought not to have known.

(2) Paragraph 1 does not apply in the case of a purchase on a commodity exchange, in a transaction in an investment instrument under any other law, in an auction or in a manner equivalent to a public auction, or in the case of a wager or gamble, or in a settlement or novation, if honestly made.

§ 1794

(1) The right under § 1793 does not arise if the reason for the disproportionate performance arises from a special relationship between the parties, in particular if the party shortchanged had the intention to perform partly for consideration and partly gratuitously, or if the amount of the shortfall can no longer be ascertained.

(2) The right under § 1793 does not arise even if the shortened party has expressly waived it and declared that he accepts the performance at an extraordinary price out of special consideration, or if he has agreed to an excessive price, although the actual price of the performance was or must have been known to him.

§ 1795

The right under § 1793 lapses if not exercised within one year of the conclusion of the contract.

§ 1796

Lichva

A contract is void if, in entering into it, one takes advantage of the distress, inexperience, weakness of mind, agitation, or recklessness of the other party and promises or gives to himself or another a performance the property value of which is grossly disproportionate to the consideration.

§ 1797

An entrepreneur who has entered into a contract in the course of his business has no right to claim rescission of the contract under § 1793(1), nor can he claim that the contract is void under § 1796.

Contracts of adhesion

§ 1798

(1) The provisions on contracts made by adhesion apply to any contract whose essential terms have been determined by or under the direction of one of the parties to the contract without the weaker party having had a real opportunity to influence the content of those essential terms.

(2) Where a contract form used in the course of trade or other similar means is used to conclude a contract with the weaker party, the contract shall be deemed to have been concluded by adhesion.

§ 1799

A clause in a contract made by adhesion which refers to terms and conditions outside the actual text of the contract is valid if the weaker party was aware of the clause and its meaning or if it is shown that the meaning of the clause must have been known to him.

§ 1800

(1) If a contract made by adhesion contains a clause which can only be read with special difficulty or a clause which is incomprehensible to a person of average intelligence, the clause is valid if it does not cause prejudice to the weaker party or if the other party proves that the meaning of the clause was sufficiently explained to the weaker party.

(2) If a contract concluded by adhesion contains a clause which is particularly disadvantageous to the weaker party without reasonable cause, in particular if the contract deviates seriously and without special reason from the usual terms and conditions agreed in similar cases, the clause is void. If the equitable arrangement of the rights and obligations of the parties so requires, the court shall decide *mutatis mutandis* in accordance with § 577.

§ 1801

If the parties deviate from § 1799 or 1800 or exclude any of these provisions, they shall be disregarded. This does not apply to contracts concluded between entrepreneurs unless a party proves that a clause outside the actual text of the contract and proposed by the other party is grossly contrary to commercial practice and the principle of fair dealing.

Interests

§ 1802

If interest is to be paid and the amount is not agreed, the debtor shall pay interest at the rate provided by law. If interest is not so fixed, the debtor shall pay the usual interest required for loans granted by banks in the place where the debtor resides or has his registered office at the time of conclusion of the contract.

§ 1803

It is understood that the agreed amount of interest relates to an annual period.

§ 1804

Interest is payable in the same currency as the principal debt (principal).

§ 1805

(1) If the period for payment of interest is not agreed, interest is paid with the principal, and if the principal is due more than one year later, interest is paid annually in arrears.

(2) A creditor who, without reasonable cause, delays in asserting his right to payment of a debt so that the interest is as much as the principal, forfeits the right to claim further interest. However, he is entitled to further interest from the date on which he claims the right in court.

§ 1806

Interest may be claimed if agreed. If the claim is for an unlawful act, interest may be claimed from the date on which the claim was brought before the court.

§ 1807

Advance payment

It is understood that what one party has given to the other before the contract is made is a deposit.

Earnest

§ 1808

(1) If an advance has been agreed, it is required to be handed over no later than the conclusion of the contract. The earnest money confirms the conclusion of the contract and the party giving the earnest money gives security that he will perform the debt.

(2) If the debt is not discharged for cause on the part of the party who gave the earnest money, the other party may retain the earnest money. If that party has given an advance, he has the right to demand either that twice as much be delivered to him or that the debtor perform the debt or, if performance of the debt is no longer possible, damages.

§ 1809

If a party has given an advance and at the same time a right to rescind has been agreed upon, without separately agreeing on a severance payment, the advance shall be deemed to be severance pay. If the party who has given the advance withdraws from the contract, he shall lose the right to its return; if the party who has accepted the advance withdraws, he shall give the other party twice as much.

Volume 4

Provisions on obligations arising from contracts concluded with consumers

Section 1

General provisions

§ 1810

The provisions of this Part shall apply to contracts concluded by a business with a consumer (hereinafter referred to as "consumer contracts") and to obligations arising therefrom.

§ 1811

(1) All communications to the consumer must be made by the trader clearly and understandably in the language in which the contract is concluded.

(2) Where the parties' conduct is directed towards the conclusion of the contract and those facts are not apparent from the context, the trader shall communicate to the consumer well in advance of the conclusion of the contract or before the consumer makes a binding offer

a) the details of his identity, registered office address, telephone number and, if any, address for the delivery of electronic mail,

b) the designation of the goods or services and a description of their main characteristics to the extent appropriate to the means of communication used and the nature of the goods or services,

- c)** the total price of the goods or services, including all taxes, charges and other similar pecuniary benefits, and, where the nature of the goods or services does not permit that price to be reasonably determined in advance, the method of calculating it,
 - d)** the method of payment, the manner and time of delivery or performance and, where applicable, the rules for dealing with complaints,
 - e)** the cost of delivery and, if that cost cannot be determined in advance, an indication that it may be charged in addition,
 - f)** an indication of the existence of rights arising from defective performance and, where applicable, of the quality guarantee, after-sales service and their conditions,
 - g)** an indication of the duration of the commitment and the conditions for terminating the commitment, if the contract is to be concluded for an indefinite period or if the commitment is to be automatically extended,
 - h)** details of the functionality of the digital content, the digital content service and the thing with digital characteristics, including technical protection measures, and
 - i)** data on the ability of the digital content, digital content service and digital object to function in conjunction with the technical and software equipment normally used with the digital content, digital content service and digital object of the same kind, without the need to convert them (compatibility), or with technical and software equipment other than those normally used with digital content, digital content services and things with digital characteristics of the same kind (interoperability), which are known or could reasonably be expected to be known to the undertaking.
- (3)** The provisions of [paragraph 2](#) do not apply to the contract
- a)** concluded for the purpose of dealing with matters of daily life, if mutual performance is to take place immediately after its conclusion,
 - b)** of a tour,
 - c)** of a financial service,
 - d)** on the transportation of a person,
 - e)** about temporary use of accommodation and other recreational services under [§ 1852](#).

§ 1812

- (1)** If the content of the contract can be interpreted in different ways, the interpretation most favourable to the consumer shall apply.
- (2)** Arrangements which deviate to the detriment of the consumer from the provisions of the law established for the protection of the consumer shall be disregarded. This applies even if the consumer waives a special right granted by law.

Abusive arrangements

§ 1813

- (1)** Abusive arrangements are those which, contrary to the requirement of fairness, create a significant imbalance of rights or obligations between the parties to the detriment of the consumer. This does not apply to arrangements on the main subject matter of the obligation or to the assessment of the adequacy of the consideration, provided that they are provided to the consumer in a clear and comprehensible manner.
- (2)** The abusive nature of the arrangement shall be assessed, in particular, having regard to the nature of the subject matter of the obligation, to the other contractual arrangements and to all the circumstances surrounding the conclusion of the contract, as well as to arrangements contained in another contract on which the arrangement depends.

§ 1814

- (1)** Abusive are always arrangements which

- a)** exclude or restrict the consumer's rights of defective performance or to compensation for injury,
- b)** oblige the consumer to perform, while the entrepreneur becomes obliged to perform by fulfilling a condition dependent on his will,
- c)** allow the entrepreneur not to deliver to the consumer what the consumer has delivered to the entrepreneur, even if the consumer fails to enter into the contract or perform the obligation, without the consumer being entitled to reasonable compensation if the entrepreneur fails to enter into the contract or perform the obligation,
- d)** give the entrepreneur the right to withdraw from the contract without cause, whereas the consumer does not,
- e)** allow the entrepreneur, if he terminates the obligation of his own volition, to retain the monies paid for the performance he has not yet provided,
- f)** bind the consumer irrevocably to perform on terms which he had no opportunity to know before entering into the contract,
- g)** permit the entrepreneur to alter the rights or obligations of the parties at will,
- h)** allow the trader to increase the price without the consumer having the right to withdraw from the contract if the price is substantially increased,
- i)** automatically extend the obligation if the end of the period for refusing the extension is unreasonably remote from the date on which the extension is due to occur,
- j)** allow the entrepreneur to determine whether the goods or services are in accordance with the contract or confer on him the exclusive right to interpret any contractual term,
- k)** restrict the obligations of the entrepreneur to which his agents have bound him or make them subject to compliance with a special condition,
- l)** impose a disproportionate penalty on the consumer in the event of a breach of the obligation,
- m)** exclude or restrict the consumer's right to bring an action or other procedural remedy, restrict the means of proof available to the consumer, or impose on the consumer the obligation to prove facts which the law requires the trader to prove,
- n)** deprive the consumer of his or her right to determine which obligation is to be discharged in priority by the performance provided,
- o)** obligate the consumer to perform an obligation to the entrepreneur even if the entrepreneur fails to perform the obligation to the consumer, or
- p)** allow the trader to assign the contract if this may lead to a deterioration in the consumer's position.

(2) Arrangements that are considered abusive are

- a)** give the entrepreneur the right to terminate the obligation without good cause without giving reasonable notice,
- b)** defer the determination of the price until the time of performance, or
- c)** exclude or restrict the consumer's right against the trader in the event of a default by the trader, including the possibility of set-off of the consumer's claim against the trader's claim.

§ 1815

An abusive arrangement is disregarded unless invoked by the consumer.

§ 1816

If a business has supplied something to a consumer without an order and the consumer has taken possession, the consumer is viewed as an honest possessor. The consumer does not have to return anything to the trader at his own expense or notify him of this.

§ 1817

The trader must not require the consumer to make any payment in excess of that which the consumer is obliged to pay under the main contractual obligation unless the consumer has given his express consent to that additional payment before the conclusion of the contract. Explicit consent cannot be inferred from a prearranged set-up which the consumer would have to reject.

§ 1818

Where a consumer has a right of withdrawal under the provisions of this Part, the consumer is not required to state a reason and no penalty may be attached to the right of withdrawal. If the consumer exercises the right of withdrawal under this Part, the withdrawal period shall be deemed to be maintained if, during the withdrawal period, the consumer sends the trader notice that he is withdrawing from the contract.

§ 1819

The textual form is preserved if the data are provided on a document or other durable medium which enables the addressee to preserve the data addressed to him in such a way that they can be used for a period proportionate to their purpose and which allows their unaltered reproduction.

Section 2**Concluding distance contracts and obligations arising from contracts negotiated away from business premises****Subsection 1****General provisions****§ 1820****Communications made before the conclusion of a contract**

(1) Where the parties' conduct is directed towards the conclusion of a contract and where the trader uses exclusively at least one means of communication which enables the contract to be concluded without the simultaneous physical presence of the parties (hereinafter referred to as a "means of distance communication"), or where such conduct is directed towards the conclusion of a contract outside the trader's usual place of business, the trader shall communicate to the consumer well in advance of the conclusion of the contract or before the consumer makes a binding offer,

- a)** details of the main characteristics of the goods or services to the extent appropriate to the means of distance communication used and the nature of the goods or services,
- b)** particulars of their identity,
- c)** the registered office address, telephone number and address for the delivery of electronic mail, and, where applicable, details of any other means of online communication which the trader also provides for the purpose of rapid and efficient communication and which enables the consumer to retain written communication with the trader in text form, including the date and time of the communication; where the trader is acting on behalf of another trader, details of the identity and registered office of the trader,
- d)** the address of the establishment, if different from the registered office, and, where the trader is acting on behalf of another trader, the address to which the consumer may send a complaint,
- e)** the total price and delivery costs in accordance with § 1811(2)(c) and (e); in the case of a contract of indefinite duration or a contract the subject of which is a recurring performance, it shall also communicate this figure for a single billing period, which is always one month, provided that the price is fixed,

- f)** an indication of the adaptation of the price to the consumer's personality on the basis of automated decision-making, if the price has been so adapted,
- g)** the cost of the means of distance communication, if different from the base rate,
- h)** the method of payment, the method and time of delivery or performance and, where applicable, the rules for dealing with complaints,
- i)** the conditions, time limit and procedure for exercising the right of withdrawal, as well as a model form for withdrawal, where this right can be exercised; the details of the model form shall be laid down in the implementing legislation,
- j)** an indication that, in the event of withdrawal, the consumer shall bear the costs of returning the goods and, in the case of a contract concluded by means of distance communication, the amount of the costs of returning the goods if, due to their nature, they cannot be returned by the usual postal method,
- k)** an indication, that, where the consumer withdraws from the contract after having already submitted a request for commencement of performance during the withdrawal period under [§ 1824a\(3\)](#) or under [§ 1828\(5\)](#), the consumer must provide the trader with a refund under [§ 1834](#),
- l)** an indication that the consumer does not have a right to withdraw from the contract if this is the case, or an indication of the conditions under which the consumer's right of withdrawal will cease,
- m)** an indication of the existence of rights arising from defective performance and, where applicable, of the quality guarantee, after-sales service and their conditions,
- n)** an indication of the code of conduct, if the trader has undertaken to comply with it in relation to any business practice or sector of his business, and how a copy of it may be obtained,
- o)** an indication of the duration of the commitment and the conditions for termination of the commitment if the contract is to be for an indefinite period or if the commitment is to be automatically renewed,
- p)** the shortest period of time for which the consumer's obligations under the contract will continue, if the contract is to be determined by the contract,
- q)** an indication of the obligation to pay a deposit or similar payment, if required, and its terms,
- r)** details of functionality, compatibility and interoperability in accordance with [§ 1811\(2\)\(h\)](#) and [\(i\)](#), and
- s)** an indication of the existence, method and conditions of out-of-court settlement of consumer disputes, including whether a complaint may be made to a supervisory or state oversight authority.

(2) The trader shall also comply with the obligation to disclose the information referred to in [paragraphs 1\(i\) to 1\(k\)](#) if he provides the consumer with a completed model notice on the possibility of withdrawing from the contract, the particulars of which are laid down in the implementing legislation.

(3) If the contract is to be concluded at a public auction under another law at which the consumer may be physically present, the information on the entrepreneur under [paragraphs 1\(b\) to \(d\)](#) may be replaced by information on the auctioneer.

§ 1821

Unless the trader has disclosed to the consumer details of other taxes, charges and other similar monetary benefits or costs, which the consumer is liable to pay under [§ 1820\(1\)\(e\)](#) or [\(j\)](#), the consumer is not liable to pay those taxes, charges, other similar monetary benefits or costs to the trader.

§ 1822

Contract Content

The information about the content of the commitment that the entrepreneur has communicated to the consumer before the conclusion of the contract becomes the content of the contract, unless the parties have expressly agreed otherwise on a particular detail.

Contracts concluded at a distance

§ 1824

(1) Where a contract is negotiated by means of distance communication, the trader shall communicate to the consumer the information referred to in § 1820(1) or make it available to the consumer in a manner appropriate to the means of distance communication used. Data provided in text form must be legible.

(2) If the means of distance communication does not allow the consumer to provide all the data, the consumer shall receive at least the data referred to in § 1820(1)(a) before the conclusion of the contract, (b), (e), (i) and (o) except for the model withdrawal form. The other information, including the model withdrawal form, shall be communicated by the trader to the consumer in an appropriate manner in accordance with paragraph 1.

§ 1824a

(1) The trader shall issue the consumer with a confirmation of the concluded contract in text form within a reasonable time after the conclusion of the contract, but at the latest at the time of delivery of the goods or before he starts to provide the service. The confirmation must contain the information referred to in § 1820(1), unless the trader has already provided it to the consumer in text form before the conclusion of the contract.

(2) Where the subject of the undertaking is the provision of digital content that is not delivered on a tangible medium, the acknowledgement shall also contain a statement that the consumer expressly consents to the commencement of performance before the expiry of the withdrawal period and that the consumer acknowledges that by giving his consent his right to withdraw from the contract under § 1837(l) ceases.

(3) If the subject of the undertaking is the provision of a service or the supply of water, gas or electricity which is not sold in a limited volume or quantity or district heating for consideration, the undertaking shall only commence performance within the withdrawal period at the express request of the consumer; the trader shall draw the consumer's attention to this and shall inform the consumer that the provision of the performance shall extinguish the consumer's right of withdrawal under § 1837(a).

§ 1825

Special provisions for contracting by telephone

(1) Where a trader contacts a consumer orally by telephone or similar device, the trader shall tell the consumer at the beginning of each call the business purpose of the call and details of his identity and, if he is telephoning on behalf of another person, details of his identity.

(2) An offer made during a call under paragraph 1 shall be confirmed by the trader to the consumer in text form without undue delay. The consumer is bound by the offer only after he has given his consent electronically or by signing the confirmation of the offer on a document.

Special provisions on the conclusion of contracts by electronic means

§ 1826

(1) When using electronic means, the entrepreneur shall also provide the data

a) whether the concluded contract will be stored by him and whether he will allow the consumer access to it,

- b)** of the languages in which the contract may be concluded,
- c)** on the various technical steps leading to the conclusion of the contract; and
- d)** on the possibilities of detecting and correcting errors arising from data entry prior to placing an order.

(2) Before placing an order, when using electronic means, the consumer must be allowed to check and change the input data he has entered in the order.

(3) Paragraphs 1 and 2 do not apply where the contract is concluded exclusively by exchange of electronic mail or similar individual communication.

§ 1826a

(1) Where a contract for consideration is concluded by electronic means, the trader shall notify the consumer immediately before he places the order, in a clear and conspicuous manner on the particulars referred to in § 1820(1)(a), (e), (o) and (p).

(2) The trader shall ensure that the consumer expressly acknowledges when placing the order that he is committing himself to payment. Where the order is made by means of a button or similar control, they shall be marked with the words "Order committing to payment" or other appropriate unambiguous wording in an easily legible manner. If the trader fails to comply with this obligation, the contract shall be void unless the consumer invokes it.

§ 1827

(1) If the consumer places an order by means of any means of distance communication, the trader is obliged to acknowledge receipt of the order without delay by means of any means of distance communication; this does not apply where the contract is concluded exclusively by exchange of electronic mail or similar individual communication.

(2) If the contract is concluded by electronic means, the trader shall provide the consumer with the text of the general terms and conditions in addition to the text of the contract in text form.

§ 1828

Special provisions on obligations arising from contracts negotiated away from business premises

(1) Where a contract is negotiated outside the business premises customary for the business of the entrepreneur in the simultaneous physical presence of the entrepreneur and the consumer, the entrepreneur shall provide the consumer with the information required by § 1820(1) in legible form on the deed; in other textual form only if the consumer agrees to it.

(2) A contract concluded outside the business premises of the trader is also deemed to be a contract concluded

a) on the premises customary for the entrepreneur's business or by means of a means of distance communication, if the conclusion of the contract took place immediately after the entrepreneur addressed the consumer outside the business premises,

b) during a trip organised by the entrepreneur for the purpose or with the effect of promoting and selling goods or services, or

c) following an offer made by a consumer outside the business premises of the entrepreneur in the simultaneous physical presence of the entrepreneur and the consumer.

(3) The entrepreneur shall give the consumer a copy of the contract or a confirmation of the contract on paper; in other textual form only if the consumer agrees.

(4) If the subject of the undertaking is the provision of digital content that is not delivered on a tangible medium, the entrepreneur shall also issue the consumer with a confirmation that the consumer expressly consents to the commencement of performance before the expiry of the withdrawal period and that he acknowledges that his right to withdraw from the contract under § 1837(l) is extinguished by giving his consent.

(5) If the subject of the undertaking is the provision of a service or supply of water, gas or electricity which is not sold in a limited volume or quantity or district heating for consideration, the undertaking shall only commence performance within the withdrawal period at the express request of the consumer in text form; the trader shall draw the consumer's attention to this and inform the consumer that the provision of the performance shall extinguish the consumer's right of withdrawal under § 1837(a).

Withdrawal from contract

§ 1829

(1) A consumer may withdraw from a distance contract or an off-premises contract within 14 days. Unless otherwise specified below, the period shall end on the expiry of 14 days from the date of conclusion of the contract.

(2) If the subject of the obligation is the purchase of goods, the period ends on the expiry of fourteen days from the day on which the consumer or a third party designated by him, other than the carrier, takes delivery of the goods, or

- a)** the last item of goods if the consumer orders more than one item of goods in a single order which are delivered separately,
- b)** the last item or part of a supply of goods consisting of several items or parts, or
- c)** the first delivery of the goods if the contract provides for the regular delivery of the goods over an agreed period of time.

(3) If the subject matter of the obligation is the supply of water, gas or electricity not sold in a limited volume or quantity, district heating or the provision of digital content not supplied on a tangible medium, the period ends on the expiry of 14 days from the date of conclusion of the contract.

(4) If the consumer has not been advised of the right to withdraw from the contract under § 1820(1)(i), he may withdraw from the contract within one year from the date of expiry of the period under paragraph 1, 2 or 3. Where the trader has advised the consumer of the right to withdraw from the contract within one year of the date specified in paragraph 1, 2 or 3, the withdrawal period expires on the expiry of 14 days from the date on which the consumer received the advice.

§ 1829a

For the withdrawal from a contract concluded outside business premises during a trip organised by an entrepreneur for the purpose or with the effect of promoting and selling goods or services, or when the entrepreneur makes an unsolicited visit to the consumer's home, a period of thirty days applies instead of the fourteen-day period under § 1829.

§ 1830

(1) The consumer may withdraw from the contract by any unequivocal statement made to the business.

(2) If the trader allows the consumer to withdraw by completing and submitting a model withdrawal form on the website, the trader shall confirm receipt of the withdrawal form to the consumer in text form without undue delay.

§ 1831

(1) Where the consumer withdraws from the contract, he shall send or hand over to the trader the goods he has received from the trader without undue delay, and at the

latest within 14 days of withdrawal, unless the trader has offered to collect the goods himself. The time limit is maintained if the consumer sends the goods before the expiry of the time limit.

(2) The trader may only require the consumer to pay under § 1832(2), § 1833 or 1834.

(3) Where the subject matter of the contract is the provision of digital content or a digital content service, the provisions of § 2389o shall apply mutatis mutandis.

§ 1832

(1) If the consumer withdraws from the contract, the trader shall without undue delay, and no later than 14 days after the withdrawal, refund to the consumer all monies, including delivery costs, received from him under the contract in the same manner. The trader shall only reimburse the consumer in another way if the consumer has agreed to this and if no further costs are incurred by the trader in doing so.

(2) If the consumer has chosen a method of delivery other than the cheapest method of delivery offered by the trader, the trader shall reimburse the consumer for the cost of delivery of the goods in an amount equivalent to the cheapest method of delivery offered.

(3) The trader shall reimburse the consumer for the costs of returning the goods if the trader has not advised the consumer of the obligation to bear those costs in accordance with § 1820(1)(j).

(4) If the consumer withdraws from the contract of sale, the business is not obliged to return the monies received to the consumer before it receives the goods or the consumer proves to it that it has sent the goods back, whichever is the earlier.

(5) Where the subject matter of the contract is the provision of digital content or a digital content service, the provisions of § 2389n apply mutatis mutandis.

§ 1833

The consumer shall only be liable to the trader for any diminution in the value of the goods resulting from the handling of the goods other than that necessary to acquaint him with the nature, characteristics and functionality of the goods. This does not apply if the trader has failed to disclose to the consumer the information required by § 1820(1)(i).

§ 1834

Where a consumer withdraws from a contract the subject matter of which is the provision of services or the supply of water, gas or electricity not sold in a limited volume or quantity or district heating heat, and the undertaker has commenced performance at the express request of the consumer before the expiry of the withdrawal period, the undertaker shall reimburse the consumer a proportionate part of the agreed price for the performance provided up to the time of withdrawal. If the agreed price is unreasonably high, the consumer shall reimburse the entrepreneur the normal price of what has been provided.

§ 1835

The trader shall take delivery of the goods from the consumer at the consumer's home at the consumer's expense if the consumer withdraws from a contract concluded outside the trader's usual place of business, the goods were delivered to the consumer's home at the time the contract was concluded and the nature of the goods does not permit dispatch by the usual postal route.

§ 1836

If the consumer withdraws from the contract, he shall not bear any costs if the contract

- a) the subject matter of which is the provision of services or the supply of water, gas or electricity not sold in a limited volume or quantity or district heating heat and the undertaker has failed to provide the consumer with the information referred to in § 1820(1)(i) and (k), or where the trader has begun performance before the expiry of

the withdrawal period, although the consumer has not expressly requested it under § 1824(3) or § 1828(5), or

b) for the supply of digital content if it has not been supplied on a tangible medium and the trader has supplied it before the expiry of the withdrawal period, although the consumer has not expressly requested or acknowledged this, that his right of withdrawal will expire, or the trader has failed to provide the consumer with confirmation in accordance with § 1824a(1) and 2 or § 1828(3) and 4.

§ 1836a

(1) If the consumer withdraws from the contract, the obligations under all ancillary contracts cease at the same time as the obligation under the main contract at no cost to the consumer, except for payments under § 1832(2), § 1833 and 1834.

(2) An ancillary contract under paragraph 1 is a contract the subject matter of which is a performance related to the performance provided under the main contract, and that performance is provided by the entrepreneur or a third party pursuant to an arrangement between them.

§ 1837

The consumer cannot withdraw from the contract

a) on the provision of services if they have been provided in full; in the case of a performance for consideration, only if it has begun with the consumer's prior express consent before the expiry of the withdrawal period and the entrepreneur has instructed the consumer before the conclusion of the contract that the provision of the performance extinguishes the right to withdraw from the contract,

b) the supply of goods or services whose price depends on financial market fluctuations independent of the entrepreneur's will and which may occur during the withdrawal period,

c) for the supply of alcoholic beverages, the price of which was agreed at the time of the conclusion of the contract with the proviso that delivery may not take place until after the expiry of thirty days and the actual value of which depends on market fluctuations independent of the entrepreneur's will,

d) on the supply of goods made to the consumer's requirements or adapted to his personal needs,

e) on the supply of perishable goods or goods with a short shelf life, as well as goods which, by their nature, have been irretrievably mixed with other goods after delivery,

f) of urgent repair or maintenance to be carried out at a place designated by the consumer at his express request; this does not apply, however, to the carrying out of repairs other than those requested or the supply of goods other than spare parts necessary for the carrying out of the repair or maintenance,

g) on the supply of goods in sealed packaging which, for reasons of health or hygiene, are not suitable for return after having been broken by the consumer,

h) on the supply of an audio or visual recording or computer program in sealed packaging where the consumer has breached it,

i) on the supply of newspapers, periodicals or magazines, other than subscription contracts for their supply,

j) for accommodation, carriage of goods, hire of a means of transport, catering or use of leisure time if the contract is to be performed on a specific date or within a specific period,

k) entered into pursuant to a public auction under any other law at which the consumer may be physically present, or

l) for the supply of digital content that is not delivered on a tangible medium after performance has begun; in the case of a performance for consideration, where the performance has begun with the prior express consent of the consumer before the expiry of the withdrawal period, the consumer has been informed that the right to withdraw from the contract is thereby extinguished, and the trader has provided him with confirmation in accordance with § 1824a(1) and 2 or § 1828(3) and 4.

Common Provisions

§ 1838

The provisions of this subsection relating to goods shall apply to the provision of digital content that is delivered on a tangible medium.

§ 1839

In case of doubt, the trader must prove that he has communicated to the consumer the information which he is required to communicate under this subsection.

§ 1840

The provisions of this subsection shall not apply to the contract

- a)** the subject matter of which is the provision of social services, social housing, child care and support to persons who are permanently or temporarily in an emergency situation,
- b)** the object of which is the provision of health care,
- c)** the subject matter of which is a wager, game, or lottery ticket,
- d)** the subject matter of which is the creation, transfer or extinction of a right in immovable property and the rental of a dwelling or house,
- e)** the subject matter of which is the construction of a new building and substantial alteration of a building,
- f)** of a financial service,
- g)** on the supply of food, drink or other goods of current consumption which are physically delivered by the business to the consumer's home, residence or place of work by way of frequent and regular deliveries,
- h)** of the transportation of a person other than § 1817 and 1826a,
- i)** closed when using vending machines or automated vending machines,
- j)** concluded with a provider of a publicly available electronic communications service through a payphone for the purpose of using it or concluded for the purpose of a single connection of the consumer by telephone, fax or internet,
- k)** for the temporary use of accommodation and other recreational services under § 1852,
- l)** on a tour except § 1825 and 1826a, or
- m)** of the purchase of goods pursuant to a judgment or other court order.

Subsection 2

Financial Services

§ 1841

Financial services contract means any consumer contract relating to banking, credit, payment or insurance services, a contract relating to superannuation, currency exchange, the issue of electronic money and a contract relating to the provision of an investment service or a transaction in an investment instruments market.

§ 1842

(1) The provisions of this subsection shall apply to a financial service contract and to the rights and obligations arising therefrom where a means of distance communication has been used exclusively to conclude the contract.

(2) However, if, on the basis of a contract referred to in [paragraph 1](#), further contracts of the same or similar nature are concluded which are successive in time, the provisions of this Subsection shall apply only to the first contract; this shall not apply if more than one year has elapsed since the conclusion of the last contract. If, on the basis of a contract referred to in [paragraph 1](#), there is another expression of intent of the same or similar nature, the same procedure shall apply.

§ 1843

Communications made before the conclusion of a contract

(1) The trader shall, sufficiently in advance of the conclusion of the contract or before the consumer makes a binding offer, communicate to the consumer in text form at least

- a)** the information set out in [§ 1811\(2\)\(a\), \(b\), \(d\)](#) and [§ 1820\(1\)\(g\) and \(p\)](#),
- b)** the main object of its business,
- c)** the name and location of the authority responsible for the supervision or state supervision of the activities of the entrepreneur, if the business is conducted under a permit,
- d)** the total price of the service provided, including all taxes, charges and other similar monetary benefits paid through the entrepreneur and other related costs; where the exact total price cannot be determined in advance, any information on how the final price was calculated to enable the consumer to verify that price,
- e)** details of other taxes or costs not paid or collected through the entrepreneur,
- f)** possible risks beyond the control of the entrepreneur associated with the financial service provided, including a disclaimer, if applicable, that past returns do not guarantee future returns,
- g)** advice on the possibility or impossibility of withdrawing from the contract under [§ 1846](#), including advice on the time limits for exercising the right to withdraw, the terms and conditions, under which it may be exercised, the amount that the consumer may be required to pay under [§ 1849](#), as well as the consequences of not exercising the right of withdrawal,
- h)** practical instructions for exercising the right of withdrawal, including the address of the place to which the notice of withdrawal should be sent,
- i)** advice on the right of either party to terminate the obligation under the contract early or unilaterally on the basis of the terms of the contract, including advice on any penalties,
- j)** an indication of the Member State or Member States of the European Union whose legislation the trader takes as a basis for establishing the relationship with the consumer prior to the conclusion of the contract,
- k)** an indication of the contractual clause on the applicable law and the jurisdiction of the court in the event of a dispute arising out of the contract,
- l)** an indication of the language or languages in which the trader will deal with the consumer during the duration of the commitment and in which the trader will provide the consumer with the contractual terms and other information,
- m)** an indication of the existence, method and conditions for the out-of-court settlement of consumer complaints, including whether a complaint may be addressed to a supervisory or state oversight authority,
- n)** an indication of the existence of a guarantee fund, and

o) the period of time for which the information provided, including the price information, remains valid.

(2) where the trader is acting through an agent or where the consumer is acting with an intermediary, the particulars referred to in [paragraph 1](#) shall be given together with the particulars referred to in [§ 1811\(2\)\(a\)](#) of the agent or intermediary and the legal basis on which the intermediary is legally acting.

(3) The information provided by the consumer must disclose their business purpose.

§ 1844

(1) The contract concluded must be consistent with the information provided to the consumer before the contract was concluded. If the content of the contract nevertheless differs from that information, this must be communicated to the consumer before the contract is concluded and the changes must be expressly indicated in the contract; otherwise, the information more favourable to the consumer shall prevail as the content of the contract.

(2) The information communicated to the consumer before the conclusion of the contract must be consistent with the information that must be communicated to the consumer under the law applicable to the conclusion of the contract.

§ 1844a

(1) If the business contacts the consumer by telephone, the business purpose of the call and the information used to identify the business must be disclosed to the consumer at the beginning of each call.

(2) If, in a case under [paragraph 1](#), the consumer consents to this, only the identity of the person may be disclosed to the consumer instead of the information set out in [§ 1843\(1\)](#), who is in contact with the consumer and his relationship with the trader, the main characteristics of the financial service and the information set out in [§ 1843\(1\)\(d\)](#), [\(e\)](#) and [\(g\)](#).

(3) The trader shall also, in the case referred to in [paragraph 1](#), inform the consumer that further data are available on request and of the nature of those data. The obligation of the trader to provide the data subsequently under the conditions and to the extent set out in [§ 1845](#) is not affected by this provision.

§ 1844b

Unsolicited Commercial Communications

When a trader contacts a consumer, he may use an automatic telecommunications system or a facsimile machine in communicating with the consumer only with the consumer's prior consent; he may use another means of distance communication enabling individual commercial communications only if the consumer has not refused its use. This procedure must not incur costs for the consumer.

§ 1845

(1) If the contract has been concluded at the consumer's request using means of distance communication which do not allow the communication of the terms and conditions and other information in accordance with [§ 1843](#), the trader shall comply with this obligation immediately after the conclusion of the contract.

(2) If the consumer so requests at any time during the term of the contractual obligation, he has the right to receive the contractual terms and conditions in printed form, as well as the right to change the means of distance communication, provided that this does not conflict with the nature of the services provided or the contract concluded.

Withdrawal from the contract

§ 1846

(1) The consumer shall have the right to withdraw from the contract within 14 days of the conclusion of the contract; however, if the information under § 1843 to 1845 was not communicated to him until after the conclusion of the contract, then within 14 days of the date on which it was communicated to him. The consumer has the right to withdraw from a life insurance or supplementary pension contract within thirty days of being informed by the trader that a distance contract has been concluded.

(2) If the trader has made a misleading representation to the consumer, the consumer has the right to withdraw from the contract within three months of the date on which he became aware of it or should and could have become aware of it.

§ 1847

The provision § 1846 does not apply where

- a)** the price of financial services depends on price movements in financial markets that are beyond the control of the business, such as services for foreign exchange and investment instruments, or
- b)** it is a contract of travel or baggage insurance or similar short-term insurance with a period of insurance of less than one month.

§ 1848

If the financial service contract is linked to another contract, also concluded at a distance, relating to services provided by the entrepreneur, then the withdrawal from the financial service contract also terminates the obligation arising from the linked contract from the outset. This also applies if the performance was provided by a third party under a contract concluded with the entrepreneur.

§ 1849

If the consumer withdraws from the contract, the trader may require the consumer to pay the price immediately only for the service actually provided up to that time; the price must not be disproportionate to the extent of the service provided. However, the right to payment of the price does not arise if the trader has started to perform before the expiry of the withdrawal period under § 1846 without the consumer's consent or if the trader fails to prove that he has informed the consumer of his right to claim the price or a reasonable part thereof on withdrawal in accordance with § 1843(1)(g).

§ 1850

If the consumer withdraws from the contract, the trader shall reimburse the consumer for all monies received from the consumer under the contract without delay, but not later than thirty days from the date of withdrawal. The consumer shall also return to the trader any money or other property received from the trader under the contract no later than 30 days after the date on which the consumer sent the notice of withdrawal.

§ 1851

Unsolicited performance

If a business has performed a financial service for a consumer without an express order, the consumer is not obliged to pay for the performance, nor does any other obligation arise.

Section 3

Timeshare and other holiday services

§ 1852

(1) The provisions of this section apply to a consumer contract which the consumer acquires for consideration

- a)** the right to use an accommodation facility with overnight accommodation for more than one period of time or the right to a benefit associated with the accommodation, including,

where applicable, transport or other services, where such a contract is concluded for a period of more than one year,

b) participation in an exchange system associated with the right to receive benefits under [paragraph \(a\)](#) in exchange for providing another person with the opportunity to exercise his or her similar rights under a contract referred to in [paragraph \(a\)](#), or

c) the right to assist the entrepreneur in the acquisition or transfer for valuable consideration of a right under [letter a\)](#).

(2) The provisions of this section shall apply mutatis mutandis to a contract for a future contract under [paragraph \(1\)](#)

§ 1853

If the duration of the obligation is relevant to the application of the provisions of this section, any provisions allowing the renewal of the contract or the extension of the obligation without the express intention of the contracting party shall be taken into account.

§ 1854

Communications made before the conclusion of a contract

(1) In the context of a bidding or sales event, the entrepreneur shall clearly state the business purpose and nature of the event on the invitation. Throughout the duration of the event, the consumer must have access to the data referred to in [paragraph 2](#).

(2) Before the consumer enters into a contract or undertakes to enter into a contract, the trader shall disclose to the consumer, free of charge, in text form, in a form sufficiently in advance, the particulars which, together with the particulars of the form, shall be laid down in the implementing legislation so that the consumer has easy access to them. The trader shall also explicitly warn the consumer of his right to withdraw from the contract, the length of the withdrawal period and the prohibition on the payment of advances and other benefits or their security during the withdrawal period.

(3) The trader shall communicate the information to the consumer in the official language of the Member State of the European Union in which the consumer resides or of which the consumer is a national, at the consumer's choice.

§ 1855

Contract Form

The contract requires a written form; however, the entrepreneur has no right to argue against the consumer that the contract is invalid for lack of form.

Content of the contract

§ 1856

(1) The contract must state the names of the parties and their residence or registered office, the information disclosed to the consumer before the contract is concluded, as well as the date of conclusion of the contract and the place where the contract was concluded.

(2) The contract shall include a withdrawal form; the entrepreneur shall fill in the information on the form. The details of the form and the list of data shall be laid down in the implementing legislation.

§ 1857

(1) The contract must also include the information communicated to the consumer before its conclusion. These particulars may be changed if the parties expressly agree to do so or if their inconsistency with the particulars in the contract is caused by an unforeseeable and insurmountable cause beyond the entrepreneur's control.

(2) If the entrepreneur does not disclose these changes to the consumer before the conclusion of the contract in a textual form in a way that allows easy access and does not

expressly indicate them in the contract, the more favourable indication for the consumer shall prevail as the content of the contract.

§ 1858

The consumer shall sign separately each of the provisions on the right to withdraw from the contract, the period for withdrawal and the provisions prohibiting the payment of advances and other benefits or their security during this period.

§ 1859

The entrepreneur shall deliver at least one copy of the contract to the consumer immediately after the conclusion of the contract.

§ 1860

Language of the contract

The trader shall conclude the contract with the consumer in the official language of the Member State of the European Union in which the consumer is resident or of which the consumer is a national, at the consumer's choice. If that language differs from the language of the Member State of the European Union in the territory of which the immovable property or part thereof to which the contract by which the consumer acquires the right to use the accommodation under § 1852(1)(a) relates is situated, the trader shall also provide the consumer with an official translation of the text of the contract into that language.

Withdrawal from the contract

§ 1861

(1) The consumer may withdraw from the contract in writing within fourteen days of the conclusion of the contract.

(2) If the consumer has been offered to conclude a contract whereby the right to use the accommodation facility with overnight accommodation for more than one period of time is granted to him for a consideration, for a period of more than one year and at the same time concluding a contract establishing his/her participation in an exchange system under § 1852(1)(b), a single withdrawal period shall apply for both contracts. For the purposes of this time limit, the contract granting the consumer the right to use the accommodation is the applicable contract.

§ 1862

(1) If a copy of the contract has not been issued to the consumer after the conclusion of the contract, the end of the withdrawal period is determined according to the date on which the consumer received the copy of the contract.

(2) If the consumer has not been issued with a completed withdrawal form, the consumer may withdraw from the contract within one year and fourteen days. However, if the form has been issued to the consumer within one year from the date on which the contract was concluded or, if later, from the date on which the consumer received a copy of the form, the withdrawal period shall end on the 14th day after the date on which the form was received.

(3) If the contract does not specify the information that must be communicated to the consumer before the contract is concluded, the consumer may withdraw from the contract within three months and fourteen days. However, if those particulars were communicated to the consumer within three months of the date on which the contract was concluded or, if later, of the date on which the consumer received a copy of the contract, the withdrawal period shall end on the 14th day after the communication of the particulars.

§ 1863

If the consumer withdraws from the contract, he does not have to reimburse the trader at his own expense. If the service has already been provided, the consumer is not liable to the trader for anything.

§ 1864

(1) Where a consumer has entered into a contract referred to in § 1852(1)(a) or (b), no person may require him to make an advance payment or other performance or security therefor under that contract while the consumer is within the period for withdrawal from that contract. If the consumer acknowledges a debt under this contract within that period, the acknowledgement of the debt shall be null and void.

(2) Where a consumer has entered into a contract referred to in § 1852(1)(c), no person shall require him to make an advance payment or other performance or security thereof under that contract until the acquisition or transfer of the right for consideration has taken place or the obligation of the business under that contract has otherwise ceased by operation of law. If the consumer acknowledges a debt under this contract within this period, the acknowledgement of the debt shall be null and void.

§ 1865

(1) If the consumer has withdrawn from the contract under § 1852(1)(a), the obligations under all ancillary contracts shall cease at the same time as the obligation under the main contract at no cost to the consumer. An ancillary contract is a contract the subject matter of which is the provision of a service related to a contract under § 1852(1)(a), and that service is provided by the business or a third party pursuant to an arrangement between them.

(2) Where the consumer has withdrawn from the contract under § 1852(1)(a), (b) or (c) and where the price is paid at least in part by means of a loan or credit provided by the trader or a third party pursuant to an arrangement between them, the obligation under the credit or loan agreement ceases at the same time as the obligation under the agreement under § 1852(1)(a), (b) or (c) at no cost to the consumer.

Special Provisions

§ 1866

(1) Where a consumer has entered into a contract for a period of more than one year by which he has acquired, for consideration, the right to a benefit in respect of accommodation, transport or other services, as the case may be, no account shall be taken of an arrangement which obliges him to make payments under that contract, including membership fees, otherwise than in equal instalments divided into annual instalments of the same amount. This shall not apply if the parties agree to change the amount of the annual instalments after the first year in accordance with price developments.

(2) The entrepreneur shall call on the consumer in text form to pay at least fourteen days in advance each time; otherwise the debt shall be due within fourteen days after the entrepreneur has called on the consumer to pay.

§ 1867

Where a consumer has concluded a contract for a period of more than one year by which he has acquired, for consideration, a right to a benefit in respect of accommodation, transport or other services, where applicable, he shall have the right within fourteen days of, the date on which he receives a notice under § 1866(2), starting from the receipt of the notice to pay the second instalment, to terminate the contract without notice, without giving any reason and without penalty. This provision is without prejudice to other methods of termination of the obligation provided for by law or by contract.

Volume 5

Joint debts and claims

§ 1868

General Provisions

(1) If several debtors undertake the same performance, or if a debtor undertakes the same performance to several creditors, the joint debt and the joint claim are administered according to the principles of joint ownership.

(2) Where there is more than one person on a party, the other party has the right to request the appointment of a common representative for service of process. If he or she fails to do so, the court shall appoint such representative on application.

Indivisible performance

§ 1869

An indivisible performance may be claimed by a creditor against any one of several debtors, unless it is clear from the nature of the obligation that the debt can be discharged only by the joint action of the debtors.

§ 1870

If a debtor owes several creditors an indivisible obligation to perform, he is not obliged to perform to any one of the creditors unless he gives reasonable security or all the creditors agree. Whether a co-creditor who has received the whole of the performance is obliged to the others depends on the relationship between the co-creditors; otherwise he is deemed to be obliged to nothing.

§ 1871

Divisible performance

(1) Each of the several co-obligors of a divisible performance owes only his share, and each of the several creditors of a divisible performance is a creditor only of his share, unless the contract, statute, or judgment of the court provides otherwise.

(2) If it has been agreed that any one of the creditors may demand the whole of the performance, the debtor shall discharge the whole debt to him who first demanded it. If the debtor has discharged the entire debt to one of the co-creditors, the others can no longer claim anything from him.

Debtors obligated jointly and severally

§ 1872

(1) Where several debtors are obliged to perform jointly and severally, they are obliged to perform one for all and all for one. The creditor may demand the whole or any part of the performance on all the co-obligors, on some of them only, or on any of the co-obligors.

(2) A special arrangement between a creditor and a co-obligor does not operate against the other co-obligors.

§ 1873

The default of a creditor against one of its co-borrowers causes its default against the other co-borrowers.

§ 1874

If several entrepreneurs are jointly obliged to perform, they are deemed to be jointly and severally obliged.

§ 1875

All co-obligors shall be deemed to share equally in the debt in their respective proportions.

§ 1876

(1) If a creditor claims against any one of the co-obligors more than his share, that co-obligor shall notify the others and give them an opportunity to object to the claim. He shall have the right to require them to discharge the debt according to their respective shares or otherwise to discharge him to that extent.

(2) If a co-obligor has settled more than his share, compensation is due from the other co-obligors. If any of the co-obligors cannot perform, his share shall be distributed pro rata to all the others.

Creditors entitled jointly and severally

§ 1877

If the debtor is obliged to perform to several creditors entitled to it jointly and severally, any one of them may claim the whole performance. The debtor shall perform in full to the first claimant.

§ 1878

(1) Default by one of the co-trustees will also place the other co-trustees in default.

(2) If a claim and debt are combined in the person of one of the co-creditors, the claims of the other co-creditors against the debtor are extinguished.

Volume 6

Changes in Obligations

Section 1

Change in the identity of a creditor

Subsection 1

Change in the person of a creditor

Assignment of claim

§ 1879

A creditor may assign all or part of a claim by contract as an assignee even without the debtor's consent to another person (the assignee).

§ 1880

(1) By assigning a claim, the assignee also acquires its accessories and rights associated with the claim, including its security.

(2) The assignor shall issue to the assignee the necessary documents relating to the claim and shall communicate to the assignee everything that is necessary for the assertion of the claim.

§ 1881

(1) An assignment may be made of a claim that is alienable unless the arrangement between the debtor and the creditor so excludes.

(2) A claim that is extinguished by death or whose content would be changed by a change of creditor to the detriment of the debtor cannot be assigned.

§ 1882

(1) Until the assignor notifies the debtor, or the assignor evidences the assignment of the claim to the debtor, the debtor may discharge its obligation by paying the assignor or otherwise settling with the assignor.

(2) If the assignor has assigned the same claim to more than one person, the assignment of which the debtor first became aware is effective against the debtor.

§ 1883

An assignment of a debt has no effect against the person who secured the debt by pledge, guarantee or otherwise until the assignor notifies the assignor of the assignment or the assignor proves the assignment.

§ 1884

(1) The debtor retains the objections to the claim that it had at the time of assignment after the assignment. The debtor may also object to its counterclaims against the assignor even if they were not yet due at the time of the assignment; however, it must notify its claims to the assignor without undue delay after it has become aware of the assignment.

(2) If, however, the debtor has acknowledged the claim against the honest assignee as genuine, he is bound to satisfy it as his creditor.

§ 1885

(1) Where a claim has been assigned for consideration, the assignor shall be liable to the assignee up to the amount of consideration received with interest for the continuance of the claim at the time of assignment and shall be liable for its recoverability. This does not apply if the assignor knew that the claim was future, uncertain or uncollectible.

(2) The assignee is not liable for the recoverability of the assigned claim if it became unrecoverable after the assignment either by accident or through the inadvertence of the assignor. In particular, inadvertence may be attributed to the assignor if he fails to collect the claim without undue delay after it has become due or if he postpones the due date of the claim.

(3) Otherwise, the provisions of § 1914 to 1925 shall apply mutatis mutandis to the rights and obligations of the assignor and the assignee; however, the defect in the claim must be raised by the assignee with the assignor without undue delay after it could and should have been discovered.

§ 1886

(1) At the request of the assignee, the assignee may enforce the assigned claim on its own behalf for the account of the assignee; if the assignment of the claim has already been notified to the debtor or proved, the assignee may enforce the claim if it proves the consent of the assignee and if the assignee does not enforce the claim itself.

(2) If the assignor enforces the claim, the debtor may contest against it the counterclaims it has against the assignor, but not the claims it has against the assignee.

§ 1887

Assignment of a set of claims

A set of claims, whether present or future, may also be assigned if such set of claims is sufficiently identified, in particular if they are claims of a certain kind arising against the creditor at a certain time or different claims arising from the same legal cause.

Subsection 2

Change in the identity of a debtor

Assumption of a debt

§ 1888

(1) Whoever agrees with the debtor to assume his debt succeeds as debtor in his place if the creditor gives his consent to the original debtor or assignee of the debt.

(2) Where a registered charge or other security interest attaching to a thing registered in the public register passes to the transferee on transfer of the title to the thing, the debt secured by the security interest shall be deemed to have passed. After the transfer of title, the transferor may invite the creditor in writing to accept the transferee as the new debtor in his stead. If the creditor does not refuse to give his consent, he shall be deemed to have given his consent if he was expressly warned of this consequence in the invitation.

§ 1889

If the creditor does not consent or refuses to consent to the assumption of the debt, the creditor does not have a direct right against the assignee of the debt; however, the assignee of the debt has a duty to the debtor to arrange that the debtor does not have to pay the creditor. Such a duty is also owed to the debtor by one who undertakes to procure performance for his creditor.

§ 1890

(1) The content of the undertaking is not altered by the assumption of the debt. The transferee of the debt is entitled to all objections that could have been raised by the original debtor. The assumption of the debt does not affect the ancillary rights attached to the debt.

(2) However, security for the debt granted by a third party shall only continue if the third party consents to the change in the debtor's person.

§ 1891

An arrangement whereby a new debtor enters in place of an existing debtor whose debt is being cancelled, with a debt arising from a separate legal relationship or with an obligation to perform a different object, does not give rise to the effect of an assumption of the debt and is treated as a novation.

§ 1892

Accession to a debt

(1) Whoever, without the debtor's consent, agrees with the creditor to discharge the debtor's debt for the debtor, becomes a new debtor alongside the original debtor and is jointly and severally liable with him.

(2) If a third party has secured the debt of the original debtor, no action can be brought against him for non-performance of the debt by the new debtor unless he has consented to it.

§ 1893

Takeover of property

(1) If someone takes all or a proportionate part of the property from the grantor, he becomes jointly and severally liable with the grantor for the debts relating to the property taken and of which the transferee knew or ought to have known at the time of the contract. However, the transferee is not obliged to pay more than the value of the property so acquired.

(2) Where such property is taken over by a person close to the transferor, he shall become jointly and severally liable with the transferor for the debts relating to the property so taken over, without limitation as to the value of the property so acquired. This shall not apply if he proves that he did not know or ought not to have known of a particular debt.

(3) A contrary arrangement between the alienator and the transferee is ineffective against the creditor.

§ 1894

In the case of a conversion of a corporation or the disposal of a plant or branch thereof, § 1893 shall not apply.

Subsection 3

Contract assignment

§ 1895

(1) Unless the nature of the contract so excludes, either party may assign its rights and obligations under the contract or any part thereof to a third party as assignee, provided

that the assigned party consents thereto and provided that the assignment has not already been performed.

(2) If performance under the contract is intended to be continuous or periodically recurring, the contract may be assigned with effect to what has not yet been performed.

§ 1896

When a contract is assigned in part or to several assignees, the rights of the assigned party under ancillary clauses in the contract, such as, but not limited to, stipulations as to condition, deposit, earnest money, liquidated damages, rescission and severance or arbitration clauses, cannot be abridged.

§ 1897

(1) Assignment of the contract shall be effective against the assigned party upon its consent. If it has given its consent in advance, the assignment of the contract is effective against the assigned party from the time when the assignor notifies the assignor of the assignment or the assignor demonstrates the assignment to the assignor.

(2) Where a contract made in writing contains a provision that it is made for the benefit of a party or any other provision of the same import, that party shall assign the contract by the reverse of the instrument. The law on bills of exchange shall apply to the particulars of the endorsement, as well as to who is entitled to the endorsement and how he proves his right. They also determine from whom the party who has forfeited the deed may claim it.

§ 1898

On the effective date of the assignment of the contract to the assigned party, the assignor is released from its obligations to the extent of the assignment.

§ 1899

(1) Consequences under § 1898 may be avoided by the assigned party declaring to the assignor that it rejects its exemption. In that event, the assigned party may require the assignor to perform if the assignee fails to perform the obligations assumed.

(2) The declaration may be made within fifteen days of the date on which the assigned party knew or must have known that the assignee had failed to perform. While a default in making the declaration does not deprive it of the effects of paragraph 1, the assigned party shall indemnify the defaulting party against any loss caused by the default.

§ 1900

The assigned party retains all defences under the contract and against the assignor. Any other objections which that party had against the assignor shall be preserved to it if it reserves them in the contract or in its consent to the assignment of the contract.

Section 2

Changes in the content of the obligations

§ 1901

I am at will to negotiate a change in my rights and obligations.

§ 1902

Novation

An agreement to change the content of an undertaking cancels the existing undertaking and replaces it with a new undertaking. However, if the existing obligation can stand alongside the new obligation, it shall be deemed not to have been cancelled.

Settlement

§ 1903

(1) An existing obligation may be replaced by a new obligation even if the parties have by agreement adjusted the rights and obligations between them which are still disputed or doubtful. If the settlement concerns a right in rem in respect of a thing entered in a public register, the effects of the settlement shall take effect upon entry in that register.

(2) A settlement cannot be resisted merely because it has created a disproportion between the parties' mutual performance.

§ 1904

The validity of a settlement is not affected by a mistake as to what was disputed or doubtful between the parties, unless the mistake was induced by artifice on the part of a party. A settlement agreed in good faith is not invalidated even if it is discovered after the fact that one of the parties did not have the claim.

§ 1905

A settlement purporting to adjust all rights between the parties cannot be applied to rights that were excluded or to rights that the parties obviously could not have had in mind.

Common Provisions

§ 1906

A novation or settlement agreement requires a written form if the original obligation was also created in writing or if it is made on a right already barred.

§ 1907

The security for rights subject to novation or settlement extends to rights arising therefrom. However, if the security was provided by a third party who did not accede to the novation or settlement, he shall be liable to the extent of the original obligation at most and shall retain any objections which he might have raised against the claim if the novation or settlement had not occurred.

Volume 7

Extinction of obligations

Section 1

Discharge

General Provisions

§ 1908

(1) The obligation is extinguished upon the discharge of the debt.

(2) The debtor must perform the debt at his own expense and risk in a proper and timely manner.

§ 1909

If the debtor has used a promissory note as a means of payment in accordance with the contract, the issuance of the note does not affect the duration of the monetary debt, but the creditor may only demand performance of the debt from the debtor if he could not obtain performance under the note; however, if the creditor has obtained performance, the debt is deemed to have been performed by the issuance of the note. This also applies if a letter of credit has been opened, a cheque issued or in other similar cases.

§ 1910

A creditor cannot be compelled against his will to accept anything other than what is due on his claim, and a debtor cannot be compelled to provide anything other than what is due. The same applies to the place, time and manner of performance.

§ 1911

If the parties are to perform to each other at the same time, only the party who has already performed the debt itself, or is willing and able to perform the debt simultaneously with the other party, may demand performance.

§ 1912

(1) One who is to perform in mutual performance first may withhold his performance until such time as mutual performance is given or secured; but this only if the performance of the other party is jeopardized by circumstances which have arisen in his case which were not and should not have been known to him when he made the contract.

(2) In the case referred to in [paragraph 1](#), an additional reasonable period of time may also be allowed for performance or for securing performance and, on its unavailing expiry, for rescinding the contract.

§ 1913

One party may not withhold performance or withdraw from a contract because a debt owed by the other party arising from another legal cause has not been performed in a proper and timely manner.

Proper performance

§ 1914

(1) Whoever performs for consideration to another is bound to perform without defect with the qualities exchanged or customary so as to enable the object of performance to be used according to the contract and, if known to the parties, according to the purpose of the contract.

(2) If performance is defective, the recipient has rights under the defective performance.

§ 1915

The debtor is obliged to perform in medium quality unless another quality is agreed between the parties.

§ 1916

(1) The debtor performs defectively, in particular

- a) if it provides an object of performance which does not have the specified or agreed characteristics,
- b) if it fails to point out defects which the subject-matter has, although they are not normally found in such subject-matter,
- c) if he assures the creditor, contrary to fact, that the subject matter of the performance has no defects or that the subject matter is fit for a particular use, or
- d) if he wrongfully disposes of another's property as his own.

(2) A manifestation of intent by which the alienator limits in advance the legal scope of his obligations under the defective performance is disregarded. If the transferee waives his right under the defective performance in advance, the expression of his will shall be in writing.

§ 1917

If the defect is conspicuous and obvious at the time of the conclusion of the contract or if the defect can be ascertained from a public list, it is the responsibility of the purchaser. This does not apply if the vendor has fraudulently concealed the defect or if he has expressly assured the vendee that the thing is free from such defect or that it is free from defects at all.

§ 1918

If a thing is left as it stands and lies (in the aggregate), its defects are the responsibility of the purchaser. This does not apply if the thing does not have a property which the grantor

has declared it to have or which the grantee has contrived to have.

§ 1920

(1) An object of performance has a legal defect if a third party claims a right in it, unless the transferee knew or ought to have known of such a limitation. In that case, the acquirer shall notify the grantor without undue delay.

(2) Whoever has transferred to himself a right in an object which he knows does not belong to the alienator or that the alienator is not entitled to establish such a right, has no right by reason of that defect.

§ 1921

(1) The purchaser may enforce the right under the defective performance in court if he has pointed out the defect to the grantor without undue delay after he has had an opportunity to inspect the thing and discover the defect, either by marking the defect or by giving notice of how it appears. The defect may be complained of within six months of the acceptance of the object of performance.

(2) If the transferee fails to point out the defect in time and the transferor objects to the late pointing out, the court shall not grant the right to the transferee. This does not apply if the defect is the result of a fact of which the alienator knew or ought to have known at the time of delivery.

§ 1922

(1) As soon as the transferee discovers the defect, he shall without undue delay point it out to the transferor and shall deliver the object of the transaction to the transferor or, as he may direct, keep it or otherwise deal with it in a suitable manner so that the defect may be examined. If the article is perishable, the transferee may, after giving notice to the disposer, sell it without delay.

(2) If the transferee has rightly complained of the defect to the transferor, the period for complaining of the defect does not run for the period during which the transferee cannot use the defective article.

§ 1923

If the defect is remediable, the purchaser may claim either repair or completion of what is missing or a reasonable discount on the price. If the defect cannot be remedied and the object cannot be used properly because of it, the purchaser may either withdraw from the contract or claim a reasonable discount on the price.

§ 1924

Whoever has a right by reason of defective performance is also entitled to compensation for the costs reasonably incurred in exercising that right. If, however, he does not assert the right to compensation within one month after the expiration of the period within which the defect must be alleged, the court shall not award the right if the alienator argues that the right to compensation was not asserted in time.

§ 1925

A right of defective performance does not preclude a right to damages; however, what can be achieved by asserting a right of defective performance cannot be asserted on any other legal ground.

Manner of performance

§ 1926

(1) If the debt can be discharged in several ways, the choice of the method of discharge is deemed to belong to the debtor. If the creditor has the right to choose, he must choose the method of performance within the agreed period of time, otherwise without undue delay, so that the debtor can perform according to his choice.

(2) If the party fails to make the election in time, the right to elect the manner of performance permanently vests in the other party.

(3) Whoever has elected the method of performance may not change it without the consent of the other party.

§ 1927

(1) If the debtor is to perform one of more than one optional performance, he is not entitled to perform part of one and part of the other, nor can he be compelled to do so.

(2) If one of the several optional performances becomes impossible, the obligation is limited to the remaining performance. If, however, the impossibility of that performance was caused by one who did not have the right to choose, the other party may withdraw from the contract.

§ 1928

One who had the right to choose may rescind the contract if the choice was frustrated by force majeure or by the other party.

§ 1929

If the debtor is to perform a thing of a particular kind, the debtor is obliged to provide the creditor with a thing fit for the purpose for which a thing of the same kind is ordinarily used under similar contracts.

§ 1930

(1) The debt is performed in full.

(2) If the debtor offers partial performance, the creditor must accept it if it is not contrary to the nature of the obligation or the purpose of the contract, provided that that purpose must have been at least apparent to the debtor. This does not create any other obligations for the creditor. The debtor shall reimburse the creditor for the increased costs caused by the partial performance.

§ 1931

If the performance was agreed in instalments and the debtor has failed to fulfil any instalment, the creditor shall be entitled to the settlement of the entire claim, if the parties so agreed. The creditor may exercise this right no later than the due date of the next instalment.

§ 1932

(1) If the debtor is to perform for principal, interest and costs of the claim, the performance shall be set off first against the costs already determined, then against default interest, then against interest and finally against principal, unless the debtor expresses a different intention in performing and the creditor consents.

(2) If the debtor is a consumer who is in default, the performance shall be set off first against the costs already determined, then against the principal of the claim, then against interest and finally against default interest.

§ 1933

(1) If the debtor owes several obligations to perform of the same kind and does not specify at the time of performance which obligation he is performing, the performance shall be set off first against the obligation which the creditor has already notified the debtor to perform, otherwise against the obligation least secured. Where several obligations are secured to the same extent, performance shall be set off first against the obligation due first.

(2) For indemnity, payment is set off only after the obligation whose breach gave rise to the obligation to indemnify has been fulfilled, unless the debtor has specified otherwise.

§ 1934

If a debtor who lacks full capacity discharges his debt due, he shall discharge the obligation. However, if he has performed on a debt which is uncertain or unpayable, he may be required to repay the performance; this does not apply if the debt has become payable in the meantime.

§ 1935

If the debtor performs by means of another person, he is liable as if he had performed himself.

§ 1936

(1) The creditor must accept the performance offered by a third party with the debtor's consent. This does not apply if the performance is linked to the personal characteristics of the debtor.

(2) One who discharges the debt of another without guaranteeing the debt or otherwise securing the debt may require the creditor, before or at the time of discharge, to assign his claim to him.

§ 1937

(1) The debtor's consent is not required if a third party discharges the creditor's debt because he guarantees or otherwise secures the debt.

(2) By discharging the debt, that person enters into the rights of the creditor and is entitled to be compensated by the debtor for what he has discharged on his behalf. The creditor's claim passes to him or her, including the accessories, security and other rights attached to the claim. The creditor shall deliver to the person who has performed for the debtor the necessary documents concerning the claim and shall communicate to him all that is necessary to assert the claim.

§ 1938

(1) If the third party has performed only part of the debt for the debtor, he may only claim compensation for what he has performed for the debtor. The original creditor has the right to claim the balance of its claim in priority to the new creditor, unless the new creditor has guaranteed to be compensated for what it has delivered on behalf of the debtor.

(2) If more than one person has performed for the debtor, each is entitled to a pro rata settlement according to the proportion in which he or she has performed for the debtor.

Voucher

§ 1939

(1) A voucher authorizes the remitter to collect a performance from the remittee on the remitter's own behalf and the remitter is directed by the voucher to perform on the remitter's behalf. A direct right accrues to the remitter against the remitter only if the remitter accepts the voucher.

(2) A voucher may also be made payable to the series or bearer.

§ 1940

If there is no other legal basis between the remitter and the remitted, the provisions of the contract of command shall apply to the rights and obligations of both; however, the voucher shall not be extinguished by the death of the remitter or the remitted.

§ 1941

The voucher holder shall notify the remitter without undue delay if the remitter does not wish to use the voucher or if the remittee refuses to accept or perform under the voucher.

§ 1942

If the remitter has not yet accepted the voucher against the remitter, the remitter may revoke the voucher. The legal relationship between the remitter and the remitter determines whether the revocation of the voucher also operates against the remitter.

§ 1943

A voucheree who has accepted a voucher may assert against the voucheree only objections that relate to the validity of the acceptance, the invalidity of the voucher or its defects, or objections that are based on an express provision of the voucher or that the voucheree is entitled to assert against the voucheree personally.

§ 1944

(1) If the voucheree already owes the voucheror what he is required to pay, he is bound to comply with the voucher and his debt is extinguished only by his compliance with the voucheror. If the voucher is to satisfy a debt owed by the voucheror to a voucheree who has consented to it, the voucheror is obliged to call upon the voucheree to perform.

(2) The drawee is obliged to perform only against the issue of the endorsed voucher.

§ 1945

If the limitation period in respect of the obligation the performance of which is the subject of the voucher commenced to run in the relationship between the remitter and the remitter before the remitter was notified of the receipt of the voucher, the limitation period in respect of the relationship between the remitter and the remitter runs from that time.

§ 1946**Voucher to order**

(1) If the voucher sounds like a bank voucher, it can be converted to a rubric.

(2) The endorsement transfers all rights under the voucher to the person entitled to the endorsement.

(3) The law on bills of exchange shall apply to the particulars of the endorsement, as well as to who is entitled under the endorsement and how he proves his right. They also determine from whom the person who has forfeited the note may claim it.

§ 1947**Voucher to bearer**

If a bearer voucher has been issued, the bearer shall pay the voucher to anyone presenting it to him.

§ 1948

The provisions relating to a bill of exchange and a bearer's bill of exchange shall apply mutatis mutandis to the case of a transfer of a debt evidenced by a document executed by the debtor in the name of the debtor or in the name of the bearer.

Acquittance**§ 1949**

(1) If the creditor accepts performance, the creditor shall issue a receipt to the debtor at the debtor's request. The receipt shall indicate the name of the debtor and the creditor, the object of the performance and the place and time where and when the debt was discharged. If the receipt is issued in respect of the principal amount, the principal amount of the debt shall also be deemed to have been settled.

(2) The debtor may withhold performance if the creditor does not also issue a receipt.

§ 1950

In the case of repeated performances for the same cause of action, one who presents a receipt for a performance due later is deemed to have also performed what was due earlier.

§ 1951

A debtor discharges a debt even if he discharges it to one who presents a creditor's certificate that he is entitled to receive the performance or gives him a receipt issued by the creditor, unless the debtor knew that the one who presented the certificate was not entitled to receive the performance.

§ 1952

Debt instrument

(1) A creditor who has a debtor's acknowledgment of debt or other promissory note must return it to the debtor upon satisfaction or indicate on the promissory note that it has been satisfied in part. If this is not possible, the debtor may request that the creditor issue a certificate to the effect that the debenture has lapsed to the extent that the debt has been discharged. The provisions on receipts are not affected.

(2) If the debtor receives the promissory note without a receipt, the debt shall be deemed to have been discharged.

§ 1953

Substitute discharge

(1) If the debt cannot be discharged because the creditor is unknown or absent, because the creditor has refused to accept performance without good cause, because the debtor is, through no fault of his or her own, uncertain who the creditor is, or because of other important causes on the part of the creditor, the debtor is entitled to deposit the object of performance in a court custody. The costs reasonably incurred in connection with the substitute performance shall be borne by the creditor.

(2) The court shall notify the person for whom the deposit has been made of the deposit of the object of performance and arrange for his representation, if necessary.

Place of Performance

§ 1954

To be properly discharged, the debt is required to be discharged at the specified place. If the place of performance cannot be ascertained from the contract, the nature of the obligation or the purpose of performance, performance is at the place fixed by law.

§ 1955

(1) A nonmonetary debt shall be performed by the debtor at the place of his residence or registered office. A monetary debt shall be performed by the debtor at the place of residence or registered office of the creditor.

(2) If the obligation arose in the course of the operation of a factory, the debt is discharged at the place of the factory. This applies *mutatis mutandis* if the obligation arose in the course of the operation of the establishment.

§ 1956

If the performance is to be performed at the creditor's place of business and the creditor has changed his residence or registered office, or the location of the factory or place of business, after the conclusion of the contract, the creditor bears the increased cost and increased risk thereby incurred by the debtor.

§ 1957

(1) Where the debtor discharges a monetary debt through a payment service provider, the debt is discharged by crediting the amount of money to the account of the creditor's payment service provider.

(2) If the debtor discharges the monetary debt by postal order, the debt is discharged

a) by crediting a sum of money to the account of the creditor's payment service provider if the debt is discharged on account, or

b) by paying the sum of money to the creditor in cash.

Time of performance

§ 1958

(1) If the time of performance is precisely agreed or otherwise fixed, the debtor is obliged to perform even without the creditor's invitation.

(2) If the parties do not agree when the debtor is to perform the debt, the creditor may demand performance immediately and the debtor is then obliged to perform without undue delay.

§ 1959

Unless the settled past practice of the parties or custom indicates otherwise, the parties shall be deemed to have agreed on the time of performance by expression

- a) "the beginning of the period" the first ten days of that period,
- b) "mid-month" the period from the 10th to the 20th day of the month,
- c) "mid-quarter" the second month of the quarter,
- d) "end of period" the last ten days of the period,
- e) "immediately" a period of up to five days, but up to two days for the supply of food or raw materials and up to ten days for the supply of engineering products.

§ 1960

If under the contract the debtor is entitled to fix the time of performance and fails to fix it within a reasonable time, the court shall, on the application of the creditor, fix it according to the circumstances of the case.

§ 1961

If the parties do not agree whether the time of performance is to be determined for the benefit of both of them or for the benefit of only one of them, it is to be determined for the benefit of both parties. This does not apply if the nature of the performance precludes it.

§ 1962

(1) If the time of performance is for the benefit of both parties, the creditor cannot demand performance before time, nor can the debtor prematurely perform the debt.

(2) If the time of performance is for the benefit of the debtor, the creditor cannot demand performance early, but the debtor can perform the debt early.

(3) If the time of performance is fixed in favour of the creditor, the creditor may demand performance early, but the debtor may not perform the debt early.

§ 1963

(1) If the mutual obligation of the businessmen includes an obligation to supply goods or services for consideration, the price is payable within thirty days

- a) from the date on which the invoice or other notice of a similar nature is delivered to the debtor,
- b) from the date of delivery of the goods or services if it is not possible to determine the date of delivery of the invoice or other demand of a similar nature, or if the debtor was served with the invoice or other demand of a similar nature before the debtor was paid, or
- c) from the date of receipt or verification that performance has been duly performed, if required by law or contract to be performed, if an invoice or other notice of a similar nature has been served on the debtor before such receipt or verification.

(2) The period of repayment may exceed sixty days only if expressly agreed upon and not particularly disadvantageous to the creditor.

(3) Paragraph 1 shall also apply to an obligation between an entrepreneur and a contracting authority under the Public Procurement Act if the obligation contains an obligation to supply goods or services to the contracting authority. The contracting parties may deviate from the determination of the time of performance under **paragraph 1** to the detriment of the creditor only by express agreement, provided that the nature of the obligation so justifies and the time of payment does not exceed sixty days.

§ 1964

(1) An agreement on the time of performance, default interest or compensation for the costs of the claim which deviates from the law in such a way as to be particularly disadvantageous to the creditor in the circumstances of the case is void. In doing so, account shall be taken, in particular, of the nature of the subject matter of the performance, whether there is a just reason for such a deviation and whether such an arrangement is not grossly contrary to commercial practice and the principle of fair dealing.

(2) An arrangement which excludes the creditor's right to default interest in relationships under **§ 1963** shall be regarded as particularly disadvantageous. An arrangement which excludes the creditor's right to be reimbursed for the costs of pursuing the claim is deemed to be particularly disadvantageous.

(3) A legal person established to protect the interests of small and medium-sized entrepreneurs may also invoke the nullity under the conditions set out in **paragraph 1** if those arrangements are contained in the terms and conditions.

(4) If the court declares an arrangement to be invalid, the provisions of the Act shall apply instead, unless the court decides otherwise in the interests of justice.

§ 1965

The time for taking possession or verifying that performance has been duly performed may, in relationships under **§ 1963**, exceed thirty days from the date of performance, if expressly agreed and unless particularly disadvantageous to the creditor.

§ 1966

The provision of **§ 1963** is without prejudice to the right of the parties to arrange for performance in instalments.

§ 1967

If the debtor discharges a pecuniary debt before the time fixed, he is not entitled, without the consent of the creditor, to deduct from the amount due interest corresponding to the time by which he has discharged it earlier.

Debtor's default

§ 1968

A debtor who fails to pay his debt properly and on time is in default. A debtor is not liable for default if he cannot perform as a result of the creditor's default.

§ 1969

After the debtor is in default, the creditor may enforce performance of the debt, or may rescind the contract on the terms agreed in the contract or provided by law.

§ 1970

After a debtor is in default in the payment of a monetary debt, a creditor who has duly fulfilled his contractual and legal obligations may demand payment of interest on the default, unless the debtor is not liable for the default. The amount of default interest shall be fixed by the Government by decree; if the parties do not agree on the amount of default interest, the amount so fixed shall be deemed to have been agreed upon.

§ 1971

A creditor is entitled to damages for failure to perform a monetary debt only if it is not covered by default interest.

§ 1972

In relationships under § 1963, the creditor is entitled to compensation for the costs of the claim in the form of a fixed sum, the amount of which is set by government regulation, in addition to default interest. This is without prejudice to the creditor's right to reimbursement of costs associated with the claim which exceed this fixed amount.

§ 1973

If it is agreed that a debt already due will be paid in instalments, and if the creditor wants the debtor to pay default interest in instalments, this must be expressly agreed.

§ 1974

Debtor bears the risk of damage to the thing during the period of his default, whatever the cause of the damage, unless he proves that the damage would have occurred even if his duty had been duly performed or that the damage was caused by the creditor or the owner of the thing. This also applies if the debtor disposes of the thing in breach of his other obligations under the contract.

Creditor's default

§ 1975

A creditor is in default if it fails to accept a properly tendered performance or fails to give the debtor the cooperation necessary to discharge the debt.

§ 1976

If the object of performance is a thing, the creditor bears the risk of damage to the thing during the period of his default, whatever the cause of the damage. This does not apply if the debtor causes the damage.

Common Provisions

§ 1977

If a party breaches its contractual obligation by default in a material way, the other party may withdraw from the contract if it notifies the defaulting party without undue delay after becoming aware of the default.

§ 1978

(1) If the default of a party constitutes an insubstantial breach of its contractual obligation, the other party may rescind the contract after the defaulting party has failed to perform its obligation even within an additional reasonable period of time given expressly or tacitly by the other party.

(2) If the creditor notifies the debtor that he is giving him an additional period of time to perform and that he will not extend it further, he is deemed to have repudiated the contract by the futile expiry of that period.

§ 1979

If the creditor has granted the debtor an unreasonably short additional period of time for performance and withdraws from the contract after that period has expired, the effects of the withdrawal take effect only after the expiry of the period which should have been granted to the debtor as reasonable. This also applies if the creditor has withdrawn from the contract without having granted the debtor an additional period of time for performance.

§ 1980

Fixed obligation

(1) If a precise time for performance has been agreed in the contract and it follows from the contract or from the nature of the obligation that the creditor cannot be interested in delayed performance, the obligation is extinguished at the beginning of the debtor's default, unless the creditor notifies the debtor without undue delay that he insists on performance.

(2) The termination of the obligation has the same effect as if the creditor had repudiated the contract.

Section 2

Other manners of extinction of obligations

§ 1981

Agreement

It is at will to negotiate the termination of the obligation without creating a new obligation.

Set-off

§ 1982

(1) Where parties owe each other performance of the same kind, either party may declare against the other that it is setting off its claim against the claim of the other party. Set-off may be set off as soon as a party has the right to demand satisfaction of its own claim and to perform its own debt.

(2) By set-off, both claims are cancelled to the extent that they overlap; if they do not overlap completely, the claim is set off in the same way as on discharge. These effects take effect at the time when both claims become eligible for set-off.

§ 1983

A declaration of set-off made under a condition or with proof of time shall be disregarded.

§ 1984

(1) Where a debtor owes jointly and severally with others, he may set off against the creditor the claim of his co-obligor only to the extent of the co-obligor's share of the joint debt.

(2) A debtor of creditors entitled jointly and severally may set off against a co-creditor what the co-creditor owes him only to the extent of his share of the joint debt.

§ 1985

One who maintains an account for the other party may set off funds deposited therein against a mutual claim arising under the account agreement.

§ 1986

If a claim has been successively transferred to several persons, the debtor may use for set-off only the claim he had against the first creditor at the time of the transfer and the claim he has against the last creditor.

§ 1987

(1) Claims that are eligible for set-off are those that can be asserted in court.

(2) A claim that is uncertain or indeterminate is not eligible for set-off.

§ 1988

(1) Prohibits set-off against a claim for support for a minor who is not fully competent.

(2) Offsetting against a personal injury claim is prohibited unless it is a counterclaim for compensation of the same kind.

§ 1989

(1) The statute of limitations does not bar a set-off if it occurred after the time when the claims became eligible for set-off.

(2) If the creditor has postponed the time of performance without consideration at the debtor's request, he may still set off his claim after the time at which the debtor should have performed originally.

§ 1990

If each claim is to be satisfied at a different place, this does not prevent set-off, but the party against whom it is so set off is entitled to recover damages for the loss sustained by him by not obtaining performance at the place specified or by being unable to perform at the place specified.

§ 1991

Disallowance of set-off by declaration of one of the parties does not prevent the parties from arranging for set-off; however, an arrangement for set-off against a claim for maintenance for a minor who is not fully competent shall not be taken into account.

§ 1992

Withdrawal fee

If the parties agree that one of them may cancel the obligation by payment of a severance payment, the obligation is cancelled by payment of the severance payment in the same way as in the case of rescission. However, the right to cancel the obligation by payment of a severance payment is not available to a party who has already accepted, even in part, the performance of the other party or has itself performed for the other party.

Merger of a right and duty

§ 1993

(1) If in any way a right and an obligation merge in one person, both the right and the obligation cease to exist unless the law provides otherwise.

(2) If the right of the creditor merges with the obligation of the person who secures the obligation, the principal debt is not extinguished thereby.

§ 1994

The merger of the right of a creditor and the obligation of one of the jointly and severally obligors extinguishes the debt to the extent of that co-obligor's share. The merger of the obligation of the debtor and the right of one of the creditors jointly and severally liable extinguishes the debt to the extent of the share of that co-creditor.

Waiver of a debt

§ 1995

(1) If a creditor forgives a debt to a debtor, the debtor is deemed to have consented to the forgiveness of the debt unless the debtor has unreasonably failed to expressly consent or to perform the debt.

(2) Forgiveness of the debt occurs even if the creditor issues a receipt to the debtor or returns a promissory note to the debtor without discharging the debt; if the creditor issues a receipt or returns a promissory note for the entire debt to one of the co-obligors, the creditor is deemed to have forgiven the debt to all co-obligors.

§ 1996

(1) Where a creditor discharges a debt owed to one of the jointly and severally obligors, the discharge of the debt shall have effect against the other joint obligors to the extent of the share of the joint obligor discharged.

(2) If a debtor is discharged by one of the creditors entitled jointly and severally, this discharges the debtor to the extent of the share of that co-creditor.

§ 1997

If the creditor discharges the obligation of the one who secures the debt, the discharge has no effect against the principal debt. If, however, the creditor releases one of the co-signatories from the obligation, the other co-signatories retain the objections that could have been raised by the co-signatory whose obligation has been released.

Termination of an obligation

§ 1998

- (1) The obligation may be terminated if the parties so agree or if the law so provides.
- (2) If the obligation is terminated, it terminates on expiry of the notice period. However, if the obligation can be terminated without notice, the obligation terminates on the effective date of termination.

§ 1999

- (1) If a contract agreed for an indefinite period obliges at least one party to engage in continuous or repeated activity, or obliges at least one party to tolerate such activity, the obligation may be terminated at the end of a calendar quarter by giving at least three months' notice.
- (2) Where a party has undertaken to refrain from a particular activity and it is clear from the nature of the undertaking that the obligation is not limited in time, the provisions of [paragraph 1](#) shall not apply.

§ 2000

- (1) If a contract has been made for a fixed term without good reason so as to bind a person for his lifetime or to bind anyone for a period exceeding ten years, it may be sought to be rescinded after the expiration of ten years from the date on which the obligation arose. The court shall also set aside the obligation if the circumstances on which the parties apparently relied when the obligation arose have changed to such an extent that the obligor cannot reasonably be required to continue to be bound by the contract.
- (2) If a party waives the right to seek to avoid an obligation in advance, this is disregarded. This does not apply if the obligated party is a legal person.

Withdrawal from contract

§ 2001

A contract may be rescinded if the parties so agree or if the law so provides.

§ 2002

- (1) If a party breaches the contract in a material way, the other party may withdraw from the contract without undue delay. A material breach is one of which the breaching party knew or ought to have known at the time of the conclusion of the contract that the other party would not have concluded the contract if it had foreseen the breach; in other cases, the breach is not deemed to be material.
- (2) A party may withdraw from a contract without undue delay after it appears beyond doubt from the conduct of the other party that it will breach the contract in a material way and if it fails to give reasonable security when called upon to do so by the party entitled to do so.

§ 2003

- (1) Once the party entitled to withdraw notifies the other party that it is withdrawing from the contract or that it is continuing to remain in the contract, it cannot itself change the choice.
- (2) If a party could have rescinded the contract for a material breach of a contractual obligation and did not exercise its right, this does not prevent it from rescinding the

contract at a later date by reference to similar conduct by the other party.

§ 2004

(1) The withdrawal from the contract cancels the obligation from the beginning.

(2) If the debtor has performed in part, the creditor may rescind the contract only in respect of the unfulfilled remainder. However, if the partial performance is not of significance to the creditor, the creditor may withdraw from the contract in respect of the whole performance.

(3) If the contract obliges the debtor to perform continuously or repeatedly, or to perform in stages, the creditor may rescind the contract only with future effect. This does not apply if the partial performance already received is not in itself of significance to the creditor.

§ 2005

(1) The withdrawal from the contract shall terminate the rights and obligations of the parties to the extent of its effects. This does not affect the rights of third parties acquired in good faith.

(2) Withdrawal from the contract does not affect the right to payment of a contractual penalty or default interest if it has already accrued, the right to compensation for damages arising from a breach of a contractual obligation or arrangements which, by their nature, are intended to bind the parties after withdrawal, in particular arrangements for dispute resolution. If the debt has been secured, neither the withdrawal nor the security is affected.

Subsequent impossibility of performance

§ 2006

(1) If the debt becomes unenforceable after the obligation is incurred, the obligation is extinguished for impossibility of performance. Performance is not impossible if the debt can be performed under difficult conditions, at greater expense, with the assistance of another person or only after a specified period of time.

(2) Impossibility of performance is proved by the debtor.

§ 2007

If only a part of the performance is impossible, the obligation is extinguished in its entirety if it follows from the nature of the obligation or the purpose of the contract, which was known to the parties at the time of the conclusion of the contract, that performance of the remainder is of no significance to the creditor. If this is not the case, the obligation is extinguished only as to that part.

§ 2008

If the debtor fails to notify the creditor that performance of the debt has become impossible without undue delay after the debtor knew or ought to have known of it, the debtor shall compensate the creditor for the loss resulting from the failure to notify the creditor in time of the impossibility of performance.

§ 2009

Death of a debtor or creditor

(1) The death of the debtor does not extinguish the obligation unless its content was a performance that should have been made by the debtor personally.

(2) The death of the creditor extinguishes the obligation if the performance was limited to his person.

Volume 8

Securing and corroboration of debts

Section 1

General Provisions

§ 2010

(1) A debt may be secured if a third party undertakes to or for the benefit of the creditor for the debtor's performance, or if someone gives the creditor or the creditor a pecuniary security that the debtor will perform his debt. A debt may be secured by a contractual penalty or by an acknowledgement of debt.

(2) If another person administers the security for the benefit of the creditor, that person may enforce against the debtor or the provider of the security the same rights and perform the same duties towards them as the creditor.

§ 2011

The creditor shall, at the request of the person who gave the security, at any time and without undue delay, inform the secured party of the amount of the secured debt.

Security

§ 2012

(1) Whoever is obliged to give security shall make good his obligation by creating a lien.

(2) If one is unable to give security by creating a lien, he shall give security by an eligible surety. An eligible guarantor is presumed to be a person who can be sued domestically and who has suitable assets.

§ 2013

No person shall be bound to accept a thing as security to an amount exceeding two-thirds of the usual value.

§ 2014

(1) Building land or immovable property used for business purposes is deemed to be sufficient security up to half the normal price. A building right shall be deemed to be sufficient security up to half of the normal price if the consideration agreed as a building fee is repaid not later than five years before the building right ceases to exist.

(2) A security providing a safe yield is deemed to be sufficient security up to three-quarters of the normal price.

(3) Deposits in banks or credit unions are eligible security up to the amount of the insurance.

§ 2015

(1) Security secures interest on a monetary debt up to a maximum of the legal rate of interest; this does not apply if the security giver was aware, before the security was given, of the interest rate agreed between the creditor and the debtor.

(2) If a debt already bearing interest is secured, interest that has not yet accrued is also secured.

§ 2016

Where the security of different creditors is based on different rights over the same thing, the creditors secured by a right in rem entered in the public list or register of pledges shall be satisfied, to the extent of those rights and in the order of creation of the security, in the first group and in the second group, respectively, by creditors secured by a right in rem not entered in the public list or register of pledges. Then, in the third group, creditors secured by an obligation right shall be satisfied.

§ 2017

(1) If the security loses value so that the security becomes insufficient, the creditor has the right to require the debtor to make reasonable additions to the security without undue

delay; if the debtor fails to do so, the portion of the claim that is not secured becomes due.

(2) The provisions of [paragraph 1](#) shall apply even if the security has been validly drawn upon.

Section 2

Debt Security

Suretyship

§ 2018

(1) Whoever represents to the creditor that he will satisfy the creditor if the debtor fails to discharge his debt to the creditor becomes the debtor's guarantor. If the creditor does not accept the guarantor, he cannot demand anything from him.

(2) A guarantor's declaration requires a written form.

§ 2019

(1) Guaranty presupposes a valid debt of the debtor; a guaranty may be given for future or contingent debts, as well as for a set of debts of a certain kind incurred by the debtor at a certain time, or a set of different debts for the same legal reason.

(2) The validity of a suretyship is not prevented if the debtor's obligation is void for lack of capacity to bind, if the surety knew or ought to have known this when assuming the surety obligation.

§ 2020

If only a part of the debt is secured by the surety, the extent of the surety is not reduced by the partial performance if the debt remains unsatisfied to the extent that it is secured by the surety.

§ 2021

(1) A creditor has the right to demand performance from a guarantor if the debtor has failed to perform the debt within a reasonable time, despite being required to do so in writing by the creditor. The demand is not necessary if the creditor cannot make it or if it is certain that the debtor will not perform the debt.

(2) If the surety has been agreed for a certain period, the creditor's right is preserved even if the creditor has called upon the surety to perform within that period.

§ 2022

A guarantor may refuse to perform if the creditor has caused the claim not to be satisfied by the debtor.

§ 2023

(1) Guarantor may assert against the creditor all defenses that the debtor has against the creditor.

(2) If the guarantor asserts objections communicated to it by the debtor, the debtor shall reimburse the guarantor for the costs incurred by the guarantor if the objections are unsuccessful.

§ 2024

If a guarantor satisfies a creditor without the debtor's knowledge, the debtor may assert against the guarantor all objections that he would have been entitled to assert against the creditor if the creditor had enforced performance against him. However, the debtor may not assert against the guarantor any objections which the debtor has not brought to the attention of the guarantor without undue delay after the guarantor has notified him that the creditor has asserted a right under the guarantee.

§ 2025

(1) A creditor's right against a guarantor is not barred before the right against the debtor is barred.

(2) Acknowledgement of debt by the debtor is effective against the guarantor if the guarantor consents.

§ 2026

(1) The guarantee terminates upon the extinction of the debt it secures.

(2) However, the guarantee does not terminate if the debt has been extinguished because of the impossibility of the debtor to perform it and the guarantor can perform it, or because of the dissolution of the legal person who is the debtor.

§ 2027

If more than one guarantor guarantees the same debt, each guarantor guarantees the entire debt to the creditor. The guarantor has the same rights against the other guarantors as a co-obligor.

§ 2028

A legal guaranty of a nonmonetary debt secures a monetary claim due to the creditor upon breach of the secured debt.

Financial guarantee

§ 2029

(1) A financial guarantee is created by a declaration by the issuer in the security instrument that it will satisfy the creditor under the security instrument up to a certain amount of money if the debtor fails to pay a certain debt to the creditor or if other conditions specified in the security instrument are met. If the issuer is a bank, foreign bank or credit union, it is a bank guarantee.

(2) A security instrument requires a written form.

§ 2030

When a non-monetary claim is secured, it is deemed to be secured, to the extent specified in the security deed, against a monetary claim that the creditor is entitled to recover upon breach of the secured obligation to perform.

§ 2031

(1) If the financial guarantee is confirmed by another issuer, the creditor may enforce the right under the financial guarantee against any of those issuers.

(2) An exhibitor that has confirmed a financial guarantee and performed on that basis has a right of recourse against the exhibitor that requested the confirmation of the financial guarantee.

§ 2032

If an exhibitor has provided a financial guarantee at the request of another exhibitor, the exhibitor who provided the guarantee shall have a right of reimbursement against the requesting exhibitor if the exhibitor has performed under the guarantee provided and complied with the conditions specified in the request.

§ 2033

If an exhibitor notifies another person that another exhibitor has provided a financial guarantee, the notifying exhibitor does not incur an obligation under the financial guarantee; however, if the exhibitor causes damage by making an incorrect notification, the exhibitor shall indemnify the notifying exhibitor.

§ 2034

(1) The Exhibitor guarantees the performance of the secured debt up to the amount and under the conditions stated in the guarantee document. The Issuer may only raise

objections against the creditor which are permitted by the guarantee document.

(2) Where a financial guarantee secures the performance of a debt, partial performance of the debt has no effect on the extent of the financial guarantee, provided that the amount of the unperformed debt is at least equal to the amount for which the guarantee instrument reads.

§ 2035

(1) If the conditions set out in the guarantee document are met, the issuer shall perform the obligation under the financial guarantee if the lender calls upon it to do so in writing. If the instrument of guarantee makes the performance of the exhibitor conditional upon the production of a certain document, it must be produced on demand or without undue delay thereafter, but always during the term of the financial guarantee.

(2) Unless otherwise provided in the guarantee document, the exhibitor may not assert against the creditor any objections which the debtor would be entitled to assert against him. A prior demand by the creditor that the debtor perform the debt is required if the security instrument so provides.

§ 2036

The right to performance under a guarantee may be assigned by the creditor. If the guarantee document so permits, the creditor may also assign the right to call on the financial guarantee; such assignment also transfers the right to performance under the guarantee.

§ 2037

If the exhibitor is obliged under the warranty deed to perform for the benefit of the beneficiary for another exhibitor, the exhibitor is obliged to perform for the account of the beneficiary with that exhibitor.

§ 2038

The financial guarantee may be limited to a specific period of time. If the creditor fails to exercise its right against the issuer within the time specified in the guarantee document, the financial guarantee will lapse.

§ 2039

(1) The Borrower shall reimburse the Exhibitor for what it has performed under the Security Deed issued in accordance with the Contract. If a third party has entered into a contract with the exhibitor for the provision of a financial guarantee, that party shall reimburse the exhibitor for what it has performed under the guarantee document issued in accordance with the contract.

(2) The borrower may not assert against the exhibitor any objections that it might assert against the lender unless it has agreed with the exhibitor that the exhibitor will reserve to the lender the assertion of such objections in the warranty deed.

Transfer of a right as security

§ 2040

(1) In a security assignment agreement, the debtor or a third party secures the debt by temporarily assigning its right to the creditor.

(2) A collateral assignment is deemed to be an assignment with a condition precedent that the debt will be discharged.

§ 2041

If the security transfer relates to a thing entered in a public register, the security interest is created by entry in that register; the temporary nature of the security transfer is also entered in the public register.

§ 2042

If title is transferred to the collateral and the item has been delivered to the creditor, the creditor shall be entitled to keep the item in his possession for the duration of the collateral transfer and shall be obliged to exercise simple administration of the item. If the thing is in the possession of the person who granted the security to the creditor by the transfer of the right, he shall exercise simple administration of the thing.

§ 2043

If the reason for the duration of the security transfer ceases to exist, the creditor shall allow the person who granted the security to exercise the right to the previous extent. At the same time, he or she shall deliver to the creditor all that he or she has acquired or added to the transferred right, against reimbursement of the costs he or she has reasonably incurred in connection with the execution of the security transfer.

§ 2044

(1) If the secured debt is not discharged, the transfer of the right becomes unconditional and the debtor shall deliver to the creditor all that is necessary for the full exercise of the transferred right.

(2) If the normal value of the security obviously exceeds the amount of the secured debt, the creditor shall pay to the person who provided the security the amount corresponding to the difference; in doing so, it shall take into account the costs it has reasonably incurred in connection with the execution of the secured assignment. If the contract of transfer of security does not contain an indication of the amount of the debt and a fair valuation of the right transferred as security, it shall be for the creditor to prove that the normal value of the security does not appear to exceed the amount of the secured debt.

Agreement on deductions from wages or other income

§ 2045

(1) A debt may be secured by an agreement between the creditor and the debtor for deductions from wages or salary, from remuneration under a contract of employment creating a similar obligation between the employee and the employer, or from wage or salary compensation. If the deductions under the first sentence are not made to satisfy the employer's right, the prior consent of the employer is required for the conclusion of the agreement.

(2) Against the payor of the wages or salary, the creditor acquires the right to payment of the deductions at the time the agreement is presented to the payor.

§ 2046

The cost of paying the deductions is borne by the paymaster; however, if the paymaster is required to pay under several agreements for deductions from wages or salary at the same time, the cost of paying the deductions under the second and subsequent agreements is borne by the debtor.

§ 2047

The provisions of § 2045 and 2046 shall also apply to other income treated as wages or salary in the enforcement of a judgment.

Section 3

Corroboration of a debt

Contractual penalty

§ 2048

(1) If the parties agree on a contractual penalty for breach of a contractual obligation in a certain amount or on the manner in which the amount of the contractual penalty is to be determined, the creditor may claim the contractual penalty regardless of whether he has suffered any damage as a result of the breach of the obligation. The contractual penalty may be agreed upon in consideration other than money.

(2) An arrangement by which a minor who has not attained the age of fifteen years at the time of the arrangement has undertaken to pay a contractual penalty shall be disregarded.

§ 2049

Payment of a contractual penalty does not relieve the debtor of the obligation to perform the debt secured by the contractual penalty.

§ 2050

If a contractual penalty is agreed, the creditor has no right to compensation for damages arising from the breach of the obligation to which the contractual penalty relates.

§ 2051

An unreasonably high contractual penalty may be reduced by the court, on application by the debtor, taking into account the value and importance of the obligation secured, up to the amount of the damage incurred up to the time of the decision by the breach of the obligation to which the contractual penalty relates. The injured party is entitled to compensation for damages, if the right to such compensation arises later, up to the amount of the contractual penalty.

§ 2052

The provisions on contractual penalty also apply to the penalty provided for by law for breach of a contractual obligation (penalty).

Acknowledgement of debt

§ 2053

If a person acknowledges his debt as to cause and amount by a statement made in writing, the debt shall be deemed to subsist to the extent of the acknowledgment at the time of the acknowledgment.

§ 2054

(1) Payment of interest shall be deemed to be an acknowledgment of the debt in respect of the amount on which interest is payable.

(2) If the debtor performs the debt in part, the partial performance has the effect of acknowledging the remainder of the debt if it can be inferred from the circumstances that by that performance the debtor has acknowledged the remainder of the debt.

(3) The provisions of paragraphs 1 and 2 do not apply if the creditor's claim is already time-barred.

TITLE II

OBLIGATIONS ARISING FROM JURIDICAL ACTS

Volume 1

Transfer of a thing into the ownership of another

Section 1

Donation

Subsection 1

General Provisions

§ 2055

Basic Provisions

(1) By a gift agreement, the donor transfers ownership of the item free of charge or undertakes to transfer ownership of the item free of charge to the donee, and the donee accepts the gift or offer.

(2) A performance of mere social service is not a gift if it is clear from the conduct of the parties that they do not intend to be bound by the contract.

§ 2056

He who merely promises a gift to another is not bound to make the gift, but he who receives the promise is entitled to be reimbursed by the promisor for expenses reasonably incurred in anticipation of the gift.

§ 2057

(1) When making a gift of an item listed on the public register, the contract requires a written form.

(2) A written form of contract is also required if the delivery of the thing does not take place at the same time as the expression of the will to make and accept the gift. The donor is obliged to surrender the gift, but is not obliged to pay interest for delay.

§ 2058

(1) A donor may, for example, donate all of his or her current assets. A contract by which someone donates his future property is valid only insofar as it does not exceed half of that property.

(2) A gift of an item that the donor does not have is valid only if the donor undertakes in the contract to acquire the item.

§ 2059

If the donor has undertaken to surrender the gift after the conclusion of the contract, the donor may withdraw from the contract and refuse to surrender the gift if circumstances change after the conclusion of the contract to such an extent that performance under the contract would seriously jeopardise the donor's maintenance or the performance of the donor's maintenance obligation. If the donor has already given part of the gift, he may withdraw from the contract only in respect of what he has not yet fulfilled.

§ 2060

If something has been given to someone in recognition or on account of his merits or as a special reward, it is a gift unless the recipient was already entitled to it.

§ 2061

If it has been agreed that the donor will also make a gift to each other, it is a gift only in respect of the extent to which the value of one party's performance exceeds the value of the other party's performance.

§ 2062

Donation of support

If the donor commits to support the donee on a regular basis, the right to support and the obligation to support pass to the heirs of the donor and donee only if expressly agreed.

§ 2063

Donation mortis causa

Giving contingent on the donor's survival is generally treated as a bequest. It is governed by the gift provision if the donee accepts the gift and the donor expressly waives the right to revoke the gift and makes a deed to the donee to that effect. This is without prejudice to § 2057.

§ 2064

(1) If the gift was made with a direction, the donor can only claim compliance with the direction if he has already complied himself.

(2) If compliance with the order is in the public interest, the relevant public authority or legal person entitled to defend such interest may also require compliance with the order

after the donor's death.

§ 2065

If a person knowingly donates another's property and conceals it from the donee, he shall compensate for the damage resulting therefrom. The donor shall compensate the donee for the damage even if the damage is caused by a defect in the thing donated, if the donor knew about the defect and did not warn the donee about it. In such cases, the donee may also withdraw from the contract and return the gift.

Subsection 2

Special provisions on the validity of donation

§ 2066

A person limited in capacity is eligible to make and accept a gift of small value or a gift customary under the circumstances.

§ 2067

(1) A gift to a person who operates a facility where health or social services are provided, or to a person who manages or is employed by such a facility, is void if it was made while the donor was in the care of such a facility or otherwise receiving its services.

(2) [paragraph 1](#) does not apply if the donee is a person close to the donor.

Subsection 3

Revocation of a gift

Revocation of a gift due to destitution

§ 2068

(1) If, after making a gift, the donor falls into such distress that he has no means of providing for his own necessary maintenance or the necessary maintenance of a person to whose maintenance he is legally obliged, he may revoke the gift and require the donee to return the gift to him or to pay its usual value, but not more than to the extent that the donor has no means of providing for that maintenance. The donee may discharge this obligation by providing what is necessary for such maintenance.

(2) The donee shall not be under an obligation under [paragraph 1](#) if the donee is himself in a similar need to that of the donor.

§ 2069

If more than one person has been gifted, the one who was gifted earlier is liable only to the extent that the later donee's contribution is insufficient for maintenance.

§ 2070

The right to revoke a gift does not pass to the donor's heirs. But if the donor does not exercise his right, the one to whom the donor is legally obliged to support has the right to demand, on the same terms, that the donee supply what the donor cannot supply.

§ 2071

The right to revoke a gift is not available to a donor who has caused the emergency intentionally or through gross negligence.

Revocation of gift due to ingratitude

§ 2072

(1) If the donee has intentionally or grossly negligently harmed the donor in a manner that clearly violates good morals, the donor may, if the donee has not so advised, rescind the gift contract for ingratitude. If the gift has already been handed over, the donor has the right to demand the return of the entire gift and, if this is not possible, payment of its normal price.

(2) If the circumstances so warrant, an apparent breach of good morals towards a person close to the donee shall also be regarded as ingratitude towards the donor.

§ 2073

Dishonesty makes the donee a dishonest possessor as to his person.

§ 2074

The right to revoke a gift passes to the donor's heirs if the donee has prevented the donor from revoking the gift or if force majeure has prevented the donor from doing so.

§ 2075

(1) A donor may revoke a gift for ingratitude within one year after the date the donee has wronged the donor, but if the donor learns of it later, within one year after the date the donor has knowledge of the reason for revoking the gift. The donor's heir may revoke the gift not later than one year after the donor's death.

(2) If the gift is revoked later and the donee objects to the late revocation of the gift, the court shall disregard the revocation.

Common Provisions

§ 2076

If, in an inter vivos gift, the donor waives the right to revoke the gift in advance because of hardship or ingratitude, it shall be disregarded.

§ 2077

If an obligation binding the donee under the gift agreement is attached to the gift, it is cancelled by revocation of the gift for the future.

§ 2078

If the donee no longer has the gift or its full value, the revocation of the gift obliges him to release what remains of the enrichment. This does not apply if he has deprived himself of the gift in order to frustrate the delivery, or if the donor himself has revoked the gift for ingratitude.

Section 2

Purchase

Subsection 1

General Provisions

§ 2079

Basic Provisions

(1) By the contract of sale the seller undertakes to hand over to the buyer the thing which is the subject of the purchase and to enable him to acquire ownership of it, and the buyer undertakes to take possession of the thing and to pay the seller the purchase price.

(2) Unless the contract or custom otherwise requires, the seller and the buyer are bound to perform their obligations simultaneously.

§ 2080

The purchase price is agreed with sufficient certainty if at least the method of determining it is agreed.

§ 2081

The seller bears the costs of handing over the goods at the place of performance. The buyer shall bear the costs associated with taking possession of the goods.

§ 2082

(1) The risk of damage to the item passes to the buyer at the same time as the acquisition of ownership. If the buyer acquires title before handing over the item, the seller has the rights and obligations of the bailee until the item is handed over.

(2) When a contract with a condition precedent is concluded, the risk of damage to the thing passes to the buyer at the earliest on the date of fulfilment of the condition.

§ 2083

To one who purchases the future benefits of a thing in the aggregate or with the hope of uncertain future benefits, all benefits properly extracted belong. But he suffers loss if his expectation is frustrated.

§ 2084

The seller shall, when negotiating the contract of sale, warn the buyer of any defects in the goods of which he is aware.

Subsection 2

Purchase of movable property

Basic Provisions

§ 2085

(1) Any purchase of a movable thing, the subject of which is not an immovable thing, as well as the purchase of a component part of an immovable thing, shall be treated as a purchase of a movable thing, if the purchaser is to acquire the component part as a movable thing under the contract after separation.

(2) Where the parties intend to enter into a contract of sale without specifying a purchase price, the agreed purchase price shall be the price at which the same or a comparable object is usually sold at the time of the conclusion of the contract and on similar terms.

§ 2086

(1) A contract for the supply of a thing yet to be made is to be treated as a contract of sale unless the party to whom the thing is to be supplied has undertaken to deliver to the other a substantial part of what is required to make the thing.

(2) A contract under which the major part of the supplier's performance consists in the carrying on of a business shall not be regarded as a contract of sale.

Obligations of the seller

§ 2087

The seller shall deliver the item to the buyer, as well as the documents relating to the item, and shall allow the buyer to acquire title to the item in accordance with the contract.

§ 2088

The seller shall fulfil the obligation to hand over the thing to the buyer if he allows the buyer to dispose of the thing at the place of performance and gives him timely notice.

§ 2089

(1) If the buyer is to determine the characteristics of the subject matter of the purchase subsequently and fails to do so in time, the seller shall determine them himself and notify the buyer of the characteristics he has determined. In doing so, he shall take into account the needs of the buyer which he knows.

(2) The buyer has the right to notify the seller of a different determination of the characteristics of the object of purchase than that determined by the seller; if the buyer fails to do so without undue delay after notification by the seller, the buyer is bound by the seller's determination.

§ 2090

If the seller is to ship the item, the seller shall deliver the item to the buyer by handing it over to the first carrier for shipment to the buyer and shall allow the buyer to exercise the rights under the contract of carriage against the carrier.

§ 2091

(1) Upon shipment, the effects of delivery of the item to the buyer are triggered by its delivery to the carrier if the seller clearly and sufficiently identifies the item as being for the buyer.

(2) If the seller does not mark the thing, the effects of delivery shall be effected if the seller notifies the buyer without undue delay that he has dispatched the thing to him and sufficiently identifies it in the notice. Without such notice, the goods are not handed over to the buyer until the carrier has handed them over to the buyer.

§ 2092

The time within which the seller is to perform runs from the effective date of the contract. However, if the buyer is required to perform an obligation before handing over the goods, the time within which the seller is to perform begins to run from the date of performance of that obligation.

§ 2093

If the seller delivers a greater quantity of goods than agreed, the contract of sale is concluded even for the excess quantity, unless the buyer rejects it without undue delay.

§ 2094

(1) The seller shall give the buyer the documents necessary for the acceptance and use of the item. If the handover is to take place upon payment of the purchase price, the seller shall hand over the documents at the place of payment.

(2) The seller shall hand over to the buyer without undue delay after their issue the documents which relate to the transport and are necessary for the acceptance and free use of the goods. Other documents specified in the contract shall be handed over by the seller to the buyer on handing over the goods.

Thing purchased**§ 2095**

The Seller shall deliver to the Buyer the object of purchase in the agreed quantity, quality and design. If the quality and workmanship are not agreed, the seller shall perform in a quality and workmanship suitable for the purpose apparent from the contract; otherwise for the purpose customary.

§ 2096

When determining quality or workmanship from a contracted sample or specimen, the item must conform in quality or workmanship to the sample or specimen. If the quality or workmanship specified in the contract and the sample or specimen differ, the contract shall govern. If the contract and the specimen determine the quality or workmanship of the thing differently, but not inconsistently, the thing must conform to both the contract and the specimen or model.

§ 2097

If it is not agreed how the thing is to be packed, the seller shall pack the thing according to custom; if not, in a manner necessary for the preservation and protection of the thing. The seller shall provide the thing for carriage in the same manner.

§ 2098

If it appears from the contract or from the nature of the object of purchase that the quantity is only approximately determined, the seller shall determine the exact quantity.

It is understood that the deviation may not exceed five % of the quantity specified in the contract.

Rights arising from defective performance

§ 2099

(1) A thing is defective if it does not have the characteristics set out in § 2095 and 2096. The performance of another thing is also considered a defect. Defects in the documents necessary for the use of the item are also considered a defect.

(2) If it follows from the seller's declaration or the handover document that the seller has delivered a smaller quantity of goods, the provisions on defects do not apply to the missing goods.

§ 2100

(1) The buyer's right of defective performance is created by a defect which the thing has when the risk of damage passes to the buyer, even if it becomes apparent later. The buyer's right is also established by a defect arising later which the seller has caused by a breach of his duty.

(2) The seller's obligations under the guarantee of quality are not affected.

§ 2101

(1) In the case of early performance, the seller may remedy the defects within the time specified for handing over the goods. In exercising his right, he must not cause undue hardship or expense to the buyer. The buyer's right to compensation for damages is not affected.

(2) Paragraph 1 applies mutatis mutandis to defects in documents.

§ 2102

(1) The buyer's rights under the defective performance are not affected if the defect was caused by the use of the item which the buyer handed over to the seller. This does not apply if the seller proves that he brought the unsuitability of the thing handed over to the buyer's attention in time and the buyer insisted on using it, or if he proves that he could not have discovered the unsuitability of the thing handed over even if he had exercised sufficient care.

(2) If the defect in the thing was caused by the seller's action in accordance with designs, samples or documents provided by the buyer, paragraph 1 applies mutatis mutandis.

§ 2103

The buyer has no rights under defective performance if the defect is one which he ought, with the exercise of ordinary care, to have become aware of at the conclusion of the contract. This does not apply if the seller has expressly assured him that the thing is free from defects or if he has disguised the defect by deceit.

§ 2104

The purchaser shall, as soon as practicable after the risk of damage to the thing has passed, examine the thing and satisfy himself as to its properties and quantity.

§ 2105

(1) If the seller sends the item, the buyer may postpone the inspection until the item is delivered to its destination.

(2) If the item is diverted to another destination during transit, or is reshipped by the buyer without the buyer having had an opportunity to inspect the item, and the seller knew or should have known at the time of the contract of the possibility of such change of destination or such reshipment, the buyer may postpone inspection until the item is transported to the new destination.

§ 2106

- (1)** If the defective performance is a material breach of contract, the buyer has the right
- a)** to remedy the defect by supplying a new item without defect or by supplying a missing item,
 - b)** to remedy the defect by repairing the item,
 - c)** for a reasonable discount on the purchase price, or
 - d)** to withdraw from the contract.
- (2)** The buyer shall notify the seller of the right he has chosen when notifying the defect or without undue delay after notification of the defect. The Buyer may not change the choice made without the consent of the Seller; this does not apply if the Buyer has requested the repair of a defect which proves to be irreparable. If the seller fails to remedy the defects within a reasonable period of time or notifies the buyer that he will not remedy the defects, the buyer may demand a reasonable discount on the purchase price in lieu of remedying the defect or may withdraw from the contract.
- (3)** If the buyer fails to exercise its right in time, the buyer has rights under [§ 2107](#).

§ 2107

- (1)** If the defective performance is an insubstantial breach of contract, the buyer has the right to have the defect remedied or to a reasonable discount from the purchase price.
- (2)** Until the buyer exercises the right to a discount on the purchase price or withdraws from the contract, the seller may supply what is missing or remedy the legal defect. The seller may remedy other defects at his option by repairing the thing or by supplying a new thing; the choice must not cause unreasonable costs to the buyer.
- (3)** If the seller fails or refuses to remedy the defect in time, the buyer may demand a reduction in the purchase price or may withdraw from the contract. The buyer cannot change the choice made without the seller's consent.

§ 2108

Until the defect is removed, the buyer does not have to pay a portion of the purchase price estimated to be reasonably equivalent to his or her right to a discount.

§ 2109

When a new item is delivered, the buyer shall return to the seller, at the seller's expense, the item originally delivered.

§ 2110

The buyer cannot withdraw from the contract or demand delivery of a new item if he cannot return the item in the condition in which he received it. This does not apply,

- a)** if there has been a change in condition as a result of an inspection for the purpose of discovering a defect in the item,
- b)** if the buyer used the item before the defect was discovered,
- c)** if the buyer did not cause the impossibility of returning the item in its unaltered condition by act or omission, or
- d)** if the buyer sold the thing before the defect was discovered, consumed it, or altered the thing in the ordinary course of use; if this happened only in part, the buyer shall return to the seller what he can still return and shall compensate the seller to the extent that he benefited from the use of the thing.

§ 2111

If the buyer has not notified the defect in the goods in time, he loses the right to withdraw from the contract.

§ 2112

(1) If the buyer has failed to notify the defect without undue delay after he could have discovered it with timely inspection and reasonable diligence, the court shall not grant him the right of defective performance. In the case of a latent defect, the same shall apply if the defect was not notified without undue delay after the buyer could have discovered it with reasonable diligence, but at the latest within two years after the delivery of the goods.

(2) For the effects under [paragraph 1](#), the court shall only take into account the seller's objection that the defect was not notified in time. However, the seller is not entitled to object if the defect is the result of a fact of which the seller knew or ought to have known at the time of delivery.

Quality guarantee

§ 2113

(1) A guarantee of quality arises from a declaration by the guarantor that it will satisfy the purchaser beyond his legal rights in respect of defective performance, in particular by refunding the purchase price, replacing or repairing the item, or providing a service in this connection if the item does not have the characteristics specified in the guarantee declaration.

(2) A warranty of quality shall also arise from a declaration made in an advertisement available at the latest at the time of conclusion of the purchase contract. If the content of the warranty contained in another warranty statement is less favourable to the purchaser than the content of the warranty made in the advertisement, the content stated in the advertisement shall prevail, unless it has been subsequently modified before the conclusion of the contract in the same or comparable manner as the advertisement.

(3) The provisions of the guarantee of quality apply *mutatis mutandis* to a guarantee assumed in connection with a contract other than a contract of sale.

§ 2114

(1) If the provider of a warranty warrants that the item will retain its functions and performance under normal use for a certain period of time, the buyer is at least entitled under the warranty to have the item delivered new and free from defects or to have the item repaired. The indication of the guarantee period or the period of use of the item on the packaging of the item also has these effects.

(2) If the warranty statement specifies different warranty periods, the longest of these applies; this is without prejudice to [§ 2113\(2\)](#)

§ 2115

The warranty period runs from the time the item is handed over to the buyer; if the item has been shipped under the contract, it runs from the time the item reaches its destination. If the purchased item is to be put into operation by someone other than the warranty provider, the warranty period shall run from the date of putting the item into operation, provided that the buyer has ordered the commissioning within three weeks of taking delivery of the item and has duly and timely provided the necessary cooperation to perform the service.

§ 2116

The buyer has no right under the warranty if an external event causes the defect after the risk of damage to the item has passed to the buyer.

§ 2117

A defect covered by a warranty must be complained of by the purchaser to the warranty provider within a period determined by the length of the warranty period; [§ 1921](#) and [1922](#) apply *mutatis mutandis*.

Duties of the buyer

§ 2118

The buyer shall pay the purchase price and take possession of the item.

§ 2119

(1) The buyer does not have to pay the purchase price until he has had a chance to inspect the item. This does not apply if a method of delivery has been agreed which excludes the possibility of inspection.

(2) In determining the price by weight, the net weight of the object of purchase shall be deemed to be decisive.

§ 2120

(1) If the buyer is in default in taking possession of the item or in paying the purchase price, the seller shall preserve the item, if he can dispose of it, for the buyer in a manner reasonable in the circumstances.

(2) If the buyer has taken possession of the thing which he intends to reject, he shall keep it in a manner reasonable in the circumstances.

(3) Whoever keeps the thing for the other party may retain it until the other party has reimbursed him for the reasonable costs of keeping it.

Risk of damage to a thing

§ 2121

(1) The risk of damage passes to the buyer upon acceptance of the item.

(2) The same consequence applies if the buyer does not take possession of the thing, although the seller has allowed him to dispose of it.

§ 2122

If the buyer is to take possession of the thing from a third party, the risk of damage passes to him at the time when he was able to dispose of the thing, but not before the time specified as the time of performance.

§ 2123

(1) If the seller delivers the thing to the carrier for carriage to the buyer at the place specified in the contract of sale, the risk of loss passes to the buyer on delivery of the thing to the carrier at that place, and if no place has been agreed, on delivery to the first carrier for carriage to the place of destination.

(2) If the goods have already been transported when the contract is concluded, the risk of damage to the goods passes to the buyer when the goods are handed over to the first carrier. However, the seller is liable for damage that occurred before the conclusion of the contract and the seller knew or should have known of it given the circumstances.

§ 2124

The risk of damage to a thing determined by its kind does not pass to a buyer who has not taken possession of the thing until the thing is sufficiently separated and distinguished from other things of the same kind for the purpose of the contract.

§ 2125

(1) Damage to the goods occurring after the risk of damage to the goods has passed to the buyer does not affect the buyer's obligation to pay the purchase price, unless the seller caused the damage through a breach of duty.

(2) [paragraph 1](#) does not apply if the buyer has exercised the right to demand delivery of a replacement item or has withdrawn from the contract.

Self-help sale

§ 2126

(1) A party's failure to take possession of an item gives the other party the right to sell the item, on notice to the selling party's account, in an appropriate manner after giving the selling party additional reasonable time to take possession.

(2) This applies even if the party is in default of payment which is conditional on the surrender of the thing.

§ 2127

If the property is in danger of perishing quickly and there is no time for notice, notice is not required.

Subsection 3

Purchase of immovable property

§ 2128

(1) In the sale and purchase of immovable property, a contract of sale requires a form under § 560. However, other forms are sufficient for arrangements for reservation of title, right of repurchase, prohibition of alienation or encumbrance, reservation of pre-emption or better buyer, as well as for arrangements for a trial purchase, unless such arrangements are intended to create a right in rem over the immovable property.

(2) Where an arrangement for reservation of title, right of redemption, prohibition of alienation or encumbrance, reservation of pre-emption or of a better buyer, or an arrangement for a test purchase establishes a right in rem in respect of a thing entered in the public register, such right shall not arise until the entry in the public register.

§ 2129

(1) The buyer is entitled to a reasonable discount on the purchase price if the land does not have the acreage specified in the purchase contract. However, if the land does not have the area entered in the public register, the buyer is entitled to a reasonable discount on the purchase price only if this has been agreed.

(2) If the buyer fails to point out to the seller a latent defect in a building connected to the ground by a solid foundation within five years of acquisition, the court will not grant the buyer the right of defective performance if the seller argues that the defect was not pointed out in time. However, the seller is not entitled to object if the defect is the result of a fact of which the seller knew or ought to have known at the time of delivery.

(3) If the buyer is a consumer and the defect manifests itself within two years of the risk of damage passing to the buyer, the immovable property shall be deemed to have been defective at the time the risk of damage passed, unless the nature of the defect precludes this. This period does not run for the time during which the buyer cannot use the thing, if he has rightly complained of the defect.

§ 2130

If the parties agree when the buyer is to take possession of the immovable, the buyer is entitled to the fruits and benefits of the immovable from the agreed time of taking possession. At the same time, the risk of damage to the thing passes to the buyer.

§ 2131

In other respects, the provisions on the purchase of movable property shall apply *mutatis mutandis* to the contract for the purchase of immovable property.

Subsection 4

Ancillary stipulations when concluding a contract of sale

Reservation of the right of ownership

§ 2132

If the seller retains title to the property, the buyer shall be deemed to become the owner only upon full payment of the purchase price. However, the risk of damage to the item passes to the buyer upon acceptance of the item.

§ 2133

If the acquisition of the ownership right by the buyer is conditional on the payment of the purchase price in instalments, the buyer's delay in making an instalment not exceeding one-tenth of the purchase price does not in itself give the seller the right to withdraw from the contract and demand the return of the item, provided that the buyer pays the instalment not later than the due date of the next instalment and together with it.

§ 2134

The title is effective against the buyer's creditors only if the arrangement was made in the form of a public deed or if it was made in writing and the signatures of the parties were officially authenticated, but then only from the date of the official authentication of the signatures. However, if the reservation of title is agreed in respect of a thing entered in a public register, it shall have effect against third parties only if it has been entered in that register.

Reservation of repurchase**§ 2135**

(1) A buy-back reservation arrangement creates an obligation on the buyer to transfer the item back to the seller for consideration upon request. The buyer shall return the thing to the seller in an unimpaired condition and the seller shall return the purchase price to the buyer; this shall also compensate for the benefits of money and fruits perhaps extracted from the thing.

(2) A reservation of repurchase binds the heirs, and the right of repurchase can be alienated only if expressly agreed upon.

§ 2136

If the buyer has incurred an expense for the improvement of the thing, or an extraordinary expense for its preservation, he is entitled to the same compensation as an honest possessor; but if the return of the thing is frustrated or its value impaired for reasons for which the buyer is responsible, he shall indemnify the seller.

§ 2137

If no time limit has been agreed within which the seller has the right to demand the return of the item, the three-year time limit is deemed to be agreed in respect of movable items and the ten-year time limit in respect of immovable items.

§ 2138

If a reservation of repurchase has been agreed to in respect of a thing registered in the public register as a right in rem, the thing may be encumbered only with the consent of the person for whom the right of repurchase is registered in the public register.

§ 2139**Reservation of resale**

Rebuy provisions apply similarly to an arrangement whereby the buyer exchanges to sell the item back to the seller.

§ 2140**Pre-emptive right**

(1) If the preemptor arranges for a right of first refusal on an asset, the debtor is obliged to offer the asset to the preemptor to buy it if he wishes to sell it to a third party

(buyer).

(2) The right of pre-emption may be extended by special agreement to other methods of alienation. The right of pre-emption may also be agreed outside the context of the purchase contract.

§ 2141

If the pre-emption right belongs to several persons jointly, they may exercise it only in its entirety. However, if the pre-emption right of any one of them ceases to exist or is not exercised, the remaining pre-emptionists may exercise the pre-emption right as a whole.

§ 2142

The reservation of the right of pre-emption binds the heirs and the right of pre-emption may be disposed of if expressly agreed.

§ 2143

The seller's obligation to offer the thing to the preemptionist for purchase is consummated by entering into a contract with the preemptionist.

§ 2144

(1) If the pre-emption right is established as a right in rem, it entitles the pre-emptionist to claim against the successor of the other party who acquired the thing by purchase or in a manner made equivalent by the pre-emption agreement to transfer the thing to him for an appropriate consideration.

(2) If the successor acquires title to the thing by other means, the obligation to offer the thing to the preemption party to purchase it passes to him on the terms by which his predecessor was bound.

(3) If the predecessor does not purchase the offered thing, the right of pre-emption remains with him.

§ 2145

If the purchaser knew or should have known of the pre-emption right, the contract is concluded with a condition precedent to the exercise of the pre-emption right.

§ 2146

If the seller agrees with the buyer that he will rescind the contract with him if the pre-emptionist exercises his right, or that the obligation will be modified or cancelled if the pre-emptionist does not exercise his right, such agreements are ineffective against the pre-emptionist. Any contrary arrangement shall be disregarded.

§ 2147

(1) The offer shall be made by the seller to the seller by announcing all terms and conditions to the buyer. The offer requires notification of the contents of the contract made with the purchaser. An offer to purchase immovable property requires a written form.

(2) If the pre-buyer accepts the offer, the purchase shall take place between the seller and the pre-buyer on the same terms and conditions as the seller has agreed with the buyer.

§ 2148

(1) The purchaser shall pay the purchase price within the agreed period, otherwise within eight days after the offer in the case of movable property and within three months after the offer in the case of immovable property. If he fails to do so, the pre-emption right shall lapse.

(2) If the seller has deferred payment of the purchase price to the purchaser to a later time or has allowed him to pay in instalments, the preemptor may claim the same

benefit if he provides sufficient security for the deferred payment.

§ 2149

(1) The preemptor shall pay the purchase price in the amount offered by the purchaser and shall comply with the terms offered by the purchaser in addition to the purchase price. If the purchaser has undertaken to provide a secondary performance which the pre-emptionist cannot provide, the pre-emptionist shall pay to the seller the value thereof. If the ancillary performance cannot be compensated even by the appraisal price, the pre-emption right is extinguished; this does not apply if the contract with the purchaser would reasonably have been concluded without the commitment to the ancillary performance.

(2) If the purchaser has undertaken to buy the thing together with others for an aggregate price, the preemption party shall pay a proportionate part of the aggregate price. The seller may require the preemptionist to buy with the thing anything that cannot be separated from it without damage.

Trial purchase

§ 2150

(1) Whoever buys an item on trial buys it on the condition that he or she approves the item within the trial period.

(2) If the parties do not agree on a trial period, it shall be three days for movable goods and one year for immovable goods from the conclusion of the contract. However, if it follows from the negotiations for the conclusion of the contract that the item is to be inspected or tested after delivery, the trial period shall run from the date of delivery.

§ 2151

(1) If the buyer has not taken possession of the item, the condition is condition precedent. The condition shall be deemed to be waived if the buyer fails to notify the seller within the trial period that he approves the item.

(2) If the buyer has taken possession of the thing, the condition is a condition precedent. The buyer is deemed to have accepted the item if he has not rejected it within the trial period.

(3) The buyer has no right to reject the item if he cannot return it in the condition in which he took it. Changes caused by testing the item shall not be taken into account.

Reservation of a better buyer

§ 2152

(1) By entering into a sale contract subject to a better buyer, the seller acquires the right to give priority to the better buyer if he applies within the specified period. This period is three days for movable goods and one year for immovable goods from the conclusion of the contract.

(2) The seller decides whether the new buyer is the better buyer; in particular, he may give preference to the new buyer, even if the first buyer offers a higher price.

§ 2153

As in a trial purchase, it is to be considered in which cases the reservation of the better buyer is in the nature of a condition precedent and in which cases it is in the nature of a condition precedent.

Price Clause

§ 2154

If a price clause has been agreed, the purchase price of the item shall be adjusted retrospectively to take account of the cost of production. If it is not determined which

costs are relevant, the purchase price shall be changed in proportion to price changes in the main raw materials needed to produce the item.

§ 2155

(1) If the parties do not specify which time is relevant for the assessment of price changes, the prices at the time of the conclusion of the contract and at the time when the seller was to deliver the item shall be taken into account. If delivery is to take place within a certain period of time, the time of actual timely performance is decisive, otherwise the end of that period.

(2) If the seller delivers the item late and the prices of the relevant cost components are lower than the prices determined under [paragraph 1](#), the lower prices shall be taken into account.

§ 2156

The rights and obligations of the parties under the price clause shall cease if the entitled party fails to exercise its rights with the other party without undue delay after delivery of the item.

§ 2157

Other ancillary stipulations

If the parties agree to other reservations or conditions allowing for the modification or termination of rights and obligations under the purchase contract, the reservation or condition shall lapse no later than one year after the effective date of the purchase contract, unless it is asserted within that period by the person entitled to the reservation or condition.

Subsection 5

Special provisions on the sale of consumer goods

§ 2158

(1) Where the purchaser is a consumer, the provisions of this subsection apply to the sale of tangible movable property. The provisions of this subsection shall also apply to a contract for the supply of a tangible movable thing which is required to be manufactured or created.

(2) Where the object of the purchase is a tangible movable thing which is connected to digital content or a digital content service in such a way that it could not perform its functions without them (hereinafter referred to as a "thing with digital characteristics"), the provisions of this subsection shall also apply to the provision of the digital content or digital content service, even if it is provided by a third party. This does not apply if it is clear from the content of the contract and the nature of the thing that they are provided separately.

(3) Where a tangible movable thing serves only as a carrier of digital content, the provisions of this subsection, except for [§ 2159](#) and [2159a](#), do not apply.

§ 2159

(1) Unless a time of performance is agreed, the seller shall hand over the item to the buyer without undue delay after the conclusion of the contract, but not later than thirty days.

(2) If the seller is to dispatch the item to the buyer, it is handed over to the buyer at the time when the carrier hands it over to the consumer or a person designated by the consumer. If, however, the carrier has been appointed by the buyer without having been offered to him by the seller, the thing is handed over to the buyer at the time when the seller hands it over to that carrier; the buyer's rights against the carrier are not affected.

(3) If the buyer does not take possession of the item at the time specified in [paragraph 1](#), the seller is entitled to payment for storage. If the parties do not agree on the amount, the

usual amount shall be deemed to be agreed.

§ 2159a

(1) If the seller is in default in delivering the goods, the buyer may withdraw from the contract if the seller fails to perform his obligation even within an additional reasonable period of time granted by the buyer. The buyer may only withdraw from the contract without an additional period of time if the seller has refused to perform, or performance at the specified time is necessary in view of the circumstances at the time the contract is made, or the buyer has told the seller before the contract is made that delivery at a specified time is necessary; § 1980 does not apply.

(2) The seller shall refund to the buyer without undue delay after cancellation all monies paid by the buyer under the contract.

§ 2160

(1) By taking possession of the purchased item, the buyer acquires title to the item.

(2) In a self-service sale, the buyer acquires title to the item by paying the purchase price. Until then, the buyer may return the item to its original location. If damage to the item occurs before payment of the purchase price, it shall be compensated according to the general provisions.

§ 2161

Quality upon takeover

(1) The seller is responsible to the buyer that the item is free from defects on receipt. In particular, the seller is liable to the buyer that the item

- a)** corresponds to the agreed description, type and quantity, as well as quality, functionality, compatibility, interoperability and other agreed characteristics,
- b)** is fit for the purpose for which it is required by the buyer and agreed to by the seller, and
- c)** is supplied with the agreed accessories and instructions for use, including instructions for assembly or installation.

(2) The seller shall be liable to the buyer that in addition to the agreed features

- a)** the item is fit for the purpose for which an item of that kind is normally used, including with regard to the rights of third parties, legislation, technical standards or codes of practice of the industry, if there are no technical standards,
- b)** the thing corresponds in quantity, quality and other characteristics, including durability, functionality, compatibility and safety, to the usual characteristics of things of the same kind which the buyer may reasonably expect, even taking into account public statements made by the seller or another person in the same contractual chain, in particular advertising or labelling,
- c)** the item is supplied with accessories, including packaging, assembly instructions and other instructions for use which the buyer can reasonably expect, and
- d)** the item corresponds in quality or workmanship to the sample or sample provided by the seller to the buyer before the contract was made.

(3) The seller is not bound by a public statement under [paragraph 2\(b\)](#) if he proves that he was unaware of it or that it was modified at the time of the contract in at least a comparable manner to the way in which it was made or that it could not have influenced the decision to purchase.

(4) [Paragraph 2](#) does not apply if the seller has specifically advised the buyer before the conclusion of the contract that a feature of the item is different and the buyer expressly agreed to this when concluding the contract.

(5) If a defect manifests itself within one year of acceptance, the thing is deemed to have been defective at the time of acceptance, unless the nature of the thing or the defect

precludes it. This period does not run for the time during which the buyer cannot use the item, if he has rightly pointed out the defect.

§ 2161a

The Seller shall also be liable to the Buyer for any defect caused by incorrect assembly or installation carried out by or under the responsibility of the Seller under the Contract. This also applies if the assembly or installation was carried out by the buyer and the defect is due to a deficiency in the instructions provided by the seller or the provider of the digital content or digital content service, if the item is a digital item.

§ 2161b

(1) Where the subject matter of the purchase is a digital asset, the seller shall ensure that the agreed updates to the digital content or digital content service are provided to the buyer.

(2) In addition to the agreed updates, the seller shall ensure that the buyer is provided with the updates that are necessary for the item to retain the features as set out in § 2161 after receipt and is notified of their availability

a) for a period of two years if the digital content or digital content service is to be provided continuously for a specified period of time under the contract, and, if provision for a period of more than two years is agreed, for that entire period,

b) for such period as the purchaser may reasonably expect, where the digital content or digital content service is to be provided under the contract on a one-off basis; this shall be assessed according to the nature and purpose of the subject matter, the nature of the digital content or digital content service and having regard to the circumstances at the time of the contract and the nature of the obligation.

(3) paragraph 2 does not apply where the seller has specifically notified the buyer before entering into the contract that updates will not be provided and the buyer has expressly agreed to this at the time of entering into the contract.

(4) If the buyer fails to provide an update in accordance with paragraph 2 within a reasonable time, the buyer shall have no rights under the defect that arose solely as a result of the failure to provide the update. This does not apply if the buyer has not been advised of the update or the consequences of failing to update, or has failed to update or has updated incorrectly due to a defect in the instructions.

(5) If, under the contract, the digital content or digital content service is to be provided continuously over a period of time and a defect manifests itself or occurs within the period referred to in paragraph 2(a), the digital content or digital content service shall be deemed to be defectively provided.

§ 2162

If the nature of the purchase so permits, the purchaser has the right to have the item re-inspected before him or to have its functions demonstrated.

§ 2163

For a usable item, the shortest period of shelf life or, in the case of a perishable item, the period for which the item may be used shall be indicated.

Rights arising from a defective performance

§ 2165

(1) The buyer may complain of a defect that becomes apparent in the item within two years of receipt.

(2) If the object of the purchase is an item with digital characteristics and if, under the contract, the digital content or digital content service is to be provided continuously over a certain period of time, the buyer may complain of a defect that appears or manifests itself in the item within two years of receipt. If the performance is to be

carried out for a period of more than two years, the purchaser shall have the right to claim a defect which appears or manifests itself within that period.

(3) The court shall grant a right in respect of a defect even if it was not discovered without undue delay after the buyer could have discovered it with reasonable diligence.

(4) If the buyer has rightly pointed out the defect to the seller, the period under [paragraphs 1 and 2](#) does not run for the period during which the buyer cannot use the thing.

§ 2167

(1) The right of defective performance does not belong to the buyer if the defect was caused by the buyer.

(2) A defect in an item is not wear and tear caused by its normal use or, in the case of a used item, wear and tear corresponding to the extent of its previous use.

§ 2168

When purchasing a used item, the parties may reduce the time period under [§ 2165](#) to up to one year.

§ 2169

(1) If the item has a defect, the buyer may request that it be removed. He may, at his option, require the supply of a new item without the defect or the repair of the item, unless the chosen method of removing the defect is impossible or disproportionately expensive compared with the other method; this is to be judged in particular having regard to the significance of the defect, the value the item would have had without the defect and whether the defect can be removed by the other method without significant difficulty for the buyer.

(2) The seller may refuse to remedy the defect if it is impossible or disproportionately expensive to do so, having regard in particular to the significance of the defect and the value the thing would have had without the defect.

(3) The provisions of [§ 1923](#), [2106](#) and [2107](#) on rights of defective performance do not apply.

§ 2170

(1) The seller shall remedy the defect within a reasonable time after it has been pointed out so as not to cause the buyer significant inconvenience, taking into account the nature of the item and the purpose for which the buyer bought the item.

(2) The seller shall take possession of the item at his own expense to remedy the defect. If the dismantling of the thing, the assembly of which was carried out in accordance with the nature and purpose of the thing before the defect became apparent, requires it, the seller shall dismantle the defective thing and assemble a repaired or new thing or pay the costs of doing so.

(3) If the buyer fails to take possession of the item within a reasonable time after being notified by the seller of the possibility of taking possession of the item after repair, [§ 2159\(3\)](#) applies mutatis mutandis.

§ 2171

(1) The buyer may demand a reasonable discount or withdraw from the contract if

a) the seller has refused to remedy the defect or has failed to remedy it in accordance with [§ 2170\(1\)](#) and [2](#),

b) the defect manifests itself repeatedly,

c) the defect is a material breach of contract, or

d) it is apparent from the seller's representations or from the circumstances that the defect will not be remedied within a reasonable time or without substantial difficulty

to the buyer.

(2) A reasonable discount is determined as the difference between the value of the item without defect and the defective item received by the buyer.

(3) The buyer may not withdraw from the contract if the defect in the item is insignificant; the defect is deemed not to be insignificant. The provisions of § 2110 and 2111 do not apply.

(4) If the buyer withdraws from the contract, the seller shall refund the purchase price to the buyer without undue delay after the seller receives the item or the buyer proves to the seller that the item has been shipped.

§ 2172

A defect may be complained of to the seller from whom the item was purchased. However, if another person is appointed to carry out the repair, either at the seller's place or at a place nearer to the buyer, the buyer shall reproach the person appointed to carry out the repair.

§ 2173

If the seller fails to perform his obligations under the defective performance, the buyer need not pay the purchase price or any part thereof not yet paid.

§ 2174

If the parties agree, before the buyer has complained of a defect in the goods, that his rights shall be limited or extinguished, this shall be disregarded.

§ 2174a

Special Provisions on Quality Warranty

(1) The warranty provider shall issue the buyer with a quality warranty certificate (warranty certificate) in text form at the latest upon receipt of the item. The warranty certificate must be written in clear and understandable language and must contain

a) an indication that the buyer has a legal right against the seller to a free remedy and that this right is not affected by the quality guarantee, and

b) an identification of the item covered by the guarantee, the content of the guarantee, the name and residence or registered office of the provider of the guarantee, the procedure for exercising rights under the guarantee and the terms of the guarantee.

(2) Failure to comply with paragraph 1 shall not affect the validity of the guarantee.

§ 2174b

Right of recourse

(1) If the defect was caused by the act or omission of another person in the same contractual chain, the ultimate seller is entitled to compensation from the person who, in the course of his business, sold the item to him or who was obliged to provide the digital content or digital content service, including updates thereof. Compensation shall be provided at the rate of the costs reasonably incurred by the final seller in seeking redress.

(2) The right to compensation does not arise if the final seller knew of the defect in the item at the time of its receipt or if the item was not intended to be marketed to consumers.

(3) An arrangement which excludes or limits the final seller's right to compensation in advance shall be disregarded.

(4) paragraphs 1 to 3 shall apply mutatis mutandis to other persons in the same contractual chain.

Subsection 6

Special provisions on the purchase of an enterprise

§ 2175

(1) By purchasing the plant, the purchaser acquires everything that belongs to the plant as a whole. The purchase of a plant is deemed to be a purchase of the plant even if the parties exclude an individual item from the purchase without the whole losing the character of the plant.

(2) The purchase of a plant is treated as a transfer of the employer's business.

§ 2176

The purchase price is deemed to be agreed on the basis of the assets transferred in the accounting records of the plant being sold and in the contract at the date of its conclusion; if the contract is to take effect at a later date, the purchase price shall vary according to the increase or decrease in assets that has occurred in the interim.

§ 2177

(1) By purchasing the plant, the purchaser becomes a creditor of the debts and a debtor of the debts which are due in respect of the plant; but of the debts, the purchaser assumes only those which he knew or at least ought reasonably to have known existed. If the creditor has not consented to the assumption of the debt by the buyer, the seller is liable for the performance of the debt. The acquisition of debts by the buyer is otherwise governed by the provisions on assignment of debts.

(2) The seller shall without undue delay notify its creditors and debtors whose claims and debts the buyer has acquired by purchasing the plant that it has sold the plant and to whom.

§ 2178

It is prohibited to transfer to the buyer by the sale of a plant a right arising from industrial or other intellectual property where the contract by which the right was granted to the seller precludes it, or where the nature of the right precludes it.

§ 2179

(1) In the record of the transfer of the plant, the parties shall list everything that the plant includes and that is being transferred to the buyer, as well as everything that is missing, even though the contract or the accounting records show that it is a part of the plant. The seller shall, no later than in the record, draw the buyer's attention to any defects in the subject-matter of the sale of which he knows or should have known and could have known.

(2) If the entry does not specify a thing belonging to the plant, the buyer acquires it together with the plant. If a debt is not mentioned in the entry, the purchaser acquires it if he must at least reasonably have foreseen its existence.

§ 2180

(1) If the purchaser is registered in the public register, he acquires title to the plant as a whole by publication of the fact that he has deposited the document of purchase of the plant in the collection of deeds under any other enactment.

(2) If the purchaser is not registered in the public register, he acquires ownership of the plant as a whole by the effectiveness of the contract.

(3) The provisions of [paragraphs 1 and 2](#) are without prejudice to the obligations to register rights in things under other legislation, or to restrictions arising from licence or similar agreements.

§ 2181

If the sale of the plant impairs the recoverability of the claim, a creditor of the seller who has not consented to the sale has the right to have the court rule that the sale of the plant is ineffective against him. This right is extinguished if the creditor does not exercise it

within one month of the date on which he became aware of the sale, but at the latest within three years of the effective date of the contract.

§ 2182

(1) If either party withdraws from the contract, the claims and debts relating to the plant shall pass to the seller; however, of the debts, the seller shall acquire only those which he knew or at least reasonably should have known existed. If the creditor has not consented to the assumption of the debt by the seller, the buyer shall be liable for its fulfilment. The acquisition of debts by the seller is otherwise governed by the provisions on assignment of debts.

(2) The buyer shall notify its creditors and debtors whose claims and debts have been acquired by the seller without undue delay that the obligation has been extinguished by withdrawal from the contract.

§ 2183

The provisions of this subsection shall apply mutatis mutandis to other transfers of ownership of a plant and to the sale or other transfer of a part of a plant constituting a separate organizational unit.

Section 3

Exchange

§ 2184

Basic Provisions

(1) By a contract of exchange, each party undertakes to transfer to the other party title to an item in exchange for the other party's undertaking to transfer title to another item.

(2) The parties will deliver the items to each other in the condition in which they were at the time of the contract.

§ 2185

(1) If accidental destruction of the goods occurs before the risk of damage to the goods has passed, the contract shall be regarded as if it had not been concluded. If, before handing over the thing, accidental deterioration occurs to the extent that the value of the thing falls below half, the other party has the right to withdraw from the contract.

(2) Other accidental deterioration of the thing or its impairment by encumbrances shall be for the account of the alienator; a slight decrease in value shall not be taken into account.

(3) In an exchange of goods in the aggregate, accidental deterioration or accidental deterioration of individual goods shall affect the transferee, unless the whole has otherwise been depreciated below half the price.

§ 2186

When an item is shipped, the risk of damage to the item passes to the transferee upon receipt of the item. However, if he has specified or approved how the thing is to be sent to him, the risk of damage to the thing passes to the transferee by the sending.

§ 2187

The fruits and benefits of the thing exchanged belong to the transferor until the time when he is required by the contract to surrender the thing; from the expiration of that time the fruits and benefits belong to the transferee, even if the thing has not yet been surrendered to him.

§ 2188

In all other respects, the provisions of the contract of sale shall apply mutatis mutandis to the contract of exchange, provided that each party shall be deemed to be the seller in respect of the thing he gives in exchange and the buyer in respect of the thing he receives.

Volume 2

Relinquishing a thing to be used by another

Section 1

Precarious loan

§ 2189

Basic Provisions

If a lender lends a thing to someone for use free of charge, without stipulating the period for which the thing is to be used or the purpose for which the thing is to be used, a bargain arises.

§ 2190

- (1) Whoever has conveyed the thing to the bailee may demand its return at will.
- (2) The bailee may not return the thing at a time when doing so would cause a hardship to the lender unless the lender consents.

§ 2191

- (1) The borrower shall compensate the lender for damage to the item unless the borrower proves that the borrower has used the item in a manner appropriate to its nature.
- (2) If the borrower, without the consent of the lender, allowed the thing to be used by someone else, the borrower shall compensate the lender for the damage resulting therefrom, unless the damage was caused otherwise.

§ 2192

If a lost item is found for which the borrower has already given compensation, the borrower does not thereby acquire the right to keep the item against the will of the lender, but returns the item to the lender against reimbursement.

Section 2

Loan for use

§ 2193

Basic Provisions

In a loan agreement, the lender transfers a non-usable item to the borrower and undertakes to allow the borrower to use it temporarily free of charge.

§ 2194

The borrower acquires the right to use the thing in the manner agreed upon, and if not agreed upon, in a manner appropriate to the nature of the thing. The borrower is not entitled to transfer the item to another person without the lender's permission.

§ 2195

- (1) The lender shall transfer the item to the borrower in a condition fit for use. If the damage is caused by a defect in the thing which the lender has concealed, the lender shall compensate the borrower for the damage resulting therefrom.
- (2) The lender shall instruct the borrower how to use the thing, unless the rules are generally known or the circumstances show that there is no need to do so. If he fails to do so, he shall indemnify the borrower against any damage resulting therefrom.

§ 2196

If only the purpose for which the thing is to be used has been agreed, the borrower shall arrange for the thing to be used without undue delay and shall return it without undue delay after the purpose has been fulfilled.

§ 2197

The borrower has the right to return the item early; however, if the lender incurs a hardship as a result, he cannot return the item without the lender's consent.

§ 2198

(1) The lender cannot claim early return of the item; this does not apply if the borrower uses the item in breach of the contract.

(2) If the lender needs the thing unavoidably sooner for a reason which he could not foresee when the contract was concluded, he may only claim its early return if this was agreed.

§ 2199

(1) The usual costs associated with the use of the item shall be borne by the borrower out of his own pocket.

(2) If extraordinary costs are required, the borrower may hand the item over to the lender to incur them himself. If the lender is unwilling or unable to do so, and if the borrower himself incurs the extraordinary expenses to the extent necessary, he shall be entitled to compensation as an unattached agent.

§ 2200

Lender's and borrower's rights must be asserted within three months of the return of the item or the court will not recognize them if the other party objects to the late assertion of the right.

Section 3

Lease

Subsection 1

General Provisions

§ 2201

Basic Provisions

In a lease agreement, the lessor agrees to give the lessee the thing for temporary use and the lessee agrees to pay the lessor rent for it.

§ 2202

Subject of the Lease

(1) Both immovable and non-usable movable property may be leased. A part of an immovable thing may also be leased; what is hereinafter provided for a thing shall apply to the lease of a part thereof.

(2) A thing which is yet to be created in the future may also be leased if it can be determined with sufficient precision when the lease is concluded.

§ 2203

If the leased thing is entered in the public register, the leasehold right shall also be entered in the public register if the owner of the thing or, with his consent, the lessee so proposes.

§ 2204

(1) If the parties do not agree on the duration or termination date of the lease, the lease is for an indefinite term.

(2) If the parties agree on a lease for a fixed term of more than fifty years, the lease shall be deemed to have been agreed for an indefinite term, provided that in the first fifty years the lease may be terminated only on the agreed grounds and within the agreed notice period.

Lessor

§ 2205

Lease agreement binds landlord

- a) to convey the property to the tenant so that he may use it for the agreed or customary purpose,
- b) to keep the thing in such condition that it may serve the use for which it was hired,
- c) to ensure that the tenant has undisturbed use of the thing for the duration of the tenancy.

§ 2206

- (1) The lessor shall deliver the item to the lessee at the agreed time, otherwise on the day after the lessee requests it.
- (2) The lessor shall deliver to the lessee the thing with everything necessary for the proper use of the thing.

§ 2207

- (1) During the period of the lease, the lessee shall carry out the ordinary maintenance of the thing, unless the lessor has undertaken to do so. Other maintenance of the thing and necessary repairs thereto shall be carried out by the lessor, unless the lessee has undertaken to carry out some manner or kind of maintenance and to repair certain defects.
- (2) The landlord is not liable for a defect of which the parties were aware at the time the lease was entered into and which does not prevent the use of the property.

§ 2208

- (1) If the lessee duly and timely notifies the lessor of a defect in the thing to be remedied by the lessor and if the lessor fails to remedy the defect without undue delay, so that the lessee can use the thing only with difficulty, the lessee is entitled to a reasonable reduction in the rent or may also carry out the repair himself and claim reimbursement of the costs reasonably incurred. If, however, the defect makes it substantially more difficult to use or completely impossible to use, the tenant is entitled to a waiver of the rent or may terminate the lease without notice.
- (2) The tenant shall be entitled to set off against what he may claim from the landlord under [paragraph 1](#) up to the amount of one month's rent; if the term of the tenancy is shorter, up to the amount of the rent.
- (3) If the tenant does not exercise the right under [paragraph 1](#) within six months from the date on which he discovered or could have discovered the defect, the court shall not grant it to him if the landlord objects to his late exercise.

§ 2209

During the lease, the lessor has no right to alter the leased item at will.

§ 2210

- (1) If, during the tenancy, it becomes necessary to carry out a necessary repair to the thing which cannot be postponed until after the end of the tenancy, the tenant must tolerate it, even if carrying out the repair causes him inconvenience or restricts his use of the thing.
- (2) If the repair takes a disproportionate amount of time in relation to the period of the tenancy or if the repair makes it more difficult than usual to use the thing, the tenant is entitled to a reduction in the rent according to the time and extent of the repair.
- (3) If the repair is such that it is impossible to use the thing at all while it is being carried out, the tenant has the right to have the landlord temporarily provide him with another thing to use, or he may terminate the tenancy without notice.

§ 2211

If a third party threatens the tenant in his tenancy or causes harm to the tenant by violating the tenancy, the tenant himself may seek protection.

§ 2212

(1) If a third party claims ownership or other rights in the property or seeks delivery or eviction of the property, the tenant shall notify the landlord; if the tenant so requests, the landlord shall provide protection.

(2) If the landlord fails to provide the tenant with sufficient protection, the tenant may terminate the tenancy without notice.

(3) If the tenant is disturbed in the use of the property or otherwise affected by the conduct of a third party, the tenant is entitled to a reasonable reduction in the rent if the tenant has given the landlord timely notice of such conduct by the third party.

Lessee**§ 2213**

The tenant is obliged, even without special arrangement, to use the property as a proper landlord for the agreed purpose, or, if not agreed, for the usual purpose, and to pay the rent.

§ 2214

The tenant shall give notice to the landlord that the thing has a defect which the landlord is to remedy as soon as the tenant discovers it or could have discovered it by careful use of the thing.

Sublease**§ 2215**

(1) If the landlord consents, the tenant may grant a third party a right of use over the property; if the lease was concluded in writing, the landlord's consent also requires a written form.

(2) If the tenant establishes a right of use over the property for a third party without the landlord's consent, this shall be considered a gross breach of the tenant's obligations causing serious damage to the landlord.

(3) A right of use may be granted to a third party only for the duration of the lease of the thing; a contrary arrangement shall not be taken into account.

§ 2216

If the lessee allows a third party to use the thing, he is liable to the lessor for the acts of that person in the same way as if he had used the thing himself.

Rent**§ 2217**

(1) Rent shall be paid at the agreed rate and, if not agreed, shall be paid at the rate customary at the time of the conclusion of the lease, taking into account rents for the rental of similar items under similar conditions.

(2) If the rent is to be paid otherwise than in money according to the agreement of the parties, the property value of the consideration given, expressed in money, shall be decisive.

§ 2218

Rent is payable monthly in arrears.

Other rights and obligations of the parties

§ 2219

(1) If the landlord gives reasonable notice, the tenant shall allow the landlord to inspect the property, and to have access to or in the property, to the extent necessary to carry out any necessary repairs or maintenance. Prior notice shall not be required if it is necessary to prevent damage or if there is a risk of delay.

(2) If the tenant incurs a hardship by the landlord's activities under [paragraph 1](#) which is not merely minor, the tenant is entitled to a reduction in the rent.

§ 2220

(1) The tenant has the right to make a change to the property only with the landlord's prior consent; if the lease was concluded in writing, the landlord's consent also requires a written form. The lessee shall make the alteration at his own expense; if the alteration results in an appreciation of the item, the lessor shall settle with the lessee at the end of the lease according to the degree of appreciation.

(2) If the tenant makes a change to the thing without the landlord's consent, the tenant shall restore the thing to its original condition as soon as the landlord so requests, but not later than at the end of the tenancy of the thing. If the lessee fails to restore the item to its original condition at the lessor's request, the lessor may terminate the lease without notice.

Change of ownership

§ 2221

(1) If the owner of the property changes, the rights and obligations under the lease pass to the new owner.

(2) If the landlord has transferred ownership of the thing, the new owner is not bound by the landlord's obligations, which are not provided for by law. This does not apply if the new owner knew about these arrangements.

§ 2222

(1) A party does not have the right to terminate a lease simply because the owner of the property has changed. Otherwise, the landlord has the right to terminate the lease within three months after the landlord knew or should have known who the tenant was and the tenant has the right to terminate the lease within three months after the tenant knew of the change of ownership.

(2) If the new owner had no reasonable cause to doubt that he was buying a thing that was not rented, he has the right to terminate the lease within three months after he knew or must have known that the thing was rented and who the tenant was. The tenant's rights against the person with whom he has entered into the lease are not affected.

(3) If the property is immovable, the notice period is three months. If it is a movable item, the notice period is one month.

§ 2223

The party who terminates the lease shall provide the other party with reasonable compensation.

§ 2224

If a lease has been granted for an apartment in which the tenant lives, the landlord does not have the right to terminate the lease because of a change of ownership. Any contrary arrangement shall be disregarded.

End of lease

§ 2225

(1) On termination of the tenancy, the tenant shall surrender to the landlord the property in the place where he took possession of it and in the condition in which it

was when he took possession of it, taking into account normal wear and tear in proper use, unless the property has become dilapidated or deteriorated; surrender includes the delivery of the property vacated. If a record containing a description of the thing was made when the thing was handed over to the tenant, it shall also be taken into account when the thing is handed over to the landlord.

(2) On surrendering the thing, the tenant shall separate and take away everything which he has put into or on the thing at his own expense, if this is possible and if it does not impair the substance of the thing or make it unreasonably difficult to use.

§ 2226

(1) If the thing is lost during the term of the lease, the lease will terminate.

(2) If the property is partly destroyed during the term of the lease, the tenant is entitled either to a reasonable reduction in the rent or to terminate the lease without notice.

§ 2227

If the property becomes unusable for the agreed purpose, or if not agreed, for the usual purpose, for reasons not attributable to the tenant, the tenant has the right to terminate the tenancy without notice.

§ 2228

(1) If the tenant uses the thing in such a way that it is wearing out beyond the extent reasonable in the circumstances or that there is a risk of the thing being destroyed, the landlord shall invite the tenant to use the thing properly, give him a reasonable period of time to remedy the situation and warn him of the possible consequences of failure to comply with the invitation. The notice shall be in writing and shall be served on the tenant.

(2) If the tenant fails to comply with the notice under [paragraph 1](#), the landlord has the right to terminate the tenancy without notice.

(3) If, however, in the case referred to in [paragraph 1](#), there is an urgent and serious risk of default, the landlord has the right to terminate the tenancy without notice without requiring the tenant to remedy the situation.

(4) The landlord has the right to proceed in the same way as set out in [paragraphs 1 and 2](#) if the tenant fails to pay the rent even if the next rent is due.

§ 2229

A lease agreed for a fixed term may only be terminated by either party if the reasons for termination and the notice period have been agreed in the contract at the same time.

§ 2230

(1) If the lessee continues to use the item after the expiry of the lease period and the lessor does not call upon the lessee to hand over the item within one month, the lease agreement shall be deemed to have been concluded anew on the terms originally agreed. If the original lease term was longer than one year, it shall be deemed to have been concluded for one year; if it was less than one year, it shall be deemed to have been concluded for that period.

(2) The provisions of [paragraph 1](#) shall not apply notwithstanding that the lessee continues to use the property if the party has given reasonable notice that the lease will end or has previously terminated the lease.

§ 2231

(1) A lease agreed for an indefinite term will terminate on notice by either party. If the lease is for a movable item, the notice period is one month; if the lease is for an immovable item, the notice period is three months.

(2) The notice need not be reasoned; this does not apply if the party has the right to

terminate the lease without notice.

§ 2232

If a party breaches its obligations in a particularly serious manner and thereby causes significant harm to the other party, the party concerned has the right to terminate the lease without notice.

§ 2233

(1) Within three months before the end of the tenancy, if the date of the end of the tenancy is known to the parties, the tenant shall give the prospective tenant access to the thing to be re-let to the extent necessary for the purpose of inspection in the presence of the tenant and the landlord; the landlord shall give the tenant reasonable notice of the visit.

(2) The provisions of § 2219 para 2 apply here too.

§ 2234

The landlord has the right to detain movable property that the tenant has on or in the property in payment of a claim against the tenant.

Subsection 2

Specific provisions on the lease of an apartment and the lease of a building

Basic Provisions

§ 2235

(1) Where a lease agreement obligates the landlord to convey to the tenant for the purpose of providing for the housing needs of the tenant and, if applicable, members of the tenant's household, the apartment or house which is the subject of the lease shall be disregarded as an arrangement impairing the tenant's rights under the provisions of this subsection.

(2) The provisions of this subsection shall not apply where the landlord lets the apartment or house to the tenant for recreation or other apparently short-term purpose.

§ 2236

(1) A dwelling means a room or collection of rooms which form part of a house, constitute living space and are intended and used for the purpose of living. If the landlord and the tenant agree that a space other than a dwelling shall be let for occupation, the parties are bound in the same manner as if the dwelling had been let.

(2) The fact that the leased premises are not intended for habitation cannot be detrimental to the tenant.

(3) Where a house is let to provide for the tenant's housing needs, the provisions relating to the tenancy of a dwelling apply *mutatis mutandis*.

§ 2237

The agreement requires a written form; however, the landlord has no right to object to the tenant's invalidity of the agreement for lack of form.

§ 2238

If the tenant has occupied the apartment for three years in good faith that the tenancy is lawful, the tenancy agreement shall be deemed to have been duly concluded.

§ 2239

Prohibited stipulations

An arrangement imposing an obligation on a tenant that is manifestly unreasonable in the circumstances is disregarded.

Release of the flat

§ 2242

(1) If there is no agreed time when the landlord shall make the tenant's apartment fit for occupancy and habitation, the landlord shall make the apartment available to the tenant on the first day of the month following the date on which the agreement becomes effective. The apartment shall be made available if the tenant has received the keys and nothing prevents the tenant from accessing the apartment.

(2) The landlord may agree with the tenant that a flat which is not fit for occupation shall be made available for occupation. Such an arrangement is valid only if special rights and obligations arising from the special nature of the flat are agreed at the same time, including the amount and method of payment of the costs of making the necessary alterations.

§ 2243

A dwelling is fit for occupation and habitation if it conforms to the arrangements in the contract and, if nothing is agreed, the dwelling is fit for occupation and habitation if it is clean and in a condition ordinarily regarded as good and the provision of the necessary services connected with or incidental to the use of the dwelling is provided.

§ 2244

(1) If the flat is not fit for occupation and habitation at the agreed time or if the flat is in a condition that does not correspond to the landlord's communication, the tenant has the right to refuse to move in. If he moves in, he has the right to demand that the landlord perform the contract; if he fails to do so without undue delay, his right is extinguished.

(2) If the tenant already knew the condition of the flat when the contract was concluded, the provisions of [paragraph 1](#) shall not apply. This applies even if the tenant did not know the condition of the flat at the conclusion of the contract because he did not inspect it, although the landlord invited the tenant to inspect it in due time and in a proper manner.

§ 2245

If the tenant exercises the right not to move into the apartment, the tenant is not obligated to pay rent for as long as the defect continues. If he moves in, he is entitled to a reasonable reduction in the rent until the landlord remedies the defect; this also applies in the case of a material defect in the provision of a supply connected with or incidental to the use of the flat.

Rent and other payments

§ 2246

(1) The parties shall agree on a fixed rent. The rent shall be deemed to be agreed for one month.

(2) If the parties do not agree on the amount of the rent, the landlord shall be entitled to the rent at the rate which is customary in the locality at the date of conclusion of the contract for a new lease of a similar apartment under similar contractual conditions.

§ 2247

(1) The parties shall agree on which services connected with the use of the apartment or related services shall be provided by the landlord; in the absence of such agreement, the provisions of [paragraph 2](#) shall apply.

(2) The lessor shall provide the necessary services during the term of the lease. It is understood that the necessary services are the supply of water, the removal and disposal of waste water including the cleaning of sumps, the supply of heat, the removal of municipal waste, the lighting and cleaning of the common parts of the building, the provision of radio and television reception, the operation and cleaning of chimneys and, where appropriate, the operation of the lift.

(3) The method of charging prices and payment for services shall be determined by other legislation.

(4) The parties shall agree on the method of accounting for prices and payment for any additional services, unless provided for by other legislation or by a decision of the pricing authority. The method of accounting shall be determined before the service is provided.

§ 2248

Parties may negotiate annual increases in rent.

§ 2249

(1) If the parties do not negotiate a rent increase or do not expressly exclude a rent increase, the landlord may propose in writing to the tenant an increase in the rent up to the amount of the comparable rent customary in the locality, provided that the proposed increase, together with that which has already occurred in the last three years, does not exceed twenty %. A proposal made earlier than twelve months after the expiration of the twelve months in which the rent has not been increased, or which does not contain the amount of the rent and does not demonstrate that the conditions under this provision have been met, shall not be considered.

(2) The implementing legislation shall set out the details and procedure for determining the comparable rent customary in the locality.

(3) If the tenant agrees to the proposal to increase the rent, the tenant shall pay the increased rent as proposed, starting from the third calendar month after the receipt of the proposal. If the tenant does not notify the landlord in writing within two months of the receipt of the proposal that he agrees to the rent increase, the landlord shall have the right to request the court to determine the amount of the rent within a further three months; the court shall not grant a request filed after the expiry of that period if the tenant argues that the request was filed late. The court, on the landlord's application, shall decide on the rent up to the amount which is customary in the place and time with effect from the date of the application to the court.

(4) If the tenant proposes to reduce the rent, the provisions of [paragraphs 1 to 3](#) shall apply mutatis mutandis.

§ 2250

(1) If the landlord carries out structural alterations which permanently improve the use value of the rented flat or the general living conditions in the house, or result in permanent savings in energy or water, he may agree with the tenants to increase the rent, but not by more than ten % of the reasonable costs incurred per annum. If the tenants of at least two-thirds of the flats in the building agree to such an increase, the increased rent shall also apply to the other tenants.

(2) If no agreement is reached under [paragraph 1](#), the landlord may propose an increase in the rent on those grounds of three and a half % per annum of the costs incurred; the costs shall be deemed to have been incurred on an expedient basis. A proposal which does not contain the amount of the rent or does not prove that the conditions under this provision have been met shall not be considered.

§ 2251

(1) The Tenant shall pay rent in advance for each month or other agreed payment period, not later than the fifth day of the relevant payment period unless a later date has been agreed. Together with the rent, the tenant shall pay deposits or costs for services provided by the landlord; such deposits and costs shall be [§ 2253](#) likewise.

(2) The Landlord shall not require the Tenant to make any performance other than that set forth in [paragraph 1](#), whether in the form of a deposit or otherwise, or to pay rent by postdated check or other similar method.

§ 2252

(1) If the tenant so requests, the landlord shall, as a rule, not later than four months after the end of the billing period, allow the tenant to inspect the statement of charges for services rendered for the preceding calendar year and to take extracts, copies or extracts from the statement; the same shall apply to documents relating to the charges.

(2) The underpayment and overpayment of advances for services rendered shall be due and payable on the same date; unless a different period is agreed, they shall be due and payable within three months after the expiry of the period specified in paragraph 1.

§ 2253

(1) If the parties do not agree on the rent due, the lease cannot be terminated for non-payment of rent if the tenant deposits the rent due, or the disputed portion thereof, in a notary's custody and notifies the landlord.

(2) If the tenant demands performance under the contract and the landlord refuses to perform, protesting non-payment of rent, the tenant shall deposit the rent due, or the disputed portion thereof, in notarial escrow and notify the landlord thereof.

§ 2254

Security and Liquidated Damages

(1) If the parties agree that the tenant will give the landlord a monetary security for the payment of rent and the performance of other obligations under the lease, or if they agree on a contractual penalty in the event of a breach of these obligations, the security and the right to payment of the contractual penalty may not exceed in the aggregate three times the monthly rent.

(2) On termination of the tenancy, the landlord shall return the security deposit to the tenant; in doing so, he shall take credit for what the tenant may owe him under the tenancy. The tenant shall be entitled to interest on the security deposit from the time it is given at least at the legal rate.

Rights and obligations of the parties

§ 2255

(1) The tenant shall use the apartment in a proper manner in accordance with the lease agreement.

(2) If it does not cause an increased burden on the apartment or house, the tenant may also work or conduct business in the apartment.

§ 2256

(1) The landlord shall keep the house in proper order during the period of the tenancy as is usual in the local area.

(2) The tenant shall observe during the period of the tenancy the rules customary for the conduct of the house and the landlord's reasonable directions for the maintenance of proper order customary in local circumstances.

§ 2257

(1) The landlord shall maintain the flat and house in a fit state for occupation during the period of the tenancy.

(2) The tenant performs and pays only routine maintenance and minor repairs related to the use of the apartment.

§ 2258

A tenant has the right to keep an animal in the apartment if the keeping of the animal does not cause the landlord or other occupants of the building a nuisance unreasonable to the conditions of the building. If the keeping of the animal gives rise to

the need for increased costs for the maintenance of the common parts of the house, the tenant shall reimburse the landlord for those costs.

Alterations and other changes made to an apartment or building

§ 2259

The tenant is obliged to tolerate alterations to the flat or house, or its reconstruction or other change, only if they do not diminish the value of the dwelling and can be carried out without great inconvenience to the tenant, or if they are carried out by the landlord on the order of a public authority, or if there is a direct threat of particularly serious harm. In other cases, the alteration may be carried out only with the consent of the tenant.

§ 2260

(1) If the tenant's consent is not required to carry out alterations, alterations or other changes to the flat or house requiring the vacating of the flat, the landlord is entitled to start the work only after he has given an undertaking to the tenant to provide reasonable compensation for the reasonable costs incurred by the tenant in connection with the vacating of the flat and has paid the tenant a reasonable deposit towards those costs.

(2) Unless the circumstances of the case so exclude, the landlord shall, at least three months before the commencement of the work, inform the tenant of the nature of the work, the date on which it is expected to commence, an estimate of its duration, the necessary period of time for which the flat must be vacated and the consequences of refusal to vacate; at the same time, the landlord shall undertake to pay the compensation referred to in [paragraph 1](#) and shall state the deposit offered for compensation.

(3) If the tenant fails to notify the landlord within ten days after the notice that he will vacate the apartment for the required period, he shall be deemed to have refused to vacate the apartment.

§ 2261

If it is necessary to vacate the flat for a period of not more than one week, it is sufficient to give the tenant at least ten days' notice before the work is to commence. The period for declaring a tenant is reduced to five days.

§ 2262

(1) If the tenant refuses to vacate the apartment, the landlord may petition the court to order the apartment vacated; however, if the landlord fails to file the petition within ten days after the tenant's refusal, the right to seek vacating the apartment shall be extinguished.

(2) If the landlord proves the expediency of altering, remodeling, or otherwise changing the apartment or house and the necessity of vacating the apartment, the court shall grant the motion; in doing so, it may impose such reasonable restrictions on the parties as may reasonably be required. No work may be carried out before the decision to vacate the flat is made unless the court authorises the work to be carried out.

§ 2263

(1) If the landlord agrees, the tenant may make alterations, alterations or other changes to the flat or house. If the landlord does not consent to a change that is necessary because of a disability of the tenant, a member of the tenant's household, or another person living in the dwelling, and the landlord does not have a good and just reason for withholding consent, the court shall substitute the landlord's consent upon application by the tenant.

(2) On the termination of the tenancy, the tenant shall remove the alteration he has made in the flat or house unless the landlord does not require restoration to the

previous condition.

§ 2264

(1) If the tenant discovers any damage or defect in the apartment which needs to be remedied without delay, he shall immediately notify the landlord; any other defect or damage which prevents normal living shall be notified to the landlord without undue delay.

(2) The tenant shall do what can be expected to be done to the best of the tenant's ability to ensure that the damage or defect to be remedied without delay does not cause further damage. The lessee shall be entitled to reimbursement of the costs reasonably incurred in preventing further damage unless the damage or defect was caused by circumstances for which the lessee is responsible.

§ 2265

(1) The landlord shall remedy the damage or defect within a reasonable time after the tenant has notified the landlord of the damage or defect.

(2) If the landlord fails to remove the damage or defect promptly and properly, the tenant may remove the damage or defect and seek reimbursement of reasonable costs or a reduction in rent, unless the damage or defect is not substantial.

(3) If the tenant fails to notify the landlord of the damage or defect without unreasonable delay after he should and could with reasonable diligence have discovered it, he shall not be entitled to recover his costs; if he removes the damage or defect himself, he shall not be entitled to a reduction in the rent either.

§ 2266

If the landlord fails to remedy the damage or defect even within an additional period of time and the damage or defect was caused by circumstances for which the tenant is not responsible, the tenant has the right to terminate the tenancy without notice if the landlord's delay in remedying the damage or defect or the damage or defect itself constitutes a gross breach of the landlord's obligations.

§ 2267

If the tenant fails to remedy the damage or defect caused by circumstances for which the tenant is responsible, the landlord shall remedy it at the tenant's expense.

§ 2268

(1) The provisions relating to damage to or defect in the flat shall apply mutatis mutandis if the use of the flat is prevented by the right of a third party.

(2) The provisions on damage to or defect in the dwelling shall apply mutatis mutandis if the use of the dwelling is prevented by a provision of law or a decision of a public authority made pursuant to law.

§ 2269

(1) If the tenant knows in advance of his absence from the apartment, which is to be longer than two months, and that the apartment will be difficult for him to access during that period, he shall notify the landlord in good time. At the same time, he shall designate a person who, during his absence, will ensure that he is able to enter the flat when he needs to do so; if the tenant does not have such a person at hand, the landlord shall be that person.

(2) If the tenant fails to comply with his or her obligation under [paragraph 1](#), such failure shall be deemed to be a breach of the tenant's obligations in a serious manner; this shall not apply unless serious harm results therefrom.

Joint lease

§ 2270

(1) If more than one person enters into a tenancy agreement with the landlord, they become joint tenants of the flat; a person who accedes to the agreement with the consent of the parties also becomes a joint tenant of the flat.

(2) What applies to a tenant applies mutatis mutandis to joint tenants, unless otherwise provided below.

§ 2271

Shared tenants have the same rights and obligations. The provisions of the company shall apply mutatis mutandis.

Members of the lessee's household

§ 2272

(1) The tenant has the right to accept anyone in his household. If the tenant takes in a new member of his household, he shall notify the landlord without undue delay of the increase in the number of persons living in the flat; if the tenant fails to do so even within two months of the change, he shall be deemed to have seriously breached his duty.

(2) The landlord has the right to reserve in the contract the right to agree to the admission of a new member to the tenant's household. This does not apply if the tenant is a close relative or in other cases of special consideration. The landlord's consent to the admission of a person other than a close relative as a member of the tenant's household shall be in writing.

(3) The landlord shall have the right to require that only such number of persons live in the tenant's household as is reasonable for the size of the apartment and does not prevent all of them from living in the apartment in customary comfortable and sanitary conditions.

§ 2273

If the number of members of the tenant's household decreases, the tenant shall notify the landlord without undue delay.

Sublease

§ 2274

A tenant may sublet a part of an apartment to a third party if he or she permanently lives in the apartment, even without the landlord's consent. The provisions of § 2272 apply mutatis mutandis.

§ 2275

(1) Where the tenant does not permanently reside in the flat himself, he may sublet the flat or part of it to a third party only with the consent of the landlord.

(2) Both the application for consent to sublet and the consent to sublet require a written form. If the landlord fails to respond to the application within one month, consent shall be deemed to have been given; this shall not apply if a prohibition on subletting has been agreed.

§ 2276

If a tenant sublets an apartment or part thereof to a third party in violation of the provisions of § 2274 and 2275, he is in gross breach of his duty.

§ 2277

The lease ends with the tenancy. If the tenancy ends, the tenant shall give notice to the subtenant stating the relevant facts; these are, in particular, the date on which the tenancy ends and, where applicable, the length of the notice period and the start of its running.

§ 2278

The sublease shall terminate no later than with the lease.

Consequences of the death of a lessee

§ 2279

(1) If the tenant dies and it is not a joint tenancy, the tenancy passes to a member of the tenant's household who was living in the flat at the date of the tenant's death and does not own the flat. If that person is someone other than the tenant's spouse, partner, parent, sibling, son-in-law, daughter-in-law, child or grandchild, the tenancy will only pass to that person if the landlord has agreed to the transfer of the tenancy to that person.

(2) The tenancy of a dwelling after it has been transferred under [paragraph 1](#) shall terminate not later than the expiration of two years from the date on which the tenancy was transferred. This shall not apply if the person to whom the tenancy has passed has reached the age of 70 years on the date of the transfer of the tenancy. Neither shall it apply if the person to whom the tenancy has passed has not attained the age of eighteen years on the date of the transfer of the tenancy; in that case the tenancy shall end at the latest on the date on which that person attains the age of twenty years, unless the landlord and the tenant agree otherwise.

(3) If more than one member of the tenant's household meets the conditions for the transfer of the tenancy, the rights and obligations under the tenancy shall pass to all of them jointly and severally.

(4) Any person who satisfies the conditions for the transfer of the tenancy may, within one month of the death of the tenant, give written notice to the landlord that he does not intend to continue the tenancy; for a person who cannot act without a legal representative, guardian or custodian, that period shall expire on the expiry of one month from the date on which the legal representative was obtained or the guardian or custodian took office. On the date of the landlord's receipt of the notice, the tenancy shall terminate.

(5) If the tenant of a cooperative flat dies and the flat is not a jointly rented flat, on the death of the tenant his membership of the cooperative and the tenancy of the flat shall pass to the heir to whom the membership share has accrued.

§ 2280

If a descendant of the tenant is a member of the tenant's household, the descendant has the right of first refusal to have the rights and obligations of the tenancy transferred to him. If there are more than one such person, the rights and obligations of the tenancy shall pass to all of them jointly and severally; but any one of them may declare for himself or herself that he or she does not wish to continue the tenancy.

§ 2281

(1) If the rights and obligations of the tenancy pass to a member of the tenant's household, the landlord has the right to require a security deposit from the tenant if the deceased tenant has not given a security deposit. This applies even if the landlord becomes obliged to settle the security deposit with the tenant's heir.

(2) Where the rights and obligations under the lease pass to a member of the tenant's household and the tenant has paid the rent in advance, the member of the tenant's household shall give to the heir what he has saved or acquired by such payment.

§ 2282

If the rights and obligations under the lease do not pass to a member of the tenant's household, they shall pass to the tenant's heirs. Persons who lived in the same household with the tenant until the tenant's death are jointly and severally liable with the tenant's heir for debts arising from the tenancy before the tenant's death.

§ 2282a

(1) If the tenancy passes to a minor who has not attained full capacity at the date of the tenant's death, the discharge of the debt under the tenancy may be enforced only against the property under § 899a(1); this applies even if, as a member of the tenant's household, he is liable for debts incurred under the tenancy before his death.

(2) A legal representative, guardian or custodian who did not terminate the tenancy for a minor when he or she could reasonably have foreseen that the minor would be unable to perform the obligations arising from the tenancy is liable for a debt arising from the tenancy from the date on which he or she took office if he or she lived with the minor in the dwelling after the transfer of the tenancy. The guarantor may not recover from the debtor the satisfaction of this debt.

§ 2283

(1) The landlord may terminate the tenancy without giving any reason on two months' notice within three months of learning that the tenant has died, that the rights and obligations under the tenancy have not passed to a member of the tenant's household, and who is the tenant's heir or who administers the estate.

(2) The tenant's heir may terminate the tenancy by giving two months' notice within three months of becoming aware of the tenant's death, of his or her right of succession and of the fact that the rights and obligations of the tenancy have not passed to a member of the tenant's household, but not later than six months after the tenant's death. The right to terminate the tenancy shall also be given to the person administering the estate.

§ 2284

If the tenant's heir is not known within six months of the tenant's death, the landlord may vacate the apartment; this terminates the tenancy. The landlord shall store the belongings of the flat at the expense of the tenant's heir in a public warehouse or with another custodian; if the tenant's heir does not take possession of the belongings without undue delay, the landlord may sell them in a suitable manner at the tenant's expense.

End of lease

§ 2285

If the tenant continues to occupy the flat for at least three months after the date on which the tenancy was due to end and the landlord does not within that time ask the tenant to leave the flat, the tenancy shall be renegotiated for the same period as previously agreed, but for no more than two years; this shall not apply if the parties agree otherwise. The notice shall be in writing.

§ 2286

(1) A notice of termination of the lease requires a written form and must be given to the other party. The notice period starts on the first day of the calendar month following the day on which the notice is received by the other party.

(2) If the landlord terminates the lease, the landlord shall instruct the tenant of his right to object to the termination and to request a court review of the validity of the termination, otherwise the termination is null and void.

§ 2287

A tenant may terminate a fixed-term tenancy if the circumstances on which the parties apparently relied in creating the obligation under the tenancy agreement change to the extent that the tenant cannot reasonably be required to continue the tenancy.

§ 2288

(1) The landlord may terminate the tenancy for a fixed or indefinite term on three months' notice,

a) if the tenant grossly breaches an obligation under the lease,

b) if the tenant is convicted of a deliberate crime committed against the landlord or a member of the landlord's household, or against a person who resides in the house where the tenant's apartment is located, or against someone else's property located in that house,

c) where the flat is to be vacated because it is necessary in the public interest to deal with the flat or the house in which the flat is situated in such a way that the flat cannot be used at all, or

d) if there is another similarly compelling reason for terminating the tenancy.

(2) The landlord may also terminate the tenancy for an indefinite period on three months' notice if

a) the flat is to be occupied by the landlord or by the landlord's spouse who intends to leave the family household and a petition for divorce has been filed or the marriage has already been dissolved,

b) the landlord needs the apartment for his or her relative or for a relative of his or her spouse in the direct line or in the second degree.

(3) If the landlord terminates the tenancy for the reasons set out in [paragraphs 1 and 2](#), the landlord shall state the reason for termination in the notice.

§ 2289

If the landlord has given notice to the tenant for any of the reasons set out in [§ 2288\(2\)](#), the landlord shall re-let the apartment to the tenant or compensate the tenant for damages if the tenant has not used the apartment for the purpose stated as the reason for notice within one month of the tenant vacating the apartment. This period shall not run for the time necessary for the alteration of the flat if the alteration was started within two weeks of the vacating of the flat and is duly continued.

§ 2290

The tenant has the right to apply to the court to review whether the notice is justified within two months of the date on which the notice is served.

§ 2291

(1) If the tenant breaches his obligation in a particularly serious manner, the landlord has the right to terminate the tenancy without notice and to require the tenant to surrender the apartment to him without undue delay, but not later than one month after the end of the tenancy.

(2) The tenant breaches his/her obligation in a particularly serious manner, in particular if he/she has not paid the rent and utility costs for at least three months, if he/she damages the apartment or the house in a serious or irreparable manner, if he/she otherwise causes serious damage or inconvenience to the landlord or to the persons residing in the house, or if he/she uses the apartment unlawfully in a different manner or for a different purpose than agreed.

(3) If the landlord does not state in the notice what he considers to be a particularly serious breach of the tenant's duty, or if he does not, before serving the notice, require the tenant to remedy his defective conduct or to remedy the unlawful condition within a reasonable time, the notice shall be disregarded.

§ 2292

The tenant shall surrender the flat to the landlord on the day the tenancy ends. The flat is surrendered if the landlord receives the keys and is not otherwise prevented from entering and using the flat. If the tenant leaves the flat in such a way that the tenancy can be deemed to have ended without any doubt, the flat shall be deemed to have been surrendered immediately.

§ 2293

(1) The tenant shall surrender the apartment in the condition in which he took possession of it, notwithstanding normal wear and tear of ordinary use and defects which the landlord is obliged to remedy.

(2) The tenant shall remove any alterations made to the apartment with the landlord's consent, provided that the parties have agreed that the tenant shall restore the apartment to its original condition at the end of the tenancy.

(3) The tenant shall remove alterations to the flat which he has made without the landlord's consent, unless the landlord tells the tenant that he does not require the alterations to be removed; the tenant may not nevertheless claim compensation even if the alterations have increased the value of the flat. The landlord may claim compensation in the amount of the decrease in the value of the apartment caused by the changes made by the tenant without the landlord's consent.

§ 2294

Facilities and objects fixed in the walls, floor and ceiling of the dwelling which cannot be removed without unreasonable diminution in value or without damage to the dwelling or the house pass by fixing or insertion into the possession of the owner of the immovable property. The tenant shall have the right to demand that the landlord deal with him without undue delay; this shall not apply to what the tenant has done without the landlord's consent. Settlement is due no later than the date of termination of the lease.

§ 2295

The landlord is entitled to compensation in the amount of the agreed rent if the tenant fails to hand over the apartment to the landlord on the day the lease ends until the day the tenant actually hands over the apartment to the landlord.

§ 2296

(1) If there is any item in the flat which may be deemed to belong to the tenant or a member of the tenant's household, the landlord shall take care of the item for the benefit and on behalf of the tenant. If the tenant does not take possession of the item without undue delay, the landlord shall have the right, after giving the tenant reasonable notice, to sell the item at the tenant's expense in an appropriate manner after giving the tenant a reasonable additional period of time to take possession.

(2) The provisions of [paragraph 1](#) shall not apply if the item is one which has been manifestly abandoned by the tenant or a member of his household.

Lease of a company apartment

§ 2297

If the lease of a dwelling is agreed in connection with the performance of an employment, function or other work, and the lease is for a service dwelling as expressly provided for in the contract, the rights of the tenant of the service dwelling may be restricted. This applies even if the lease of a house is agreed in this context.

§ 2298

(1) The tenancy of a service apartment shall end on the last day of the calendar month following the month in which the tenant ceases to perform work under [§ 2297](#) without good cause.

(2) If the tenant ceases to perform the work for reasons consisting in his age or health, for a reason on the part of the landlord or for any other serious reason, the tenant's tenancy of the service apartment shall end on the expiry of two years from the date on which he ceased to perform the work.

§ 2299

If the tenant dies, the lease of the service apartment shall terminate. A person who was living in the flat with the tenant has the right to live in the flat; however, if the

landlord asks him to vacate the flat, he must do so within three months of the date on which he receives the notice.

Lease of a special purpose apartment

§ 2300

(1) If the subject of the lease is an apartment intended for the accommodation of persons with disabilities or an apartment in a house with facilities intended for such persons or an apartment in a nursing home, it is a lease of a special purpose apartment.

(2) The landlord may conclude a lease of a special purpose flat only on the written recommendation of the person who has established such flat at his own expense or his legal successor.

§ 2301

(1) If the tenant dies, the tenancy of the special purpose dwelling shall terminate and the landlord shall invite the members of the tenant's household who were living in the dwelling at the date of the tenant's death and who do not have their own dwelling to vacate the dwelling not later than six months after the date on which the notice is received. If there are no such persons in the flat, the landlord shall invite the tenant's heirs to vacate the flat not later than three months from the date of receipt of the notice.

(2) If a disabled person or a person who has reached the age of seventy years who has lived in the special purpose flat with the tenant for at least one year and does not have a flat of his own was living in the flat at the date of the tenant's death, the tenancy shall pass to him at the date of the tenant's death, unless the landlord and the person agree otherwise.

(3) The lease of a special purpose flat may be terminated by the landlord only with the prior consent of the person who has established such flat at his own expense or his successor in title.

Subsection 3

Special provisions on the lease of business premises

Basic Provisions

§ 2302

(1) The provisions of this subsection apply to the lease of a premises or room if the purpose of the lease is the carrying on of a business in that premises or room and the premises or room is then at least predominantly used for business, whether or not the purpose of the lease is expressed in the lease (hereinafter referred to as "premises used for business"). Unless otherwise specified below, the general provisions on leases shall apply to the lease of business premises.

(2) Where the lease is of a space or room the purpose of which is neither a dwelling nor the carrying on of a business within the meaning of [paragraph 1](#), the general provisions on leases shall apply.

§ 2303

If the lease of a business premises involves the provision of services, the provisions on the provision of services related to the lease of a dwelling shall apply *mutatis mutandis*.

§ 2304

(1) The tenant shall not have the right to carry on any other activity or to change the manner or conditions of its performance other than as may be implied from the purpose of the lease or other agreement of the parties or as may reasonably have been expected at the time of the conclusion of the agreement, if such change would cause a deterioration in the conditions of the immovable property or would be

detrimental to the landlord or other users of the immovable property beyond a reasonable degree.

(2) The provisions of [paragraph 1](#) do not apply if, as a result of a change in circumstances on the part of the tenant, the tenant's activities have changed only insubstantially in any respect.

§ 2305

The tenant may, with the consent of the landlord, provide the immovable property in which the premises used for the business is situated with shields, signals and similar signs to a reasonable extent; the landlord may refuse consent if he has good reason for doing so. If the tenant has requested consent in writing and the landlord fails to give his consent within one month, the landlord's consent shall be deemed to have been given.

§ 2306

At the end of the tenancy, the tenant shall remove the signs with which the immovable property has been provided and restore the affected part of the immovable property to its original condition.

§ 2307

Transfer of lease of business premises

(1) A tenant may, with the prior consent of the landlord, transfer the lease in connection with the transfer of the business the space serves; both the landlord's consent and the lease transfer agreement require a written form.

(2) The provisions of [§ 2306](#) shall apply mutatis mutandis.

End of lease

§ 2308

A fixed-term lease may be terminated by the tenant before the expiry of the agreed term,

- a) if the tenant loses competence for the activity for which the business premises are intended,
- b) if the leased premises ceases for objective reasons to be fit for the business for which it was intended and the landlord fails to provide the tenant with an adequate replacement premises, or
- c) if the landlord grossly breaches its obligations to the tenant.

§ 2309

If the lease is for a fixed term, the landlord has the right to terminate the lease before the expiry of the agreed term,

- a) if the immovable property in which the business premises are situated is to be removed or rebuilt in such a way that it prevents the continued use of the premises and the lessor need not or could not have foreseen this at the time of conclusion of the agreement, or
- b) where the tenant is in gross breach of his obligations to the landlord, in particular by failing to remedy the breach despite being called upon to do so by the landlord, the tenant behaves in violation of the provisions of [§ 2305](#), or is in default for more than one month in the payment of rent or services related to the use of the business premises.

§ 2310

(1) The notice must state the reason for the notice; a notice that does not state the reason is invalid.

(2) The notice period is three months.

§ 2311

The provisions on the termination of a fixed-term tenancy shall apply mutatis mutandis.

§ 2312

If the lease is for an indefinite term, the party has the right to terminate it on six months' notice; however, if the party has good reason to terminate the lease, the notice period is three months; if the lease lasts for more than five years and the party could not have foreseen, given the circumstances, that the other party would terminate the lease, the notice period is always six months.

§ 2313

If the tenant vacates the business premises in accordance with the notice, the notice shall be deemed valid and accepted by the tenant without objection.

§ 2314

(1) The party served with the notice shall have the right to object to the notice within one month of the date on which the notice is served on him/her; any objection shall be in writing.

(2) If the party being deposed fails to object in time, the right to request a review of the validity of the deposition is extinguished.

(3) If the party being deposed objects in time, but the deponent fails to withdraw his or her deposition within one month of the date on which the objections are served on him or her, the deposed party shall have the right to apply to the court for a review of the validity of the deposition within two months of the date on which the time for withdrawal of the deposition has expired.

§ 2315

Compensation for acquisition of customer base

If the lease is terminated by the landlord's termination, the tenant is entitled to compensation for the landlord's or new tenant's benefit gained by taking over the customer base built by the terminated tenant. The tenant does not have this right if the tenant was terminated from the lease for gross misconduct.

Subsection 4

Special provisions on a commercial lease of movable things

§ 2316

Basic Provisions

(1) By a lease agreement, the lessor, who is an entrepreneur and whose business consists in renting out things, undertakes to give the lessee the use of movable things for a certain period of time, and the lessee undertakes to pay rent to the lessor in return.

(2) Unless otherwise provided below, the general provisions on lease shall apply to business leases of movable property.

§ 2317

The lessor, on handing over the thing to the lessee, shall satisfy himself that the thing is in good condition, demonstrate to the lessee that the thing is in working order, if usual, and inform the lessee of the rules for handling the thing or give him instructions in writing to that effect.

§ 2318

(1) If the thing has a defect for which it cannot be used properly or for which it can be used only with considerable difficulty, the lessee has the right to have the lessor provide him with another thing serving the same purpose.

(2) During the period during which the tenant has been unable to use the thing properly at all or only with considerable difficulty, the tenant shall have the right to a remission of rent, or to a reduction of rent, or to a reduction of rent; the tenant must assert his right with the landlord before the end of the agreed period of the lease, otherwise it shall lapse.

§ 2319

(1) The lessee shall notify the lessor of damage, loss or destruction of the item without undue delay.

(2) The tenant shall pay the rent until he notifies the landlord of damage to the thing for which he cannot properly use it, or of the loss or destruction of the thing; he shall likewise pay the rent while he is in default in returning the thing.

(3) The tenant is not liable for wear and tear on the thing caused by proper use.

§ 2320

(1) The lessee has the right to terminate the lease at any time. The notice period is ten days.

(2) The provision for renewal of the lease after the expiry of the lease term, provided the landlord does not request a return, does not apply.

Subsection 5

Special provisions on the lease of a means of transport

§ 2321

Basic Provisions

In a lease agreement, the lessor undertakes to give the lessee the use of a means of transport for a specified period of time, and the lessee undertakes to pay the lessor rent in return.

§ 2322

(1) The lessor shall hand over the means of transport together with the necessary documents to the lessee within the agreed time, otherwise without undue delay after the conclusion of the contract.

(2) The means of transport shall be fit for use and for the agreed use, otherwise for the use for which the means of transport is normally used.

(3) If the means of transport is not fit for use in accordance with [paragraph 2](#), the hirer has the right to refuse to accept the means of transport, and if he discovers the unfitness afterwards, he has the right to return it and demand that the defect be remedied or that another means of transport be handed over or that the contract be cancelled.

§ 2323

The hirer shall insure the means of transport only if this has been agreed.

§ 2324

The hirer shall pay the hire at the end of the use of the means of transport; however, if the hire is agreed for a period of more than three months, the hirer shall pay the hire at the end of each calendar month.

§ 2325

(1) The lessee shall maintain the vehicle in the condition in which it was taken over, taking into account normal wear and tear.

(2) The lessor shall reimburse the lessee for the costs incurred by the lessee for the maintenance; if the lessee does not exercise this right with the lessor within three months after the costs have been incurred, the right shall lapse.

Subsection 6

Accommodation

§ 2326

Basic Provisions

In an accommodation agreement (for a temporary lease), the accommodation provider undertakes to provide temporary accommodation to the occupant for the agreed period or for the period resulting from the purpose of the accommodation in a facility designated for that purpose, and the occupant undertakes to pay the accommodation provider for the accommodation and for the services connected with the accommodation within the period specified in the accommodation regulations, or within the usual period.

§ 2327

(1) The guest has the right to use the space reserved for his/her accommodation as well as the common areas of the accommodation facility (accommodation space) and to use the services associated with the accommodation.

(2) If the resident so requests, the accommodation provider shall take custody of cash, jewellery or other valuables from the resident, unless they are dangerous or disproportionate in value or extent to the accommodation facility. The landlord may require that the items be delivered to him for safekeeping in a closed or sealed box.

§ 2328

The accommodation provider shall hand over the accommodation space to the accommodated person in a condition suitable for proper use and shall ensure the undisturbed exercise of his/her rights connected with the accommodation.

§ 2329

The occupant shall use the accommodation space and accept the services associated with the accommodation in a proper manner; he/she shall not make substantial changes to the accommodation space without the consent of the accommodation provider.

§ 2330

(1) The resident may terminate the contract before the expiry of the agreed period.

(2) If the landlord proves that he could not have prevented the damage caused by the accommodation cancellation by the accommodation guest, he may demand that the accommodation guest compensate him for the damage.

§ 2331

The landlord may terminate the contract without notice before the expiry of the agreed period if, despite a warning, the resident grossly breaches his/her obligations under the contract or good morals.

Section 4

Usufructuary lease

Subsection 1

General Provisions

§ 2332

Basic Provisions

(1) By a usufruct agreement, the usufructuary undertakes to convey to the payee the thing for temporary use and enjoyment, and the payee undertakes to pay to the usufructuary a rent or to provide a proportionate share of the proceeds of the thing.

(2) If a party conveys to the other party by one contract several things, some of which are for use and others for enjoyment, the contract shall be judged according to the nature of the principal thing.

§ 2333

If the thing to be leased is entered in the public register, the lease shall also be entered in the public register if the owner of the thing or, with his consent, the lessee so proposes. This applies even if an individual item belonging to the leased bulk item is entered in the public list.

§ 2334

If the lessor leases the leased item to another, or transfers it to another for use, or changes the economic purpose of the item, or the manner of its use or enjoyment, without the lessor's prior consent, the lessor may terminate the lease without notice.

§ 2335

(1) If the grantor carries out measures on the property subject to the lease which he is entitled or obliged to do by contract or other legal reason, he shall compensate the grantee to a reasonable extent for the costs and loss of revenue incurred by the grantee as a result of such measures; if the grantee so requests, the grantor shall give him a reasonable advance. The right of the usufructuary to a reduction or remission of rent shall not be affected thereby.

(2) If the lessor improves the thing leased to such an extent that the lessee can obtain a higher yield by proper management, the lessor may claim a reasonable increase in the rent.

§ 2336

The usufructuary shall take care of the property subject to the lease as a good steward.

§ 2337

(1) If the usufructuary does not remove the defect in the thing which he is obliged to remove without undue delay and if, as a result, the yield from the usufruct falls below half of the normal yield, the usufructuary shall be entitled to a reduction in the rent; if he removes the defect himself, he shall be entitled to reimbursement of the costs incurred.

(2) If the defect is such as to render the enjoyment of the leased property substantially more difficult or even impossible, so that at most only a small return can be obtained from it, the lessee is entitled to a remission of the rent or to termination of the lease without notice.

§ 2338

If the lease has been agreed for a period of at least three years, a party may, not less than six months before the expiry of the agreed period, give notice to the other party whether it intends to continue the lease, provided that if the other party consents within three months of the service of the notice, the lease shall be extended for the period for which it was originally agreed; otherwise the lease shall terminate at the time originally agreed.

§ 2339

(1) A lease agreed for an indefinite term may be terminated on six months' notice so as to end at the end of the lease year. If the contract was concluded in writing, the notice of termination shall also be in writing.

(2) For agricultural tenancies, the tenancy year is deemed to be the period from 1 October to 30 September of the following year, for other tenancies it is the calendar year.

§ 2340

If the lessee does not return the thing leased to the lessor at the termination of the lease, the lessor shall be entitled to the rent as if the lease had continued; the fruits and benefits extracted by the lessee at that time shall be counted as benefits for the whole year.

§ 2341

Unless otherwise provided in the provisions of this section, the provisions of the lease shall apply mutatis mutandis to the tenancy.

Inventory

§ 2342

(1) If the item is forfeited together with the inventory, the payee retains the individual pieces of the inventory. If the inventory includes animals, the payee shall restore their condition with due care.

(2) If something in the inventory is destroyed or worn out to such an extent that it can no longer be used, the grantor shall restore the inventory, unless the damage is attributable to the grantor; this shall also apply in the case of a defect in the thing being conveyed.

§ 2343

(1) If the thing is proffered together with the inventory at the agreed price and if the lessee undertakes to return the inventory to the profferor at the end of the lease at the same price, the lessee is free to dispose of the inventory as a good steward, but bears the risk of damage, even if it arises accidentally. The usufructuary shall maintain the inventory and replace it with due care; if the item is entered in the inventory, the usufructuary shall acquire title to it.

(2) If the charterparty ends, the charterer shall return the inventory to the charterer. The squatter may refuse to accept a piece of inventory procured by the squatter if it is of disproportionate value in relation to the thing squatted and to the proper management of it, or if it is superfluous to the thing squatted; by refusal the squatter acquires title to the refused piece.

(3) If there is a difference between the price of the accepted and returned inventory, it shall be settled in money.

§ 2344

A lien shall attach on the items belonging to the inventory for the claims of the mortgagee against the mortgagor. However, if the grantor gives the grantee other security, the lien shall not apply to the extent of the security.

Subsection 2

Agricultural usufructuary lease

§ 2345

Basic Provisions

(1) Where agricultural or forest land is being leased, an agricultural tenancy is agreed.

(2) If the lease is agreed for a period of more than two years and the agreement is not in writing, the lease is deemed to have been agreed for an indefinite period.

§ 2346

The rent is payable annually in arrears and is payable on 1 October.

§ 2347

A charter agreed for an indefinite period may be terminated on 12 months' notice.

§ 2348

(1) If the tenant becomes incapable of farming the land for health reasons, he has the right to terminate the tenancy on three months' notice, even if the tenancy was agreed for a fixed term.

(2) If the tenant dies, the tenant's heir has the right to terminate the tenancy on three months' notice, even if the tenancy was agreed for a fixed term; the notice must be given within six months of the date of the tenant's death.

Subsection 3

Usufructuary lease of an enterprise

§ 2349

(1) If a plant is chartered, the charterer shall use and enjoy it in the manner and to the extent necessary for the proper operation of the plant. The lessee may change the subject matter of the activities carried on in the plant only if this has been expressly agreed.

(2) A plant lease is deemed to be a transfer of the employer's business.

§ 2350

(1) If the charterer is registered in the public register, he acquires the right to the plant by publishing the fact that he has deposited the document of the charter of the plant in the collection of deeds in accordance with other legislation.

(2) If the lessee is not registered in the public register, the right to the plant is acquired by the effectiveness of the contract.

(3) The provisions of paragraphs 1 and 2 are without prejudice to the obligations to register rights in things under other legislation.

§ 2351

It is prohibited to transfer to a grantee those rights in industrial or other intellectual property where the contract by which the industrial or other intellectual property right was granted to the grantee precludes it or where the nature of such right precludes it.

§ 2352

(1) By leasing the plant, the lessee becomes a creditor of claims and a debtor of debts relating to the operation of the plant; however, of the debts, the lessee assumes only those debts of which he knew or at least reasonably should have foreseen the existence. If the creditor has not given his consent to the assumption of the debt by the usufructuary, the usufructuary shall be liable for its performance. The acquisition of debts by the usufructuary shall otherwise be governed by the provisions on assignment of debts.

(2) The disponsee shall notify without undue delay its creditors and debtors whose claims and debts the disponsee has acquired by the leasing of the plant that it has disposed the plant.

§ 2353

(1) If the parties make a record of the transfer of the plant, they shall list everything that the leased plant includes and that is conveyed to the lessee, as well as what is missing, although it is otherwise by contract or by the accounting records that the plant is jointly owned. The lessor shall, no later than in the entry, draw the lessee's attention to defects in the subject matter of the lease of which he knows or ought to have known and could have known.

(2) If a thing belonging to the plant is not mentioned in the entry, the usufructuary acquires the usufruct right to it together with the usufruct right to the plant. If a debt is not mentioned in the entry, the usufructuary acquires it if he must at least have reasonably foreseen its existence.

§ 2354

If a chattel mortgage impairs the recoverability of a claim, a creditor of the mortgagor who has not consented to the mortgage has the right to have the court rule that the mortgage is ineffective against him. The right to invoke the ineffectiveness shall lapse if the creditor does not exercise it within one month from the date on which he became aware of the lease, but no later than three months from the effective date of the contract.

§ 2355

(1) On the date of termination of the lease, the claims and debts relating to the plant shall pass to the lessor; but of the debts, the lessor shall acquire only those of which he knew or at least reasonably should have foreseen the existence. If the creditor has not consented to the assumption of the debt by the lessor, the lessee shall be liable for its performance. The acquisition of debts by the bailee shall otherwise be governed by the provisions on assignment of debts.

(2) The charterer shall notify its creditors and debtors whose claims and debts the charterer has acquired by the charter of the plant without undue delay that the charter has terminated.

§ 2356

If the parties do not show that the creation or termination of the lease was previously known to the third party, the facts are effective against the third party from the date on which notice of the creation or termination of the lease was published.

§ 2357

The provisions of this subsection shall apply mutatis mutandis to a lease of a part of a plant forming a separate organizational unit.

Section 5

Licence

Subsection 1

General Provisions

§ 2358

Basic Provisions

(1) By a license agreement, the licensor grants the licensee the right to exercise the intellectual property right (license) to the agreed limited or unlimited extent and the licensee agrees, unless otherwise agreed, to provide the licensor with a fee.

(2) The agreement requires a written form,

- a) if an exclusive license is granted, or
- b) if the licence is to be entered on the relevant public register.

(3) A licence in respect of an item of industrial property entered in a public list shall be effective against third parties upon entry in that list.

§ 2359

(1) The acquirer is not obliged to use the licence unless the duration of the right depends on its exercise.

(2) The grantor maintains the right for the duration of the licence if its nature requires it.

§ 2360

Exclusive or non-exclusive licence

(1) If an exclusive licence is agreed, the provider does not have the right to grant the same licence to a third party for as long as the exclusive licence lasts. Unless expressly agreed to the contrary, the provider shall also refrain from exercising the right for which it has granted an exclusive licence.

(2) If the licensor grants a licence to a third party during the term of the exclusive licence to the licensee without the licensee's consent in writing, the licence shall not arise. However, if the non-exclusive licence was granted before the grant of the exclusive licence, it shall remain in force.

§ 2361

If a non-exclusive licence is agreed, the licensor is entitled to exercise the right for which it has granted a non-exclusive licence, as well as to grant a licence to a third party.

§ 2362

Unless an exclusive license is expressly agreed, it is a non-exclusive license.

§ 2363

Sublicense

The user may grant the authorization forming part of the license to a third party in whole or in part only if this has been agreed in the license agreement.

§ 2364

(1) The Licensee may assign the License to a third party in whole or in part only with the consent of the Licensor. The consent shall be in writing.

(2) The acquirer shall notify the provider without undue delay that it has assigned the licence, as well as the person of the assignee.

§ 2365

If a plant or a part of a plant which forms a separate component thereof has been transferred, the consent of the licensor to the transfer of the licence is required only if this has been specifically agreed.

§ 2366

Remuneration

(1) If the amount of remuneration or the method of determining it is not agreed, the contract is nevertheless valid if

a) the negotiations between the parties for the conclusion of the contract show their intention to conclude a contract for consideration even without specifying the amount of the consideration; in that case, the transferee shall pay to the provider a consideration in the amount which is customary at the time of conclusion of the contract under similar contractual conditions and for such right, or

b) the parties agree in the contract that the licence is granted free of charge.

(2) If the amount of the remuneration is agreed in relation to the revenue from the use of the licence, the transferee shall allow the licensor to inspect the relevant accounting records or other documentation to determine the actual amount of the remuneration. If the acquirer so provides the provider with information designated by the acquirer as confidential, the provider shall not disclose it to a third party or use it for its own purposes contrary to the purpose for which it was provided to it.

(3) The Acquirer shall submit to the Provider periodic statements of the consideration under [paragraph 2](#) at agreed time periods; unless otherwise agreed, the Acquirer shall do so at least annually.

§ 2367

The grantor shall provide the grantee with all documents and information necessary for the exercise of the licence without undue delay after the conclusion of the contract.

§ 2368

(1) The acquirer shall keep secret from third parties the documents and communications received from the grantor, unless it is clear from the contract or from the nature of the documents and communications that the grantor has no interest in keeping them secret. Neither an employee nor a person who participates in the business of the entrepreneur shall be regarded as a third party if the entrepreneur has been bound by an obligation of confidentiality.

(2) Upon termination of the license, the licensee shall return the disclosure; the disclosure

shall remain secret until it becomes generally known.

§ 2369

If the licensee's license is compromised or violated, the licensee shall notify the provider without undue delay as soon as the licensee becomes aware of it. The provider shall provide the assignee with assistance to legally protect its licence.

§ 2370

Termination of an obligation

If the contract is concluded for an indefinite period of time, the termination shall take effect one year after the end of the calendar month in which the notice is received by the other party.

Subsection 2

Special provisions for licences to items protected by the Copyright Act

§ 2371

Basic Provisions

In the agreement, the author grants to the transferee the right to exercise the right to use the copyright work in its original or processed or otherwise altered form, in a particular manner or in all manners of use, to a limited or unlimited extent.

§ 2372

(1) The author may grant a right to exercise the right to use the copyright work only in a manner known to the author at the time of the conclusion of the contract; any contrary arrangement shall be disregarded.

(2) The licensee is obliged to use the copyright work unless otherwise agreed.

§ 2373

(1) A proposal to enter into a contract is made even if the expression of will is directed to an indefinite number of persons. The content of the contract or part of it may also be determined by reference to licence conditions known to the parties or publicly available.

(2) Taking into account the content of the proposal or the practice established between the parties or custom, a person who intends to accept the proposal may express his agreement to the proposal to conclude a contract by performing a certain act without notifying the proposer, in particular by giving or accepting performance. In this case, acceptance of the proposal is effective at the time when the act is done.

(3) If a proposal addressed to an indefinite number of persons which may be accepted without notice to the proposer under [paragraph 2](#) sets a time limit for acceptance, the proposal may not be revoked during that time limit.

§ 2374

(1) In agreeing the remuneration for the grant of the licence, account shall be taken in particular of the purpose of the licence, the manner and circumstances of the use of the work, the extent of the author's creative contribution and the territorial, temporal and quantitative scope of the licence. The remuneration may be fixed only in justified cases and taking into account the particularities of the various sectors.

(2) If the remuneration originally agreed is so low as to be manifestly disproportionate to the revenue arising from the exploitation of the licence and to the importance of the subject matter of the licence in achieving such revenue, the author may claim a reasonable and fair additional remuneration. Arrangements which exclude or restrict the author's right to additional remuneration shall be disregarded; this shall apply even if the author waives this right.

(3) If there is no agreement between the parties on the amount of the additional remuneration, the amount of the additional remuneration shall be determined by the

court, which shall take into account, in particular, the amount of the original remuneration, the revenue obtained from the exploitation of the licence, the importance of the work for obtaining such revenue and the usual remuneration in comparable cases.

§ 2374a

(1) The licensee to whom a licence has been granted for remuneration shall provide the author with up-to-date, relevant and complete information on the use of the copyright work on a regular basis, at least once a year, while maintaining a high level of transparency in each sector and taking into account the specificities of each sector. The information shall be provided to the extent appropriate in the circumstances, taking into account in particular the costs in relation to the revenues derived from the use of the copyright work. Where such provision of information is unreasonable, the acquirer shall provide information about the use of the copyright work at least of a type and level of detail that can reasonably be expected in such a case.

(2) If the author's contribution to the work as a whole is not significant, the author may request information about the use of the work if he or she demonstrates that he or she requires it for the purpose of exercising the right to additional remuneration.

(3) Where a sub-licence has been granted for the use of the copyright work, the licensee shall provide the author, at his request, with information about the use of the copyright work under the sub-licence granted; if the licensee does not have information about the use of the copyright work under the sub-licence granted, or if such information cannot be obtained from the licensee for any other reason, the sub-licensee shall provide such information to the licensee at his request.

(4) Arrangements excluding or limiting the author's right under paragraphs 1 to 3 shall be disregarded. This shall apply even if the author waives this right.

§ 2375

Limitations on a licensee

(1) The author designation may be modified or otherwise changed by the licensee only if agreed.

(2) The acquirer may modify or otherwise alter the work or its title only if agreed, unless it is a modification or other alteration which, in the circumstances of the use, the author could fairly be expected to consent to; but even in such a case the acquirer may not modify or otherwise alter the work or its title if the author has reserved his consent and the acquirer is aware of such reservation.

(3) Paragraph 2 shall apply mutatis mutandis when the work is combined with another work or included in a collective work.

§ 2376

(1) The license may be limited to particular uses of the work; the uses of the work may be limited in scope, particularly in quantity, location, or time.

(2) The licence is deemed to be granted for such uses and to such extent as is necessary to achieve the purpose of the contract.

(3) Unless the purpose of the contract otherwise appears, it shall be deemed that

- a) the territorial scope of the licence is limited to the territory of the Czech Republic,
- b) the temporal scope of the licence is limited to the period customary for the type of work and the method of use, but not exceeding one year from the grant of the licence, and if the work is to be handed over after the grant of the licence, then from such handing over, and
- c) the scope of the licence is limited to the quantity that is customary for the type of work and method of use.

(4) A license to reproduce a work includes the right to make copies directly or indirectly, permanently or temporarily, in whole or in part, by any means and in any form.

(5) A licence to reproduce a work includes a licence to distribute copies so made.

§ 2377

Reproduction for the author

If the licensee of a reproduction of a work of authorship may fairly be required to do so, and if it is customary to do so, the licensee shall provide the author, at his expense, with at least one reproduction of the author's work of authorship from among the reproductions made by him under the relevant licence.

Withdrawal from licence agreement due to inactivity of the licensee

§ 2378

(1) If the assignee does not use the exclusive licence at all, the author may withdraw from the contract or limit the licence as to the uses of the work or the scope of the uses. This does not apply if the non-use of the licence is due to circumstances predominantly attributable to the author.

(2) If the work contains contributions from more than one author, only all authors may withdraw from the contract or limit the licence by common agreement. If they do not agree, the declaration of intent of the dissenting author shall be replaced by a court, on the application of any of the other authors, if there is good reason for doing so and if the dissenting author can fairly be required to do so.

(3) The author may only rescind the agreement or limit the licence for the reasons set out in paragraph 1 if he or she invites the assignee to make use of the licence within a reasonable time of the receipt of the invitation and the assignee fails to make use of the licence despite the invitation. The author shall draw the attention of the acquirer to the possibility of withdrawing from the contract or limiting the licence after the expiry of the time limit. No notice need be given if use by the assignee is not possible or if the assignee declares that he will not use the licence. After the expiry of the time limit, the author may choose to terminate the exclusive nature of the licence instead of rescinding the contract or limiting the licence.

§ 2379

(1) The author may not exercise the right of withdrawal or limitation of the licence for inactivity of the licensee before the expiry of two years from the grant of the licence, or from the delivery of the copyright work if it was delivered to the licensee after the grant of the licence; for contributions to periodicals with a daily periodicity, this period shall be three months and for other periodicals one year.

(2) If a notice to the transferee to make use of the licence within a reasonable time is required, no such notice may be given before the expiry of the time limits specified in [paragraph 1](#).

§ 2380

If there are special reasons for doing so, the author shall compensate the purchaser for the damage suffered by him as a result of the withdrawal. In doing so, account shall be taken, in particular, of the reasons for which the assignee did not make use of the licence.

§ 2381

(1) If the licence has not been used at all, the author shall reimburse the transferee the remuneration received from him under the contract from which he has withdrawn; if the author has limited the licence or terminated the exclusive nature of the licence, the part of the sentence before the semicolon shall apply *mutatis mutandis*. The remuneration for the performance made after the time of the restriction of the licence or the termination of its exclusive nature shall be adjusted accordingly.

(2) If the transferee was obliged to use the licence and has breached that obligation, the author's right to remuneration shall remain unaffected by the termination of the

contract or the restriction of the licence due to the transferee's inaction. If the remuneration was agreed on the basis of the proceeds from the use of the copyright work, the author shall be deemed to have acquired a right to remuneration in the amount that would have accrued if the licensee had made use of the licence at the time before the withdrawal or restriction of the licence.

§ 2382

Withdrawal from the agreement due to a change of the author's conviction

(1) The author may withdraw from the contract if the author's work, which has not yet been published, no longer corresponds to his beliefs and his legitimate personal interests would be significantly adversely affected by the publication of the author's work.

(2) The author shall indemnify the acquirer against any loss incurred by him by withdrawal under paragraph 1. The withdrawal shall take effect upon compensation for the damage or the provision of sufficient security.

(3) If, after withdrawal under paragraph 1, the author expresses a renewed interest in the use of the copyright work, he shall offer the licence to the acquirer on terms comparable to those originally agreed.

(4) The provisions of § 2381(2) shall apply mutatis mutandis.

§ 2383

Extinction of a licence

On the death of a natural person or on the dissolution of a legal entity to which a licence has been granted, the rights and obligations under the licence agreement shall pass to its successor in title. The licence agreement may exclude such transfer of rights and obligations to a successor in title.

Subsection 3

Special provisions for publishing licence agreements

§ 2384

Basic Provisions

(1) By a publishing license agreement, the author grants the licensee a license to reproduce and distribute the author's work of literature, music or drama, visual art, photography, or expressed in a manner similar to photography, unless the use of the author's work is in a performance by performers.

(2) Unless a non-exclusive licence has been expressly agreed in a contract concluded in writing, the licence shall be regarded as exclusive; this shall not apply where the reproduction and distribution of the work of authorship in a periodical publication is concerned.

§ 2385

(1) The acquirer shall grant the author a reasonable period of time before publication of the author's work to make minor creative changes to his work which do not cause the acquirer to incur disproportionate costs and which do not change the nature of the work (author's correction).

(2) If the transferee does not allow the author to carry out the author's proofreading, the author may withdraw from the contract if this would result in the use of the author's work in a way that diminishes its value.

§ 2386

If the quantitative scope of the licence is limited to a certain number of copies and those copies have been disassembled before the expiry of the period for which the licence was granted, the licence shall terminate unless the parties agree to increase the quantitative

scope within six months of the date on which the author invites the licensee to make such a change.

Subsection 4

Special provisions for rights related to copyright and rights of an author of a database

§ 2387

For artistic performances, § 2371 to 2383 apply mutatis mutandis; however, the performer does not have the right provided for in § 2377.

§ 2388

For sound recordings, sound-image recordings and radio or television broadcasts, § 2371 to 2376 and § 2383 shall apply mutatis mutandis; however, neither the producer of the phonogram or phonogram recording nor the radio or television broadcaster shall have the rights set out in § 2374 and in § 2374a.

§ 2389

For databases that are subject to the special right of the database acquirer, § 2371 to 2376 and § 2383 shall apply mutatis mutandis; however, a database acquirer does not have the rights set forth in § 2374 and § 2374a.

Section 6

Digital Content Delivery

Subsection 1

General Provisions

§ 2389a

(1) By a digital content contract, the provider undertakes to make available to the user an item in digital form (digital content) for use for his or her own use, and the user undertakes to pay remuneration for this.

(2) If the use of the digital content requires the authorisation to exercise an intellectual property right, the relevant provisions on licensing also apply.

§ 2389b

(1) Unless a time of performance is agreed, the provider shall make the digital content available to the user without undue delay after the conclusion of the contract.

(2) The provider shall also fulfil this obligation by making the digital content available through a physical or virtual device chosen by the user.

(3) It is for the provider to demonstrate that it has made the digital content available to the user.

§ 2389c

(1) The provider shall be liable to the user that the digital content is free from defects for the duration of the commitment.

(2) The provider shall make available to the user the latest version of the digital content available at the time of conclusion of the contract.

§ 2389d

(1) The provider shall ensure that the agreed updates to the digital content are provided to the user.

(2) In addition to the agreed updates, the provider shall ensure that the user is provided with updates that are necessary to keep the digital content free from defects for the duration of the commitment and that the user is notified of their availability.

(3) If the user fails to make an update in accordance with [paragraph 2](#) within a reasonable time, the user shall not have any rights in respect of any defect arising solely as a result of the failure to make the update. This does not apply if the user has not been warned of the update or the consequences of not performing the update, or has not performed the update or has performed the update incorrectly due to a defect in the instructions.

§ 2389e

(1) If a defect manifests itself during the term of the commitment, the burden is on the provider to prove that the digital content is provided without defect.

(2) If the provider proves that the defect was caused by inadequate technical or software equipment or network connectivity for access to or use of the user's digital content necessary for the proper functioning of the digital content (hereinafter referred to as the "user's digital environment"), although the user was clearly and understandably made aware of the need for it before the conclusion of the contract, [paragraph 1](#) shall not apply.

(3) In order to verify whether the defect is due to the user's inadequate digital environment, the user shall provide the provider with the necessary cooperation to the extent reasonably requested. The user's obligation to cooperate shall be limited to the least intrusive means technically available to the user. If the user refuses to provide the cooperation despite having been clearly and comprehensibly informed of this obligation and the consequences of its breach before the conclusion of the contract, [paragraph 1](#) shall not apply.

§ 2389f

Special provisions on single performance

(1) If the digital content is not to be provided for a specific period of time, but if the performance consists only of a single act or a sequence of acts, including cases in which the user acquires the right to use the digital content on a permanent basis, [paragraphs 2 to 4](#) shall apply; otherwise, the provisions on the provision of digital content shall apply *mutatis mutandis*.

(2) The provider shall be liable for defects in the digital content which it had when making it available; this is without prejudice to the obligation to provide updates under [paragraph 4](#) and [§ 2389d](#).

(3) If a defect manifests itself within one year of disclosure, the digital content is deemed to have been defective at the time of disclosure. This period does not run for the time during which the user cannot use the digital content, if the defect has been rightly raised by the user.

(4) The provider shall ensure that updates are provided to the user in accordance with [§ 2389d\(2\)](#) for as long as the user can reasonably expect; this shall be assessed according to the type and purpose of the digital content and taking into account the circumstances at the time of the conclusion of the contract and the nature of the obligation.

Subsection 2

Special provisions for the provision of digital content to consumers

§ 2389g

(1) Where the user is a consumer, the provisions of this subsection shall apply to the provision of digital content.

(2) The provisions on the provision of digital content shall also apply where the user provides or undertakes to provide his or her personal data to the provider in lieu of remuneration, unless the provider processes them only for the purposes of providing the digital content or only to comply with his or her legal obligations. In this case, the user cannot claim a reasonable discount and [§ 2389m paragraph 2 and 3](#) and [§ 2389p](#) do not apply.

(3) The provisions on the provision of digital content shall also apply to a contract for the production of digital content.

(4) The provisions of this subsection shall not apply if the digital content is provided together with a thing with digital characteristics under [§ 2158\(2\)](#)

§ 2389h

(1) If the provider is in default in making the digital content available, the user may withdraw from the contract if the provider fails to perform its obligation without undue delay after being called upon to perform by the user or within an additional period expressly agreed between the parties.

(2) The user may withdraw from the contract without additional time only if it is clear from the provider's statement or the circumstances that the provider will not provide the digital content or if it is clear from the parties' agreement or the circumstances at the time of the conclusion of the contract that performance within the specified time is necessary; [§ 1980](#) does not apply. If the user withdraws from the contract, [§ 2389n to 2389p](#) shall apply mutatis mutandis.

(3) Where digital content is provided on a tangible medium, [paragraph 1](#) and [paragraph 2](#) and [§ 2389b](#) shall not apply.

§ 2389i

(1) In particular, the provider shall be liable to the user that the digital content

- a)** corresponds to the agreed description and scope, as well as to the quality, functionality, compatibility, interoperability and other agreed characteristics,
- b)** is fit for the purpose for which the user requires it and to which the provider has agreed, and
- c)** is provided with the agreed accessories and instructions for use, including installation instructions, and user support.

(2) The provider is liable to the user that, in addition to the agreed features

- a)** the digital content is fit for the purpose for which digital content of that kind is normally used, including with regard to third party rights, legislation, technical standards or industry codes of practice, where there are no technical standards,
- b)** the digital content corresponds in scope, quality and other performance parameters, including functionality, compatibility, accessibility, continuity and security, to the usual characteristics of digital content of the same kind that a user may reasonably expect, even taking into account public statements made by the provider or another person in the same contractual chain, in particular advertising or labelling,
- c)** the digital content is provided with the accessories and instructions for use that the user may reasonably expect, and
- d)** the digital content corresponds to a trial version or preview made available by the provider before the contract is entered into.

(3) The provider is not bound by the public statement referred to in [paragraph 2\(b\)](#) if it proves that it was not aware of it or that it was modified at the time of the conclusion of the contract in at least a comparable way to the way in which it was made or that it could not have influenced the decision to conclude the contract.

(4) [paragraph 2](#) does not apply if the provider has specifically notified the user before the conclusion of the contract that a feature of the digital content is different and the user has expressly agreed to this when concluding the contract.

§ 2389j

The Provider shall also be liable to the User for any defect caused by the improper interconnection of the Digital Content with the User's Digital Environment, which was performed by or under the responsibility of the Provider pursuant to the Contract. This

applies even if the connection was made by the user and the defect is due to a deficiency in the instructions provided by the provider.

§ 2389k

(1) The user may complain of a defect that appears or occurs in the digital content during the term of the commitment. In the case of a one-off performance, he or she may complain of a defect that becomes apparent in the digital content within two years of making it available.

(2) The court will grant the right of a defect even if it was not notified without undue delay after the user could have discovered it with reasonable diligence.

§ 2389l

(1) If the digital content has a defect, the user may demand that it be removed unless it is impossible or unreasonably expensive to do so; this shall be assessed having regard in particular to the significance of the defect and the value that the digital content would have had without the defect.

(2) The provider shall remedy the defect within a reasonable time after the defect has been identified so as not to cause the user significant inconvenience, taking into account the nature of the digital content and the purpose for which the user requested it.

§ 2389m

(1) The user may request a reasonable discount or withdraw from the contract if

- a) the provider has not remedied the defect in accordance with § 2389l or it is apparent from the provider's statement or the circumstances that the defect will not be remedied within a reasonable time or without substantial inconvenience to the user,
- b) the defect continues to manifest itself after removal, or
- c) the defect is a material breach of contract.

(2) The reasonable discount shall be determined as the difference between the value of the digital content without defect and the defective digital content provided to the user. If the digital content is to be provided for a certain period of time, the period for which it was provided defectively shall be taken into account; the user shall be entitled to a discount even if he withdraws from the contract.

(3) The user may not withdraw from the contract if the defect in the digital content is only insignificant; the defect shall be deemed not to be insignificant.

§ 2389n

(1) If the user withdraws from the contract, the provider shall refrain from using content other than the user's personal data that was created by the user when using the digital content; this does not apply if

- a) the content is unusable without that digital content,
- b) the content relates solely to the user's activity in using the digital content,
- c) the content has been mixed with other data by the provider and can only be separated with unreasonable effort, or
- d) was created jointly with other persons who may continue to use the content.

(2) Except as provided for in points (a) to (c) of paragraph 1, the provider shall make available to the user, on request, content other than his personal data which the user has created or stored in the course of using the digital content through the content. The provider shall do so free of charge, within a reasonable time and in a commonly used machine-readable format.

(3) If the user withdraws from the contract, the provider may prevent the user from further use of the digital content, in particular by making the digital content or the user account unavailable to the user.

§ 2389o

(1) If the user withdraws from the contract and a tangible medium has been surrendered to the user in connection with the provision of digital content, the provider shall, at the user's request and expense, deliver the medium to the user without undue delay. The provider may request the return of the tangible medium within fourteen days of the termination of the commitment.

(2) If the user withdraws from the contract, he/she shall refrain from using the digital content, including providing it to a third party.

§ 2389p

Money to be released by the Provider to the User on account of a defective performance shall be returned by the Provider at its own expense without undue delay, but not later than fourteen days from the date on which the User has exercised the relevant defective performance right with the Provider. In doing so, it shall use the same method as that used by the user to pay the fee, unless the user expressly agrees otherwise and no costs are incurred.

§ 2389q

Changing Digital Content

(1) If the digital content is to be provided for a certain period of time and it is not a change necessary to keep the digital content free from defects, the provider may change the digital content,

- a) if this is agreed in the contract together with a fair reason for such change,
- b) if the change will not incur additional costs to the user and
- c) if it notifies the user of the change in a clear and understandable manner.

(2) If the change under [paragraph 1](#) impairs the user's access to or use of the digital content in a non-substantial way, the provider shall further notify the user of the nature of the change in text form within a reasonable time before the change is made, the time of the change and of the right to terminate the commitment under [paragraph 3](#) or to keep the digital content unchanged under [paragraph 4](#).

(3) The user may terminate the commitment without penalty if the change impairs the user's access to or use of the digital content in a non-significant way within thirty days of being notified of the change or the time the digital content is changed, whichever is later. If the user terminates the undertaking, [§ 2389n to 2389p](#) shall apply mutatis mutandis.

(4) [Paragraph 3](#) shall not apply if the provider allows the user to refuse the change and retain the digital content in its original form at no additional cost, without detriment to the provision of the content without defect.

(5) [Paragraphs 1 to 4](#) do not apply to digital content, which is provided together with an internet access service pursuant to Regulation (EU) [2015/2120](#) or with a numbers-based interpersonal communication service.

§ 2389r

The provision [§ 2174b](#) applies mutatis mutandis in the case of a defect in digital content or delay in making it available.

§ 2389s

(1) An agreement that the user's rights are limited or that they are extinguished made before the user has complained of a defect in the digital content or a delay in making it available or has been notified of a change to it under [§ 2389q](#) shall not be taken into account.

(2) The provisions of [§ 2389d\(2\)](#) shall not apply if the provider has specifically notified the user prior to entering into the contract that updates will not be provided and the user has expressly agreed to this when entering into the contract.

Subsection 3

Common Provisions

§ 2389t

The Digital Content Provision Provisions apply *mutatis mutandis* to cases where a provider undertakes to provide a service to a user that enables the user to create, process or store or access data in digital form, to share data in digital form uploaded or created by that user or by another user of the service, or to otherwise interact with that data (a digital content service).

§ 2389u

(1) The provisions relating to the provision of digital content do not apply to a contract the subject matter of which is

- a) the provision of an electronic communications service under the law governing electronic communications, other than a number-independent interpersonal communications service,
- b) the provision of health care services,
- c) a game, wager, or lottery ticket,
- d) financial service,
- e) the provision of an open source computer program under a free licence for which the user does not pay a price and where the personal data provided by the user are processed by the provider solely for the purpose of improving the security, compatibility or interoperability of that computer program,
- f) the provision of digital content where the digital content is made available to the general public otherwise than by transmission of a signal as part of a performance or other event, or
- g) the provision of information that is subject to copyright protection under the law governing free access to information.

(2) Where the contract under which the digital content is provided also contains elements of a contract under [paragraph 1](#), the provisions of this section shall apply only to that part of the obligation relating to the provision of the digital content.

Section 7

Loan for consumption

§ 2390

Basic Provisions

If the lender leaves a fungible item to the borrower to be used at will and returns the item of the same kind after a period of time, a loan agreement is created.

§ 2391

(1) If the money lent is to be returned in a currency other than that in which it was given, the borrower shall repay the loan so that what is returned is equal in value to what was given. The loan shall be repaid in the currency of the place of performance.

(2) On a loan in kind, the thing returned is of the same kind as that lent; it does not matter whether its value has risen or fallen in the meantime.

§ 2392

(1) In the case of a cash loan, interest may be negotiated. The same applies to a loan made in securities.

(2) In a non-monetary loan, a performance of a proportionately larger quantity or of things of better quality but of the same kind may be agreed instead of interest.

§ 2393

(1) If the contract does not specify when the loan is to be repaid, the maturity is dependent on the termination of the contract. If nothing else is agreed on the notice, the notice period is six weeks.

(2) If no interest is agreed, the borrower may repay the loan without notice.

§ 2394

If it has been agreed to repay the loan in instalments, the lender may cancel the contract and demand payment of the debt with interest if the borrower defaults on more than two instalments or on one instalment for more than three months.

Section 8**Credit****§ 2395****Basic Provisions**

In a loan agreement, the lender agrees to provide the borrower, at the borrower's request and for the borrower's benefit, with funds up to a certain amount, and the borrower agrees to repay the funds provided and pay interest.

§ 2396

The borrower shall return the funds to the lender in the currency in which they were lent. The lender shall pay interest in the same currency.

§ 2397

The borrower may exercise the right to receive the money within the period specified in the contract. If no time limit is agreed, he may exercise the right for as long as the obligation under the contract continues.

§ 2398

(1) The lender shall provide the funds to the borrower at the borrower's request at the time specified in the request; if the borrower does not specify the time of performance in the request, the lender shall provide the funds without undue delay.

(2) If the contract binds the use of the credit only for a specific purpose, the lender may limit the provision of the money only to the performance of the obligations of the borrower incurred in connection with that purpose.

§ 2399

(1) The Borrower shall repay to the Lender the monies advanced within the agreed period, otherwise within one month of the date on which repayment is requested.

(2) The borrower may return the funds to the lender before the agreed time. The borrower shall pay interest only for the period from the disbursement of the funds until the return of the funds.

§ 2400

If the funds are to be used under the contract only for a particular purpose and the borrower uses them for another purpose, the lender may cancel the contract and require the borrower to repay what he has received from the lender, with interest, without undue delay. This applies even if it is impossible to use the money for the agreed purpose.

Volume 3**Employment****§ 2401**

(1) The employment relationship, as well as the rights and obligations of the employee and the employer under the employment relationship, is governed by a different law. The same shall

apply, to the extent provided by another law, to contracts of employment creating a similar obligation between the employee and the employer.

(2) The rights and obligations of the employee and the employer shall not be subject to the provisions of this Consumer Protection Act.

Volume 4

Obligations arising from safekeeping contracts

Section 1

Deposit

Subsection 1

General Provisions

§ 2402

Basic Provisions

In a custodial agreement, the custodian agrees to take possession of the item to hold it for the custodian. It may be agreed in the contract that the custodian may give the thing to another custodian for safekeeping.

§ 2403

(1) The custodian shall take custody of the thing taken into custody as agreed, otherwise with such care as is consistent with the nature of the thing and his ability to avoid damage to the thing, and shall return the thing to the custodian at the expiration of the custody period, together with what has accrued to it.

(2) If the custodian so requests, the custodian shall return the thing to him even before the expiry of the agreed period of custody. However, he himself has no right to return the item earlier, unless he cannot safely or without harm to himself take custody of it due to an unforeseeable circumstance.

§ 2404

If it is not clear from the circumstances how long the thing is to be kept in custody, the custodian may at any time demand the return of the thing, and the custodian may at any time return the thing.

§ 2405

If the custodian uses the thing taken for himself, allows another to use the thing, or gives the thing into the custody of another without the custodian's permission or without necessary necessity, he shall indemnify the custodian against all damages, including incidental damages. This does not apply if the bailee proves that the damage would have otherwise affected the item.

§ 2406

(1) The custodian shall reimburse the bailee for the necessary expenses incurred by him in the custody of the thing; reimbursement of other expenses shall be payable to the bailee, unless otherwise agreed, as an unassigned agent.

(2) The custody fee is due to the custodian only if it has been agreed or if it results from custom, from the previous dealings of the parties, or from the object of the custodian's business.

§ 2407

If the bailee fails to assert a right to damages, or if the bailee fails to assert a right to payment of fees or costs within three months of the return of the item, the court shall not award the right if the other party objects to the delay.

§ 2408

Custody provisions apply *mutatis mutandis* to cases where someone is required by contract or other provisions of law to hold a thing in trust for another.

Subsection 2

Deposit of securities

§ 2409

(1) The custodian holds the securities in custody separately from its own securities or those of other custodians; this does not apply if the custody is a collective custody or if otherwise agreed with the custodian.

(2) The custodian shall keep a record of the securities deposited in custody, which shall also include the identification of the custodian and the place of deposit of the securities.

§ 2410

Collective deposit

In collective custody, the security is held together with the securities of other custodians separately from the securities of the custodian. Securities in collective custody belong to all custodians jointly, but each custodian may exercise its rights against the custodian separately, in particular the right to the return of the same security as it has deposited with the custodian.

§ 2411

(1) The share of each custodian shall be determined by the ratio of the sum of the face values of the securities he has placed in custody to the sum of the face values of all the securities in the same collective custody; if a security has no face value, the custodian's share shall be determined by the number of securities.

(2) The provisions on co-ownership shall apply *mutatis mutandis* to the transfer of a share; other provisions on co-ownership shall not apply to securities in collective custody.

§ 2412

(1) A security taken into custody may be transferred by the custodian to another custodian for safekeeping (secondary custody); its rights and obligations are not affected.

(2) If the custody is a collective custody of immobilised securities, its conditions are governed by the rules for keeping separate records of investment instruments under the law governing capital market business; the transfer of securities to a secondary custodian is not required to create a secondary custody.

Immobilisation of securities

§ 2413

(1) Where securities are held in collective custody by their issuer, the security is issued on the date the issuer delivers the security to the custodian for the benefit of its holder as first transferee (immobilised security). If a security is delivered for safekeeping in registered form or in series, the name of the owner of the security shall not appear on the security when it is delivered for safekeeping.

(2) The owner of a custodial security has the right to require that the security be delivered to him only on the terms and conditions set out in the terms and conditions of issue of the security. The custodian shall, before issuing the security from custody, add the name or series of names of the owner of the security to the security.

(3) The custodian of an immobilised security may only be a person authorised to keep separate records of investment instruments pursuant to the law regulating business on the capital market; the secondary custodian may only be a person authorised to keep records subsequent to the separate records of investment instruments pursuant to the law regulating business on the capital market.

§ 2414

The provisions of another law on book-entry securities shall apply mutatis mutandis to securities in custody in cases where the issuance of an individual security cannot be required.

Section 2

Storage

§ 2415

Basic Provisions

(1) By a storage contract, the storer agrees to take possession of the item so as to store and care for it, and the depositor agrees to pay him storage charges for doing so.

(2) If the custody of the thing is the business of the warehouseman, the parties are deemed to have entered into a contract of storage.

§ 2416

If the depositor delivers the item to the warehouseman, the warehouseman shall take possession of the item and confirm its receipt to the depositor in writing.

§ 2417

(1) The receipt of the item may be replaced by a warehouse receipt. A warehouse receipt is a security with which is attached the right to demand the delivery of the thing in storage; it may be issued in the name, on the number, or on the bearer.

(2) A warehouse warrant contains at least

- a) the name of the warehouseman and his residence or registered office,
- b) the name of the stockist and his residence or registered office,
- c) the designation, quantity, weight or volume of the stored items,
- d) the form of the warehouse certificate; if issued in the name or name of a series, the name of the person in whose name or series it was issued,
- e) an indication of the place where the item is stored, and
- f) the place and date the warehouse certificate was issued and the warehouseman's signature.

(3) If the warehouse receipt does not contain the name of the person in whose name it is issued, it shall be deemed to be issued in the name of the depositor.

§ 2418

If a third party is entitled to demand delivery of a stored item on the basis of a warehouse receipt, he shall, on request, acknowledge receipt of the item on the warehouse receipt to the warehouseman. The warehouseman is not obliged to pay the warehousing fee, but if the warehousing fee is not paid, the warehouseman is not obliged to release the goods if he exercises a right of retention over the goods stored in the warehouse.

§ 2419

The obligation will be extinguished if the goods are not delivered to the warehouseman for storage within the agreed time, otherwise within six months of the conclusion of the contract.

§ 2420

The depositor shall store the item separately from other stored items, indicating that it is the depositor's items. The depositor shall have the right to inspect and sample the condition of the stored item.

§ 2421

The depositor shall insure the item if this has been agreed or if it is consistent with custom.

§ 2422

- (1) If the storage lasts more than six months, the storage fee is paid half a year in arrears.
- (2) Storage fees for the uncompleted half-year and storage fees for shorter storage periods are payable on collection of the stored item.
- (3) Even after the termination of the contractual obligation, the warehouseman is entitled to storage fees for the time the item was stored with him because the warehouseman failed to collect it in a timely manner.

§ 2423

The storage fee covers all storage costs except insurance costs. The warehouseman is entitled to reimbursement of insurance costs if he was obliged to have the item insured.

§ 2424

- (1) Where storage is agreed for an indefinite period, the warehouseman may demand delivery of the item at any time on payment of storage charges for the actual period of storage. Upon the removal of the item, the storage shall cease.
- (2) The warehousekeeper may terminate a storage arrangement for an indefinite period; the notice period shall be one month and shall commence on the first day of the month following the receipt of the notice.

§ 2425

Even if the storage is agreed for a fixed period, the depositor may collect the item before the expiry of the agreed period, but must first pay the storage fee attributable to the entire agreed period. Before the expiry of the agreed period, the depositor may request to take possession of the item again for storage until the end of that period, provided that he reimburses the depositor for the costs incurred in doing so.

§ 2426

- (1) The warehouseman shall indemnify the depositor against any loss incurred from the time of receipt of the goods until their delivery, unless he proves that he could not have prevented it.
- (2) The warehouseman shall not be liable for damage caused by the depositor or the owner of the thing, or by the defect or inherent nature of the thing deposited. The warehouseman shall indemnify for damage caused by a defect in the packaging if the defect could have been discovered by the exercise of professional care and was brought to his attention in a certificate in accordance with § 2416.
- (3) If the damage was caused by a cause listed in [paragraph 2](#), the warehouseman shall exercise professional care to keep the damage to a minimum.

§ 2427

The warehouseman may terminate the storage without notice,

- a) if the depositor has concealed the dangerous nature of the item and the depositor is at risk of substantial damage from it,
- b) if the depositor owes storage fees for a period of at least three months, or
- c) if substantial damage to the stored item is imminent and cannot be averted by the storer.

§ 2428

Sale by self-help

If the depositor fails to collect the item after the end of the period for which the depositor is required to store the item, the depositor may allow the depositor a reasonable period of time to collect the item. If the warehousekeeper gives notice that he will otherwise sell the item, the warehousekeeper may, after the expiry of the time limit, sell the item for the account of the depositor in an appropriate manner; he shall deliver the proceeds to the depositor

without undue delay but may deduct the storage charges and reasonable costs incurred in connection with the sale.

§ 2429

The warehouseman has a lien on the stored goods while they are in his possession to secure debts arising under the contract.

Volume 5

Obligations arising from mandate-type contracts

Section 1

Mandate

§ 2430

Basic Provisions

The principal agrees to procure the affairs of the principal.

§ 2431

When a person procures certain matters as a businessman, he is under a duty, if he has been requested to procure such matters, to make it expressly known to the other party without undue delay whether or not he is undertaking the procurement of the matter; otherwise he shall make good the damage caused thereby.

§ 2432

(1) The principal shall execute the order honestly and diligently to the best of his ability; in doing so, he shall use every means which the nature of the matter to be procured requires, as well as such as are consistent with the will of the principal. The principal may deviate from the instructions of the principal if this is necessary in the interests of the principal and if he cannot obtain his consent in time.

(2) The Principal shall assign to the Principal all benefit of the matter procured.

§ 2433

If the Principal receives an instruction from the Principal which is obviously incorrect, the Principal shall draw the Principal's attention to it and shall comply with such instruction only if the Principal insists on it.

§ 2434

The principal shall execute the command personally. If he entrusts the execution of the order to another, he shall be liable as if he had executed the order himself; but if the principal has allowed himself to appoint a substitute, or if such substitute was strictly necessary, he shall make good the damage caused by the erroneous choice of the substitute.

§ 2435

The Principal shall, at the request of the Principal, report to the Principal on the progress of the execution of the order and shall transfer to the Principal the benefit of the order being executed; upon execution of the order, the Principal shall submit an accounting to the Principal.

§ 2436

The Principal shall, upon request, advance to the Principal a deposit for out-of-pocket expenses and reimburse the Principal for expenses reasonably incurred in executing the order, even if the result is not forthcoming.

§ 2437

(1) The principal shall also indemnify the person giving the order against any loss incurred by him in connection with the execution of the order.

(2) If the principal has undertaken to execute the order free of charge, the principal shall indemnify the ordering party against any loss suffered by the principal by accident in the execution of the order. However, the principal shall not be entitled to more than the usual remuneration agreed upon.

§ 2438

(1) The principal shall give the principal such remuneration as has been agreed or is customary, having regard in particular to the principal's business.

(2) The principal will provide a reward even if the result did not occur, unless the failure was caused by the principal's breach of duty. This is true even if the execution of the order was frustrated by an accident not initiated by the principal.

§ 2439

If the procurement of the matter requires the principal to act legally for the principal, the principal shall issue a power of attorney to the principal in a timely manner. If the power of attorney is not contained in the contract, it is not a substitute for an agreed assumption of the principal's obligation to act on behalf of the principal; this applies even if the third party with whom the principal is legally dealing is aware of this obligation.

§ 2440

(1) The principal may terminate the order no earlier than the end of the month following the month in which the notice is served.

(2) If the principal terminates the order before the procurement of the matter for which he has been specially entrusted, or the procurement of which he has commenced under a general assignment, he shall make good the loss resulting therefrom in accordance with the general provisions.

§ 2441

The obligation under the order ceases on the death of the principal and on the death of the principal. This applies even if a legal person ceases to exist without a legal successor.

§ 2442

When an order is terminated by revocation, termination, or death, the principal shall arrange for everything that cannot be postponed until the principal or his successor in title expresses a different will.

§ 2443

The principal may revoke the order at will, but shall reimburse the principal for the expenses incurred up to that time and for damages, if any, sustained by the principal, and for that part of the remuneration commensurate with the effort made by the principal.

§ 2444

The provisions of the order apply mutatis mutandis to cases where someone is under a duty under a contract or other provisions of law to arrange a matter on behalf of another.

Section 2

Brokerage

§ 2445

Basic Provisions

(1) By a brokerage contract, the broker undertakes to arrange for the prospective buyer to enter into a particular contract with a third party, and the prospective buyer undertakes to pay the broker a commission.

(2) If it is already clear from the circumstances at the time of entering into a contract by which one party undertakes to procure for the other party the opportunity to enter into a

contract with a third party that a fee will be required for the procurement, a contract of agency is deemed to have been concluded.

§ 2446

(1) The intermediary shall without undue delay disclose to the interested party everything relevant to its decision to enter into the mediated contract.

(2) The interested party shall disclose to the intermediary everything that is of material importance to the interested party in concluding the contract.

§ 2447

(1) The commission is payable on the date of the conclusion of the mediated contract; if this contract has been concluded with a condition precedent, the commission is payable only on fulfilment of the condition.

(2) If it has been agreed that the intermediary will procure for the interested party an opportunity to conclude a contract with a third party with certain content, the commission is already payable on the procurement of the opportunity.

§ 2448

If it has been agreed that the broker is entitled to a commission when a third party fulfils an obligation under the contract brokered, the bidder shall pay the commission even if the fulfilment of that obligation is delayed or frustrated for reasons for which the bidder is liable. If the amount of the commission is to be determined according to the extent of the third party's performance, the performance not performed for reasons for which the interested party is liable shall also be included in the basis.

§ 2449

The intermediary is entitled to reimbursement of the costs associated with the mediation, unless a commission has been agreed. If a commission has been agreed, the commission shall be deemed to include those costs.

§ 2450

An intermediary is not entitled to a commission and to reimbursement of costs if, contrary to the contract, he was also acting for the other party to the contract being intermediated.

§ 2451

The intermediary shall retain for the interested party documents acquired in connection with the intermediation activity for such period as may be relevant to the protection of the interests of the interested party.

§ 2452

A broker may not propose to a prospective buyer to enter into a contract with a person about whom the broker has a reasonable doubt as to whether the obligations under the brokered contract will be performed in a proper and timely manner, or about whom, given the circumstances, the broker should have had such a doubt. If the interested party so requests, the intermediary shall provide the interested party with the information necessary to assess the credibility of the person with whom it proposes to conclude the contract.

§ 2453

The obligation is extinguished if the mediated contract is not concluded within the agreed time. If the time is not agreed, either party may cancel the obligation by giving notice to the other party.

§ 2454

An intermediary's right to a commission is not prejudiced if the contract to which the intermediary's activities related was entered into or performed after the termination of the obligation under the intermediary contract.

Section 3

Undisclosed mandate

§ 2455

Basic Provisions

In a commission contract, the commission agent undertakes to procure for the principal, on his own behalf, a particular matter on his own account, and the principal undertakes to pay him a fee.

§ 2456

A legal act done by a commission agent towards a third party does not give rise to rights or obligations of the principal, but of the commission agent himself.

§ 2457

The commission agent may deviate from the instructions of the principal if it is in the principal's interest to do so and if he cannot obtain the principal's timely consent; otherwise, the principal need not recognize the act as having been done on his own account if he rejects the effects of the act for himself without undue delay after he has knowledge of the contents of the act.

§ 2458

If a commission agent attends to a principal's affairs on terms more favourable than those specified by the principal, the benefit accrues only to the principal.

§ 2459

(1) If the commission agent sells the item at a lower price than the price determined by the principal, he shall compensate the principal for the difference in price. This does not apply if he proves that the sale could not have been made at the price specified and that by selling the thing he averted the damage to the principal which was imminent.

(2) If the commission agent has bought the thing at a higher price than that fixed by the principal, the principal may refuse the purchase as if it had not been made on his account, unless the commission agent has undertaken to pay him the difference in price at the same time as the report of the purchase is given. If the principal does not reject the purchase without undue delay after receipt of the report of purchase, he shall be deemed to have approved it.

§ 2460

(1) The commission agent protects the principal's interests as he knows them and notifies the principal of any circumstance that may affect a change in the principal's order.

(2) The commissioner shall keep the principal informed of the execution of the principal's order. After procuring the matter, he shall make an accounting, assign to the principal the rights acquired in connection with the procurement of the matter and deliver to him all that he has acquired in doing so.

§ 2461

If the commission agent does not specify in the report of the execution of the order the person with whom he has contracted on behalf of the principal, the principal may enforce his rights against the commission agent himself as the obligor under the contract.

§ 2462

If the commission agent cannot perform the obligation under the contract himself, he shall use another person to perform the contract.

§ 2463

If the commission agent has breached the principal's direction as to the person with whom the contract was to be made, he is liable for the performance of the obligation by the person with whom he made the contract.

§ 2464

- (1) The thing entrusted to the commission agent for sale remains the property of the commission agent until a third party acquires ownership.
- (2) A claim under a contract made by a commission agent for a principal is treated as a claim of the principal in relation to the commission agent or his creditor.

§ 2465

- (1) While the commission agent has in his possession the goods taken from or for the comitant, he has duties as a warehouseman. If there is a risk of damage to the goods, or if the commissary neglects to dispose of the goods when it was under a duty to do so, the commissary may sell the goods under [§ 2428](#).
- (2) The commission agent has a lien on the thing while it is in his possession or while he may otherwise dispose of it, to secure debts arising under the contract.

§ 2466

If a third party fails to perform an obligation under a contract entered into with him by the commission agent, the commission agent shall enforce the performance of that obligation on behalf of the principal. The commission agent may assign the right corresponding thereto to the principal if the principal agrees.

§ 2467

The principal may demand from a third party the performance which the commission agent has procured for him if the commission agent is unable, for reasons on his own part, to arrange for the third party to perform for the principal.

§ 2468

If the amount of remuneration has not been agreed, the commissioner shall be entitled to remuneration commensurate with the activity performed and the result achieved.

§ 2469

- (1) Together with the remuneration, if not already included therein, the principal shall reimburse the commissioner for the expenses reasonably incurred by the commissioner in procuring his affairs and shall discharge the commissioner from the obligations assumed by him in the performance of the contract.
- (2) The costs under [paragraph 1](#) shall be deemed to be included in the remuneration.

§ 2470

The commissioner has the right to revoke the order only until the commissioner's obligation to the third party arises.

Section 4**Forwarding****§ 2471****Basic Provisions**

- (1) By a forwarding contract, the freight forwarder undertakes to the principal to procure for him, on his own behalf and for his own account, the carriage of a consignment from a specified place to another specified place, or to procure or perform acts in connection with the carriage, and the principal undertakes to pay the freight forwarder a fee.
- (2) Where it is agreed that the freight forwarder shall procure for the principal the receipt of funds from the consignee of the consignment or perform any other act of collection before he has delivered the consignment or a document enabling the consignee to dispose of the consignment, the provisions on documentary collection shall apply mutatis mutandis.

§ 2472

If the contract is not in writing, the freight forwarder has the right to require the principal to deliver to him an order to procure carriage (forwarding order).

§ 2473

The freight forwarder may use another freight forwarder (intermediate freight forwarder) to arrange the transport.

§ 2474

If not contrary to the contract or if not prohibited by the Principal not later than the commencement of the carriage, the freight forwarder may itself perform the carriage to be procured.

§ 2475

The freight forwarder shall arrange the manner and conditions of carriage with all reasonable care so as to best suit the interests of the principal known to the freight forwarder. The obligation to insure the consignment shall only be imposed on the freight forwarder where this has been agreed.

§ 2476

If the principal fails to provide the freight forwarder with correct information about the contents of the consignment and about all the facts necessary to conclude the contract of carriage, the principal shall compensate the freight forwarder for any damage caused by the breach of this obligation.

§ 2477

(1) The freight forwarder shall report to the principal any damage to the shipment that is threatened or has already occurred as soon as it becomes aware of it, otherwise the freight forwarder shall indemnify the principal for the damage caused by the principal's failure to so repair.

(2) If substantial damage to the shipment is imminent and there is no time to request instructions from the principal, or if the principal delays in providing them, the shipper has the right to sell the shipment under § 2126 and 2127.

§ 2478

If damage occurs to a received shipment in the course of arranging for carriage, the freight forwarder shall compensate for the damage unless he proves that he could not have prevented the damage.

§ 2479

If the consignee of a shipment knew or should have known of a claim of the freight forwarder under the forwarding contract against the principal, he becomes a guarantor of that claim by accepting the shipment.

§ 2480

If the amount of the remuneration has not been agreed, the freight forwarder is entitled to the reasonable remuneration usually granted at the time of conclusion of the contract and under similar contractual conditions. In addition, the freight forwarder is also entitled to reimbursement of costs reasonably incurred in the performance of the contract.

§ 2481

(1) The freight forwarder has a lien on the consignment while the consignment is in his possession or while he has documents authorising him to dispose of the consignment, to secure the debts of the principal under the contract. This applies even if the consignment or documents are in the possession of someone who holds them on behalf of the freight forwarder.

(2) The intermediate freight forwarder shall, at the request of the earlier freight forwarders, exercise all the rights to which they are entitled under their lien and shall have the right and

duty to satisfy their rights. If he satisfies them, they shall pass to him together with the lien securing them.

§ 2482

In all other respects the provisions of the Commission shall apply mutatis mutandis to the forwarding agency.

Section 5

Commercial agency

Basic Provisions

§ 2483

(1) By a commercial agency agreement, the agent, as an independent businessman, undertakes to undertake, on a long-term basis, to undertake activities for the principal aimed at concluding a certain type of business by the principal or to arrange business on behalf of and for the principal, and the principal undertakes to pay the agent a commission.

(2) A commercial agency agreement requires a written form.

§ 2484

A person who may bind the represented person or the person with whom the business is to be transacted, as a member of its body, or the receiver of the legal person or the insolvency practitioner, may not be a commercial agent of the legal person. Arrangements to the contrary shall be disregarded.

§ 2485

Relevant geographical area

If it is not agreed where the sales representative is to carry on business, the agreed territory is the Czech Republic; if the sales representative is a foreign person, the agreed territory is the state where the sales representative has its registered office at the time the contract is concluded.

§ 2486

The agent has no right to enter into transactions on behalf of the principal, to accept anything for the principal or otherwise to act legally on behalf of the principal. If the contrary is agreed, the provisions of the order shall apply to the rights and obligations of the parties in connection therewith.

§ 2487

Exclusive commercial agency

(1) Where an exclusive commercial agency has been agreed, the principal has no right to use any other commercial agent in the relevant territory or for the specified class of persons; the agent has no right to act as commercial agent for other persons to the same extent, or to transact business on his own account or on behalf of another person.

(2) The principal shall have the right to enter into transactions covered by the exclusive commercial agency without the assistance of a commercial agent. In such a case, however, the agent shall be entitled to a commission as if the transactions had been concluded with his assistance.

§ 2488

Non-exclusive commercial agency

If it does not follow from the contract that the commercial representation is exclusive, the principal may also entrust another person with the same commercial representation as he has agreed with the commercial agent, and the commercial agent may also carry out the activity which he has undertaken in relation to the principal for other persons, or, where

appropriate, enter into transactions which are the subject of the commercial representation, for his own account or for the account of another person.

Duties of a commercial agent

§ 2489

(1) A sales representative shall conduct his/her business with professional care. He shall look after the interests of the principal, act in accordance with the principal's authority and reasonable instructions and shall disclose to the principal the necessary information which he has learned in connection with the performance of his duties and which is relevant to that performance.

(2) The agent shall disclose to the principal information about market developments and any other circumstances relevant to the principal's legitimate interests, in particular for the principal's decision-making related to the conclusion of transactions.

§ 2490

If the right of the agent to enter into transactions on behalf of the principal is agreed, such transactions may only be entered into on the terms and conditions determined by the principal, unless the principal consents to a different course of action.

§ 2491

(1) If it would be contrary to the interests of the represented person, the agent may not disclose to a third party the data he has obtained from the represented person, nor use such data for himself or for other persons, unless the represented person consents. The same shall apply to data which the agent has not learned directly from the principal but in the performance of his duties under the contract and the use of which could cause harm to the principal.

(2) The duty of the agent under [paragraph 1](#) continues after the termination of the agency.

§ 2492

A commercial agent guarantees that a third party will fulfil the obligations arising from a transaction which he has proposed to the principal to conclude, or which he himself has concluded on behalf of the principal, only if he has undertaken to do so in writing and if a special consideration has been agreed for the assumption of the guarantee.

§ 2493

If the agent obtains documents in the course of his activities which may be relevant for the protection of the legitimate interests of the represented party, he shall keep them for the necessary period.

§ 2494

If the agent is unable to carry on his business, he shall notify the represented person without undue delay.

Duties of the principal

§ 2495

The represented person shall procure and disclose to the agent the information necessary for the performance of the agent's duties.

§ 2496

(1) The principal shall provide the agent with the necessary documentation relating to the subject matter of the transactions.

(2) The principal shall deliver to the agent all documents and things necessary for the performance of the agent's duties. The documents and things handed over shall remain in the possession of the principal; the agent shall return them to the principal at the

termination of the agency, unless they have been consumed in the course of the agency due to their nature.

§ 2497

The principal shall promptly notify the agent whether he has accepted or rejected the business procured by the agent or whether he has failed to comply.

§ 2498

If the principal anticipates a significant reduction in the scope of the business from what the agent could reasonably expect, the principal shall notify the agent within a reasonable time.

Commission

§ 2499

(1) If the amount of the commission has not been agreed, the agent is entitled to a commission in an amount corresponding to the custom in the place of his business in relation to the type of goods or services dealt with; if there is no such custom, the agent is entitled to a commission in a reasonable amount taking into account the essential circumstances of the transaction carried out.

(2) If the basis for determining the amount of the commission is the extent of the obligations performed by the third party, the performance not performed for reasons on the part of the represented party shall be included in the basis.

(3) Any part of the consideration, the amount of which varies according to the number and value of the transactions concluded, is considered to be a component of the commission.

§ 2500

It is understood that a sales representative's commission includes the costs associated with the sales representation. If it has been agreed that the principal will pay those costs to the agent in addition to the commission, the agent will be entitled to reimbursement of the costs if he is also entitled to the commission.

§ 2501

(1) A sales representative is entitled to a commission for acts performed in the course of the agency if the transaction was entered into as a result of the sales representative's activities or if the transaction was entered into with a third party that the sales representative acquired for the purpose of effecting the transaction before the effective date of the contract.

(2) In the case of an exclusive agency, the agent is also entitled to a commission for business done with a third person from a territory or circle of persons not covered by the exclusive agency.

(3) If the dealership has terminated, the dealer is entitled to a commission if the business was primarily as a result of the dealer's activities within a reasonable time after the dealership terminated, or if a third party, under the conditions set out in [paragraph 1](#) or [2](#), made an order against the agent or the principal before the termination of the agency.

§ 2502

The right to commission under [§ 2501\(1\)](#) and [2](#) does not accrue to the agent, if the prior sales representative is entitled to a commission under [§ 2501\(3\)](#) unless it is equitable in the circumstances to divide the commission between the two sales representatives.

§ 2503

If it has been agreed that the agent will only procure for the principal an opportunity to close a deal with certain content, the agent is entitled to a commission by procuring that opportunity.

§ 2504

(1) Unless it has been agreed that the agent will only procure for the principal an opportunity to conclude a transaction of a particular content, the agent is entitled to a commission when the principal has performed an obligation or has been obliged to perform an obligation under a contract with a third party or when the third party has performed an obligation under such a contract.

(2) The right to a commission arises at the latest at the time when the third party has performed its part of the obligation or was obliged to perform it, if the principal has performed its part. However, if the third party is not due to perform its obligations until more than six months after the conclusion of the transaction, the agent shall be entitled to a commission on the conclusion of the transaction.

§ 2505

The commission is payable no later than the last day of the month following the end of the quarter in which the right to it arose.

§ 2506

(1) The principal shall deliver to the agent a statement of commission due no later than the last day of the month following the end of the quarter in which the commission became due. In the statement, he shall state the main data relevant for the calculation of the commission.

(2) The agent shall have the right to have the principal disclose to him all data, but at least the data from accounting or similar records, in his possession which are necessary to verify the amount of the commission.

§ 2507

If it is apparent that the transaction between the principal and the third party will not be consummated, the right to commission has not accrued; this does not apply if the transaction is not consummated for reasons on the principal's part.

§ 2508

A commercial agent is not entitled to remuneration and agreed reimbursement of expenses if he was acting for both parties as a commercial agent or as an intermediary in concluding the transaction.

§ 2509

Term of commercial agency

(1) If it is not agreed for what period the commercial agency is established, nor does it follow from the purpose of the contract, the commercial agency is deemed to have been agreed for an indefinite period.

(2) If the commercial agency has been agreed for a fixed term and the parties are governed by the contract after the expiry of the agreed term, the commercial agency shall be regarded as having been agreed for an indefinite term.

Termination of commercial agency

§ 2510

(1) If a commercial agency is agreed for an indefinite period, it may be terminated. The period of notice shall be one month for the first year of the agency, two months for the second year and three months for the third year and subsequent years; arrangements for shorter periods of notice shall be disregarded. If the parties agree on a longer period of notice, the period to which the principal is bound shall not be shorter than the period to which the agent must adhere.

(2) The notice period ends on the last day of the calendar month.

§ 2511

The provisions of § 2510 shall apply to a dealership that is subject to § 2509, as if it had been agreed for an indefinite period, the period of notice to be calculated taking into

account the duration of the commercial agency prior to its conversion to an indefinite period.

§ 2512

(1) If an exclusive agency has been agreed, either party has the right to terminate the agency if the volume of business in the last twelve months has not reached the volume specified in the contract; if the volume of business has not been agreed, the volume commensurate with the sales possibilities shall prevail.

(2) The provisions of § 2510 and 2511 shall apply mutatis mutandis.

§ 2513

(1) Where an exclusive agency has been agreed and the principal uses another agent, the agent concerned may terminate the agency without notice.

(2) If an exclusive commercial agency has been agreed and the commercial agent carries on the same business to which the agent is committed to the principal for other persons, the principal may terminate the commercial agency without notice.

Special remuneration

§ 2514

(1) If the agency ceases to exist, the agent is entitled to a special fee if

a) the principal has acquired new customers or significantly developed business with existing customers and the principal still receives substantial benefits from those transactions; and

b) the payment of a special fee is fair, having regard to all the circumstances of the case, when all the circumstances are taken into account, in particular the commission lost by the agent arising from business done with those customers; these circumstances include any negotiation or non-negotiation of a non-compete clause.

(2) If the conditions under paragraph 1 are met, the right to special remuneration is not affected even if the agency is terminated by the death of the agent.

§ 2515

The amount of the special remuneration shall not exceed the annual remuneration calculated on the annual average of the remuneration earned by the sales representative during the last five years. If the agency has lasted less than five years, the amount of the special remuneration shall be calculated on the average of the fees earned over the entire duration of the agency; if it has lasted less than one year, it shall not exceed the aggregate of the commissions earned over the entire duration of the agency. The amount of the special remuneration shall be calculated on the average of the fees earned over the entire duration of the agency.

§ 2516

The right to special remuneration lapses if not exercised within one year of the termination of the agency.

§ 2517

The right to special consideration will not vest,

a) if the principal has terminated the agency for such a breach of duty by the agent as would entitle the principal to rescission,

b) where the agency has been terminated by the agent unless the termination is for reasons attributable to the principal or to the age, disability or illness of the agent and the agent cannot reasonably be required to continue the agency, or

c) where the agent has transferred the rights and obligations of the agency pursuant to an agreement with the principal to a third party.

§ 2518

Non-compete clause

(1) The parties may agree that the agent may not, after the termination of the agency, carry on in a specified territory or in relation to a specified class of persons in that territory, on his own account or on behalf of others, any activity which is of a competitive nature in relation to the business of the principal, in particular any activity which he carried on for the principal during the agency. A competition clause which contradicts this or which is agreed for a period of more than two years from the termination of the agency is void.

(2) If a competing clause restricts the agent more than the necessary level of protection for the principal, the court may limit the competing clause.

§ 2519

Prohibited stipulations

(1) Prohibited are arrangements that deviate from § 2489, 2495, § 2496 odst 1, § 2497 or 2498.

(2) For arrangements that deviate from § 2504 para 2, § 2505, 2506, 2507, 2514, 2515, 2516 or 2517 to the detriment of the agent, shall be disregarded.

§ 2520

(1) The provisions on commercial agency do not apply where it is agreed that the agent is not remunerated for his activities.

(2) The provisions on commercial representation do not apply to obligations of persons operating on a regulated market, multilateral trading facility or commodity exchange under another law and to obligations of exchange dealers under another law.

Volume 6

Package tour

Basic Provisions

§ 2521

(1) By the tour contract, the tour operator undertakes to procure the tour for the customer and the customer undertakes to pay the total price.

(2) A tour is a set of tourism services according to the law regulating certain conditions of business and the performance of certain activities in the field of tourism.

§ 2522

Where a tour is procured under several contracts, the provisions of this Part shall apply to all contracts.

§ 2523

(1) A tour operator is one who offers a tour to the public or a group of persons in a business manner, including through a third party. An organiser is also considered to be an entrepreneur who passes on customer data to another entrepreneur pursuant to the Act regulating certain conditions of business and the performance of certain activities in the field of tourism.

(2) Whoever arranges or facilitates individual tourism services shall be deemed to be an organiser if, on the basis of special circumstances, he gives third parties the impression that he is providing tourism services as a tour under his own responsibility.

§ 2524

(1) The tour operator or intermediary selling the tour shall communicate to the customer in a clear, comprehensible and distinct manner, before he makes a binding order or before the conclusion of the contract, the information referred to in the Act regulating certain conditions of business and the performance of certain activities in the field of tourism.

(2) The information on the content of the commitment under § 2527 and § 2528(1)(b)-(d) and (f), which the tour operator or tour operator has communicated to the customer under paragraph 1 shall become the content of the contract; may be amended only by express agreement of the parties. The tour operator or tour operator shall communicate any changes to these data to the customer in a clear, comprehensible and distinct manner before the conclusion of the contract.

(3) If the tour operator or tour sales agent has not disclosed to the customer the total price of the tour including taxes, fees and other similar monetary benefits and any other costs, the customer shall not be obliged to pay such taxes, fees, other similar monetary benefits and other costs. This also applies if such taxes, charges, other similar gratuities and other costs cannot be reasonably quantified before the conclusion of the contract and if the organiser or intermediary selling the tour has not disclosed to the customer the type of additional costs he may still incur.

Package tour certificate

§ 2525

(1) The organiser will issue a proof of contract (tour confirmation) in text form to the customer at or immediately after the conclusion of the contract.

(2) If the contract is in written form, the tour confirmation shall replace the identical copy of the contract if it contains all the requirements laid down for a tour confirmation.

(3) If the contract is concluded in the simultaneous physical presence of the parties, the customer may request that it be executed on a deed.

(4) If both the contract and the tour confirmation contain information that differs, the customer may invoke whichever is more advantageous to him.

(5) For off-premises contracts made under § 1828, the contract or tour confirmation must be provided to the customer on a deed; in other textual form only if the customer agrees.

§ 2526

Along with the tour confirmation, the organiser will issue the customer with proof of bankruptcy insurance issued by the insurer or proof of bank guarantee issued by a bank or foreign bank.

§ 2527

Major elements of a tour confirmation

The organiser shall state in the tour confirmation

- a)** the destination of the trip or stay, the itinerary and duration of the stay including dates and, if accommodation is included, the number of nights,
- b)** the agreed means of transport, their characteristics and categories, the places, dates and times of departure and arrival, the duration and locations of stops and transport links; if the exact time is not yet fixed, the organiser and, where relevant, the tour operator shall communicate to the customer the approximate time of departure and arrival,
- c)** the location, main features and, where applicable, the tourist category in which the accommodation is classified under the rules of the State of destination or residence,
- d)** the catering arrangements,
- e)** visits, excursions or other services included in the total price of the tour,
- f)** an indication of whether any of the travel services will be provided to the customer as part of a group and, if so and if possible, the approximate size of the group, unless this is not apparent from the context,
- g)** the language in which the tourism services are provided, if the customer's use of those services depends on oral communication, and

h) an indication of whether the travel or stay is generally suitable for persons with reduced mobility and, at the request of the customer, an indication of the suitability of the travel or stay in relation to the customer's needs.

§ 2528

Further particulars of the tour confirmation

(1) The organiser shall further specify in the tour confirmation

a) the business name and registered office address or residential address of the tour operator and, where applicable, the address or residential address of the tour sales agent, their telephone numbers and email addresses,

b) the total price of the tour, including taxes, charges or other similar monetary benefits and any other costs, if any, or, if such costs cannot be reasonably quantified before the conclusion of the contract, the type of other costs that may still be incurred by the customer,

c) the method of payment, including the amount or percentage of the price to be paid as a deposit, and the timetable for payment of the remainder of the price, or the monetary security to be paid or given by the customer,

d) the minimum number of persons required for the tour to take place and the period within which the promoter may cancel the contract under [§ 2536\(1\)\(a\)](#),

e) general details of passport and visa requirements, including approximate time limits for visa processing, and details of the health requirements of the State of destination,

f) an indication that the customer may withdraw from the contract at any time before the commencement of the tour against payment of a reasonable early termination fee or, where applicable, a termination fee set by the organiser in accordance with the law regulating certain conditions of business and the performance of certain activities in the field of tourism,

g) an indication of insurance to cover the costs associated with the termination of the contract by the customer or the costs of assistance involving repatriation in the event of accident, illness or death,

h) any special requirements of the customer accepted by the promoter,

i) the name and contact details of the body which is to provide insolvency protection, including its address, and, where relevant, the name of the competent authority designated by the Member State for that purpose and its contact details,

j) the name, address, telephone number, electronic address and, where applicable, fax number of the organiser's local representative, point of contact or other service that will enable the customer to contact the organiser promptly and communicate effectively, to request assistance if the customer is in difficulty or to complain about a defect in the tour,

k) an indication that the customer must, in accordance with [§ 2537\(2\)](#), reproach the tour defect,

l) information enabling the minor or the person responsible for the minor to be contacted at the minor's place of residence if the minor is travelling unaccompanied by a person who cares for him or her and if the tour includes accommodation,

m) information on available internal complaint handling procedures and alternative dispute resolution procedures under other legislation,

n) details of the customer's right to assign the contract in accordance with [§ 2532](#),

o) the period of time within which the customer may give notice that another person will take part in the tour in his place, and

p) any other conditions that the tour participant must meet if there are grounds for specifying conditions.

(2) In the tour confirmation, the tour operator shall also state that it is responsible for the proper provision of all agreed tourist services and that it has a duty to provide assistance to the customer in the event of difficulties.

§ 2529

(1) The organiser shall, in an appropriate manner, deliver to the customer, not later than seven days before the commencement of the tour, further details of all facts known to the customer which are important to the customer and which are not already contained in the contract or in the tour confirmation or in the catalogue given to the customer.

(2) The organiser shall disclose, as part of the information referred to in [paragraph 1](#), in particular details of scheduled departure times, check-in times where applicable, scheduled stop times, transport links and arrival times.

(3) Together with the provision of the data referred to in [paragraph 2](#), the organiser shall, within the same period, provide the customer with the necessary receipts, vouchers and transport documents, in particular the air ticket, the accommodation or meal voucher, the document required for the provision of optional excursions or any other document required for the tour.

(4) If the contract is concluded less than seven days before the start of the tour, the organiser shall comply with the obligations under [paragraphs 1](#) and [3](#) already at the conclusion of the contract.

Change in the price of a package tour

§ 2530

(1) The organiser may increase the tour price for the reasons set out in [paragraph 2](#) if

- a) this is expressly agreed,
- b) the customer is entitled to a reduction in the price of the tour due to a reduction in the costs listed in [paragraph 2](#) that occurs between the conclusion of the contract and the commencement of the tour, and
- c) the method of calculating the price adjustment is agreed.

(2) The tour price may be increased by the organiser if the

- a) the cost of transport resulting from an increase in the price of fuel or other energy sources,
- b) taxes, any additional similar monetary benefits or payments from travel services provided under the contract by third parties not directly involved in the provision of the tour, including payments related to transport, or
- c) the exchange rate of the Czech koruna used to determine the price of the tour.

§ 2530a

(1) The organiser shall deliver a notice of the price increase according to [§ 2530 paragraph 2](#) in text form to the customer no later than on the 20th day before the start of the tour. The notice must be clear and understandable and must include the justification for the price increase and the calculation of the increase. If the organiser delivers the price increase notice to the customer later than the 20th day before the start of the tour, the price increase shall have no legal effect.

(2) In the event of a reduction in the price of a tour under [§ 2530\(1\)](#), the organiser shall be entitled to deduct the actual administrative costs from the amount to be refunded to the customer. Upon request of the customer, the promoter shall provide evidence of these actual administrative costs.

§ 2531

Changes to a contract

(1) The promoter may change a contractual obligation,

- a) if it has reserved this right in the contract,
 - b) if it is an immaterial change and
 - c) if it communicates the details of the change to the customer in text form in a clear and comprehensible manner.
- (2) if the organiser proposes, in accordance with § 2530, to increase the price of the tour by more than eight %, the customer may accept the proposal or may withdraw from the contract within the time limit set out in the contract without having to pay any early termination fee. The cancellation period must not be less than five days and must end before the start of the tour. If the customer does not withdraw from the contract within the specified period, the customer shall be deemed to have accepted the change in the price of the tour. Similarly, if external circumstances force the organiser to substantially change any of the main features of the tour as set out in § 2527 or if the organiser cannot meet the customer's special requirements which it has accepted under § 2528(1)(h).
- (3) The Promoter shall notify the Customer, together with the submission of the proposal to vary the commitment under paragraph 2, in a clear, plain and conspicuous manner and without undue delay, of the information recorded in text form, namely
- a) the impact of the proposed changes on the price of the tour,
 - b) the period within which the customer may withdraw from the contract,
 - c) the consequences for the customer if he or she does not withdraw from the contract in time, and
 - d) details of any replacement tour and its price.
- (4) If the quality or cost of the tour is reduced as a result of a change in the contractual obligation in accordance with paragraph 2, the customer is entitled to a reasonable discount.

§ 2532

Contract assignment

- (1) If the third party meets the conditions for participation in the tour, the customer may assign the contract to them.
- (2) A change in the person of the customer shall be effective against the organiser if the assignor delivers a timely notice in text form together with a statement by the assignee that he agrees to the contract and that he fulfils the conditions for participation in the tour. The notice is timely if it is delivered at least seven days before the start of the tour; a shorter period may be agreed if the contract is concluded less than seven days before the start of the tour.
- (3) The organiser or agent selling the tour
- a) shall disclose to the assignor the actual costs associated with the assignment of the contract; such costs shall not be excessive and shall not exceed the costs actually incurred in assigning the contract, and
 - b) shall provide the assignor with the costs referred to in paragraph (a).
- (4) The assignor and the assignee shall be jointly and severally liable for payment of the balance of the tour price and for any additional costs incurred by the promoter in connection with the change in the customer.

Withdrawal from contract

§ 2533

- (1) The customer can always withdraw from the contract before the tour starts, but the organiser can only withdraw if the tour has been cancelled or if the customer has breached an obligation.
- (2) If a cancellation fee is agreed, the amount must be reasonable. The reasonableness of the indemnity shall be based on the period between the time of withdrawal and the time of

commencement of the tour, taking into account the expected cost savings and the revenue from the substitute use of the travel services. If no severance payment is agreed, it shall be equal to the price of the tour less the cost savings and the income from the substitute use of tourism services. At the customer's request, the organiser shall justify the amount of the severance payment.

§ 2534

If the customer has withdrawn from the contract under § 2531 paragraph 2, the promoter shall refund all payments made by or to the customer without undue delay, but no later than 14 days after the termination of the contract commitment. The provisions of § 2542 to 2544a, § 2913(2) and § 2918 on damages shall apply mutatis mutandis.

§ 2535

The customer shall have the right to withdraw from the contract before the commencement of the tour without payment of a cancellation fee if unavoidable and extraordinary circumstances have arisen at the destination or place of travel or stay or in its immediate surroundings which have a significant impact on the provision of the tour or on the transport of persons to the destination or place of travel or stay. In such a case, the customer is entitled to a refund of all payments made for the tour, but is not entitled to compensation.

§ 2536

(1) The organiser may withdraw from the contract if

a) the number of persons registered for the tour is less than the minimum number specified in the contract and the organiser has notified the customer of the cancellation within the period specified in the contract, which must not be less than

1. twenty days prior to the commencement of the tour in the case of journeys lasting more than six days,
2. seven days before the start of the tour in the case of journeys lasting between two and six days,
3. forty-eight hours before the start of the tour in the case of journeys lasting less than two days, or

b) he has been prevented from fulfilling his obligation by unavoidable and extraordinary circumstances and has given the customer undue notice of the cancellation before the commencement of the tour.

(2) In such cases, the organiser shall refund to the customer all payments made for the tour, but shall not be liable to the customer for damages.

§ 2536a

In the event of withdrawal from the contract, the organiser shall reimburse without undue delay, and no later than fourteen days after termination of the contractual obligation, all payments made by or on behalf of the customer for the tour, less, in the cases provided for by this Act, the termination fee for early termination of the contractual obligation.

Tour defects

§ 2537

(1) A tour is defective if any of the tourism services included in the tour are not provided in accordance with the contract.

(2) The customer shall without undue delay complain to the organiser about the defect in the tour. The customer shall at the same time specify a reasonable period of time to remedy the defect, unless the organiser refuses to remedy the defect or immediate remedy is required. The customer shall also have the right to complain about the defect via the tour operator. The delivery of the customer's report, request or complaint to the tour operator shall be deemed to be the delivery of the customer's report, request or complaint to the tour operator for the purposes of the time limits, including the limitation period.

(3) The tour operator shall remedy the defect in the tour unless it is not possible to do so or the remedying of the defect requires disproportionate costs having regard to the extent of the defect and the value of the travel services concerned.

(4) If the organiser fails to remedy the defect within the time limit set out in [paragraph 2](#), the customer has the right to remedy the defect themselves and to claim compensation for the necessary costs. If the defect is a material defect, the customer may withdraw from the contract without payment of compensation.

§ 2538

(1) If, after departure, there are material defects in the tour, the organiser shall offer the customer, at no additional cost to the customer, a suitable alternative solution, preferably of equal or higher quality than that agreed in the contract, to enable the tour to continue; this also applies if the customer's return to the place of departure is made by means other than those agreed.

(2) If the proposed alternative solution is of a lower quality than that specified in the contract, the organiser shall grant the customer a reasonable discount.

(3) The customer may reject the proposed replacement solution only if it is not comparable to what was agreed in the contract or if the discount given is not reasonable.

§ 2539

(1) If the tour includes the carriage of passengers, the organiser shall, in the case under [§ 2537 paragraph 4](#), provide the customer with equivalent transport to the place of departure or to another place agreed between the parties without undue delay and at no additional cost to the customer.

(2) If, due to unavoidable and extraordinary circumstances, the return of the customer cannot be arranged in accordance with the contract, the organiser shall bear the cost of the necessary accommodation, preferably in an equivalent category, for a maximum of three nights per customer. Where longer return periods are laid down in the European Union legislation on passenger rights relating to the means of transport concerned, these periods shall apply.

(3) The limitation on the amount of the costs under [paragraph 2](#) shall not apply to persons with reduced mobility within the meaning of Article 4(1)(a) of the Treaty. 2(a) of Regulation (EC) No [1107/2006](#) on the rights of disabled persons and persons with reduced mobility in air transport, and all persons accompanying them, pregnant women and unaccompanied minors, as well as persons requiring special medical assistance, provided that they have notified the organiser of their special needs at least forty-eight hours before the start of the tour.

(4) The organiser may not exempt itself from the obligation under [paragraph 2](#) as a result of unavoidable and extraordinary circumstances, unless such circumstances are in favour of the carrier concerned under European Union law.

§ 2540

(1) If the tour has a defect and the customer has raised it without undue delay in accordance with [§ 2537 paragraph 2](#), the customer is entitled to a price reduction in an amount proportionate to the extent and duration of the defect.

(2) If the customer's right to a discount is at issue, the provision of a statute of limitations of less than two years shall be disregarded.

§ 2541

Assistance in difficulties

(1) If, after the commencement of the tour, the customer finds himself in difficulty or in a situation according to [§ 2539 paragraph 2](#), the organiser shall provide him with immediate assistance, in particular by giving him

a) providing details of health services, local authorities and consular assistance,

- b) assists with facilitating long-distance communication; and
- c) helps find alternative travel solutions.

(2) If the customer has caused the inconvenience himself, the organiser may claim reasonable compensation for the actual costs incurred for his assistance.

Compensation for damage

§ 2542

(1) The organiser is liable to the customer for the fulfilment of the obligations under the tour contract, regardless of whether other persons provide individual tourism services as part of the tour.

(2) If the customer has brought a defect to the organiser's attention in accordance with § 2537 and the organiser has not remedied it, the customer is entitled to compensation.

(3) The organiser shall also be exempt from the obligation to pay compensation if it proves that the breach of the contractual obligation is attributable to a third party not involved in the provision of the tourism services included in the tour and could not have been foreseen or avoided.

(4) Where the customer's right to damages is at issue, no account shall be taken of an arrangement for a limitation period of less than two years.

§ 2543

(1) In the event of a breach of a duty for which it is liable, the organiser shall compensate the customer without undue delay for the disruption of the holiday, in particular if the tour has been cancelled or substantially curtailed, in addition to the damages.

(2) If the customer withdraws from the contract or exercises a right arising from a defect in the tour, this shall not affect his right to compensation under paragraph 1.

§ 2544

If an international treaty to which the Czech Republic is bound allows for a limitation of the amount of compensation for damages arising from a breach of an obligation under the tour contract or the terms of compensation, the organiser shall pay damages only up to the amount of such limitation. In other cases, no account shall be taken of an agreement which excludes or limits in advance the organiser's obligation to compensate for culpable damage or personal injury, or of an agreement to compensate for damage to a lesser extent than three times the total price of the tour.

§ 2544a

The customer's right to compensation and to a discount is without prejudice to his rights as a passenger under directly applicable European Union ²⁾ rules and international conventions. The compensation or discount granted to the customer by the organiser under the contract and the compensation or discount under directly applicable European Union law and under international conventions are mutually deductible.

Student homestay

§ 2545

If the purpose of the trip is a stay of the pupil with a host family in another country, combined with a regular school visit arranged for a period of at least three months, the organiser, with the pupil's cooperation, shall arrange for the pupil's suitable accommodation with the host family and for his supervision and care according to the usual conditions in the country of school stay. At the same time, he/she shall make arrangements for the pupil to attend school regularly.

§ 2546

(1) The organiser is not entitled to a cancellation fee if the customer withdraws from the contract before the start of the school stay because the organiser has not given the

customer even two weeks' notice

- a) the name and address of the host with whom the pupil will be accommodated on arrival, and
- b) the name and address of the person in charge (coordinator) in the country of school residence from whom assistance may be requested and an indication of how to contact him/her.

(2) The organiser is not entitled to a cancellation fee if the customer has withdrawn from the contract because the organiser has not prepared the pupil adequately for the placement.

§ 2547

(1) The customer has the right to withdraw from the contract during the school stay; the organiser is entitled to the agreed remuneration less the costs saved. The organiser will make the necessary arrangements for the pupil's return transport; the customer will reimburse the organiser for the increased costs involved.

(2) The organiser shall not be entitled to the performance under [paragraph 1](#) if the customer has withdrawn from the contract for breach of the organiser's obligation.

Common Provisions

§ 2548

Tourism under this Part does not include a set of tourism services provided to an entrepreneur for the purpose of furthering his or her business or a set of tourism services the offer and provision of which is not a business.

§ 2549

Agreements deviating from the provisions of this Part to the detriment of the customer shall not be taken into account. This applies even if the customer waives the right.

Volume 7

Obligations arising from contracts of carriage

Section 1

Carriage of persons and things

Subsection 1

Carriage of a person

§ 2550

Basic Provisions

In a contract for the carriage of a person, the carrier undertakes to carry the passenger to the destination and the passenger undertakes to pay the fare.

§ 2551

The carrier will ensure the safety and comfort of the passenger during the transport. The details will be regulated by the timetables.

§ 2552

(1) If the passenger has luggage, it is carried by the carrier either together with him and under his supervision or separately.

(2) If the baggage is carried separately, the carrier shall ensure that it is transported to its destination no later than the same time as the passenger.

§ 2553

(1) Where the carriage of passengers is a scheduled carriage, the timetables shall specify the rights of the passenger against the carrier if the carriage is not carried out on time.

(2) In the case of non-scheduled carriage of passengers, the carrier shall compensate the passenger for the damage caused by the failure to carry out the carriage on time; the conditions and extent of compensation shall be laid down in the timetables.

(3) The rights under paragraphs 1 and 2 must be exercised by the passenger with the carrier without undue delay. If such a right has not been exercised within six months at the latest, the court shall not grant it if the carrier argues that the right was not exercised in time.

§ 2554

(1) If a passenger suffers bodily injury or damage to luggage carried with him during carriage, or if damage occurs to an item carried by the passenger, the carrier shall compensate him in accordance with the provisions on compensation for damage caused by the operation of means of transport.

(2) Damage caused to luggage carried separately from the passenger shall be compensated by the carrier in accordance with the provisions on compensation for damage in respect of the carriage of goods.

Subsection 2

Carriage of a thing

§ 2555

Basic Provisions

(1) By a contract for the carriage of goods, the carrier undertakes to the consignor to carry the goods as a consignment from the place of dispatch to the place of destination, and the consignor undertakes to pay the carrier the freight.

(2) If the consignor does not request the carrier to take delivery of the consignment within the agreed time and if the contract is not concluded within six months, the rights and obligations under the contract will cease.

§ 2556

The sender shall confirm the transport order to the carrier at the latter's request. The carrier shall, at the request of the shipper, confirm receipt of the shipment. Confirmations shall be in writing.

§ 2557

(1) The consignor shall provide the carrier with the correct details of the contents of the consignment and its nature.

(2) If a special document is required for the carriage, the consignor shall give it to the carrier at the latest when the consignment is handed over for carriage.

§ 2558

The carrier shall carry out the carriage to the destination with professional care within the agreed time and, if not agreed, without undue delay. This period shall be deemed to commence on the day following the carrier's acceptance of the shipment.

§ 2559

Interruption of carriage

If the carrier has not yet delivered the consignment to the consignee, the consignor may order the carriage to be interrupted and the consignment to be handled as he directs, but he shall reimburse the carrier for the costs reasonably incurred in doing so.

§ 2560

(1) If the carrier knows the consignee of the consignment, he shall deliver the consignment to him. If, however, the consignee is contractually required to collect the

consignment at the place of destination, the carrier shall only notify him of the termination of the carriage and deliver the consignment to him on request.

(2) If the contract obliges the carrier to collect a sum from the consignee or to perform another collection action before releasing the consignment, the provisions on documentary collection shall apply accordingly.

§ 2561

The consignee of a shipment specified in a contract acquires a right under the contract if the consignee requests the release of the shipment after it has reached its destination or after the expiration of the time when the shipment should have reached its destination. At that moment, the right to compensation for damage to the consignment also passes to the consignee.

§ 2562

By accepting the consignment, the consignee becomes the consignor's guarantor for the carrier's claims under the contract relating to the carriage of the consignment accepted. The consignee shall be released from liability if he proves that he did not know and did not need to know about these claims.

§ 2563

The carrier will not deliver the shipment to the consignee if it would be contrary to the sender's order under § 2559. In such a case, the sender is still entitled to dispose of the shipment. If the sender designates another person as consignee to the carrier, that person acquires rights under the contract in the same manner as the original consignee.

Freight charges

§ 2564

(1) Freight is payable without undue delay after carriage to destination.

(2) If the amount of the freight charge is not agreed, the carrier is entitled to the freight charge customary at the time of conclusion of the contract, taking into account the content of the obligation.

§ 2565

If the carrier is unable to complete the carriage for reasons for which he is not responsible, he is entitled to a proportionate part of the carriage charge, taking into account the carriage already carried out.

Compensation for damage

§ 2566

(1) The carrier shall indemnify the consignment for damage to the consignment during the period between the carrier's receipt of the consignment and the delivery of the consignment to the consignee. This does not apply if he proves that he could not have prevented the damage even with the exercise of professional care.

(2) The obligation to compensate for the damage shall be discharged if the carrier proves that the damage was caused by

- a) the consignor, consignee or owner of the consignment; or
- b) the defect or inherent nature of the shipment, including normal wastage.

(3) If the defective packaging of the consignment causes damage, the carrier shall be relieved of the obligation to pay compensation by proof that he brought the defect to the attention of the consignor when he accepted the consignment for carriage; if a bill of lading or bill of lading has been issued, the defect in the packaging must be noted therein. If the carrier fails to point out the defective packaging, he shall be exonerated from liability for damages by proof that he could not have known of the defect when he took delivery of the consignment.

(4) Arrangements limiting the carrier's obligation under paragraphs 1 to 3 shall be disregarded.

§ 2567

(1) In the event of loss or destruction of a shipment, the carrier will replace the price the shipment was worth at the time it was received.

(2) If the shipment is damaged or depreciated, the carrier will refund the difference between the price the shipment was worth at the time the carrier took delivery of the shipment and the price the shipment would have been worth if it had been damaged or depreciated at that time.

§ 2568

(1) If damage occurs to the shipment, the carrier shall report the damage to the shipper. However, if the consignee has already acquired the right to have the consignment released, the carrier shall report to the consignee.

(2) If the carrier fails to report the damage without undue delay, the carrier shall compensate the consignor or the consignee for the damage caused thereby.

§ 2569

If the right to compensation is not asserted against the carrier within six months of the date of receipt of the consignment, or, if the consignment is not received, within six months of the date on which it should have been delivered, the court shall not award it if the carrier argues that the right was asserted late.

§ 2570

Sale by self-help

The carrier may sell a shipment on behalf of the shipper when there is an imminent threat of substantial damage to the shipment, when there is no time to request the shipper's instructions, or when the shipper delays giving them.

§ 2571

(1) The carrier has a lien on the shipment, so long as it can dispose of it, to secure debts arising under the contract.

(2) If several liens attach to the shipment, the carrier's lien has priority over liens previously created and the carrier's lien has priority over the shipper's lien.

Subsection 3

Bill of Lading

§ 2572

(1) The acknowledgement of receipt of shipment may be replaced by a loading list. A bill of lading is a security which carries the right to require the carrier to deliver the shipment in accordance with the contents of the bill of lading; it may be issued in the name, on the number or on the bearer.

(2) A bill of lading contains at least

- a) the name of the carrier and its residence or registered office,
- b) the name of the consignor and his residence or registered office,
- c) the designation, quantity, weight or volume of the goods carried,
- d) the form of the loading list; if issued in the name or on the line, the name of the person in whose name or line it is issued,
- e) an indication of the place of destination and
- f) the place and date of issue of the loading list and the carrier's signature.

(3) If the loading list does not contain the name of the person in whose name it is issued, it shall be deemed to be issued in the name of the consignor.

§ 2573

When issuing a loading list in counterparts, the carrier shall indicate on each counterpart the number of copies.

§ 2574

The carrier shall issue to the consignor a new loading list for a destroyed or lost loading list, indicating that it is a replacement loading list. The consignor shall indemnify the carrier against any damage caused by the misuse of the original loading list.

§ 2575

Only the person authorised by the loading list has the right to interrupt the carriage after the issue of the loading list. If more than one copy of the loading list has been issued, all copies must be produced.

§ 2576

After the issue of the loading list, the person entitled to the release of the consignment under the loading list has the right to do so.

§ 2577

(1) Against the holder of the bill of lading, the carrier may only assert objections arising from the contents of the bill of lading or from its rights against the holder.

(2) Against the holder of the bill of lading, the carrier may invoke the provisions contained in the contract he has concluded with the consignor, if these provisions are contained in the bill of lading or if the bill of lading expressly refers to them.

Subsection 4

Common provisions for the carriage of persons and goods

§ 2578

More detailed provisions on the carriage of persons and goods are laid down in other legislation, in particular the provisions laying down the timetables, unless directly applicable European Community legislation so provides.

§ 2579

Where several carriers join together to carry out a carriage, the timetables may specify which carrier is responsible for the carriage and under what conditions.

§ 2580

(1) If the timetables limit the obligation of the carrier to compensate for personal injury, this shall not be taken into account.

(2) The obligation of carriers operating public carriage to compensate for damage or other injury may be limited by the timetables only in particularly justified cases where the need for such a limitation for national carriage necessarily follows from the principles applicable to international carriage.

(3) Any limitations on the carrier's obligation to compensate for damage in the timetables shall not apply to cases of damage caused intentionally or through gross negligence.

§ 2581

(1) If the person entitled to collect the baggage or parcel is in default in collecting the item for more than six months, the carrier may sell the item on behalf of that person. If the item is of greater value and the carrier knows the person's address, the carrier shall give the person advance notice of the intended sale and a reasonable additional time to collect the item.

(2) The timetables may, in justified cases, provide for a shorter period of time for the collection of certain baggage and consignments, in particular where they are of a dangerous or perishable nature.

Section 2

Operation of a means of transport

§ 2582

Under a contract for the operation of a means of transport, the operator undertakes to transport the cargo specified by the customer and to make at least one pre-determined journey for that purpose, or to make a greater number of journeys within the agreed period of time, as specified by the customer, and the customer undertakes to pay the operator a fee.

§ 2583

(1) The operator shall ensure the fitness of the means of transport for the agreed journey, its usability for the agreed carriage and shall provide the means of transport with a fit crew and fuel and other necessary items.

(2) If the means of transport is unfit according to [paragraph 1](#), the operator shall compensate the customer for the damage resulting therefrom, unless he proves that he could not have foreseen such unfitness even with due care.

§ 2584

The customer may assign the right to require the agreed operation of the means of transport to another person.

§ 2585

If the operator accepts cargo for carriage, the provisions governing the contract of carriage shall apply *mutatis mutandis* to determine the rights and obligations of the parties, if the nature of the contract for the operation of the means of transport so permits.

Volume 8

A work

Section 1

General Provisions

§ 2586

Basic Provisions

(1) By the contract for work, the contractor undertakes to carry out the work at his own expense and risk for the client, and the client undertakes to accept the work and pay the price.

(2) The price of the work is agreed with sufficient certainty if at least the method of determining it is agreed or if it is determined at least by estimation. If the parties intend to conclude the contract without specifying the price of the work, the price paid for the same or comparable work at the time of conclusion of the contract and under similar contractual conditions shall be deemed to have been agreed.

§ 2587

Work means the making of a thing, if not covered by a contract of sale, and the maintenance, repair or alteration of a thing, or an activity with a different result. A work is always the making, maintenance, repair or alteration of a building or part of a building.

§ 2588

(1) If the performance of the work depends on the special personal ability of the contractor, the obligation is extinguished by the loss of his ability or his death. This does not apply if the

work can be successfully carried out by one who has taken over the contractor's activities as his successor.

(2) The death of the client does not in itself terminate the obligation unless it renders performance of the obligation impossible or unnecessary. This also applies in the case of termination of the obligation by the death of the principal.

Manner of performance of a work

§ 2589

The contractor shall either carry out the work personally or have it carried out under his personal direction. This does not apply if the execution of the work is not dependent on the personal qualities of the contractor or if the nature of the work does not require it.

§ 2590

(1) The contractor shall carry out the work with due diligence within the agreed time and shall procure all that is necessary for the execution of the work.

(2) If the time of performance is not agreed, the Contractor shall perform the work within a time appropriate to its nature. The time of performance shall be deemed to be agreed in favour of the contractor.

§ 2591

If the Client's cooperation is necessary for the performance of the work, the Contractor shall give the Client a reasonable period of time to provide it. If the time limit expires in vain, the contractor shall have the right, at his option, either to arrange for substitute performance at the client's expense or, if he has so notified the client, to withdraw from the contract.

§ 2592

The Contractor shall proceed independently in carrying out the work. The contractor shall be bound by the client's instructions as to how the work is to be carried out only if this is implied by custom or agreed upon.

§ 2593

The client has the right to control the execution of the work. If he finds that the contractor is in breach of his duty, he may require the contractor to ensure that the work is rectified and carried out in a proper manner. If the contractor fails to do so even within a reasonable time, the client may withdraw from the contract if the contractor's conduct would undoubtedly lead to a material breach of the contract.

§ 2594

(1) The Contractor shall without undue delay notify the Employer of the improper nature of the thing handed over to it by the Employer for the execution of the Work or of the order given to it by the Employer. This does not apply if he could not have discovered the unsuitability even if he had exercised the necessary care.

(2) If the unsuitability of the item or order interferes with the proper execution of the work, the contractor shall suspend it to the extent necessary until the item is replaced or the order is changed; if the client insists on carrying out the work using the item handed over or in accordance with the order given, the contractor is entitled to require the client to do so in writing.

(3) The time allowed for completion of the work shall be extended by the time caused by the interruption. The Contractor shall be entitled to reimbursement of the costs associated with the interruption of the work or the use of unsuitable items until such time as their unsuitability can be ascertained.

(4) If the contractor behaves in accordance with paragraphs 1 and 2, the client has no rights in respect of defects in the work arising from the unsuitability of the thing or order.

§ 2595

If the client persists in carrying out the work according to an obviously unsuitable thing or order or using an obviously unsuitable thing after the contractor has given notice, the contractor may withdraw from the contract.

Things to be used to perform a work

§ 2596

If the contractor sees a thing made in the course of the work, the parties to that thing, if it has become part of the work, are in the position of the seller. The purchase price of the thing is deemed to be included in the price of the work.

§ 2597

(1) If the client is to procure the item for the performance of the work, he shall hand it over to the contractor within the agreed time, otherwise without undue delay after the conclusion of the contract. The price of the work shall not be deemed to be reduced by the price of the item.

(2) If the client fails to procure the item in time and fails to do so even at the contractor's request within an additional reasonable time, the contractor may procure the item at the client's expense. The Client shall pay the price of the item and the costs reasonably incurred in arranging it to the Contractor without undue delay after the Contractor has requested payment.

§ 2598

(1) The client shall bear the risk of damage to the thing procured by him for the execution of the work so long as his title to the thing continues.

(2) The contractor shall be liable for the item taken over from the client as a warehouseman. He shall submit an account to the client with the work done and return to him whatever he has not processed from his things.

Right of ownership in the subject of a work

§ 2599

(1) If the subject matter of the work is individually identified, the client acquires ownership of it. This does not apply if the contractor has worked the client's thing at a place other than the client's place or on the client's land or on land procured by the client, or if the value of the work is equal to or greater than the value of the thing worked by the client; then the contractor acquires title to the subject matter of the work.

(2) If the subject matter of the work is a thing determined by type, the contractor acquires title to it. This does not apply if the contractor has constructed the item at the client's premises, on the client's land or on land provided by the client; in that case the client acquires ownership.

§ 2600

If the contractor acquires title to the item by processing and the work is frustrated for a reason for which the contractor is not liable, the client shall not be entitled to compensation for the item he has handed over to the contractor for processing. The right to unjust enrichment is not affected.

§ 2601

If the contractor has acquired title to the item by processing and if the work is frustrated for a reason for which the contractor is liable, he shall provide the client with monetary compensation for his processed item or return the item of the same kind.

§ 2602

(1) If the client has acquired title to the thing by processing and the work is frustrated for a reason for which the contractor is liable, the client may either demand the return of the thing resulting from the processing or refuse the thing and demand the return of his things used in the processing.

(2) If the contractor delivers the thing resulting from the processing to the client, this does not affect the client's right to unjust enrichment. If the client refuses the workmanship, he shall be entitled to a monetary compensation for his workmanship or to the return of the same kind of workmanship.

§ 2603

If the client has acquired title to the thing and the work is frustrated for a reason for which the contractor is not liable, the client may only demand the return of the thing resulting from the processing, but shall reimburse the contractor for the cost of his thing used for processing.

Performance of the work

§ 2604

The work is done when it is completed and handed over.

§ 2605

(1) The work is completed when it is demonstrated to be fit for its purpose. The client accepts the completed work with or without reservations.

(2) If the client accepts the work without reservation, the court shall not grant him a right based on an obvious defect in the work if the contractor argues that the right was not exercised in time.

§ 2606

If the work is carried out in stages and the stages can be distinguished, it may be handed over and accepted in parts.

§ 2607

(1) If completion of the work is to be demonstrated by the performance of the agreed tests, the performance of the work shall be deemed to be completed by the successful performance of the tests. The contractor shall invite the client to participate in them in due time; if the client does not participate in the tests and if the nature of the matter does not preclude it, this shall not prevent their performance.

(2) The result of the test shall be recorded in the minutes; if the client is not present, the minutes shall be certified in his place by a credible, competent and impartial person who has taken part in the tests. Unless this is contrary to the nature of the commitment, the contractor shall be obliged to provide the client with the minutes at the latter's request.

§ 2608

(1) If the subject matter of the work is a thing, the handover of the thing shall be governed by the provisions on the contract of sale by analogy.

(2) On acceptance, the client acquires ownership of the thing and the risk of damage to the thing passes to him if this has not already happened.

§ 2609

Self Help Sale

(1) If the subject matter of the work is an item, the contractor may sell it in a suitable manner on behalf of the client if the client does not take possession of the item without undue delay after the work should have been completed; if it was completed later, then without undue delay after notification of completion of the work. Unless the nature of the work prevents it, the contractor shall notify the client of the intended sale and shall give him an alternative period of time to take possession of the work, but not less than one month.

(2) If an unknown or difficult-to-reach client does not apply for the work for more than six months or, if the nature of the matter prevents it, if the client does not apply for the work

for a period of time commensurate with its nature, the contractor may sell the work on his behalf without giving notice.

Price for the Work

§ 2610

(1) The right to payment of the price of the work arises on completion of the work.

(2) If the work is accepted in parts, the right to payment of the price for each part arises on completion.

§ 2611

If the work is carried out in parts or at considerable expense, and if the parties have not agreed on the payment of an advance, the contractor may demand a reasonable part of the remuneration during the execution of the work, taking into account the costs incurred.

§ 2612

(1) If, after the conclusion of the contract, the contractor discovers that the price determined by the estimate will have to be substantially exceeded, he shall notify the client without undue delay, stating the new price with reasons; if he fails to do so without undue delay after he has discovered the need to increase the price, or should have discovered it and could have done so, he shall not be entitled to payment of the difference in price.

(2) The client may withdraw from the contract; he shall pay the proportionate part of the price originally determined to the contractor if he benefits from the contractor's partial performance. If the client does not withdraw from the contract without undue delay after receiving notification of the higher price, the client shall be deemed to have accepted the price increase.

§ 2613

If the client fails to carry out the work for a reason for which he is responsible, the contractor shall be entitled to the price for the work less what the contractor has saved by failing to carry out the work.

§ 2614

If the parties agree after the conclusion of the contract to limit the scope of the work and do not agree on the consequences for the amount of the price, the client shall pay the price adjusted to take into account the difference in the scope of the work required and in the reasonable costs associated with the changed performance of the work.

Defects of a work

§ 2615

(1) The work is defective if it does not conform to the contract.

(2) The provisions of the contract of sale shall apply *mutatis mutandis* to the rights of the customer in respect of defective performance. However, the client shall not be entitled to demand the performance of replacement work if the object of the work cannot be returned or handed over to the contractor due to its nature.

§ 2616

If, under Czech law or the law of the state where the subject matter of the work is to be used, as a result of the use of the subject matter of the work, a third party's industrial or other intellectual property right is endangered or infringed, the contractor shall be liable to the client if the contractor knew or should have known of this at the time of conclusion of the contract. The provisions on legal defects in the subject matter of the purchase shall apply *mutatis mutandis* to legal defects in the work.

§ 2617

If the work has a defect at the time of handover, this shall give rise to the contractor's obligations under the defective performance; however, if the risk of damage is transferred to the client at a later date, the time of such transfer shall be decisive. After that time, the client has rights under the defective performance if the defect was caused by the contractor's breach of duty.

§ 2618

The court shall not grant the client the right of defective performance if the client has not notified the defects in the work without undue delay after he discovered them or, with due care, should have discovered them, but not later than two years after the handover of the work, and if the contractor argues that the right was exercised late.

§ 2619

If the contractor has given a guarantee for the quality of the work, the guarantee period starts when the work is handed over.

Section 2

Determining the price according to the budget

§ 2620

(1) If the price is agreed as a fixed amount or by reference to a budget which forms part of the contract or was communicated to the client by the contractor before the contract was concluded, neither the client nor the contractor may request a change in the price because the work required different efforts or costs than those anticipated.

(2) If, however, a wholly exceptional unforeseeable circumstance arises which makes the completion of the work substantially more difficult, the court may, in its discretion, decide on an equitable increase in the price for the work, or on the cancellation of the contract and how the parties shall settle. This does not apply where a party has assumed the risk of a change of circumstances or where the circumstance is one which a party has previously stated will not occur.

§ 2621

(1) If the work has been awarded on budget, the contractor cannot claim an increase in the price for the work, even if the scope or cost of the work results in an overrun.

(2) If the completeness of the budget has been guaranteed, the contractor cannot claim an increase in the price for the work if the need for additional work to complete the work arises.

§ 2622

(1) However, if the price has been determined on the basis of a budget given subject to the proviso that its completeness is not guaranteed or subject to the proviso that the budget is non-binding, the contractor may request an increase in the price, if, in the case of a budget subject to a non-guarantee of completeness, the need for activities not included in the budget arises during the execution of the work if they were not foreseeable at the time of conclusion of the contract and, in the case of a budget subject to a non-guarantee of completeness, if the costs necessarily exceed the costs reasonably incurred by the contractor for the costs included in the budget. If the client disagrees with the price increase, the court shall determine the price increase on the contractor's proposal.

(2) The Contractor shall lose the right to have the price increase determined in accordance with [paragraph 1](#) if it fails to notify the necessity of exceeding the budgeted amount and the amount of the requested price increase without undue delay after the necessity has become apparent during the performance of the work.

(3) The client may withdraw from the contract without undue delay if the contractor requests an increase of more than 10 % of the budgeted price. In this case, the client is obliged to compensate the contractor for the part of the price corresponding to the extent of the partial execution of the work according to the budget.

Section 3

Structure as a subject of a work

§ 2623

Unless otherwise provided below, the provisions of the first section of this part shall apply to a contract for the alteration of immovable property and to a contract for the construction, repair or alteration of a building.

§ 2624

Risk of damage

When a building is constructed to order for a client, the contractor bears the risk of damage or destruction of the building until it is handed over, unless the damage occurs otherwise.

§ 2625

Right to be presented with accounts

If the price of the work is determined with reference to the actual extent of the work and its value or to the value of the items used and the amount of other costs, the contractor shall, at the request of the client, account for the progress of the work to date as well as for the costs incurred to date.

§ 2626

Inspecting the performance of a works

(1) If the contract provides that the client shall inspect the subject matter of the work at a certain stage of its execution, the contractor shall invite the client to inspect it. If the contractor fails to invite the client in time or invites the client at an obviously inappropriate time, the contractor shall allow the client to carry out an additional inspection and shall bear the costs thereof.

(2) If the client fails to attend an inspection to which he has been duly invited or which should have taken place according to the agreed timetable, the contractor may proceed with the work. The client has the right to request an additional inspection, but shall reimburse the contractor for the costs involved if he was prevented from attending the inspection by force majeure and if he requested the additional inspection without undue delay, otherwise he shall bear the costs of the additional inspection.

§ 2627

Latent obstacles

(1) If the contractor discovers, during the execution of the work, hidden obstacles relating to the place where the work is to be carried out which make it impossible to carry out the work in the agreed manner, he shall notify the client without undue delay and propose a change to the work. He may suspend the execution of the work pending agreement on the change.

(2) If the parties fail to agree on a variation within a reasonable time, either party may withdraw from the contract. The contractor shall be entitled to the price for the part of the work carried out before the obstruction could have been discovered by the exercise of due diligence.

§ 2628

Takeover of a structure

The client shall not have the right to refuse acceptance of the building due to isolated minor defects which, by themselves or in conjunction with others, do not prevent the use of the building functionally or aesthetically, or substantially restrict its use.

Defects of a structure

§ 2629

(1) The court shall not grant a right under a latent defect which the client did not discover without undue delay after he could have discovered it with reasonable diligence, but not

later than five years after the acceptance of the construction, if the other party argues that the defect was not discovered in time. The same applies to latent defects in the design documentation and other similar performances.

(2) The implementing legislation may, in justified cases, provide for a reduction of the time limit referred to in [paragraph 1](#) for certain parts of the construction to up to two years. If the parties agree to shorten this time limit, no account shall be taken of the fact that the client is the weaker party.

(3) If the client is a consumer and the defect manifests itself within two years of acceptance, the construction shall be deemed to have been defective at the time of acceptance, unless the nature of the defect precludes this. This period does not run during the period during which the client cannot use the building if he has rightly complained about the defect.

§ 2630

(1) If the performance has been defective, he is jointly and severally liable with the contractor in respect of what he himself has delivered

- a) the contractor's subcontractor, unless he proves that the defect was caused solely by a decision of the contractor or of the person who supervised the construction,
- b) who supplied the construction documents, unless he proves that the defect was not caused by an error in the construction documents, and
- c) who supervised the construction, unless he proves that the defect in the construction was not caused by a failure of supervision.

(2) The contractor is excused from liability for a defect in the construction if he proves that the defect was caused only by a defect in the construction documents supplied by a person chosen by the client or only by a failure of supervision of the construction by a person chosen by the client.

Section 4

A work consisting in an incorporeal result

§ 2631

If the work consists of an activity result other than the making of an item or the maintenance, repair or alteration of an item, the contractor shall proceed with that activity as agreed and with professional care so as to achieve the activity result specified in the contract.

§ 2632

If the subject matter of the work is not a tangible object, the contractor shall hand over the result of his work to the client. A work with an intangible result is deemed to have been handed over if it is completed and the contractor allows the client to use it.

§ 2633

The contractor may provide the result of the work, which is subject to industrial or other intellectual property rights, to persons other than the client, if so agreed. If the contract does not contain an express prohibition against such disclosure, the contractor is entitled to do so, unless the nature of the work makes it contrary to the interests of the client.

§ 2634

If the subject matter of the work is the result of an activity which is protected by industrial or other intellectual property rights, the contractor shall be deemed to have provided it to the client for the purpose of the contract.

§ 2635

The provisions of this section shall apply *mutatis mutandis* to the result of a work made under the provisions of a public promise (competitive work).

Healthcare

§ 2636

Basic Provisions

(1) By a health care contract, a provider undertakes to the principal to care for the health of the person being treated, whether the principal or a third party, within the scope of the provider's profession or business.

(2) The principal shall pay the provider a fee if agreed; this does not apply if another legal provision stipulates that health care is to be paid for exclusively from other sources.

§ 2637

Health care includes an act, examination or advice and all other services that are directly related to the person being treated and are motivated by an effort to improve or maintain the person's health. However, health care is not an activity consisting solely of the sale or other transfer of medication. Health care is not an activity consisting solely of the sale or other transfer of medication.

Advice

§ 2638

(1) The provider shall explain the intended examination and proposed health care to the person being treated in a clear manner; after the appropriate examination, the provider shall explain the person's condition and health care to the person being treated and the follow-up procedure. If requested by the person undergoing treatment, the provider shall provide an explanation in writing.

(2) If the person being treated is not fully competent but is nevertheless capable of exercising judgement, he shall be instructed in a manner appropriate to his ability to understand the explanation; the explanation shall also be given to his legal representative.

§ 2639

(1) An explanation is properly given if the person being treated can reasonably be assumed to understand his or her condition, the manner, purpose and necessity of the health care, including the expected consequences and possible dangers to his or her health, and whether any other health care is contemplated.

(2) If the provider must be aware that he or she has induced in the person being treated the belief that health care will achieve a particular outcome, even though he or she knows or must know that the outcome may not be achieved, he or she must also explain this to the person being treated.

§ 2640

(1) If this would clearly and seriously endanger the health of the person being treated, the explanation may be given in full subsequently, once the danger is no longer to be feared. The provider shall not be deemed to have this right unless the obviousness and seriousness of the danger is confirmed to him by another health care provider in the field.

(2) If an explanation is withheld and the interests of the person being treated so require, the explanation shall be given to another person authorised by the person being treated, unless another legal provision provides otherwise.

§ 2641

If the person being treated has made it clear that he or she does not wish an explanation to be given, it shall not be given unless the danger to the person being treated or to another person from doing so clearly outweighs his or her interest.

Rights and Responsibilities of the Parties

§ 2642

(1) The consent of the person being treated is required for every health care act unless the law provides that consent is not required. If the person being treated refuses to give consent, he or she shall confirm this in writing to the provider at the provider's request.

(2) If requested by the provider or the person being treated, the other party shall confirm to the provider or the person being treated in writing the purpose for which consent was given.

§ 2643

(1) The provider shall act under the contract with the care of a competent professional, including in accordance with the rules of its field.

(2) To the best of his or her knowledge, the care recipient shall disclose to the provider the necessary information and provide such assistance as is reasonably expected to enable the provider to perform his or her obligations under the contract.

§ 2644

The provider will not allow another person to observe the health care of the care recipient unless the care recipient has given consent. This does not apply if the presence of another person is required to demonstrate compliance with the requirements of professional care.

§ 2645

The provider is responsible for having performed its duties with due professional care; arrangements that preclude or restrict this shall be disregarded.

§ 2646

(1) If health care is provided in a health care facility, social service facility, or similar facility that is not operated by a Party, the care recipient or principal must be notified in a timely manner who the provider is and that the operator of the facility is not a Party.

(2) If the provider cannot be identified, the operator of the facility where the health care was provided shall be deemed to be the provider; this shall apply even if the operator fails to disclose to the person being treated or the principal who the provider is without undue delay. Arrangements to the contrary shall be disregarded.

Health Care Records

§ 2647

(1) The provider shall maintain health care records that shall show information about the health status of the person being treated and the provider's activities, including documentation attesting to the accuracy of such information, to the extent necessary to provide proper health care. The records shall be retained by the provider for as long as the need for professional care requires.

(2) The provider shall also attach to the records, at the provider's discretion, supporting documentation and statements submitted by the care recipient or principal, as applicable.

(3) The provider shall always note in the records who consulted them.

§ 2648

(1) If the person being treated so requests, the provider shall, without undue delay, allow the person being treated to inspect the records kept about him or her and shall allow the person being treated to make extracts, copies or copies of them or shall himself or herself, on payment of reasonable compensation, give him or her an extract, copy or copy of them.

(2) If the records also contain information about a third person, they may not be disclosed without his consent.

§ 2649

(1) Unless otherwise provided by law, records cannot be disclosed to another person without the express consent of the person being treated, even if that person is the principal or agent of the person being treated.

(2) If the person being treated has given consent or refused to give consent, this shall be indicated in the records the provider maintains about the person being treated.

§ 2650

(1) Without the consent of the person being treated, a provider may disclose information about the person being treated in anonymised form for the purposes of a scientific or statistical investigation relating to the health of a population and its groups if it is reasonably foreseeable that consent cannot be obtained at all or in a timely manner and

a) if the investigation is carried out with such security that there is no risk of unreasonable interference with the privacy of the person being treated, or

b) if the provider communicates the information in such a way as to preclude subsequent identification of the specific person to whom it relates.

(2) The right under [paragraph 1](#) is not available to the provider if the investigation is not conducted in the public interest, if the investigation can be conducted without data about a particular person being treated, or if the person being treated has expressly consented to the disclosure of data about him or herself.

§ 2651

A treated person who is not the principal may refuse health care; his refusal cancels the commitment.

Volume 10

Inspection

§ 2652

Basic Provisions

(1) By the contract for inspection activity, the inspector undertakes to ascertain impartially the state of a particular matter or to verify the result of a particular activity and to issue an inspection certificate to that effect, and the client undertakes to pay the inspector a fee.

(2) An arrangement which imposes an obligation on the inspector which might affect the impartiality of the inspection or the accuracy of the inspection certificate shall be disregarded.

§ 2653

The inspector shall carry out the inspection with professional diligence in accordance with the prescribed method of inspection, the time, place and extent of the inspection, taking into account also the state in which the subject matter of the inspection was at the time of the inspection. He/she shall describe the condition found in the inspection certificate.

§ 2654

The inspector shall carry out the inspection to the extent and in the manner usual for similar inspections. The inspection shall be deemed to be carried out without undue delay at the place where the object of the inspection is located. The client shall notify the inspector in good time where the inspection is to take place.

§ 2655

The client shall provide the inspector with the necessary cooperation to carry out the inspection, in particular to allow him the necessary access to the subject of the inspection.

§ 2656

(1) The right of the inspector to remuneration arises on the performance of the inspection and the issue of the inspection certificate.

(2) Together with the right to remuneration, the inspector shall also be entitled to reimbursement of costs reasonably incurred by him in carrying out the inspection, unless the nature of those costs shows that they are already included in the remuneration.

§ 2657

If no remuneration is agreed, the client shall pay the inspector a remuneration in the amount customary having regard to the subject matter, scope, manner and place of the inspection at the time of conclusion of the contract.

§ 2658

The performance of the inspection does not affect the legal relations between the client and other persons, in particular persons to whom the subject of the inspection is addressed or from whom it originates.

§ 2659

If an inspector fails to carry out an inspection properly, he is not entitled to remuneration and reimbursement of expenses.

§ 2660

(1) The inspector shall compensate for damage caused by a breach of the obligation to carry out the inspection properly to the extent that the client cannot effectively obtain compensation by asserting a right of defective performance against the person who performed the inspected item. The inspector shall not be obliged to compensate for damages if the client has omitted to enforce his right against the third party in time or if he cannot enforce it due to what he has agreed with the third party.

(2) The restriction under [paragraph 1](#) does not apply if the inspector has assured the client that, regardless of the extent and manner of inspection, he will find all defects, or has assured the client that the inspection certificate is complete and correct.

§ 2661

If the inspector indemnifies the client, the client's right against the third party passes to the inspector as if it had been assigned.

Volume 11

Obligations arising from an account contract, lump-sum deposit contract, letter of credit contract and collection contract

Section 1

Account

Subsection 1

General Provisions

§ 2662

Basic Provisions

In an account agreement, the account holder agrees to establish an account for the account holder from a specified time in a specified currency, to allow cash to be deposited into or withdrawn from the account, or to make transfers of funds to or from the account.

§ 2663

If an account is set up for more than one person, each person has the status of an account holder. These persons shall deal with the account jointly. Their shares in the funds in the account shall be deemed to be equal.

§ 2664

The funds in the account may be disposed of by the account holder and, subject to the terms and conditions agreed in the agreement, by his or her agents in the manner agreed. Unless the contrary appears from the mandate, it does not terminate on the death of the principal.

§ 2665

If the parties agree that the person who maintains the account shall allow cash to be withdrawn or funds to be transferred from the account even though there are insufficient funds in the account to do so, the provisions on credit shall apply mutatis mutandis.

§ 2666

If the account holder dies, the account holder shall, on the day following the day on which the account holder's death is certified to him, stop those cash withdrawals and transfers of funds from the account which the account holder has determined should not be continued after his death.

§ 2667

Interest on funds in the account is payable at the end of the calendar month. The person who maintains the account shall add interest to the balance of funds in the account without undue delay after it has become due.

§ 2668

When an obligation is extinguished, the person who maintains the account shall without undue delay settle the claims and debts relating to the account, in particular make transfers of funds from the account made by means of payment instruments and cheques used up to the date of the extinguishment of the obligation, close the account and pay the balance of the funds to the account holder.

Subsection 2

Payment Account

§ 2669

Payment Account is governed by a different law. Another law also regulates the transfer of funds in an account that is not a payment account if it is a payment transaction under another law.

Subsection 3

An account other than a payment account

§ 2670

The provisions of this subsection shall apply to an account that is not a payment account. The provisions of this subsection shall also apply to the deposit of cash, withdrawal of cash, or transfer of funds made in a payment account if it is not a payment transaction under any other law.

§ 2671

If interest has been agreed, the account holder is entitled to interest from the date the funds are credited to the account until the day before they are debited from the account.

§ 2672

The person who holds the account shall credit the funds received or transferred to the account no later than the next business day after he has acquired the right to dispose of them.

§ 2673

(1) The person who maintains the account shall notify the account holder of any deposit or withdrawal of cash or transfer of funds that occurred during the preceding calendar month without undue delay after the end of the calendar month.

(2) The account holder shall notify the account holder of the balance of funds in the account without undue delay after the end of the calendar year.

§ 2674

An account holder may terminate an account agreement without notice, even if the agreement is for a fixed term.

§ 2675

(1) The account holder may terminate the obligation under the account agreement with effect from the end of the month following the month in which the notice is received by the account holder.

(2) If the account holder materially breaches an agreed obligation, the account holder may terminate the account agreement without notice.

Subsection 4**Savings book****§ 2676**

(1) The deposit book is used by the issuer of the deposit book to confirm the deposit of cash into and withdrawal of cash from the account. The account to which the deposit slip is issued shall not be used for the transfer of funds. The deposit book may be issued only in the name of the holder of the deposit book. The amount of funds in the account and changes thereto must be clear from the deposit book.

(2) The amount of funds in the account shall be deemed to correspond to the entries in the deposit book.

§ 2677

The funds in the account are handled by the owner of the deposit book. The funds in the account may not be disposed of without presentation of the deposit book.

§ 2678

If the deposit book is lost or destroyed, the issuer of the deposit book shall issue a new deposit book at the request of the holder of the deposit book. This deposit book shall replace the original deposit book, which shall cease to be valid on the date of its issue.

§ 2679

If the holder of the passbook does not handle the funds in the account for a period of twenty years or produce the passbook to complete the records, the commitment shall be cancelled on the expiry of that period; the holder of the passbook shall be entitled to receive payment of the balance of the funds in the account, including interest to the date of cancellation of the commitment.

Section 2**Lump-sum deposit****§ 2680**

(1) By a lump sum deposit agreement, the depositor agrees to provide the deposit taker with a fixed lump sum deposit of a specified amount, and the deposit taker agrees to accept the deposit, return it upon termination of the obligation, and pay interest to the depositor.

(2) If the handling of the deposit was conditional on the depositor providing a password and the depositor does not know the password, the depositor may handle the deposit if the depositor proves that the deposit belongs to the depositor.

§ 2681**Certificate of deposit**

In a certificate of deposit, the deposit payee confirms a fixed lump sum deposit for a fixed period of time in the amount specified in the certificate of deposit.

Section 3**Letter of credit****§ 2682**

Basic Provisions

In the Letter of Credit Opening Agreement, the L/C Issuer agrees to issue a Letter of Credit against the Principal at the request and for the account of the Principal in favour of a third party (the Beneficiary) and the Principal agrees to pay the L/C Issuer a fee.

§ 2683

(1) The letter of credit issuer shall notify the beneficiary in writing without undue delay after the execution of the agreement that it is opening a letter of credit in his favour and shall disclose the contents thereof.

(2) The letter of credit shall contain, at a minimum, a statement that the letter of credit issuer agrees to pay a certain amount, accept a promissory note, or undertake other performance, as well as the terms of the letter of credit, specifying the date by which the beneficiary must comply with them in order to demand performance from the letter of credit issuer.

§ 2684

The letter of credit issuer's obligation to the beneficiary is created by the issuance of the letter of credit. This obligation is independent of the obligation between the letter of credit issuer and the principal and the obligation between the principal and the beneficiary.

§ 2685

The issuer of a letter of credit may authorize another issuer to provide performance on its behalf. If the delegated issuer provides performance, it has a right of indemnity against the issuer of the letter of credit; if the letter of credit has been confirmed, it also has this right against the confirming issuer.

§ 2686

Unless the letter of credit expressly provides otherwise, the issuer of a letter of credit may amend or cancel the letter of credit only with the consent of the beneficiary and the principal.

Confirmed Letter of Credit

§ 2687

(1) If the letter of credit is confirmed by another issuer at the request of the issuer of the letter of credit, the beneficiary shall also have a right of performance against the confirming issuer from the time the confirming issuer notifies the beneficiary of the confirmation of the letter of credit.

(2) The consent of the confirming exhibitor is also required to amend or cancel a confirmed letter of credit.

§ 2688

If the confirming issuer has not paid the beneficiary in accordance with the terms of the letter of credit, the confirming issuer has a right of recourse against the letter of credit issuer.

§ 2689

A letter of credit issuer that merely notifies the beneficiary that another letter of credit issuer has opened a letter of credit for it does not incur an obligation under the letter of credit, but will indemnify if the notification was incorrect.

Documentary Letter of Credit

§ 2690

(1) In a documentary letter of credit, the issuer of the letter of credit shall pay the beneficiary if the documents specified in the letter of credit are timely presented to the beneficiary in accordance with the terms of the letter of credit. This is the case even if the documents are submitted to the issuer authorized by the letter of credit.

(2) If the Documentary Letter of Credit has been confirmed, the confirming Issuer shall provide performance to the Beneficiary if the documents specified in [paragraph 1](#) are timely presented to it or, as applicable, to the Issuer authorized by the Letter of Credit.

§ 2691

The letter of credit issuer shall review with professional care whether the contents of the documents submitted and their interrelationship appear to conform to the terms and conditions specified in the letter of credit.

§ 2692

If the documents are lost, destroyed or damaged while in the possession of the letter of credit issuer, the letter of credit issuer shall indemnify the principal against any loss or damage caused thereby. This does not apply if the letter of credit issuer could not have prevented the damage even with the exercise of professional care.

§ 2693

Other Letters of Credit

The provisions on documentary credit shall apply mutatis mutandis to a letter of credit under which performance may be claimed upon satisfaction of conditions other than the production of documents.

Section 4

Collection

§ 2694

Basic Provisions

(1) By a direct debit agreement, the direct debit provider undertakes to procure for the principal the receipt of a sum of money or other act of collection from a third party and the principal undertakes to pay the direct debit provider a fee.

(2) If the amount of the remuneration is not agreed, the principal shall pay to the debt collector the remuneration customary at the time of conclusion of the contract.

§ 2695

The debt collector shall invite a third party to perform the collection operation. If that person refuses to comply with the invitation, the debt collector shall report this to the principal without undue delay.

§ 2696

The direct debit agent shall exercise due diligence in arranging the direct debit in accordance with the instructions of the principal. If the direct debit nevertheless fails to take place, this shall not give rise to a penalty for the direct debit provider.

§ 2697

(1) What the direct debit principal has accepted on collection, he shall without undue delay deliver to the principal.

(2) If the drawee accepts a security or document, the drawee shall compensate the principal for any loss, destruction or damage caused by the loss, destruction or damage to the security or document while it was in the drawee's possession. This does not apply if the debt collector could not have prevented the damage even with the exercise of professional care.

§ 2698

If a debt collector uses another debt collector to procure a collection as instructed by the principal, this is done at the principal's expense and risk.

Documentary collection

§ 2699

In a documentary direct debit, the drawee undertakes to the principal to deliver documents to a third party if the third party pays a sum of money in exchange for the delivery of the documents, or to perform some other act of collection prior to the delivery of the documents, and the principal undertakes to pay a fee to the drawee.

§ 2700

If documents are lost, destroyed or damaged while in the possession of the debt collector, the debt collector shall compensate the principal for the damage caused thereby. This does not apply if the debt collector could not have prevented the damage even if he had exercised professional care.

Volume 12

Obligations arising from contracts for the provision for life

Section 1

Pension

§ 2701

Basic Provisions

(1) By a pension contract, the payer agrees to pay the recipient a periodic cash benefit (pension).

(2) If the payer undertakes to pay a pension for the lifetime of a person or for a period of more than five years, the contract requires a written form.

§ 2702

Unless the duration of the obligation has been agreed, the obligation to pay the pension continues for the life of the beneficiary.

§ 2703

Unless there is an agreed period for the payment of the pension, benefits are payable monthly in advance. If the person for whose lifetime the pension was agreed dies, the payer shall pay the benefit that has already accrued during that person's lifetime. However, if it was agreed that the pension was payable in arrears, the payer shall pay the benefit accruing during the period during which the person was still alive.

§ 2704

The right to a pension cannot be assigned to another; a contrary arrangement is disregarded. However, a claim for benefits due may be assigned.

§ 2705

If the payor has established the pension gratuitously, he may also stipulate that the beneficiary's creditors cannot attach the beneficiary's benefits either by execution or in insolvency proceedings. Such a reservation is effective against third parties as well as against public authorities, but only to the extent that the recipient, given his circumstances, necessarily needs for his provision.

§ 2706

(1) Where a pension has been provided for consideration, the contract cannot be rescinded for non-payment of benefits and repayment of the consideration sought. This does not apply if payment of the pension has been secured and the security ceases or deteriorates without the payer replenishing it to its original extent within a reasonable time.

(2) If the circumstances warrant, the court shall, on motion of the beneficiary, order the sale of a portion of the payor's property and the use of the proceeds to pay the pension for a reasonable time into the future.

Section 2

Reserved rights of enjoyment

§ 2707

Basic Provisions

(1) By a contract of exchange, the owner of immovable property reserves for himself or for a third person, in connection with the transfer thereof, benefits, acts or rights serving to provide for life or for a fixed period, and the transferee of the immovable property undertakes to provide for the same. Unless otherwise provided or agreed, local custom shall govern the content of the rights of the exchanger.

(2) Depending on the content of the legal act by which the exchange was established, the provisions on the rights of which the exchange consists, in particular the easement of the dwelling or the pension, shall also apply to the exchange contract.

§ 2708

(1) If the exchange is created as a real burden, the acquirer of the immovable property shall do all that is necessary on his part to enable the exchange to be entered in the public register. If the exchanger does not waive registration, the title of the acquirer may be registered in the public register only at the same time as the registration of the exchange.

(2) The owner of immovable property may register a future exchange for himself in the public register before the immovable property is transferred.

§ 2709

Even if it was not agreed at the time of the establishment of the exchange, the person bound to the exchange shall contribute auxiliary acts to the exchanger who is in dire need of it in sickness, accident or similar distress. He shall be relieved of this obligation if he arranges for the placement of the exchanger in a medical or similar institution. Unless a special legal reason obliges the person liable for the exchange to pay the costs of the stay in the facility, the exchanger shall bear the costs himself.

§ 2710

(1) If the circumstances change to such an extent that the person liable to the exchange cannot fairly be required to remain on the benefit in kind, and if the parties do not agree, the court may, on application by the person liable to the exchange, order that the benefit in kind be replaced in whole or in part by a cash pension; the court may also, even without an application, order the person liable for the exchange to deposit a security in a specified amount in favour of the exchanger with the operator of a suitable maintenance facility.

(2) Where an exchange has been converted into a cash pension, the court may vary the agreement of the parties or its decision if the circumstances have changed materially.

(3) Decisions made under [paragraph 1](#) or [paragraph 2](#) may not be made in such a way as to jeopardise the exchanger's provision.

§ 2711

In the event of the destruction of the structure in which the exchanger's dwelling has been reserved, the person obligated by the exchange shall provide suitable alternative housing for the exchanger at his own expense.

§ 2712

Exchange reserved to spouses is not reduced by the death of either spouse.

§ 2713

Exchange cannot be assigned; only the right to benefits payable can be assigned, but not those whose extent is determined by the personal needs of the exchanger.

§ 2714

The right to the exchange does not pass to the exchanger's heirs.

§ 2715

If a contract for the transfer of immovable property was made in connection with the establishment of an exchange, it cannot be rescinded for default by the person obligated on the exchange.

Volume 13

Partnership

Section 1

General Provisions

§ 2716

Basic Provisions

(1) Where by contract several persons undertake to associate as partners for the common purpose of an activity or thing, a company is formed.

(2) Where a pooling of assets has been agreed, a list of the contributions of the partners signed by them is required for the validity of the contract. It shall be presumed that only what the inventory states has been pooled.

§ 2717

(1) Where a member contributes a thing to the company, the provisions relating to purchase shall apply mutatis mutandis; but where he contributes only the right to use the thing, the provisions relating to lease shall apply mutatis mutandis, and where he contributes the right to enjoy the thing, the provisions relating to lease shall apply mutatis mutandis.

(2) Where a partner undertakes to act for the company, the provisions of the work or the order shall apply mutatis mutandis.

§ 2718

(1) If a member contributes all his assets to the company, they are deemed to be the assets present at the time the agreement takes effect.

(2) The provision that a shareholder's contribution includes his future property does not apply to property acquired by inheritance unless expressly agreed.

§ 2719

(1) The funds and usable things, as well as the things designated by kind contributed to the company, become the joint property of the partners who contributed them; other things become their joint property only if they have been valued in money. The co-ownership shares of the partners shall be determined by the proportion of the value of the assets contributed by each partner to the company.

(2) The partners acquire the right of usufruct free of charge in respect of any other object of contribution.

§ 2720

A shareholder who has undertaken to contribute to the common purpose only by activity shall have the right to a share in the profits and the right to use the items contributed to the company, but shall not have the right to enjoy such items, nor shall he become a co-owner under § 2719(1)

Section 2

Mutual rights and duties of partners

§ 2721

The provisions on co-ownership apply mutatis mutandis to the rights and obligations of the partners towards each other.

§ 2722

(1) Whoever has undertaken to contribute to the company only by activity is not obliged to make any other contribution. He who has undertaken to contribute only property is not bound to contribute in any other way to the common purpose.

(2) A partner cannot be compelled to contribute more than he has undertaken. If, however, circumstances change so that the common purpose cannot be achieved without an increase in the contribution, he who is unwilling to increase his contribution may withdraw from the company or be expelled from it.

§ 2723

If only what is to be contributed to the company in total is agreed, each of the partners shall contribute equally.

§ 2724

To achieve the common purpose, all partners contribute, as a rule, equally. If a partner has arranged the common cause in good faith, he is entitled to compensation as principal.

§ 2725

A member shall carry on business for the company personally and shall not be entitled to establish membership of the company to any other person or to assign his membership to any other person.

§ 2726

Actions detrimental to the company are prohibited to the member.

§ 2727

(1) A partner may not do anything on his own account or on behalf of others that is competitive in nature with respect to the common purpose without the consent of the other partners. If this happens, the other partners may request that the partner refrain from such action.

(2) Where a partner has acted on his own account, the other partners may claim that the partner's act be declared to have been done on the common account. If the partner has acted on someone else's account, the other partners may claim that the right to remuneration be assigned to them for the benefit of the joint account or that remuneration already granted be released to them. These rights shall lapse if they are not exercised within three months of the date on which the entrepreneur became aware of the conduct, but at the latest one year from the date on which the conduct took place.

(3) In lieu of the rights under [paragraph 2](#), the other partners may claim damages.

§ 2728

(1) If the contract does not specify the proportion in which the partners share in the property acquired during the life of the company, in the profits and in the losses of the company, their shares shall be equal. If the contract specifies the proportion in which a partner shares either only in the property or only in the profit or loss, the same proportion shall apply in the other cases.

(2) An arrangement excluding a shareholder's right to a share in the profits has no legal effect. An arrangement excluding a shareholder's obligation to share in a loss has legal effect only as between the shareholders.

§ 2729

(1) Decisions on company affairs are made by majority vote; each shareholder has one vote. An arrangement or decision of the shareholders preventing a shareholder from taking part in the decision shall have no legal effect.

(2) A resolution amending the memorandum of association must be passed unanimously.

Section 3

Administration of a partnership

§ 2730

(1) The partners may divide the powers of managing the affairs of the company in such manner as they think fit. If they do not do so, each partner shall be the principal of the other partners in respect of those matters.

(2) No partner may, of his own volition, materially alter the condition or purpose of the common property without regard to the convenience of such alteration.

§ 2731

(1) The management of the common property may be entrusted by the partners to someone from among themselves or to a third person.

(2) If a trustee has been appointed in the memorandum of association, he may be removed only for good cause, otherwise his appointment may be revoked in the same way as in the case of an order.

§ 2732

A trustee who is not authorised to administer may not dispose of common property. If he does so in respect of a third party who is in good faith, he may not be held liable for the invalidity of the act.

§ 2733

If more than one trustee is appointed without further specification of their powers, each of them shall act independently in the affairs of the company.

§ 2734

The directors shall keep proper accounts and a statement of the company's assets; they shall regularly render to the members an account of the company's assets, including income and expenditure, and of any profit or loss, at least once in each calendar year, and not later than two months after the end of that year.

§ 2735

A shareholder, even if he does not exercise management, may satisfy himself as to the state of the company's affairs, examine the accounting records and other documents and be informed of the company's affairs, but in exercising this right he may neither disturb the operations of the company more than is necessary nor prevent other shareholders from exercising the same right. If the partners agree otherwise, no account shall be taken of it.

Section 4

Rights and duties of partners towards third persons

§ 2736

For debts arising from joint activities, the partners are jointly and severally liable to third parties.

§ 2737

(1) Where a partner acts in a joint matter with a third party, he is deemed to be the principal of all the partners. If the partners agree otherwise, this cannot be objected to against a third party acting in good faith.

(2) If a partner has acted on his own behalf in a joint matter with a third party, the other partners may exercise the rights arising therefrom, but the third party is only liable to the one who has legally acted with him. This does not apply if the third party knew that the partner was acting on behalf of the company.

§ 2738

(1) If a person pretends to be a partner when he is not, the real partners are jointly and severally liable to the third party for his acts if

- a) any of the partners has given rise to the third person's deception, or
 - b) the partners could have foreseen such a mistake by the exercise of due care, but none of them took steps to avoid misleading the third party.
- (2) Paragraph 1 does not apply if the third party was not acting in good faith.

Section 5

Extinction of membership

§ 2739

A member may withdraw from the company, even if the duration of the company has been agreed for a fixed period; but not at an inconvenient time or to the detriment of the other members. However, he may withdraw at any time for serious reasons, even if a period of notice has been agreed.

§ 2740

- (1) If a member breaches an obligation under the agreement in a material way, he may be expelled from the company. He may also be expelled,
- a) if insolvency proceedings have been opened on his property on his application,
 - b) if the shareholder has joined a petition for the commencement of insolvency proceedings in which his bankruptcy or threatened bankruptcy is being resolved, or
 - c) if the insolvency proceedings have been resolved in the insolvency of the shareholder.
- (2) A limitation of a partner's legal capacity is a ground for expulsion of the partner only if the condition is detrimental to the company.

§ 2741

- (1) A member whose membership has lapsed shall be entitled to be accounted for and delivered all that is due to him at the date of the lapse. His share of the property acquired during the life of the company shall be paid to him in money.
- (2) A member shall, on the dissolution of his membership, account for and discharge to the other members all that he was liable to the company.

§ 2742

The heir of a partner does not become a partner, but has the rights set out in § 2741.

§ 2743

- (1) If it has been agreed that the memorandum of association applies to the heirs, the heir enters the company in place of the testator. Heirs of heirs cannot be bound by such an arrangement.
- (2) If the heir is unable to carry on for the company the activity to which the testator has committed himself, his proportionate share may be reduced.

Section 6

Extinction of a partnership

§ 2744

A company shall be dissolved if the members agree, if the conditions agreed in the memorandum of association are fulfilled, if the period for which the company was formed expires, if the purpose for which the company was formed is achieved or if that purpose becomes impossible.

§ 2745

If a partner dies without it being agreed that the memorandum of association shall extend to his heirs, the company shall be dissolved if it had two partners. If the company has more than one partner, the other partners are deemed to wish to remain in the company.

§ 2746

- (1) If the company ceases to exist, the trustee shall file an account under § 2734 not later than two months after its dissolution.
- (2) The partners shall be given what is their property and the community property shall be distributed in accordance with the provisions for the division of community property.

Volume 14**Silent partnership****§ 2747****Basic Provisions**

- (1) By a silent partnership agreement, the silent partner agrees to contribute a share of the profits of the entrepreneur's business for the duration of the silent partnership, and the entrepreneur agrees to pay the silent partner a share of the profits.
- (2) A silent partnership may also be arranged for the silent partner to participate only in the operation of one of the entrepreneur's plants.

§ 2748

- (1) The silent partner shall deliver to the entrepreneur the subject matter of the contribution without undue delay after the formation of the silent partnership or allow the entrepreneur to dispose of it.
- (2) If an immovable property is contributed, the entrepreneur acquires the right of use and enjoyment of the property for the duration of the silent partnership. If the object of the contribution is something else, the entrepreneur shall be deemed to have acquired ownership of the object by the formation of the silent partnership.

§ 2749

- (1) The silent partner has the right to inspect the business documents and accounting records of the entrepreneur. An arrangement which limits or excludes this right shall be disregarded if the silent partner proves reasonable grounds for believing that the business documents and accounting records are not kept correctly or honestly.
- (2) The business shall deliver to the silent partner a copy of the financial statements without undue delay after they have been prepared and approved, if required; any contrary arrangement shall be disregarded.

§ 2750

- (1) Notwithstanding the silent partnership, only the entrepreneur is bound by all legal facts arising out of the business.
- (2) If the name of the silent partner is included in the name or trade name of the entrepreneur, the silent partner is liable for the debts of the entrepreneur.
- (3) If the silent partner declares to the person with whom the entrepreneur is negotiating a contract that they are both doing business together, the silent partner is liable for the debts of the entrepreneur arising from the contract.

Share of a silent partner in profits or losses**§ 2751**

- (1) A silent partner shall share in the profits or losses of the business in the amount agreed upon, otherwise in an amount determined by reference to the amount of his contribution and the established practice of the parties or by reference to custom. An arrangement whereby the silent partner does not share in the profit or loss shall be disregarded.
- (2) The amount of the silent partner's share shall be determined from the net profits. If the entrepreneur establishes a fund which he is not at liberty to dispose of, the statutory allocation to such fund shall be deducted from the net profit.

§ 2752

The profit share shall be paid by the entrepreneur within thirty days after the preparation of the accounts and their approval, if any, if required. The silent partner's contribution shall not be increased by his share of the profits which he does not withdraw.

§ 2753

(1) The silent partner shares in the loss as well as in the profit; any contrary arrangement is disregarded. The silent partner's share of the loss shall be reduced by the silent partner's contribution; the silent partner shall not be obliged to supplement the contribution by the share of the loss.

(2) If the silent partner has already been paid a share of the profits, he is not obliged to repay it on a subsequent loss.

Extinction of a silent partnership

§ 2754

(1) Unless the silent partnership has been agreed for a fixed term, it may be terminated not later than six months before the end of the financial year.

(2) A silent partnership is also dissolved,

- a) if the silent partner's share of the loss reaches the amount of his contribution, unless he pays his share of the loss or makes up the contribution,
- b) if the business to which the silent partnership relates ceases, or
- c) if the business or the silent partnership has been adjudged bankrupt, by the bankrupt's bankruptcy order being discharged, by the bankrupt's bankruptcy order being discharged because the assets are wholly insufficient, or by the dismissal of the bankruptcy petition for lack of assets.

§ 2755

An entrepreneur shall promptly after the dissolution of the silent partnership issue to the silent partner a deposit adjusted by the share of the profits of his business as at the date of dissolution of the silent partnership.

Volume 15

Obligations arising from aleatory contracts

Section 1

General Provisions

§ 2756

If, by the agreement of the parties, the benefit or disadvantage of at least one of the parties depends on an uncertain event, it is a contract of courage.

§ 2757

The change of circumstances (§ 1764 to 1766) and undue hardship (§ 1793 to 1795) provisions do not apply to bold contract obligations.

Section 2

Insurance

Subsection 1

Basic Provisions

§ 2758

(1) By an insurance contract, the insurer undertakes to the policyholder to indemnify him or a third party if an accidental event covered by the insurance (an insured event) occurs,

and the policyholder undertakes to pay the insurer a premium.

(2) Unless the insurance is for a period of less than one year, the contract requires a written form. If the policyholder has accepted the offer by timely payment of the premium, the written form of the contract shall be deemed to be preserved.

§ 2759

(1) If the offer does not specify by when it is to be accepted, acceptance is required within one month from the date of delivery of the offer to the other party; however, if the conclusion of the contract is conditional on a medical examination, acceptance is required within two months. The policyholder may also accept the insurer's offer by timely payment of the premium in the amount specified in the offer.

(2) If the reply to the offer is considered a new proposal, it is deemed to have been rejected if it is not accepted by the other party within one month from the date of delivery.

(3) If a party proposes to amend the contract, [paragraph 1](#) and [paragraph 2](#) apply mutatis mutandis.

§ 2760

Before concluding the contract, the insurer shall disclose to the prospective insured the information, the scope and manner of disclosure of which is prescribed by another law. This also applies to facts that change during the term of the insurance.

Insurable interest

§ 2761

An insurable interest is a legitimate need for protection from the consequences of an insured event.

§ 2762

(1) The policyholder has an insurable interest in his own life and health. A policyholder shall also be deemed to have an insurable interest in the life and health of another person if he or she certifies an interest conditioned by a relationship to that person, whether arising from relationship or conditioned by a benefit or advantage from the continuance of his or her life.

(2) The policyholder has an insurable interest in his own property. The policyholder shall be deemed to have an insurable interest in the property of another person if he certifies that he would be in danger of direct pecuniary loss without its existence and preservation.

(3) If the insured has consented to the insurance, the insured's insurable interest is deemed to have been proved.

§ 2763

Future insurable interest may also be insured. If the contract has been concluded with a view to future business or other future interest which does not arise, the policyholder is not obliged to pay the premium; the insurer is, however, entitled to a reasonable remuneration if this has been agreed.

§ 2764

(1) If the prospective insured had no insurable interest and the insurer knew or ought to have known this when the contract was made, the contract is void.

(2) If the policyholder knowingly insured a non-existent insurable interest, but the insurer did not know or have reason to know of it, the contract is void; however, the insurer is entitled to a consideration equal to the premium up to the time it became aware of the voidness.

§ 2765

If the insurable interest is extinguished while the insurance is in force, the insurance is also extinguished; however, the insurer is entitled to the premium up to the time it became aware of the extinguishment of the insurable interest.

§ 2766

Insured person

The person whose life, health, property or liability or other value of insurable interest is covered by the insurance is the insured.

§ 2767

Insurance of foreign value of insurable interest

(1) If the policyholder enters into a contract for his own benefit relating to the value of a third party's insurable interest, he may exercise his right to the insurance benefit if he proves that he has made the third party aware of the contents of the contract and that the third party, knowing that he will not acquire the right to the insurance benefit, agrees to accept the insurance benefit. If the insured is to be a descendant of the policyholder who is not fully competent, no special consent is required if the policyholder is himself the legal representative of the insured and the insurance is not property insurance.

(2) If the consent of the assured or his legal representative, as the case may be, is required and if the policyholder fails to show his consent within the time agreed, otherwise within three months from the date of conclusion of the contract, the insurance shall lapse on the expiry of that time. If an insured event occurs within this period without consent, the insured acquires the right to the insurance benefit; if the insured event is the death of the insured, the persons listed in § 2831 acquire this right.

(3) If the policyholder assigns the contract without the consent of the insured or his legal representative, as the case may be, the assignment of the contract shall be disregarded. This does not apply if the assignee is a person whose consent is not required to insure the insured's risk.

(4) On the date of the death of the policyholder or on the date of his dissolution without a successor in title, the insured shall enter into the insurance; but if he notifies the insurer in writing within thirty days from the date of the death of the policyholder or from the date of his dissolution that he is not interested in the continuance of the insurance, the insurance shall cease on the date of death or on the date of the dissolution of the policyholder. The effects of the default against the assured shall not take effect until the expiration of fifteen days from the date on which the assured became aware of his entry into the insurance; an arrangement for a shorter period shall not be taken into account.

§ 2768

(1) If the contract is concluded for the benefit of a third party, that party may consent to it subsequently when exercising the right to claim. The third party shall be entitled to the insurance benefit if the insured or his legal representative, as the case may be, has given his consent to the third party to accept the insurance benefit after having been informed of the contents of the contract.

(2) If the value of the insurable interest is insured for the benefit of a third party, the § 2767 mutatis mutandis.

§ 2769

Equal treatment

If the insurer uses nationality, racial or ethnic origin or any other consideration contrary to the principle of equal treatment under any other law as a consideration in determining the amount of the premium or in calculating the benefit, no increase in the premium or reduction in the benefit shall be taken into account on the basis of such

considerations. This shall also apply where pregnancy or maternity is used as a consideration in determining the amount of the premium or in calculating the insurance benefit.

§ 2770

Beneficiary

An eligible person is the person who, as a result of an insured event, becomes entitled to an insurance benefit.

§ 2771

An agreement to shorten or extend the limitation period shall not be taken into account.

§ 2772

(1) If there is no agreed period of commencement, the insurance commences on the first day following the date of conclusion of the contract.

(2) If it has been agreed that the insurance extends to a period prior to the date of conclusion of the contract, the insurer is not obliged to provide the insurance benefit if the policyholder knew or should have known and could have known at the time of the offer that the insured event had already occurred, and the insurer is not entitled to the insurance benefit if it knew or should have known at the time of the offer that the insured event could not occur.

§ 2773

(1) A legal transaction relating to insurance requires a written form unless the parties agree that no such form is required.

(2) Written form is required for notice only if agreed. If, however, the policyholder requests the insurer in writing to disclose information relevant to performance under the contract, the insurer shall disclose it to the policyholder in writing without undue delay.

§ 2774

Insurance Conditions

(1) The terms and conditions of insurance will usually define the details of the formation, duration and termination of the insurance, the insured event, exclusions from insurance and the method of determining the extent of the insurance benefit and its maturity.

(2) If the contract refers to the terms and conditions of insurance, the insurer shall acquaint the policyholder with them before the conclusion of the contract; this does not apply if the contract is concluded by means of distance selling. The provisions of § 1845 apply mutatis mutandis.

Insurance policy

§ 2775

(1) The insurer will issue the policy to the policyholder as confirmation of the policy.

(2) On loss, damage or destruction of the policy, the insurer shall issue a counterpart policy at the request and expense of the policyholder; this applies mutatis mutandis to the issue of a copy of the policy.

§ 2776

If the contract requires the production of the policy to exercise the right to claim, the insurer may require the original policy to be redeemed before issuing a second copy.

§ 2777

(1) If the policy was not in writing, the insurer shall specify in the policy at least

- a) the policy number,
 - b) the identity of the insurer and the policyholder,
 - c) designation of the beneficiary or the manner in which the beneficiary will be designated,
 - d) the insured event and the insured peril,
 - e) the amount of the premium, its maturity and whether it is a regular or single premium,
 - f) the period of insurance,
 - g) any derogations from the policy conditions; and
 - h) if, in the case of personal insurance, it has been agreed that the beneficiary will share in the insurer's proceeds, the method of determining the amount of the share.
- (2) If the contract is in writing, it shall contain the particulars specified in [paragraph 1](#) and the insurer shall specify in the policy at least
- a) the policy number,
 - b) identification of the insurer and the policyholder,
 - c) designation of the beneficiary or the manner in which the beneficiary will be designated,
 - d) the insured event and the insured peril, and
 - e) the period of insurance.
- (3) In designating persons under [paragraph 1](#) or [paragraph 2](#), their name or names, residence or registered office address and identifying information shall be given. This shall also apply if the insured is to be identified.

§ 2778

An arrangement whereby the parties depart from [§ 2775](#) or [2777](#) shall be disregarded. This applies even if the policyholder waives the right to have the policy issued.

Compulsory insurance

§ 2779

(1) Where another law imposes a duty on a person to take out a contract of insurance, the provisions of this section may be departed from in the contract only if the law permits it and the extent of the insurance provided by the other law is not thereby reduced.

(2) If another law so provides, the insurer is obliged to conclude the contract of insurance in such a way that the obligation to provide the insurance benefit arises even if the damage was caused by the intentional act of the policyholder, the insured or another person.

§ 2780

In the case of compulsory insurance, the insurer may refuse to pay the claim only if the victim or another person with the victim's knowledge was solely involved in the provision of false information, incomplete answers to questions made in writing or knowingly false or grossly misrepresented information.

§ 2781

The insurer has the right to cancel the contract or terminate the compulsory insurance only if another law allows it. This does not preclude other arrangements giving the insurer another right to sanction the policyholder or the insured for breach of their duty.

Insurance premium

§ 2782

- (1) The insurer is entitled to the premium for the duration of the policy.
- (2) If the insurance is cancelled as a result of an insured event, the insurer is entitled to the premium until the end of the insurance period in which the insured event occurred; in such a case, the insurer is entitled to a single premium in full.

§ 2783

- (1) If the time of the insurer's right to the premium is not agreed, such right shall accrue to the insurer on the date of conclusion of the contract.
- (2) A single premium is payable on the date of commencement of the insurance. If an ordinary premium is agreed, it shall be payable on the first day of the policy period; if no policy period is agreed as the period of time for which the ordinary premium is payable, the agreed policy period shall be deemed to be an annual period.
- (3) If the policyholder so requests, the insurer shall communicate to the policyholder the principles for determining the amount of the premium.

§ 2784

The insurer shall also accept premiums due and other claims payable under the policy from the policyholder's mortgagee, beneficiary or the insured.

§ 2785

- (1) Unless conditions are stipulated in the contract, upon the fulfilment of which the insurer has the right to readjust the amount of the current premium for the next policy period, the amount of the premium cannot be changed without the agreement of the policyholder.
- (2) If the insurer reserves the right to vary the amount of the premium for any reason other than a change in the conditions relevant to the determination of the amount of the premium, or if, in the case of insurance of persons, the insurer reserves the right to vary the amount of the premium according to age or state of health, no account shall be taken of this.

§ 2786

- (1) If the insurer modifies the amount of the premium, it shall notify the policyholder of the modification at least two months before the premium due date for the policy period in which the amount of the premium is to be modified, and shall at the same time notify the policyholder of the possibility to refuse the modification and to terminate the commitment for that reason.
- (2) If the policyholder does not agree to the change, he may express his disagreement within one month of the date on which he became aware of it; in that case, the insurance shall lapse on the expiry of the policy period for which the premium was paid. If, however, the insurer has not warned the policyholder of this consequence in the communication referred to in [paragraph 1](#), the insurance shall continue and the amount of the premium shall not change if the policyholder does not consent.

§ 2787

The insurer shall have the right to deduct from the insurance benefit any premium or other claims due under the policy. This does not apply if the obligation to provide the insurance benefit arises from compulsory insurance; contrary arrangements are disregarded.

§ 2788**Duty to provide true information**

- (1) If an insurer asks a prospective insured in writing, in negotiating a contract, or a policyholder in negotiating a change to a contract, about facts relevant to the insurer's decision as to how to assess the insured risk, whether to insure it and on what terms,

the prospective insured or policyholder shall answer those questions truthfully and fully. The obligation shall be deemed to have been duly fulfilled if nothing material has been concealed in the answer.

(2) What is stated in [paragraph 1](#) about the duty of the insurer applies *mutatis mutandis* to the insured.

§ 2789

(1) If the insurer must be aware of discrepancies between the insurance offered and the applicant's requirements when the contract is concluded, it shall draw them to the applicant's attention. In doing so, account shall be taken of the circumstances and the manner in which the contract is concluded, as well as whether the other party is assisted in concluding the contract by an intermediary independent of the insurer.

(2) If, in negotiating the conclusion of the contract, the prospective purchaser or the policyholder, in negotiating a variation of the contract, asks the insurer in writing about facts relating to the insurance, the insurer shall answer those questions truthfully and fully.

Change of insurance risk

§ 2790

(1) If circumstances which were stated in the contract or which the insurer has inquired about ([§ 2788](#)) change so materially as to increase the likelihood of an insured event arising from an expressly agreed peril of insurance, the insured risk will increase.

(2) The policyholder shall not do anything which increases the insured risk without the insurer's consent, nor shall he allow a third party to do so; if he discovers only afterwards that he has allowed the insured risk to increase without the insurer's consent, he shall notify the insurer without undue delay. If the insured risk increases independently of the policyholder's will, the policyholder shall notify the insurer without undue delay after becoming aware of it.

(3) Where the insured interest is of an extraneous value, the obligations set out in [paragraph 2](#) the insured.

§ 2791

(1) If the insurer proves that it would have entered into the contract on different terms if the insured risk had existed to an increased extent when the contract was entered into, it has the right to propose a new premium. If he fails to do so within one month of the date on which the change is notified to him, his right shall lapse.

(2) If the proposal is not accepted or the newly determined premium is not paid within the agreed period, otherwise within one month from the date of receipt of the proposal, the insurer shall have the right to terminate the insurance by giving eight days' notice; however, the insurer shall not have this right if it has not already warned of the possibility of termination in the proposal. If the insurer does not terminate the insurance within two months of the date on which it receives the disagreement with the proposal or the time limit referred to in [paragraph 1](#) has expired, its right to terminate the insurance shall lapse.

§ 2792

If the insurer proves that, in view of the conditions in force at the time the contract was concluded, it would not have concluded the contract if the insured risk had already existed to an increased extent when the contract was concluded, it shall have the right to terminate the insurance by giving eight days' notice. If the insurer fails to terminate the insurance within one month of the date on which the change was notified to him, his right to terminate the insurance shall lapse.

§ 2793

(1) If the policyholder or the insured breaches the obligation to notify an increase in the insured risk, the insurer has the right to terminate the insurance without notice. If the

insurer terminates the insurance, the premium shall be payable until the end of the insurance period in which the insurance ceased; the single premium shall in this case be payable in full to the insurer. If the insurer does not terminate the insurance within two months of the date on which it becomes aware of the increase in the insured risk, its right to terminate the insurance shall lapse.

(2) If the policyholder or the insured breaches the obligation to give notice of an increase in the insured risk and an insured event occurs after the change, the insurer has the right to reduce the insurance benefit in proportion to the ratio of the premium it has received to the premium it would have received if it had known of the increase in the insured risk from the notice in time.

§ 2794

If the insured risk materially decreases during the policy period, the insurer is obliged to reduce the premium in proportion to the decrease in the insured risk with effect from the date on which it became aware of the decrease.

§ 2795

(1) The provisions on the increase of the insured risk do not apply if the increase of the risk is due to the avoidance or reduction of a higher loss, or as a result of an insured event, or as a result of an act of humanity.

(2) The provisions on change of insured risk do not apply to insurance of persons against sickness. For personal accident insurance, the provisions on change of insured risk shall not apply if the insured risk changes during the period of insurance; if this change has not been reflected in the calculation of the premium, a notification obligation to the insurer arises if the policyholder or the insured has been notified of it.

Investigating an insured event

§ 2796

(1) If an event occurs to which the person who considers himself to be the beneficiary attaches a claim for insurance benefits, he shall notify the insurer without undue delay, give him a truthful explanation of the occurrence and extent of the consequences of such event, of the rights of third parties and of any multiple insurance; he shall at the same time submit the necessary documents to the insurer and proceed in the manner agreed in the contract. If he is not at the same time the policyholder or the insured, the policyholder and the insured shall also have these obligations.

(2) The same notice may be given by any person who has a legal interest in the policy.

§ 2797

(1) The insurer shall, without undue delay after notification under § 2796 the investigation necessary to determine the existence and extent of its obligation to perform. The investigation shall be completed by communicating its results to the person who has asserted the right to the insurance benefit; the insurer shall give the person a textual explanation of the amount of the insurance benefit or, where appropriate, the reason for refusing it.

(2) If the notification contains knowingly false or grossly misrepresented material information concerning the extent of the notified event, or if it knowingly omits information concerning the event, the insurer shall be entitled to reimbursement of the costs reasonably incurred in investigating the facts about which such information was communicated or omitted. The insurer shall be deemed to have reasonably incurred the costs to the extent proved.

(3) If the policyholder, the insured or any other person claiming a right to a claim incurs the cost of an investigation or an increase thereof by breach of duty, the insurer shall be entitled to reasonable compensation against him.

§ 2798

(1) If no maturity is agreed, the claim is payable within fifteen days of the date of completion of the investigation.

(2) If the investigations necessary to establish the insured event, the scope of the insurance benefit or to establish the person entitled to receive the insurance benefit cannot be completed within three months from the date of notification, the insurer shall inform the notifier in text form why the investigation cannot be completed. The insurer shall, at the request of the person claiming the right to the insurance benefit, provide the person claiming the insurance benefit with a reasonable advance on the insurance benefit; this shall not apply if there is a reasonable ground for refusing to provide the advance.

(3) If the insurer has breached the obligation under [paragraph 2](#) for reasons attributable to it, it is in default; any contrary arrangement shall not be taken into account.

§ 2799

If the insured event is intentionally caused either by the person claiming the right to the insurance benefit or by a third party at his instigation, the right to the insurance benefit arises only if this has been expressly agreed or if this or another law so provides.

§ 2800

Consequences of breach of duty

(1) If, as a result of a breach of duty by the policyholder or the insured in negotiating the contract or a variation of it, a lower premium has been agreed, the insurer has the right to reduce the insurance benefit by an amount equal to the ratio of the premium it received to the premium it should have received.

(2) If the breach of the duty of the policyholder, the insured or the beneficiary had a material effect on the occurrence of the insured event, on its course, on the magnification of the extent of its consequences, or on the determination or determination of the amount of the insurance benefit, the insurer shall have the right to reduce the insurance benefit in proportion to the effect that the breach had on the extent of the insurer's obligation to perform.

§ 2801

Suspension of insurance

(1) Insurance shall be discontinued if the premium has not been paid; the period of discontinuance shall commence on the expiration of two months from the date the premium is due until it is paid.

(2) If the insurance is interrupted during the period of insurance, the obligation to pay premiums does not continue during the interruption and there is no right to benefit from events that occurred at the time of the interruption and would otherwise be insured events. The period of interruption of insurance shall only count towards the period of insurance if expressly agreed.

(3) If there are statutory reasons for the continuation of compulsory insurance, compulsory insurance cannot be interrupted. Life insurance can only be interrupted if this has been agreed.

Extinction of insurance

§ 2802

The validity of a termination of insurance agreement requires that the parties stipulate in the agreement how they will settle. If no agreement is made as to the time of termination of the insurance, the insurance is deemed to have terminated on the date the agreement became effective.

§ 2803

(1) Insurance terminates upon expiration of the policy period.

(2) If the insurance has been agreed for a fixed period, it may be agreed that the insurance will not lapse on the expiry of that period unless the insurer or the policyholder notifies the other party at least six weeks before the expiry of the period of insurance that it is not interested in the continuation of the insurance. If the insurance does not lapse and the terms and period of extension are not agreed, the insurance shall be extended on the same terms for the same period for which it was agreed.

§ 2804

If the insurer reminds the policyholder to pay the premium and instructs him in the reminder that the insurance will lapse if the premium is not paid even within an additional period, which must be fixed at least one month from the date of service of the reminder, the insurance will lapse in vain on the expiry of that period.

§ 2805

The insurer or policyholder may cancel the insurance

- a) upon eight days' notice within two months of the date of the contract, or
- b) with one month's notice within three months from the date of notification of the occurrence of the insured event; however, if the insurer terminates the life insurance policy, this shall not be taken into account.

§ 2806

The policyholder may cancel the insurance by giving eight days' notice

- a) within two months of learning that the insurer has used a consideration prohibited in § 2769 in determining the amount of the premium or in calculating the benefit,
- b) within one month after the date on which it receives notice of the transfer of the policy or any part thereof or of the conversion of the insurer, or
- c) within one month of the date on which notice is published that the insurer's authorisation to carry on the business of insurance has been revoked.

§ 2807

If the insurance is taken out at the normal premium, the insurance shall lapse on notice given by the insurer or the policyholder at the end of the policy period; but if notice is given to the other party later than six weeks before the day on which the policy period expires, the insurance shall lapse at the end of the following policy period. If the insurer terminates the life insurance, the notice shall not be taken into account.

§ 2808

(1) If the policyholder or the insured has wilfully or negligently breached an obligation set out in § 2788, the insurer shall have the right to cancel the contract if it proves that it would not have concluded the contract after answering the questions truthfully and fully. The policyholder shall have the right to cancel the contract if the insurer has breached the obligation laid down in § 2789. The right of withdrawal lapses if the party does not exercise it within two months from the date on which he discovered or should have discovered the breach of the obligation laid down in § 2788 or in § 2789.

(2) If the policyholder withdraws from the contract, the insurer shall, within one month of the date on which the withdrawal takes effect, refund to him the premium paid, less what, if any, he has already paid under the insurance; if the insurer has withdrawn from the contract, he shall also be entitled to set off against the costs of the formation and administration of the insurance. If the insurer withdraws from the contract and the policyholder, the insured or any other person entitled has already received the insurance benefit, he shall, within the same period, reimburse the insurer for that part of the insurance benefit which exceeds the premium paid.

(3) Where the contract has been concluded by means of distance selling, the policyholder shall have the right to cancel the contract without giving any reason within a period of fourteen days from the date of conclusion of the contract or from the date on which the terms and conditions of insurance are communicated to him if such communication is made at his request after the conclusion of the contract. In the case of insurance falling within the life insurance sector under another law, the policyholder shall be entitled to withdraw from the contract within thirty days of the date on which he receives notification of the conclusion of the distance contract or of the date on which he is informed of the terms and conditions of the policy, provided that such notification is made at his request after the conclusion of the contract; this shall apply even if the contract was concluded otherwise than by distance contract.

(4) Paragraph 3 shall not apply to contracts covered by insurance to assist persons in distress while travelling or staying away from their place of residence, including insurance for financial losses immediately related to travel, if those contracts were concluded for a period of less than one month.

(5) If the policyholder cancels the contract under paragraph 3, the insurer shall refund the premium paid without undue delay, but not later than thirty days after the date on which the cancellation takes effect; in doing so, the insurer shall be entitled to deduct what it has already paid under the insurance. However, if the insurance benefit has been paid in excess of the premium paid, the policyholder, or the insured or the defendant, as the case may be, shall reimburse the insurer the amount of the insurance benefit paid in excess of the premium paid.

§ 2809

The insurer may refuse to pay the claim if the cause of the insured event was a fact,

- a) of which it became aware after the occurrence of the insured event,
- b) which he or she could not have discovered at the time of taking out the insurance or changing it as a result of a culpable breach of the duty set out in § 2788 and
- c) if, knowing that fact at the time of entering into the contract, he would not have entered into it or would have entered into it on different terms.

§ 2810

Insurance shall cease on the termination of the insurable interest, on the termination of the peril insured, on the date of death of the insured person, on the date of dissolution of the insured legal entity without legal successor, or on the date of refusal of the insurance benefit.

Subsection 2

Insurance against loss and damage

§ 2811

Scope

In the case of claims-made insurance, the insurer shall provide a benefit that compensates, to the extent agreed, for the loss of property resulting from an insured event.

§ 2812

Change in the ownership of the insured property

Unless it has been expressly agreed that the insurance shall not be terminated by a change of ownership or co-ownership of the insured property, the insurance shall terminate on the date of notification of such change to the insurer. Provisions § 2765 shall not apply in such a case.

Insurance indemnity threshold

§ 2813

If a limit of indemnity has been agreed, it is deemed to apply to a single claim.

§ 2814

(1) Where it is agreed that the claim shall be limited by an upper limit, that limit shall be determined by the sum insured or the limit of indemnity.

(2) Where, in the case of insurance of property, the insurable value of the property can be determined at the time of conclusion of the contract, the upper limit of the benefit shall, at the proposal of the policyholder, be determined by an amount of insurance corresponding to the insurable value of the insured property at the time of conclusion of the contract. The insurer shall have the right to review the value of the insured property at the conclusion of the contract.

(3) If, in the case of property insurance, the insurable value of the property cannot be determined at the time of conclusion of the contract, the upper limit of the insurance benefit shall be determined at the proposal of the policyholder by the limit of the insurance benefit. This limit shall be agreed even if the insurance covers only a part of the value of the insured property under [paragraph 2](#) (fractional insurance). If the insurable interest corresponds to this, the upper limit of indemnity may also be determined in this way for insurance under [paragraph 2](#)

§ 2815

If it is expressly agreed in the contract that the person entitled to the benefit shall be charged with a loss of property not exceeding the agreed limit, or that he shall be charged with a certain proportion of the loss of property, the insurer shall not be obliged to provide a benefit to the extent of the excess so agreed.

§ 2816

Insurance with multiple insurers

If the same insurable interest is insured against the same peril and for the same period of time with several insurers, plural insurance arises. Plural insurance may arise as

- a)** coinsurance where the contract is between the policyholder and several insurers represented by a leading insurer and the policyholder has undertaken to pay a single premium,
- b)** concurrent insurance where the aggregate of the sums insured does not exceed the insured value of the property insured or where the aggregate of the limits of indemnity does not exceed the actual amount of loss incurred, or
- c)** multiple insurance, if the aggregate of the sums insured exceeds the insured value of the property insured or if the aggregate of the limits of indemnity exceeds the actual amount of loss incurred.

§ 2817

Coinsurance

(1) Where co-insurance is agreed, the lead insurer designated in the contract shall determine the terms and conditions of insurance and the amount of the premium, administer the co-insurance, receive notifications of claims and conduct the investigations necessary to determine the extent of the insurers' obligation to provide benefits; to that extent, it shall act on behalf of the other insurers. Unless the method of receipt of premiums is agreed, the lead insurer shall also receive the premiums.

(2) In the context of co-insurance, a contract may also be concluded between the policyholder and several insurers who have agreed on a common procedure for the insurance of certain insured perils, in the name and on behalf of all the insurers, and have appointed a lead insurer, or have entrusted the performance of its duties to a joint body set up for that purpose, or to an insurance intermediary.

(3) The right to the insurance benefit shall be exercised against the lead insurer. The insurers shall settle among themselves according to their respective shares; if the shares have not been agreed, they shall be deemed to be equal.

(4) On the liquidation of the insurer, its obligations under the co-insurance shall be discharged in the same manner as its obligations under other insurances arranged by that insurer.

(5) Arrangements which deviate from [paragraphs 1 to 4](#) shall not be disregarded, even if any of the insurers participates in the co-insurance through a business network established at the insurer's registered office or through a branch of the insurer, which are situated in the territory of a Member State of the European Union or a Member State of the Agreement on the European Economic Area other than the State of the insurer's head office, or where the insured risk is situated in one of those States or in the Czech Republic. This does not apply in the case of insurance of large risks under any other law regulating the insurance sector.

§ 2818

Multiple Insurance

(1) If multiple insurance arises, the policyholder shall notify each insurer without undue delay and shall specify in the notice the other insurers and the sums insured or limits of indemnity agreed in the other policies.

(2) The insurer to whom the insured event is first notified shall provide a benefit up to the sum insured or the limit of indemnity agreed in the contract by which it is bound and shall notify the other insurers to which it has become aware without undue delay. This shall be without prejudice to the right of the person entitled to claim the insurance benefit up to the amount of the loss of property from the other insurers if the sum insured or the limit of indemnity agreed in the contract with the first insurer is not sufficient to compensate for the entire loss of property resulting from the insured event.

(3) The insurers shall settle in the proportion in which the sums insured or the limits of indemnity agreed in the contracts by which they are bound bear to each other, taking into account the indemnity provided under [paragraph 2](#) of the second sentence.

(4) Where an insured event has occurred, any subsequent lapse or subsequent change in any of the multiple insurances shall be disregarded for the purposes of the settlement of insurers under paragraph 3.

§ 2819

Salvage costs

(1) If the policyholder has reasonably incurred costs in averting an imminent insured event to mitigate the consequences of an insured event that has already occurred, or because he has fulfilled a duty to remove damaged insured property or its remains for hygienic, environmental or safety reasons, he is entitled against the insurer to reimbursement of those costs, as well as to compensation for any loss suffered in connection with that activity.

(2) No account shall be taken of any arrangement by which the insurer has reserved the right in relation to compensation under [paragraph 1](#)

a) to reduce by them the sum insured or the limit of indemnity,

b) to limit them to less than 30 % of the sum insured or limit of indemnity if it is for the saving of life or limb of persons, or

c) limit them if the policyholder has incurred rescue expenses with the consent of the insurer when he was not otherwise obliged to do so.

(3) If the insured or another person has incurred salvage expenses in excess of the obligations imposed by another statute, he has the same right of recovery against the insurer as the policyholder.

§ 2820

Passage of a right to the insurer

(1) Where, in connection with an insured event that is threatened or has occurred, a person who is entitled to an insurance benefit, the insured or a person who has incurred salvage expenses has a right of indemnity or other similar right against another, that claim, including its accessories, reinsurance and other rights connected with it, shall pass to the insurer at the moment of payment of the insurance benefit, up to the amount of the benefit paid by the insurer to the person entitled. This does not apply if such a right has arisen against the person who lives in the same household as the insured person or is dependent on the insured person for maintenance, unless the insured person has caused the insured event intentionally.

(2) The person whose right has passed to the insurer shall give the insurer the necessary documents and tell the insurer all that is necessary to establish the claim. If he or she frustrates the transfer of the right to the insurer, the insurer shall have the right to reduce the insurance benefit by the amount he or she could otherwise have received. If the insurer has already provided the benefit, it shall be entitled to reimbursement up to the amount of that benefit.

Subsection 3

Fixed-amount insurance

§ 2821

Carrier insurance obliges the insurer to provide a single or repeated insurance benefit in the event of an insured event to the agreed extent. The basis for determining the amount of the premium and for calculating the benefit is the amount determined on the policyholder's proposal to be paid by the insurer in the event of an insured event, or the amount and frequency of payment of the pension.

§ 2822

The right to receive benefits under a liability insurance policy is without prejudice to the right to recover damages or any other right against one who is liable to make good the loss.

§ 2823

When a right arises under an endowment insurance to a reduction in the period of insurance, to a surrender charge, and to reinstatement of insurance after a reduction in the sum insured, after a reduction in the annual income, or after a reduction in the period of insurance, shall be provided for in the contract, unless such right is created directly by this Act.

Subsection 4

General provisions on personal insurance

§ 2824

(1) A person may be insured under a personal insurance policy against death, against reaching a certain age or a date specified in the contract as the end of the insurance, against sickness, accident or other event relating to the health or change in the personal status of the insured person.

(2) Personal insurance gives the person specified in the contract the right to payment of the agreed sum or pension or the right to a benefit of a specified amount if an insured event occurs under [paragraph 1](#).

§ 2825

If insurance has been arranged for incapacity for work and the contract does not clearly state the nature and extent of the incapacity to which the insurance applies, insurance for

the incapacity of the insured to carry on his usual occupation shall be deemed to have been arranged.

§ 2826

(1) Where the policyholder enters into a contract for the benefit of a defendant, the consent of the insured is required to enter into the contract. If the assured is to be a descendant of the policyholder who is not fully competent, no special consent is required if the policyholder is himself the legal representative of the assured.

(2) If the consent of the assured or, where applicable, his legal representative is required and if the policyholder fails to prove his consent within the time agreed, otherwise within three months of the date of conclusion of the contract, the insurance shall lapse on the expiry of that time. If an insured event occurs within this period without consent, the insured acquires the right to the insurance benefit; if the insured event is the death of the insured, the persons listed in § 2831 acquire this right.

(3) Consent under paragraph 1 is also required for a change of defendant, for a change of shares in the policy if more than one defendant has been designated, and for the payment of the surrender charge; if consent is not given, it is disregarded.

§ 2827

Group Insurance

(1) If the insurance covers members of a group, or their families and dependants where applicable, the contract need not contain the names of the insured if the insured can be identified without doubt at least at the time of the insured event.

(2) Consent of the insureds under § 2826 is not required. This applies mutatis mutandis if the policyholder assigns the policy.

(3) A breach of the duty to truthfully and fully answer the insurer's questions affects only the insurance of those persons affected by the breach of that duty in a group policy.

§ 2828

(1) If there are reasons for doing so relating to the determination of the amount of the risk insured, the amount of the premium or the investigation of the claim, the insurer may require information about the health and the determination of the health or cause of death of the insured, provided that the insurer has been given the consent of the insured. The investigation shall also be carried out on the basis of reports and medical records requested by the person operating the medical establishment, who has been authorised by the insurer, from the attending physicians and, if necessary, by an examination or examination carried out by the medical establishment.

(2) If it has been agreed that the policyholder is exempt from the obligation to pay premiums, the insurer may request information about the policyholder's state of health and, with the policyholder's consent, examine the policyholder's state of health in the manner set out in paragraph 1.

§ 2829

If the insured's death is the insured's insured event, the policyholder may determine who the insured is by name or relationship to the insured. Until the insured event occurs, the policyholder may change the obligee; the change is effective on the date of delivery of the notice to the insurer.

§ 2830

(1) If the insurer has designated the spouse as the defendant and it has been agreed that the designation is irrevocable, its effects cease on the dissolution of the marriage or on the annulment of the marriage.

(2) If the policyholder has designated an ancestor or descendant as the obligee, and it has been agreed that the designation is irrevocable, its effect ceases on the adoption of the obligee or the policyholder. This also applies if the policyholder's adopted child or

adoptive parent has been irrevocably designated as the ascendant and the adoption has been revoked.

§ 2831

(1) If at the time of the insured event the survivor has not been designated or the survivor has not acquired a right to the policy benefits, the insured's spouse, and if there is no spouse, the insured's children, acquire that right.

(2) If there is no person specified in [paragraph 1](#), the insured's parents and, if there is no such person, the insured's heirs acquire the right to the benefit. The provisions on the protection of the heir entitled thereto are not affected.

(3) Where more than one person has a right to the benefit, their shares shall be deemed to be equal.

§ 2832

(1) The insured acquires the right to the insurance benefit on the occurrence of the insured event. Until the assured acquires this right, the policyholder may freely dispose of the rights under the insurance, in particular to pledge or assign them, as well as to change the designation of the assured's person. However, in the case of pension insurance, the consent of the insurer is required to change the defendant, otherwise the insurer is not bound by the change.

(2) If the insured is a person other than the policyholder, the consent of the insured is required for legal actions under [paragraph 1](#), otherwise they are not taken into account.

Subsection 5

Life Insurance

§ 2833

Life insurance for death, for reaching a certain age or a date fixed by contract as the end of the insurance, or for any other event relating to a change in a person's personal status may be arranged only as endowment insurance.

§ 2834

(1) If the insurer has incorrectly determined the premium, the period of insurance, the period of payment of the premium or the sum insured because the policyholder has incorrectly stated the date of birth or the sex of the insured, the insurer has the right to reduce the policy benefit in proportion to the amount of the premium that was paid to the amount of the premium that would have been paid if the policyholder had correctly stated the date of birth or the sex of the insured.

(2) If, as a result of incorrect information given under [paragraph 1](#), a higher premium has been paid, the insurer shall adjust the amount of the premium from the policy period following the policy period in which the correct information came to its attention. The premiums paid for subsequent insurance periods shall be reduced by the overpayment of premiums; if the premiums were single premiums, the insurer shall refund the overpayment to the policyholder without undue delay.

§ 2835

If an incorrect date of birth of the insured has been given, the insurer shall have the right to cancel the contract if it proves that it would not have concluded the contract in view of the insurance conditions in force at the time of conclusion of the contract. If the insurer does not exercise the right to cancel the contract during the lifetime of the insured and within three years of the date of conclusion of the contract, but not later than two months after becoming aware of the incorrect information, his right shall be extinguished.

§ 2836

If both the insured and the survivor die at the same time or under circumstances which prevent the determination of which of them died first, the insured shall be deemed to have survived the survivor for insurance purposes. If, however, the insured died without

the right to the benefit having vested in the persons named in § 2829 and 2830, it shall be deemed for these purposes to have been established that the survivor survived the insured.

§ 2837

Exclusion from Insurance

The insurer is not obligated to provide benefits in the event of the insured's suicide if the insurance has been in force continuously for less than two years preceding the suicide.

Reduction of sum insured, reduction of annual income and reduction of period of insurance

§ 2838

(1) Where an ordinary premium has been paid for an insurance for a period specified in the contract and, after the expiry of that period, no further ordinary premium has been paid within a specified period, such insurance shall be converted into an insurance with a reduced sum insured (reduction of the sum insured) or into a reduced annual pension, without any obligation to pay ordinary premiums.

(2) If the reduced sum insured or the reduced annual pension is less than the limit agreed in the contract, the period of insurance shall be reduced.

§ 2839

A reduction in the sum insured, reduction in the annual pension or reduction in the period of insurance occurs on the first day after the expiry of the period at the end of which the insurance would otherwise lapse for non-payment of premiums.

§ 2840

The policyholder may only claim an increase in the reduced sum assured or the amount of the annual pension back to the original amount if this has been expressly agreed. The same applies to the extension of the reduced period of insurance to its original length.

§ 2841

If death benefit insurance has been arranged for a specified period of time at the normal premium, failure to pay the premium does not give rise to a right to a reduction in the sum insured, a reduction in the annual income or a reduction in the period of insurance, and the insurance will lapse for non-payment of premium.

Surrender value

§ 2842

(1) Where, in a life insurance policy arranged with a regular premium, premiums have been paid for at least two years, or where the policy is a single premium policy arranged for a period of more than one year, or where the policy is a reduced sum assured, the policyholder has the right, unless the contract so excludes, to have the insurer pay him a surrender charge on his request. The surrender premium shall be payable within three months of the date of receipt of the request for payment by the insurer; the insurance shall be cancelled on payment of the surrender premium.

(2) If at any time during the period of insurance the policyholder requests the insurer to tell him how much the amount of the ransom would be, the insurer shall tell him within one month of the date of receipt of the request, including the calculation of the ransom.

§ 2843

In the case of a death benefit insurance agreed for a specified period of time, the right to the surrender value arises only if it has been expressly agreed. The same applies in the case of insurance from which a pension is paid if the pension has already been paid.

Subsection 6

Accident insurance

§ 2844

Under accident insurance, the insurer will provide a benefit in the amount agreed in the contract if the insured is injured.

§ 2845

The insurer has the right to refuse to provide the benefit if the injury to the insured occurred in connection with an act for which the insured was found guilty of an intentional crime or by which he intentionally injured himself.

§ 2846

(1) The insurer has the right to reduce the insurance benefit by up to one half if the injury was caused by the victim's consumption of alcohol or ingestion of an addictive substance or a preparation containing such a substance, if the circumstances in which the injury occurred so warrant. However, if such an accident has resulted in the death of the injured person, the insurer shall have the right to reduce the insurance benefit only if the injury occurred in connection with an act of the injured person causing serious bodily injury or death to another.

(2) The insurer does not have the right under [paragraph 1](#) if the insured contained alcohol or an addictive substance in a drug that the insured took in a manner prescribed by a physician and the insured was not advised by the physician or the manufacturer of the drug that the insured could not engage in the activity that caused the injury while the drug was in effect.

Subsection 7

Sickness insurance

§ 2847

In sickness insurance, the insurer pays the costs or an agreed amount for medical care incurred on behalf of the insured to the beneficiary to the extent agreed, as a result of illness or accident and acts related to the insured's medical condition, including but not limited to illness, accident, pregnancy and preventive or dispensary care, or other facts related to the insured's medical condition.

§ 2848

If a waiting period has been agreed, it may be set at a maximum of three months, up to eight months in the case of childbirth, psychotherapy, dental and orthopaedic replacements, and up to three years from the date of commencement of insurance for nursing care.

Subsection 8

Property Insurance

§ 2849

Unless an insurable value is agreed in the insurance of property, the insurable value is the normal price which the property has at the time at which its value is determined.

§ 2850

(1) If a bulk item is insured, the insurance applies to all items belonging to the bulk item at the time of the insured event. The provisions relating to the sum insured or limit of indemnity, the insured value, underinsurance and overinsurance apply to the whole of the mass item. If the insurance covers several collective items, the sum insured or the limit of indemnity shall be determined separately for each set.

(2) Where a bundle of items is insured, [paragraph 1](#) shall apply *mutatis mutandis*.

§ 2851

(1) If the property has been damaged or destroyed by the insured event, the beneficiary shall refrain from repairing the damaged property or removing the remains of the destroyed property until the insurer consents. If a period of time has been agreed by which the insurer is to express its opinion, this obligation shall cease at the latest on the expiry of that period; if no such period has been agreed, this obligation shall cease if the insurer fails to express its opinion within a period of time reasonable in the circumstances of the case.

(2) Paragraph 1 does not apply if it is necessary to start repairing the property or removing its remains earlier for safety, health or environmental reasons or for any other compelling reason.

§ 2852

(1) If, after the occurrence of the event giving rise to the claim, the policyholder or other person entitled to the benefit discovers that the property to which the event relates has been found lost or stolen, he shall notify the insurer without undue delay. However, the property shall not be deemed to have been found if

- a) possession of it has been lost and either cannot be regained at all or can be regained only with unreasonable difficulty or expense, or
- b) the thing has been damaged to such an extent that it has ceased to exist as such or can be repaired only with unreasonable expense.

(2) If, after the occurrence of the insured event, the insurer has provided an insurance benefit, title to the insured property does not pass to the insurer, but the insurer is entitled to recover what it has provided in the insurance benefit. The person entitled may, however, deduct the costs reasonably incurred in remedying defects arising at the time when he was deprived of the use of the property.

§ 2853

Over-insurance

(1) If the sum insured exceeds the insured value of the insured property, both the insurer and the policyholder have the right to propose to the other party that the sum insured be reduced while reducing the premium for the next policy period following the change proportionately. If the party does not accept the proposal within one month of the date on which it is received, the insurance shall lapse.

(2) If the sum insured exceeds the insurable value of the property insured and a single premium has been agreed, the insurer shall have the right to claim a reduction in the sum insured on condition that the premium is also reduced proportionately, and the policyholder shall have the right to claim a reduction in the premium on condition that the sum insured is also reduced proportionately.

§ 2854

Under-insurance

If the sum insured at the time of the insured event is less than the insured value of the insured property, the amount corresponding to the amount of the loss, reduced in the proportion in which the sum insured bears to the insured value of the insured property at the time of the insured event, shall be used to determine the amount of the insurance benefit; this shall not apply if the parties agree that the insurance benefit shall not be reduced.

§ 2855

Special Provisions

If insurance is arranged for human tissues or organs intended for transplantation under another law, or for human blood or its components taken for the purpose of producing blood derivatives and for use in humans under another law, the provisions of § 2849 to

2854 shall apply mutatis mutandis. This also applies if, after the death of a person, his body or a separate part thereof is insured.

Subsection 9

Legal expenses insurance

§ 2856

(1) By a contract of legal expenses insurance, the insurer undertakes to cover, to the extent agreed, the costs of the insured of exercising his right and to provide services in connection therewith.

(2) If legal expenses insurance has been agreed in a contract concluded for several insured perils (combined insurance contract), the arrangement is valid if it is specified in a special part of the contract, where the content and scope of legal expenses insurance, as well as the amount of the legal expenses insurance premium, are agreed.

(3) Legal expenses insurance may only be arranged as claims-made insurance.

§ 2857

Arrangements restricting the insured's freedom to choose an agent shall be disregarded.

§ 2858

The insurer shall ensure that

- a) none of its employees whom it has appointed to handle legal expenses insurance or to provide legal advice in that class of insurance is simultaneously carrying on similar activities in another class of insurance operated by the insurer which has entered into the legal expenses insurance contract; this shall also apply where that similar activity is carried on in another insurance sector by another non-life insurer which is a controlled or controlling person in relation to the insurer which has concluded the legal expenses insurance contract,
- b) the handling of the rights under the insurance was carried out by a person independent of the insurer and named in the contract, or
- c) the beneficiary had, at the time the right to the insurance benefit arose, the opportunity to choose a representative to protect his or her interests.

§ 2859

(1) The insurer is obliged to enter into an arbitration agreement with the policyholder to resolve disputes arising out of the legal expenses insurance, if the policyholder so requests. The right to request an arbitration agreement must be notified to the policyholder in the insurance contract.

(2) If a conflict of interest or disagreement arises between the insurer and the policyholder in the settlement of a matter in dispute, the insurer shall be obliged to advise the policyholder of his or her right under [paragraph 1](#) and the possibility of arbitration.

§ 2860

The provisions of [§ 2857 to 2859](#) shall not apply when

- a) legal protection insurance relating to the operation of marine vessels or insured perils arising in connection with such operation,
- b) the representation of the insured, where such activity is at the same time carried on in the insurer's own interest under liability insurance, and
- c) legal expenses insurance provided by the insurer as an addition to insurance to assist persons who become distressed while travelling or staying away from their place of residence.

Subsection 10

Third-party liability insurance

§ 2861

(1) Under liability insurance, the insured has the right to have the insurer indemnify the injured party in the event of an insured event against loss or other damage to the extent and in the amount specified by law or contract, if the obligation to indemnify the insured has arisen.

(2) The injured party shall have the right to claim against the insurer only if this has been agreed or if another law so provides.

(3) Insurance may only be arranged as a claims-made insurance.

§ 2862

(1) Without undue delay, the insured shall notify the insurer of the occurrence of the loss or damage, the fact that the injured party has asserted a right to compensation against him, and shall comment on his obligation to compensate for the loss or damage, if any, the compensation claimed and the amount thereof.

(2) The insured shall also notify the insurer without undue delay that proceedings have been instituted against him before a public authority or arbitration proceedings in connection with the damage event; he shall also inform the insurer who his legal representative is and inform the insurer of the course and results of the proceedings. In the compensation proceedings, the insured shall proceed in accordance with the insurer's instructions; the costs of the proceedings shall be borne by the insurer.

§ 2863

The insurer has the right to handle the claim on behalf of the insured as soon as it has been notified. The insurer has the right to require from the injured party the particulars set out in [§ 2777\(3\)](#)

§ 2864

The insurer shall have the right to ascertain information about the injured party's health or cause of death during the investigation of a claim if the injured party or other authorised person gives consent; [§ 2828](#) shall apply mutatis mutandis.

§ 2865

(1) If no limit of indemnity has been agreed, the insurer shall pay the full amount of the loss or other damage to the injured party. If the insured has compensated the insurer for the loss or damage covered by the insurance, he shall be entitled to compensation against the insurer up to the amount to which the insurer would otherwise have been obliged to pay the injured party.

(2) Where the insurer agrees with the injured party to provide him, in respect of rights of a recurring nature, such as in particular the right to compensation for loss of earnings or for the costs of maintenance of survivors, with a lump sum indemnity in an amount determined by actuarial methods, the lump sum payment shall be in respect of all such rights already accrued and future rights. The consent of the insured is required for such an arrangement. If the insured is unable to give such consent, such consent is not required.

§ 2866

(1) If the insured has caused the loss or damage under the influence of alcohol or the use of an addictive substance or a preparation containing such a substance, the insurer shall be entitled to recover against him what he has paid on his behalf.

(2) The insurer does not have a right under [paragraph 1](#) if the drug which the insured took in a manner prescribed by a physician contained alcohol or an addictive substance and the physician or the manufacturer of the drug did not warn the injured person that he or she could not engage in the activity which caused the harmful event at the time of the drug.

§ 2867

If the insurance relates to ownership and it has not been expressly agreed that the insurance shall not be terminated by a change of ownership or co-ownership, the insurance shall terminate on the date of notification of such change to the insurer. Provisions § 2765 shall not apply in such a case.

Subsection 11

Credit insurance or guaranty insurance

§ 2868

(1) Credit insurance is arranged to protect against the property consequences that may arise to the insured from the failure of the borrower to repay the funds provided.

(2) Surety insurance is arranged to cover the insured's performance under a surety bond, forfeiture of the bond or security, or performance under the bond or security, or for any other similar reason agreed upon.

(3) Insurance of a loan or guarantee may be arranged only as indemnity insurance.

§ 2869

If the person entitled to the insurance benefit fails to notify the insurer of the occurrence of a loss within the time limit agreed in the contract, the court shall not grant the right to the insurance benefit if the insurer objects to the late notification of the loss.

§ 2870

Credit insurance with state support shall be governed by this Act and the Act regulating insurance and financing of exports with state support.

Subsection 12

Financial Loss Insurance

§ 2871

(1) The subject matter of financial loss insurance is the costs incurred as a result of a claim or loss of profit or other financial loss specified in the contract.

(2) Financial loss insurance may be arranged as claims-made or excess insurance.

§ 2872

Large Insurance Risk

(1) Where an insurer insures a large insurable risk in non-life insurance under any other law regulating insurance, any provision of this Part may be waived in favour of any party if the purpose and nature of the insurance so requires.

(2) Insurance of a large insurable risk may be arranged only as claims-made insurance.

Section 3

Bets, games and lot-drawing

Subsection 1

Bets

§ 2873

Basic Provisions

(1) By a wager, at least one party undertakes to the other to perform a prize if its assertion of a fact unknown to the parties proves incorrect or if the other party's assertion of the event proves correct.

(2) If the party whose assertion proves correct is certain of the outcome and conceals it from the other party, the bet is void.

§ 2874

If the winnings have not been given, the winning party cannot claim them.

§ 2875

If the prize was given, the losing party cannot recover it. This does not apply if the losing party was clearly a person of deficient mental or intellectual capacity.

§ 2876

If the award was manifestly excessive in view of the circumstances of the case and the position and capabilities of the parties, the court may, on motion of the losing party, reduce it accordingly.

§ 2877

A claim for a loan or credit knowingly made in connection with a wager is also not recoverable. This does not apply if the loan or credit was given by a person of unsound mind or intellect.

§ 2878

A claim arising from a wager or from a loan or credit knowingly made in connection with a wager that cannot be enforced cannot be validly secured. If a debt corresponding to such a claim has been acknowledged, it shall be disregarded.

§ 2879

The betting provisions do not apply where, in connection with the business of the parties, a contract for the supply of a movable thing has been so agreed that the thing is not to be delivered but only the difference between the agreed price and the market price at the time of delivery is to be paid. This applies even if the delivery of the thing has not been expressly excluded by the contract, but it is clear from the circumstances, which must be known to the parties, that the parties are concerned only with obtaining such a difference.

§ 2880

The provisions on staking do not apply if the contract was concluded on a commodity exchange, on a regulated market, on a multilateral trading facility or if it is a contract between entrepreneurs and its subject matter is an investment instrument under the law regulating business on the capital market.

Subsection 2

Game

§ 2881

The stakes provisions apply similarly to the game; however, if it is a game requiring only skill or physical exercise by both parties, only § 2875 of the stakes provisions shall apply.

Subsection 3

Lot-drawing

§ 2882

The lottery ticket provisions apply mutatis mutandis. However, these provisions do not apply if the lot is to decide a dispute, divide a common cause or decide a vote.

Subsection 4

Common Provisions

§ 2883

The provisions relating to the unenforceability of claims arising from a wager, game, or lottery and the provisions relating to the power of the court to reduce the prize shall not apply to claims arising from a wager, game, or lottery operated by the state or subject to official authorization.

Obligations arising from a juridical act of a single person

Section 1

Public promise

Subsection 1

Promise of a reward

§ 2884

A promise of reward for some performance made to an unspecified person binds the promisor if the promise has been publicly announced.

§ 2885

(1) If the promisor has not waived the right to revoke the public promise, he may revoke it before execution in the same form in which the public promise was made; if that is not possible, then in a form equally effective.

(2) A revocation is not effective against one who has already performed the performance with respect to the public promise if he did not know or need not have known of the revocation at the time.

§ 2886

(1) If more than one person fulfils the terms of a public promise, the reward is due to the person who first performed the performance, unless the public promise implies a different intention on the part of the promisor.

(2) If several persons fulfill the terms of the public promise at the same time, the promisor shall divide the consideration equally among them, unless the public promise implies a different intention on the part of the promisor.

(3) Paragraph 2 does not preclude agreement by the awardees as to a different division of the consideration and, in the absence of such agreement, the right of each awardee to claim against the others such part of the consideration as bears to the proportion in which he has shared in the result obtained.

Subsection 2

Announcement of a prize

§ 2887

(1) If a reward is promised by announcing a prize for the best possible performance, the public promise is valid if it also specifies the period for which the prize may be claimed.

(2) Unless otherwise provided below, the provisions on the promise of remuneration apply to the announcement of a prize.

§ 2888

(1) The prize announcement may be revoked only for compelling reasons.

(2) If the promisor has revoked the prize, it shall indemnify adequately the one who, before the revocation, has at least partially fulfilled the conditions of the public promise. Notice of this right shall be given by the promisor in the revocation if he has not already done so when the price was announced.

§ 2889

If the promisor did not specify at the time of the solicitation who will assess compliance with the terms of the public promise and by what standards, and who will make the assessment and within what timeframe, the promisor itself shall assess and evaluate compliance.

Section 2

Promise of indemnity

§ 2890

By promising **indemnification**, the promisor agrees to indemnify the promisee if the promisee incurs damages arising out of certain acts of the promisor that the promisee is not required to do.

§ 2891

(1) The obligation of the promisor arises upon delivery of the promisee's statement to the promisee.

(2) The promisee performs the act requested by the promisor only if the promisee has committed to it.

§ 2892

The promisor shall reimburse the promisee for the costs and any damages incurred by the promisee in connection with the action requested by the promisor.

§ 2893

The promisee shall take such timely action on behalf of the promisor as will keep the extent of the damage to a minimum.

TITLE III

OBLIGATIONS ARISING FROM TORTS

Volume 1

Compensation for pecuniary and non-pecuniary harm

Section 1

Basic Provisions

§ 2894

(1) The duty to compensate another for injury always includes the duty to compensate for injury to property (damages).

(2) If the obligation to compensate another for non-pecuniary damage has not been expressly agreed, it only affects the wrongdoer if the law specifically so provides. In such cases, the obligation to compensate for non-pecuniary damage by way of compensation shall be assessed *mutatis mutandis* in accordance with the provisions on the obligation to compensate for damage.

§ 2895

A pest is obliged to compensate for damages regardless of its fault in cases specifically provided for by law.

§ 2896

If a person discloses that he excludes or limits his obligation to compensate for injury to others, this shall not be taken into account. If, however, he does so before the injury occurs, such notice may be regarded as a warning of danger.

§ 2897

If a person waives the right to claim damages for injury to land and the waiver is recorded in a public record, it operates against subsequent owners.

§ 2898

An arrangement which excludes or limits in advance the obligation to compensate for injury to a person's natural rights, or caused by intent or gross negligence, shall not be considered; nor shall an arrangement which excludes or limits in advance the right of the

weaker party to recover for any injury. In such cases, the right to compensation may not even be validly waived.

§ 2899

Whoever has accepted for himself the risk of the victim, even though he has done so in such circumstances that it may be regarded as unreasonable, has not thereby waived the right of recovery against the person who caused the injury.

Prevention

§ 2900

When the circumstances of the case or the customs of private life so require, every person is bound to conduct himself or herself so as to avoid unreasonable injury to the liberty, life, health, or property of another.

§ 2901

If the circumstances of the case or the customs of private life so require, anyone who created the dangerous situation or who has control over it, or if the nature of the relationship between the persons so justifies, has a duty to intervene to protect another. The same duty is owed by one who, according to his or her means and abilities, can easily avert an injury which he or she knows or ought to know that the gravity of the threat clearly exceeds what is necessary to take action.

§ 2902

Anyone who has breached a legal duty, or who can and ought to know that he or she will breach it, shall without undue delay notify the person who may be harmed thereby and warn him or her of the possible consequences. If he or she complies with the duty to notify, the injured party is not entitled to compensation for the injury which he or she could have prevented after notification.

§ 2903

(1) If the person threatened with the injury fails to take steps to avert it in a manner reasonable in the circumstances, he bears out of his own resources what he could have prevented.

(2) In a serious threat, the person threatened may request that the court impose appropriate and reasonable measures to avert the threatened harm.

§ 2904

Accident

Injury caused by accident shall be compensated by the person who, through no fault of his own, gave rise to the accident, in particular by breaking an order or damaging a device intended to prevent the accidental injury.

§ 2905

Self-defence

Whoever repels an imminent or continuing unlawful attack on himself or another, and in so doing causes injury to the attacker, is not liable for compensation. This does not apply if it is clear that the person attacked is at slight risk of harm in relation to his or her circumstances or if the defence is manifestly disproportionate, in particular in view of the seriousness of the harm to the attacker caused by the repelling of the attack.

§ 2906

Necessity

Whoever averts from himself or from another an imminent danger of harm is not liable to compensate for the harm thereby caused unless, in the circumstances, the danger could not otherwise have been averted or unless he causes a consequence manifestly as serious or more serious than the harm threatened, unless the property would have succumbed to

destruction even without the act of distress. This does not apply if the danger was caused by the actor's own fault.

§ 2907

In assessing whether someone acted in necessary defence or in extreme emergency, the excusable excitement of the mind of the person who averted the attack or other danger is to be taken into account.

§ 2908

He who averted imminent harm is entitled to recover his reasonable costs and to recover damages against the person in whose interest he acted, but at most to the extent proportionate to what he averted.

Section 2

Duty to provide compensation for damage

Subsection 1

General provisions

§ 2909

Breach of good morals

A wrongdoer who causes damage to an injured party by a deliberate breach of good morals is obliged to compensate for it; however, if he exercised his right, the wrongdoer is obliged to compensate only if he pursued as his main purpose the harm of another.

§ 2910

Breach of a statute

A tortfeasor who, through his own fault, breaches a duty imposed by law and thereby interferes with an absolute right of the injured party shall compensate the injured party for what he has thereby caused. A duty to compensate shall also arise in respect of a wrongdoer who interferes with another right of the injured party by culpably breaching a legal duty imposed for the protection of such right.

Presumption of negligence

§ 2911

If a tortfeasor causes harm to an injured party by breaching a legal duty, the tortfeasor is presumed to have caused the harm through negligence.

§ 2912

(1) If the wrongdoer fails to act as might reasonably be expected of a person of average qualities in private dealings, he is presumed to have acted negligently.

(2) If the person demonstrates special knowledge, skill, or care, or undertakes an activity for which special knowledge, skill, or care is required, and fails to exercise those special qualities, the person is presumed to be acting negligently.

§ 2913

Breach of a contractual duty

(1) If a party breaches an obligation under a contract, it shall compensate the other party for the damage resulting therefrom or also to the person whose interest the performance of the agreed obligation was manifestly intended to serve.

(2) The obligation to indemnify shall be discharged if the wrongdoer proves that he has been temporarily or permanently prevented from fulfilling his obligation under the contract by an extraordinary, unforeseeable and insurmountable obstacle arising independently of his will. However, neither an obstacle arising from the personal circumstances of the party causing the damage or arising at a time when the party causing the damage was in

default in the performance of the contractual obligation, nor an obstacle which the party causing the damage was obliged to overcome under the contract, shall exempt the party from the obligation to pay compensation.

§ 2914

Whoever, in the course of his business, uses an agent, employee or other helper shall make good the damage caused by him as if he had caused it himself. If, however, he has undertaken to perform an act independently in the performance of another person's duty, he shall not be deemed to be an assistant; but if that other person has negligently selected him or has not supervised him sufficiently, he shall be liable for the performance of his duty to indemnify.

Damage caused by several persons

§ 2915

(1) Where several wrongdoers are liable for compensation, they shall jointly and severally compensate for the damage; where any of the wrongdoers is liable under any other law for compensation only to a certain extent, he shall be jointly and severally liable with the other wrongdoers to that extent. This shall also apply where several persons commit separate unlawful acts, each of which could have caused the harmful consequence with a probability approaching certainty, and where it is impossible to determine which person caused the damage.

(2) Where there are special reasons for doing so, the court may order that the wrongdoer compensate for the damage according to his participation in the harmful consequence; if the participation cannot be precisely determined, the degree of probability shall be taken into account. Such a decision may not be made if one of the vermin knowingly participated in the infliction of the damage by another vermin, or encouraged or encouraged them, or if the entire damage is attributable to each vermin, even though they acted independently, or if the vermin has to pay for the damage caused by an auxiliary and the auxiliary has also incurred an obligation to pay compensation.

§ 2916

Whoever is jointly and severally liable for damages with others shall settle with them according to their participation in causing the damage.

§ 2917

Whoever is liable for damages caused by another person has a remedy against that person.

§ 2918

If the damage has also arisen or increased as a result of circumstances attributable to the injured party, the obligation of the injured party to compensate for the damage shall be reduced proportionately. However, if the circumstances attributable to one or the other party contribute only in a negligible way to the damage, the damage shall not be divided.

§ 2919

If the wrongdoer has enriched himself at the expense of the injured party by an unlawful act or by virtue of some other fact which has caused the damage, the wrongdoer's enrichment is unjust even after the limitation of the injured party's right to compensation. If the injured party's right to compensation is time-barred, the injured party may claim that the wrongdoer should repay him what he has received under the provisions on unjust enrichment.

Subsection 2

Special Provisions

Damage caused by a person unable to assess the consequences of his actss

§ 2920

(1) A minor who has reached the age of thirteen and has not acquired full legal capacity, or one who is suffering from a mental disorder, shall compensate for the damage caused if he was capable of controlling his actions and of judging their consequences; the injured party shall also be entitled to compensation if he did not resist the injurious party out of consideration for him.

(2) If a minor who has attained the age of thirteen years and has not acquired full legal capacity, or one who is suffering from a mental disorder, was not capable of controlling his or her conduct and of judging its consequences, the injured party shall be entitled to compensation if it is just, having regard to the pecuniary circumstances of the wrongdoer and the injured party.

(3) Damage caused to a minor under thirteen years of age shall be compensated by the person who neglected to exercise proper supervision over him. If the damage was not caused by the neglect of proper supervision, the minor shall compensate for the damage if he or she caused it by an act in the nature of a deliberate criminal offence or if it is fair having regard to his or her financial circumstances and those of the victim.

§ 2921

(1) Jointly and severally with the injured party, if he is a minor who has attained the age of thirteen years or one who is suffering from a mental disorder, the person who neglected to exercise proper supervision over him shall also pay damages. If the pest is not obliged to compensate, the damage shall be compensated by the person who neglected to supervise the pest.

(2) If the minor pest is not liable for compensation and the damage was not caused by the neglect of proper supervision, the damage shall be compensated by the person who has and exercises full parental responsibility towards the child, if this is fair having regard to his or her financial circumstances and those of the victim.

§ 2922

Whoever, through his own fault, puts himself in such a state that he is unable to control his actions or to judge their consequences, shall make good the damage caused in that state. Those who, through their own fault, have brought him into that state shall jointly and severally make good the damage.

§ 2923

Damage caused by a person with dangerous qualities

Whoever knowingly takes possession of a person of dangerous character by sheltering him or entrusting him with a particular activity, whether in a home, business or other similar place, without his necessary need, shall jointly and severally with him make good the damage caused in such place or in such activity to another by the dangerous character of such person.

§ 2924

Damage resulting from operating activities

Whoever operates a plant or other facility used for gainful employment shall compensate for damage arising from the operation, whether caused by the operation itself, by an item used in the operation, or by the effect of the operation on the surroundings. He shall be exempt from the obligation if he proves that he exercised all the care that could reasonably be required to avoid the damage.

§ 2925

Damage caused by a particularly hazardous operation

(1) Whoever operates a plant or other facility that is particularly dangerous shall compensate for damage caused by the source of the increased danger; the operation is particularly dangerous if the possibility of serious damage cannot reasonably be excluded

in advance even if due care is exercised. Otherwise, he shall be released from the obligation if he proves that the damage was caused externally by a force majeure or by the victim's own conduct or by the unavoidable conduct of a third party; if other grounds for release are agreed, these shall be disregarded.

(2) If it is clear from the circumstances that the operation has substantially increased the risk of damage, although other possible causes may reasonably be pointed out, the court shall order the operator to pay damages to the extent of the likelihood of the damage being caused by the operation.

(3) An operation is deemed to be particularly dangerous if it is carried on in a factory-like manner or if an explosive or similarly dangerous substance is used or handled in the operation.

§ 2926

Damage to an immovable thing

Whoever, although lawfully, performs or procures work by which damage is caused to immovable property to another, or by which possession of immovable property is rendered impossible or materially more difficult, shall make good the damage resulting therefrom.

Damage caused by the operation of a means of transport

§ 2927

(1) Whoever operates a transport service shall compensate for the damage caused by the special nature of that service. Another operator of a vehicle, vessel or aircraft shall have the same obligation, unless such means of transport is propelled by human power.

(2) The obligation to compensate for damage cannot be waived by the operator if the damage was caused by circumstances originating in the operation. Otherwise, he shall be excused if he proves that he could not have prevented the damage even if he had made all reasonable efforts to do so.

§ 2928

When a vehicle is under repair, the person who took possession of the vehicle for repair is deemed to be the operator of the vehicle.

§ 2929

In lieu of the operator, the person who uses the means of transport without the knowledge or against the will of the operator shall pay damages. The operator shall compensate the damage jointly and severally with him if he negligently allowed such use of the means of transport.

§ 2930

If the operator cannot be determined, the owner of the means of transport is the operator.

§ 2931

If damage to an item has been caused by its theft or loss, the operator shall compensate for that damage only if the injured party has not had the opportunity to take custody of the item.

§ 2932

If the operations of two or more operators collide and the settlement is between those operators, the operators shall settle according to their respective share in causing the damage.

Damage caused by an animal

§ 2933

If an animal causes damage, the owner of the animal shall pay compensation, whether the animal was under the owner's control or under the control of a person to whom the owner entrusted the animal, or whether the animal wandered or escaped. The person to whom the animal was entrusted or who keeps or otherwise uses the animal shall jointly and severally with the owner compensate for the damage caused by the animal.

§ 2934

If a domestic animal serves the owner in the exercise of a profession or other gainful occupation or for livelihood, or if it serves as an assistant for a person with a disability, the owner shall be exempt from the obligation to pay compensation if he proves that he did not neglect to exercise due care in supervising the animal or that the damage would have occurred even if he had exercised due care. Under the same conditions, the person to whom the owner has entrusted the animal shall also be exempt from the obligation to pay compensation.

§ 2935

(1) Where a third person has voluntarily taken an animal from the owner or a person entrusted by the owner with the animal, the third person shall compensate for the damage caused by the animal himself if the owner or the person entrusted by the owner with the animal proves that he could not reasonably have prevented the taking; otherwise, jointly and severally with them.

(2) One who has voluntarily taken an animal cannot exempt himself from the obligation to make restitution.

Damage caused by a thing

§ 2936

Whoever is obliged to perform something for someone and uses a defective thing in doing so, compensates for the damage caused by the defect in the thing. This applies even in the case of the provision of medical, social, veterinary and other biological services.

§ 2937

(1) If the damage is caused by the thing itself, the person who should have had supervision over the thing shall pay compensation; if such person cannot otherwise be identified, the owner of the thing shall be deemed to be the owner. Whoever proves that he did not neglect the proper supervision shall be exempt from the obligation to compensate.

(2) If the damage was caused by the thing falling or being thrown out of a room or similar place, the parties shall recover jointly and severally with it, who is liable to pay compensation under [paragraph 1](#), and the person using such place and, if that person cannot be identified, the owner of the immovable property.

§ 2938

(1) When a building collapses or a part of a building is detached as a result of a defect in the building or lack of maintenance, the owner of the building shall compensate the owner of the building for any damage resulting therefrom.

(2) The previous owner shall jointly and severally pay for the damage if the damage is caused by a defect arising during his ownership which he did not bring to the attention of his successor and if the damage occurred within one year of the termination of his ownership. This does not apply if the defect is one of which the successor must have been aware.

Damage caused by a product defect

§ 2939

(1) Damage caused by a defect in a movable thing intended to be marketed as a product for sale, hire or other use shall be compensated by the person who

manufactured, mined, grew or otherwise acquired the product or part thereof, and jointly and severally with him by the person who marked the product or part thereof with his name, trademark or otherwise.

(2) Jointly and severally with the persons referred to in [paragraph 1](#), the person who imported the product for the purpose of placing it on the market in the course of his business shall also be liable for damages.

(3) Damage to property caused by a defect in the product shall be covered only in an amount exceeding the amount calculated on the basis of EUR 500 at the exchange market rate announced by the Czech National Bank on the day on which the damage occurred; if that day is not known, then on the day on which the damage was discovered.

§ 2940

(1) If the manufacturer cannot be identified under [§ 2939](#), any supplier shall also indemnify the victim if, when the victim claims damages, the supplier fails to disclose within one month who the manufacturer is or who supplied the product to the victim.

(2) If the product is an imported product, then any supplier, even if the manufacturer is known, will compensate for the damage if it fails to tell the injured party who the importer is within the time limit.

§ 2941

(1) A product is defective within the meaning of [§ 2939](#) if it is not as safe as could reasonably be expected to be, having regard to all the circumstances, in particular the manner in which the product is placed or offered on the market, the intended purpose for which the product is intended to serve and the time at which the product was placed on the market.

(2) A product shall not be considered defective simply because a more perfect product was later placed on the market.

§ 2942

(1) The obligation to compensate for damage caused by a defect in the product is discharged only if the plaintiff proves that the damage was caused by the injured party or by one for whose act the injured party is liable.

(2) The obligation to compensate for the damage shall also be discharged if the person concerned proves that

a) did not place the product on the market,

b) it is reasonable to assume, having regard to all the circumstances, that the defect did not exist at the time the product was placed on the market or that it occurred later,

c) did not manufacture the product for sale or other use for business purposes, nor did it manufacture or distribute the product in the course of its business,

d) the defect in the product is the result of compliance with those provisions of law which are binding on the manufacturer, or

e) the state of scientific and technical knowledge at the time he placed the product on the market did not make it possible to detect its defect.

(3) Whoever manufactured a part of the product shall be exempted from the obligation to compensate for damage if he proves that the defect was caused by the design of the product into which the part was incorporated or by the instructions for the product.

(4) If the other party waives the right to compensation in whole or in part in advance, this shall not be taken into account.

(5) Arrangements contrary to [paragraphs 1 to 4](#) shall be disregarded.

§ 2943

The provisions of § 2939 to 2942 do not apply if the defect has caused damage to a defective product or damage to an item designed and used primarily for business purposes.

§ 2944

Damage to property taken

Anyone who takes from another a thing which is to be the subject of his obligation shall make good any damage, loss or destruction thereof, unless he proves that the damage would otherwise have occurred.

§ 2945

Damage to a thing left at a particular place

(1) Where the carrying on of an activity normally involves the depositing of things and the thing has been deposited in a place designated for that purpose or in a place where such things are normally deposited, the operator shall compensate the person who deposited the thing or the owner of the thing, as the case may be, for the damage, loss or destruction of the thing. The operator of guarded garages or similar facilities shall likewise compensate the damage in the case of the means of transport therein and their accessories.

(2) If the right to compensation is not asserted with the operator without undue delay, the court shall not award it if the operator argues that the right was not asserted in time. At the latest, the right to compensation may be exercised within fifteen days after the date on which the injured party must have become aware of the damage.

(3) Where damage has been caused to an item deposited in a means of public transport, it shall be compensated only in accordance with the provisions on compensation for damage caused by the operation of the means of transport.

Damage to a thing brought inside

§ 2946

(1) Whoever regularly operates accommodation services shall compensate for damage to property brought by the occupant into premises reserved for accommodation or for the storage of property, or to property brought there for the occupant. This applies even if the item was taken over by the accommodation provider for that purpose.

(2) If the accommodation provider proves that the damage would have been caused otherwise or that the damage was caused by the accommodation provider or by a person accompanying the accommodation provider at the accommodation provider's request, the accommodation provider shall be exempt from the obligation to compensate for the damage. Agreements on other grounds for exemption shall not be taken into account.

§ 2947

The obligation to indemnify does not apply to vehicles, items left in the vehicle, or live animals unless the accommodation provider has taken custody of them.

§ 2948

(1) Damage is covered up to an amount equivalent to one hundred times the price of accommodation for one day.

(2) If the item has been taken into custody, if the accommodation provider has refused custody of the item in violation of the law, or if the damage was caused by the accommodation provider or someone working in the establishment, the damage shall be covered without limitation.

§ 2949

(1) If the right to compensation is not asserted against the landlord without undue delay, the court shall not award it if the landlord argues that the right was not asserted in time. At the latest, the right to compensation may be asserted within fifteen days after the date on which the injured party should have become aware of the damage.

(2) The provisions of [paragraph 1](#) shall not apply if the landlord has taken custody of the item, if the landlord has refused custody of the item in breach of the law or if the damage has been caused by the landlord or by someone working on the premises.

§ 2950

Damage caused by information or advice

One who claims to be a member of a particular state or profession for professional practice or otherwise holds himself out as a professional shall recover damages if he causes harm by incomplete or incorrect information or harmful advice given in return for remuneration in a matter of his knowledge or skill. Otherwise, only damage which is knowingly caused by the information or advice is compensable.

Section 3

Manner and extent of compensation

Subsection 1

General Provisions

§ 2951

(1) Damage is replaced by restoration to previous condition. If this is not well possible or if the injured party so requests, the damage shall be paid for in money.

(2) Non-pecuniary damage shall be compensated by appropriate compensation. Compensation shall be awarded in money if no other means of compensation provides real and sufficiently effective reparation for the harm caused.

§ 2952

Actual damages and what the injured party has lost (lost profits) are covered. If the actual loss is due to the creation of a debt, the injured party has the right to be released from the debt or to be compensated by the wrongdoer.

§ 2953

Reduction of compensation

(1) For reasons of special merit, the court shall reduce the damages accordingly. In doing so, it shall take into account, in particular, how the damage occurred, the personal and financial circumstances of the person who caused the damage and is liable for it, and the circumstances of the injured party. Compensation may not be reduced if the damage was caused intentionally.

(2) [Paragraph 1](#) does not apply if the damage was caused by a breach of professional care by one who claimed to be a member of a particular state or profession.

§ 2954

If the wrongdoer has caused damage by a deliberate criminal act from which he or she has derived a pecuniary benefit, the court may, on application by the injured party, order satisfaction out of the property acquired by the wrongdoer out of the pecuniary benefit, even if it is not otherwise subject to execution. Pending satisfaction of the right to compensation, the wrongdoer may not dispose of such items specified in the judgment.

§ 2955

If the amount of damages cannot be determined with precision, it shall be determined by the court in its equitable discretion in the particular circumstances of the case.

Subsection 2

Compensation for harm to the natural rights of an individual

General Provisions

§ 2956

If the wrongdoer incurs an obligation to compensate a person for an injury to his natural right protected by the provisions of [part one](#) of this Act, he shall compensate for the harm and non-pecuniary harm thereby caused; he shall also compensate for the mental anguish caused as non-pecuniary harm.

§ 2957

The manner and amount of appropriate compensation must be determined so as to compensate for the special circumstances. These are the deliberate infliction of harm, in particular the infliction of harm by means of deceit, threats, abuse of the victim's dependence on the wrongdoer, multiplying the effects of the interference by making it public, or as a result of discrimination against the victim on grounds of his or her sex, state of health, ethnic origin, religion or other similarly serious grounds. The victim's fear of loss of life or serious damage to health shall also be taken into account if the threat or other cause gave rise to such fear.

ere caused by the threat or other causes. Compensation for bodily harm and death

§ 2958

In personal injury, the harasser shall compensate the injured party for the injury by monetary compensation, fully compensating for the pain suffered and other non-pecuniary damages; if the injury to health has caused an obstacle to a better future for the injured party, the harasser shall also compensate the injured party for the impairment of his or her social life. If the amount of compensation cannot be so determined, it shall be determined in accordance with the principles of decency.

§ 2959

In the case of homicide or particularly serious bodily injury, the wrongdoer shall compensate the mental anguish of the spouse, parent, child or other person close to the wrongdoer by monetary compensation fully compensating for their suffering. If the amount of compensation cannot be so determined, it shall be determined in accordance with the principles of decency.

§ 2960

Costs associated with health care

The pest shall also reimburse to the person who has incurred the expenses reasonably incurred in connection with the care of the victim's health, person or household; if the pest so requests, the pest shall make a reasonable advance for such expenses.

§ 2961

Funeral Costs

The undertaker shall reimburse the person who incurred them for the reasonable costs of the funeral to the extent that they have not been reimbursed by a public benefit under any other provision of law. In doing so, regard shall be had to the custom and circumstances of the individual case.

Pecuniary benefits

§ 2962

(1) Compensation for loss of earnings during the injured person's incapacity for work is paid in the form of a cash pension equal to the difference between the injured person's average earnings before the injury and what the injured person was paid as a result of the illness or injury under other legislation.

(2) The pupil or student is entitled to compensation for loss of earnings from the date on which his compulsory schooling, studies or training for a profession should have ended for the period

- a)** by which his/her compulsory schooling, studies or vocational training were prolonged as a result of an injury to health,
- b)** incapacity as a result of an injury to health,
- c)** the duration of a disability resulting from a personal injury which normally prevents full participation in gainful activity, or
- d)** the duration of a disability resulting from a bodily injury which partially prevents participation in gainful activity, provided that he or she does not, through no fault of his or her own, miss an opportunity to earn income by performing work suitable for him or her.

§ 2963

(1) After the termination of the incapacity for work or, if applicable, disability, the injured person shall compensate the injured person for his loss by a pension in money which shall be determined by reference to the difference between the earnings which the injured person was earning before the injury occurred and the earnings earned after the termination of the incapacity for work, plus any disability pension under any other provision of law. If the personal injury results in a long-term increase in the injured person's needs, the amount of the pension shall also be determined in the light of those needs.

(2) If the injured person achieves earnings after the end of the incapacity for work only with increased effort or exertion which, but for the injurious event, he would not otherwise have had to make, he shall be compensated for the increased effort or exertion by means of a cash pension. In fixing the amount of the gratuity, account shall also be taken of the increase in earnings in the industry concerned and of the likely increase in the injured person's earnings as reasonably expected.

(3) If there are serious reasons for doing so, the court may decide whether, how and to what extent the injured party shall secure the injured party's claim for a money pension; in doing so, it shall not be bound by the parties' proposals.

§ 2964

An injured person is entitled to compensation for loss of pension in the amount of the difference between the pension to which the injured person is entitled and the pension to which he would have been entitled if the compensation for loss of earnings after incapacity for work which the injured person was receiving at the time relevant to the assessment of the pension had been included in the basis on which the pension was assessed.

§ 2965

If the injured person performed unpaid work for another in his or her household or factory, the injured person shall compensate the other person with the pension money he or she lost.

§ 2966

(1) On death, the next person pays by way of a cash pension the cost of maintenance to the survivors to whom the deceased was providing or was required to provide maintenance at the date of his death. Compensation is payable to the survivors in the amount of the difference between the pension benefits provided for the same reason and what the injured person could reasonably be expected to have provided to the survivors in respect of those costs if the injury had not occurred.

(2) On the ground of decency, a maintenance allowance may be awarded to another person if the deceased provided such benefits to him when he was not legally obliged to do so.

§ 2967

(1) In computing compensation, the average earnings of the deceased shall be taken as the basis of the calculation; however, compensation for maintenance to survivors or others shall not exceed in the aggregate what the deceased would have been entitled to as compensation for loss of earnings or pension, as the case may be.

(2) In assessing compensation to survivors, account shall also be taken of how long the deceased would probably have lived but for the injury. In assessing compensation to other persons, account shall be taken of how long the deceased would probably have provided the benefit.

§ 2968

Lump-sum payment

If there is a compelling reason and the injured party requests it, the court shall award the injured party a maintenance allowance in lieu of a monetary pension.

Subsection 3

Special Provision

§ 2969

Compensation in the case of damage to a thing

(1) In determining the amount of damage to an item, the amount of damage is based on its normal value at the time of the damage and takes into account what the injured party must reasonably expend to restore or replace the function of the item.

(2) If the injured party has damaged the thing out of arbitrariness or malice, he shall compensate the injured party for the cost of the special consideration.

§ 2970

Compensation in the case of damage to a thing

When an animal is injured, the pest person shall reimburse the injured animal's reasonable costs of care to the person who incurred them; if the pest person so requests, the pest person shall make a reasonable advance on those costs. The costs of care are not unreasonable even if they substantially exceed the value of the animal if incurred by a reasonable keeper in the position of the injured party.

§ 2971

Compensation for non-pecuniary harm

If the special circumstances in which the wrongful act of the wrongdoer caused the injury so justify, in particular if the wrongdoer has grossly negligently breached an important legal duty, or if the wrongdoer has intentionally caused the injury out of a desire to destroy, harm or other particularly reprehensible motive, the wrongdoer shall also compensate for non-pecuniary damage to anyone who reasonably feels the injury caused as a personal misfortune which cannot otherwise be remedied.

Volume 2

Abuse and restriction of competition

Section 1

General Provisions

§ 2972

One who engages in competition (a competitor) shall not, in engaging in competitive activity or in associating to engage in competitive activity, unfairly exploit his own participation in competition or restrain the participation of others in competition.

§ 2973

The provisions of this Title shall not apply to conduct to the extent that it has effects abroad, unless otherwise follows from international treaties by which the Czech Republic is bound and which have been promulgated in the Collection of International Treaties.

§ 2974

Czech persons are, as far as protection against unfair competition is concerned, on an equal footing with foreign persons engaged in competition in the Czech Republic. Otherwise, foreign persons may claim protection under international treaties to which the Czech Republic is bound and which have been published in the Collection of International Treaties, and, in the absence thereof, on the basis of reciprocity.

§ 2975

Prohibited non-compete clause

(1) If an agreement prohibiting another from engaging in a competitive activity does not specify the territory, the range of activities or the range of persons affected by the prohibition, the non-compete clause is disregarded.

(2) A non-compete clause agreed for an indefinite period or for a period exceeding five years is prohibited; if the prohibition is breached, the non-compete clause is deemed to have been agreed for five years.

(3) A competition clause that restricts the obligated party more than is required for the necessary protection of the obligee is prohibited; if the prohibition is violated, the court may, upon motion of the party concerned, restrict, cancel, or declare the competition clause void.

Section 2

Unfair competition

§ 2976

Basic Provisions

(1) Whoever, in the course of trade or commerce, comes into conflict with the morality of competition by conduct likely to cause injury to other competitors or customers commits unfair competition. Unfair competition shall be prohibited.

(2) Unfair competition according to [paragraph 1](#) is in particular

- a) misleading advertising,
- b) misleading labelling of goods and services,
- c) creating a likelihood of confusion,
- d) free-riding on the reputation of another competitor's plant, product or services,
- e) bribery,
- f) disparagement,
- g) comparative advertising when not permitted as permissible,
- h) violation of trade secrets,
- i) harassment, and
- j) endangering health and the environment.

§ 2977

Misleading advertising

(1) Misleading advertising is advertising which is connected with a business or profession, seeks to promote the sale of movable or immovable property or the provision of services, including rights and obligations, and deceives or is likely to deceive, by its presentation or in

any other manner, persons to whom it is addressed or to whom it reaches, and thereby is likely to influence the economic conduct of such persons.

(2) In assessing whether an advertisement is misleading, all its salient features shall be taken into account. In particular, account shall be taken of the information contained in the advertisement as to

- a) the availability, nature, design, composition, manufacturing process, date of manufacture or provision, fitness for a particular purpose, applicability, quantity, geographical or commercial origin, as well as more detailed statements and other features of the goods or services, including the intended results of use or the results and essential features of tests or examinations carried out,
- b) price or the manner of determining it,
- c) the conditions under which the goods are supplied or the service is provided, and
- d) the nature, characteristics and rights of the advertiser, such as, in particular, his identity, property, professional competence, his intellectual property rights or his honours and distinctions.

§ 2978

Misleading identification of goods and services

(1) A misleading designation of goods or services is a designation which is capable of giving rise to the mistaken impression in the course of trade that the goods or services it designates come from a particular region or place or from a particular producer, or that they have a special characteristic or quality. It shall be irrelevant whether the sign appears immediately on the goods, on the packaging, on commercial documents or elsewhere. It is also irrelevant whether the misleading indication was made directly or indirectly and by what means it was made.

(2) An indication commonly used in the course of trade to designate a kind or quality is also misleading if it is accompanied by a supplement capable of deception, in particular by the use of the expression "genuine", "real" or "original".

(3) The provisions of the preceding paragraphs are without prejudice to other legislation on the protection of industrial or other intellectual property.

§ 2979

Common provisions on misleading advertising and misleading identification of goods and services

(1) A representation may have the capacity to deceive if it is itself correct if it is likely to mislead because of the circumstances and context in which it is made.

(2) In assessing misleadingness, account is also taken of additions, in particular the use of terms such as "kind", "type", "manner", as well as omissions, abbreviations and overall external design.

§ 2980

Comparative Advertising

(1) Comparative advertising directly or indirectly identifies another competitor or its goods or services.

(2) Comparative advertising is permissible if it is comparative,

- a) if it is not misleading,
- b) if it compares only goods and services satisfying the same need or intended for the same purpose,
- c) if it objectively compares one or more essential, relevant, verifiable and indicative characteristics of the goods or services, including price,

- d)** where it compares goods with a designation of origin only with goods of the same designation,
- e)** if it does not disparage or unfairly take advantage of a competitor, its position, its activities or their results, or their designation, and
- f)** does not offer the goods or service as an imitation or reproduction of the goods or services identified by the competitor's trade mark or name.

§ 2981

Creating a likelihood of confusion

- (1)** Whoever uses the name of a person or a special race designation already used by right by another competitor, thereby creates a likelihood of confusion.
- (2)** A danger of confusion is also created by anyone who uses a particular designation of a plant or a particular designation or modification of a product, performance or trade material of a plant which is regarded as characteristic of a particular plant in consumer circles.
- (3)** Similarly, a person who imitates another's product, its packaging or performance shall create a likelihood of confusion unless the imitation is in elements which are already predetermined by the nature of the product in functional, technical or aesthetic terms and the imitator has taken all precautions, which may be required of him to eliminate or at least substantially reduce the likelihood of confusion, if those acts are liable to create a likelihood of confusion or a misleading impression of association with the competitor, its plant, its name, its specific marking or with the product or performance of another competitor.

§ 2982

Free-riding on the reputation

Fair trading is the exploitation of the reputation of another competitor's plant, product or service to obtain a benefit for the results of one's own or another's business which the competitor would not otherwise have obtained.

§ 2983

Bribery

Bribery, as used in this Act, is an act by which

- a)** a competitor offers, promises or gives any advantage, directly or indirectly, to a person who is a member of a statutory or other body of another competitor or is in an employment relationship with another competitor, for the purpose of obtaining, by unfair means, an advantage or other undue advantage in competition for himself or another competitor at the expense of other competitors, or
- b)** the person referred to in paragraph (a) directly or indirectly requests, promises or accepts any advantage for the same purpose.

§ 2984

Disparagement of a competitor

- (1)** A disparagement is an act by which a competitor makes or disseminates a false statement about the circumstances, performance or product of another competitor that is likely to cause harm to that competitor.
- (2)** It shall also be an act of disparagement to make or disseminate a false statement about the circumstances, performance or product of another competitor if it is likely to cause harm to that competitor. However, it is not unfair competition if the competitor has been compelled by circumstances to act in such a way (legitimate defence).

§ 2985

Breach of business secrets

Breach of a trade secret is an act by which an actor wrongfully discloses to another person, makes available, uses for himself or for another, a trade secret which may be used in competition and of which he has knowledge

- a) by having the secret entrusted to him or otherwise made available to him by virtue of his employment by or other relationship with a competitor, or in the exercise of a function to which he has been called upon by a court or other authority, or
- b) by his own or another's conduct contrary to law.

§ 2986

Unsolicited advertising

(1) Intrusive solicitation is the communication of information about a competitor, goods or services, or the offering of goods or services by telephone, facsimile machine, electronic mail or similar means, even though the recipient clearly does not wish to take such action, or the communication of an advertisement in which the originator conceals or obscures information by which he can be identified and does not indicate where the recipient can order the advertisement to cease without special cost.

(2) Where an advertisement is sent to an electronic address which the business has obtained in connection with the sale of goods or the provision of services, it is not vexatious solicitation if the business uses the address to advertise directly for its own goods or services and the other party has not prohibited the advertisement, although the business has clearly advised the other party of its right to order the advertisement to cease without special cost when it obtained the address and each time it uses it for advertising.

§ 2987

Threat to health or the environment

Health or environmental endangerment is conduct by which a competitor distorts the conditions of competition by engaging in the production, marketing of a product, or performance of a practice that threatens a health or environmental interest protected by law in order to obtain for itself or another a benefit to the detriment of another competitor or customers.

Protection against unfair competition

§ 2988

A person whose right has been threatened or infringed by unfair competition may demand against the infringer that he refrain from unfair competition or that he remedy the defective condition. He may also demand reasonable compensation, damages and the release of unjust enrichment.

§ 2989

(1) The right to have the infringer refrain from unfair competition or to remedy the defective condition may also be exercised by a legal person entitled to defend the interests of competitors or customers, in addition to the cases listed in § 2982 to 2985.

(2) If the consumer exercises the right, for the infringer to refrain from unfair competition or to remedy the defective condition and if it is one of the cases set out in § 2976 to 2981 or in § 2987, the infringer must prove that it did not commit unfair competition. If the consumer claims damages, the infringer must prove that the damage was not caused by unfair competition.

§ 2990

Protection against Restraint of Competition

A person whose right has been threatened or violated by an unlawful restraint of competition has the rights set forth in § 2988.

TITLE IV

OBLIGATIONS ARISING FROM OTHER LEGAL CAUSES

Volume 1

Unjust enrichment

§ 2991

(1) Whoever enriches himself at the expense of another without just cause must render to the impoverished person what he has enriched himself.

(2) In particular, he is unjustly enriched who obtains a pecuniary advantage by performing without legal justification, by performing for a legal reason which has lapsed, by the unlawful use of someone else's value or by performing for him what he had a right to perform himself.

§ 2992

If a debt has been discharged, even prematurely, if a right has not been exercised when it might have been exercised, or if one person has done something in his own exclusive and personal interest or at his own risk, there is no obligation to surrender the enrichment; this applies even if one person enriches another with the intention of benefiting or enriching him without any intention to bind himself legally.

§ 2993

If a party has performed without there being a valid obligation, he is entitled to recover what he has performed. If both parties have performed, either party may demand that the other party deliver to it what it has received; the right of the other party to object to mutual performance is not affected. This applies even if the obligation has been cancelled.

§ 2994

If someone has wrongfully given a thing to another for use or enjoyment without the latter's good faith, the owner or co-owner of the thing has a right to compensation against the user or enjoyer.

§ 2995

If the performance has led to the enrichment of a third party, he shall not deliver it to the impoverished person unless the impoverished person was induced to perform by trickery, coerced by threat or abuse of dependence, or was not self-governing.

§ 2996

If the debtor should have performed one of several optional benefits and has mistakenly provided more than one, it is up to the debtor to decide what to reclaim. If, however, the creditor had the right to choose, the debtor may demand that the creditor make the choice; if the creditor does not make the choice without undue delay, the court may be asked to substitute a declaration of his will.

§ 2997

(1) A debtor who has performed a debt which is unenforceable or time-barred or which is void for want of form is not entitled to recover what he has performed. Nor does a person who has enriched another knowing that he is not obliged to do so have a right to repayment, unless he has performed for a legal reason which has not subsequently arisen or has lapsed.

(2) If a person has performed because he was induced to do so by deceit, coercion, threat or abuse of a dependency, the provisions of [paragraph 1](#) shall not apply. This shall apply even if the person performing the performance was an incapable person.

§ 2998

If a party knowingly performs something for a purpose prohibited or wholly impossible for the other party to do, he has no right to recover. If, however, in order to prevent an unlawful act, one has given something to one who intended to commit the act, he may demand restitution.

§ 2999

(1) If it is not readily possible to return the object of unjust enrichment, the impoverished person is entitled to monetary compensation equal to the normal value. However, if the performance was based on an invalid or void legal act, the right to monetary compensation does not arise to the extent that it defeats the purpose of the rule excluding the validity of the legal act.

(2) If the impoverished person performed for consideration, compensation shall be given in the amount of that consideration; this shall not apply if the amount of the consideration gives rise to a ground for the nullity of the contract or for the avoidance of the obligation, or if the amount of the consideration was substantially affected by such a ground.

(3) If the object of the unjust enrichment cannot be returned because it has been destroyed, lost or deteriorated by causes attributable to the impoverished party, the enriched party shall be compensated at most for what he has saved on his own property.

§ 3000

The honest recipient shall deliver what he has acquired, but at most to the extent that the enrichment continues when the right is exercised.

§ 3001

(1) If the honest recipient has alienated the subject matter of the unjust enrichment for consideration, he may, at his option, deliver either a pecuniary substitute or what he has earned. If the honest recipient has alienated it gratuitously, the impoverished person has no right to compensation against him; he may, however, claim it from the person who acquired the object from the enriched person and was not in good faith.

(2) If the enriched person has acquired the object of enrichment in good faith or without his consent, and if it cannot be delivered in good faith, he is not liable to compensation, unless a state of affairs manifestly contrary to good morals is thereby created.

§ 3002

(1) Where a party has performed under a contract for valuable consideration, even though it was not valid, his right to monetary compensation against the other party is not affected by the provisions of § 3000 and 3001. This applies even if the obligation under such contract has been cancelled.

(2) If the thing acquired under a contract for valuable consideration has been used by an honest recipient and the contract is void, he shall compensate the other party for the use, but only to the extent of his benefit.

§ 3003

The dishonest recipient shall deliver what he acquired at the time he obtained the enrichment.

§ 3004

(1) The enriched person who was not in good faith shall deliver up all that he acquired by the enrichment, including fruits and benefits; he shall also make good the benefit which the impoverished person would have received. If he has alienated the object of unjust enrichment for consideration, the impoverished person shall be entitled to demand that either a pecuniary substitute or what he has gained by the alienation be delivered to him at his choice.

(2) Where unjust enrichment has been acquired by interference with a natural right of a person protected by the provisions of [Part One](#) of this Act, the impoverished person may claim for the unauthorised disposal of values relating to his or her personality, instead of the consideration under [paragraph 1](#), twice the usual remuneration for consenting to such disposal. If there is just cause for doing so, the court may increase the amount of the consideration proportionately.

§ 3005

He who delivers the object of unjust enrichment is entitled to be compensated for the necessary expenses he has incurred in the thing and may separate from the thing anything by which he has improved it at his own expense, if this is possible without impairing the substance of the thing.

Agency without mandate and the use of a thing of another for the benefit of another person

Section 1

Agency without mandate

§ 3006

Basic Provisions

If a person interferes in the affairs of another person when he is not entitled to do so, the consequences arising therefrom are his responsibility.

§ 3007

Prevention of damage

If a person, although not called upon to do so, procures another's business in order to avert imminent damage, then the one whose business was procured shall reimburse him for the expenses reasonably incurred, even though the result did not occur through no fault of the uncharged agent.

§ 3008

Salvaging a thing of another

A person who rescues another's thing from unavoidable loss or destruction is entitled to a reasonable reward, not exceeding one-tenth of the value of the thing, and to reimbursement of expenses reasonably incurred. The owner of the thing shall be relieved of the obligation to reimburse if he does not demand the rescued thing back.

§ 3009

Acts for the benefit of another person

(1) If a person undertakes a matter for the benefit of another person without that person's permission, that person shall reimburse him for the expenses reasonably incurred by him if he has arranged the matter for his predominant benefit. Whether a matter has been done for the benefit of another shall not be judged according to general considerations, but with reference to his understandable interests and intentions.

(2) If the benefit is not predominant, the unassigned executive is not entitled to recover costs. The person whose business he has taken upon himself may require the uncommitted agent to restore everything to its former condition and, if that is not well possible, to make good the damage.

Common Provisions

§ 3010

He who has undertaken another's business without orders shall carry it through to completion and give an account of it, and shall transfer all that he has gained in doing so to the person whose business he has procured.

§ 3011

If the unassigned agent is not entitled to recover his expenses, he may take what he has procured at his own expense, if it is possible to do so and if it does not impair the substance of the thing or unduly impair its use.

Section 2

Using a thing of another for the benefit of another person

§ 3012

Basic Provisions

If a person uses another's thing for the benefit of another without intending to procure the other's thing, and if it is not well possible to obtain the return of the thing, the owner of the thing may recover from him the value which the thing had at the time of use, even if the benefit has not been obtained.

§ 3013

Whoever makes an expense for another person which that person was obliged to make himself is entitled to claim compensation.

§ 3014

When one's property is sacrificed in an emergency to avert greater harm, anyone who has benefited from it shall give the injured party proportionate compensation.

PART FIVE

COMMON, TRANSITIONAL AND FINAL PROVISIONS

TITLE I

COMMON PROVISIONS

§ 3015

This Act incorporates relevant European Union ¹⁾ regulations.

§ 3016

The provisions of this Act are without prejudice to the provisions of any other consumer protection legislation.

§ 3017

The provisions of this Act which relate to the enforcement of a right in a court of law or in a judicial proceeding or judicial decision shall apply mutatis mutandis to the enforcement of a right before an arbitrator, to an arbitration proceeding or to an arbitral award.

§ 3018

The obligation to publish data is fulfilled by its publication in the Commercial Bulletin, unless another legal regulation provides otherwise.

§ 3019

The data by which a person can be identified are, in particular, name, residence and date of birth, or, where applicable, identifying information pursuant to other legislation. The identifying data of a legal person or an entrepreneur is the person's identification number, if assigned to them.

§ 3020

The provisions of [parts one](#), [part three](#) and [part four](#) on marriage and the rights and obligations of spouses apply mutatis mutandis to registered partnerships and the rights and obligations of partners.

§ 3021

The provisions of [§ 751 to 753](#) against domestic violence also apply where persons other than spouses live together.

§ 3022

(1) The provisions of this Act relating to the rights and duties of a guardian shall apply mutatis mutandis to a guardian under Part Two.

(2) The provisions of this Act relating to a guardianship council shall also apply to the appointment of a guardian, but the creation of the council and the election of its members shall become

effective if approved by the court; in doing so, it shall be required that such action be consistent with the interests of the child.

§ 3023

The provisions of this Act relating to the owner of land shall apply *mutatis mutandis* to the owner of immovable property not forming part of the land.

§ 3024

(1) A foreign person shall be deemed to be a natural person domiciled or a legal person having its registered office outside the territory of the Czech Republic.

(2) The capacity to acquire rights and to bind itself to obligations which a foreign person other than a natural person has under the legal system under which it was established shall also belong to it in the area of the Czech legal system. The law under which the person was established also governs its internal legal relations and the liability of its members or associates for its debts.

§ 3025

(1) The provisions of this Act on legal persons and associations shall apply to trade unions and employers' organizations only to the extent that this does not contradict their character as representatives of employees and employers under international treaties by which the Czech Republic is bound and which regulate freedom of association and the protection of the right to freedom of association.

(2) Trade union organisations and employers' organisations shall come into existence on the day following the day on which the competent public authority receives notification of their establishment; this shall apply *mutatis mutandis* if a trade union organisation is changed or dissolved.

§ 3026

(1) Unless the nature of the document precludes it, the provisions of this Act relating to a document shall apply *mutatis mutandis* to any other document, irrespective of its form.

(2) Where a legal act requires the form of a public deed, it shall be understood to be a notarial record; it may be replaced by a decision by which a public authority, within the limits of its powers, approves a settlement or other expression of will, the nature of which does not preclude it.

§ 3027

If this Act gives the creditor a right to sufficient security and if the creditor and the debtor or other person providing security do not agree on the subject matter or amount of the security, the court shall decide on the sufficiency of the security, taking into account the nature and amount of the claim.

TITLE II

TRANSITIONAL AND FINAL PROVISIONS

Volume 1

Transitional Provisions

Section 1

General Provisions

§ 3028

(1) This Act shall govern rights and obligations arising from the date of its coming into force.

(2) Unless otherwise provided hereafter, the provisions of this Act shall also govern legal relations relating to personal, family and property rights; however, their creation, as well as the rights and obligations arising therefrom, before the date of entry into force of this Act shall be judged in accordance with the existing legislation.

(3) Unless otherwise provided, other legal relations arising before the date of entry into force of this Act, as well as rights and obligations arising therefrom, including rights and

obligations arising from the breach of contracts concluded before the date of entry into force of this Act, shall be governed by the existing legislation. This shall not preclude the parties from agreeing that their rights and obligations shall be governed by this Act as from the date of its entry into force.

§ 3029

(1) Where legislation refers to provisions which are repealed by this Act, the corresponding provisions of this Act shall take their place.

(2) Unless otherwise provided in this Act, the provisions of legislation in the field of public law, as well as the provisions of other legislation governing special private rights, shall not be affected.

§ 3030

And the provisions of Part One of Title I shall apply to rights and obligations which are to be considered under existing legislation.

§ 3031

Where proceedings have been initiated under § 5 of Act No. 40/1964 Coll., the Civil Code, as amended, they shall be completed in accordance with the existing legislation.

§ 3032

(1) Whoever has been deprived of legal capacity under the former legislation shall be deemed to be a person who has been deprived of legal capacity under this Act as from the date of commencement of this Act.

(2) Whoever has been deprived of legal capacity under previous legislation shall, from the date of the coming into force of this Act, be deemed to be a person deprived of legal capacity under this Act and shall continue to be legally capable of acting to the extent provided for by previous legislation, unless the court decides otherwise under this Act.

§ 3033

(1) Persons who have been deprived of their legal capacity before the date of commencement of this Act or whose legal capacity has been restricted before the date of commencement of this Act shall acquire their legal capacity not later than five years after the date of commencement of this Act, unless the court decides otherwise.

(2) Unless another legal provision provides otherwise, guardianship under § 468 shall pass to the municipality in whose territory the ward resides.

§ 3034

If a person with legal capacity, in anticipation of his or her own incapacity to act legally, has expressed a desire before the effective date of this Act to have a particular person as his or her guardian, § 59 shall apply to the determination of the limitation of legal capacity while this Act is in effect. Similarly, § 469 applies to decisions about the guardian of a corporation.

§ 3035

If adoption proceedings were initiated prior to the date of entry into force of this Act, they shall be completed in accordance with the existing legislation. Actions taken in the context of the preparatory proceedings leading to adoption shall be judged in accordance with this Act; this shall not apply if they concern the granting of parental consent to adoption or a court decision that such consent is not required.

Section 2

Time limits and periods

§ 3036

All time limits and periods which began to run before the date of the coming into force of this Act, as well as time limits and periods for the exercise of rights governed by the previous

legislation, shall be considered until their conclusion, even if they begin to run after the date of the coming into force of this Act.

§ 3037

(1) If a person knew before the effective date of this Act of a violation of his or her right of name, honor, reputation, or similar private relationship, and of the person who violated it, or if he or she should have and could have known of it before the effective date of this Act, the period for extinguishing the right to its protection shall begin to run on the effective date of this Act.

(2) If a person became aware during the effective period of this Act that his or her right of name, honour, reputation or other similar private relationship had been infringed before the date of commencement of this Act and who infringed it, or if he or she should and could have become aware of it, the period for the extinction of the right to its protection shall begin to run from the date of commencement of this Act.

Section 3

Matrimonial property law

§ 3038

Items belonging to the usual furnishings of the family household cease to be part of the community property on the date of entry into force of this Act.

§ 3039

What has been acquired gratuitously by one spouse before the date of entry into force of this Act, or what has been acquired gratuitously by both spouses without becoming part of the community property, shall not continue to be part of the community property.

§ 3040

A thing delivered under the legislation on restitution of property to a spouse who had possession of the thing delivered before the marriage or to whom the thing was delivered as a successor to the original owner is not part of the community property.

Section 4

Legal persons

§ 3041

(1) The legal nature of legal persons regulated by this Act shall be governed by the provisions of this Act from the date of its entry into force. If, before the date of entry into force of this Act, proceedings for the registration of a legal person in the public register have been initiated, they shall be completed in accordance with the existing legal provisions; however, if a constituent legal act taken before the date of entry into force of this Act contradicts the existing legal provisions, it shall be deemed valid if it complies with the provisions of this Act.

(2) Provisions of the memorandum or articles of association of the legal persons referred to in [paragraph 1](#) which contravene the coercive provisions of this Act shall cease to be binding on the date of its entry into force; the legal person shall, within three years from the date of entry into force of this Act, adapt its memorandum or articles of association to the provisions of this Act and deliver them to the public authority which maintains the public register in which the legal person is entered. If it fails to do so, the competent public authority shall invite it to do so and shall set in the invitation an additional reasonable period of time for compliance with this obligation; if the additional period expires in vain, the court shall, on the proposal of the public authority or a person who certifies a legal interest therein, dissolve the legal person and order its liquidation.

(3) The provisions of [paragraph 2](#) of the second sentence after the semicolon shall not apply to trade unions and employers' organisations.

§ 3042

If the name of a legal person does not comply with the provisions of this Act, the legal person shall adapt its name to the requirements of this Act within two years from the date of its entry into force. It shall not be obliged to do so if there are important reasons for doing so, in particular if the legal person has used its name for a long time and if it is so characteristic of the legal person that its confusion or deceptiveness cannot reasonably be assumed.

§ 3043

(1) If a contract or a decision on the conversion of a legal person made before the date of entry into force of this Act contravenes the existing legal provisions, it shall be deemed valid if it complies with the provisions of this Act and if the competent public authority has not, before the date of entry into force of this Act, rejected the proposal for registration of the conversion in the public register or has not decided that the conversion has not taken place.

(2) Where, before the date of entry into force of this Act, a decision has been taken to dissolve or convert a legal person, the procedure under the existing legislation shall apply unless the competent authority of the legal person decides within three months of the date of entry into force of this Act that the procedure under this Act shall apply. The provisions of this Act for the protection of creditors shall also apply to cases where the decision on the dissolution or conversion of a legal person was taken before the date of entry into force of this Act and had not yet been entered in the public register on the date of entry into force of this Act.

§ 3044

The provisions of § 128 shall also apply to incorporation acts and to conversions of legal persons that took place before the effective date of this Act.

§ 3045

(1) Associations pursuant to Act No. 83/1990 Coll., on Association of Citizens, as amended, shall be deemed to be associations pursuant to this Act. An association shall have the right to change its legal form to an institute or social cooperative under another law.

(2) Organisational units of an association entitled to act on its own behalf pursuant to Act No. 83/1990 Coll., on the association of citizens, as amended, shall be deemed to be affiliated associations pursuant to this Act. The statutory body of the main association shall, within three years from the date of entry into force of this Act, file a petition for registration of the subsidiary association, otherwise, on the last day of this period, the legal personality of the subsidiary association shall cease.

§ 3046

Trade union organisations, employers' organisations including international organisations and their organisational units registered under Act No. 83/1990 Coll., on the Association of Citizens, as amended, shall be deemed to be trade union organisations and employers' organisations under this Act.

§ 3047

If, prior to the effective date of this Act, a proceeding was commenced to invalidate a decision of a body of a civil association, the court shall decide the petition in accordance with this Act.

§ 3048

Until the entry into force of the Act on the public register in which associations are entered, associations are subject to registration under Act No. 83/1990 Coll., on the association of citizens, as amended.

§ 3049

(1) Foundations established under the existing legislation shall be deemed to be foundations established under this Act; where the foundation was established by will, § 311 and 312 shall apply, even if the will was made before the date of entry into force of this Act, if the succession proceedings have not been completed on the date of entry into force of this Act. If a foundation has been established otherwise than by a foundation deed, in particular by

the issue of statutes, the provisions of this Act on foundation deeds shall apply to such legal act and to amendments thereto to the extent of the particulars set out in § 310 for foundation deeds.

(2) The founder of a foundation may adapt the constitutive act to the regulation of the foundation deed pursuant to this Act if he delivers the decision amending the constitutive act to the person who keeps the public register with which the foundation is registered, but not later than two years after the date of entry into force of this Act. If the founder has died or ceased to exist before the date of entry into force of this Act, the court may, on the foundation's motion, amend the founding act.

(3) The provisions of paragraphs 1 and 2 shall apply mutatis mutandis to endowment funds.

§ 3050

The rights and obligations of charitable companies continue to be governed by the existing legislation. A public benefit corporation shall have the right to change its legal form to an institute, foundation or endowment fund in accordance with this Act; the provisions of this Act on the conversion of the legal form of legal persons shall apply mutatis mutandis.

§ 3051

Interest associations of legal persons established under the existing legislation shall continue to be governed by the existing legislation. An interest association of legal persons shall have the right to change its legal form into an association in accordance with this Act; the provisions of this Act on the transformation of the legal form of legal persons shall apply mutatis mutandis.

§ 3052

Legal persons established pursuant to Act No. 42/1980 Coll., on economic relations with foreign countries, as amended, shall continue to be governed by the existing legal provisions. This also applies to legal entities formed as an association under § 636 of Act No. 101/1963 Coll., on Legal Relations in International Trade. Such legal persons shall have the right to change their legal form into an association; the provisions of this Act on the conversion of the legal form of legal persons shall apply mutatis mutandis.

§ 3053

The legal nature and internal legal relations of legal persons carrying out business activities which were governed until the date of entry into force of this Act by the earlier legislation under § 767(2) of Act No. 513/1991 Coll., the Commercial Code, as amended, shall remain unchanged and shall continue to be governed by the legislation under which they were established.

Section 5

Rights in rem

Tracts of land and buildings

§ 3054

A building which, under existing law, is not part of the land on which it is established ceases to be a separate thing on the date of commencement of this Act and becomes part of the land if, on the date of commencement of this Act, the ownership of the building and the ownership of the land were held by the same person.

§ 3055

(1) A building connected to the ground by a fixed foundation which, under existing law, is not part of the land on which it is established and is owned by a person other than the owner of the land on the date this Act comes into force does not become part of the land and is immovable property on the date this Act comes into force. The same shall apply to a building which is in joint ownership if any of the joint owners is also the owner of the land or if only some of the joint owners of the building are joint owners of the land.

(2) Paragraph 1 shall apply mutatis mutandis to a building to be established on the land of another owner by virtue of a right in rem created by the builder before the commencement of this Act or by virtue of a contract entered into before the commencement of this Act.

§ 3056

(1) The owner of the land on which a building is established which is not part of the land under the existing legislation and has not become part of the land on the date this Act comes into force shall have a pre-emption right to the building and the owner of the building shall have a pre-emption right to the land. The right of pre-emption of the owner of the land shall also apply to an underground structure on the same land which is an accessory to an above-ground structure. Arrangements excluding or limiting the right of pre-emption shall not be taken into account.

(2) If a part of the land with a building can be separated without substantially impeding its use and enjoyment, the pre-emption right shall apply only to the part of the land necessary for the exercise of the right of ownership of the building.

§ 3057

If the owner establishes a right in rem over the land in favour of a third party who acquires the right in rem in good faith that the building is part of the land, the building is deemed to be part of the land in relation to that person. The owner of the building is entitled to claim compensation from the grantor of the right in rem for the depreciation of his ownership; if the building is encumbered by a lien, the lien extends to the claim for such compensation.

§ 3058

(1) If the land and the building become the property of the same owner, the building ceases to be a separate thing and becomes part of the land on which it is established. This does not apply where the building is not part of the land under this Act.

(2) Where the ownership of land has been alienated to a third person who, when acquiring the ownership, was in good faith in the belief that the building was part of the land, the building shall cease to be a separate thing and shall become part of the land on which it is established. The person who owned the building shall be entitled to compensation from the vendor in the amount of the price of the building on the date of termination of his ownership; if the building was encumbered by a lien, the lien shall pass to the claim for such compensation.

§ 3059

If a structure is established on more than one parcel of land, § 3056 to 3058 apply only in relation to the parcel of land on which the bulk of the structure is located. If the building becomes part of that land, the provision on conversion applies in relation to the land on which parts of the building overhang.

§ 3060

If an easement encumbers a building or land, the building does not become part of the land while the easement continues and unless its nature precludes it.

§ 3061

The provisions of this section shall not apply if the property is a structure that is not part of the land under this Act or an immovable property under § 498(1), second sentence.

Co-ownership

§ 3062

The statutory pre-emption right of co-owners under § 140 of the 40/1964 Coll., Civil Code, as amended, shall cease upon the expiration of one year from the effective date of this Act. This shall not apply in the case of co-ownership of an agricultural or family plant.

§ 3063

If the ownership right to at least one unit in a house with flats and non-residential premises was acquired before the date of entry into force of this Act by the acquirer pursuant to Act No. 72/1994 Coll. , regulating certain co-ownership relations to buildings and certain ownership relations to flats and non-residential premises and supplementing certain acts (Act on Ownership of Flats), as amended, the ownership right to other units in this house shall arise after the date of entry into force of this Act in accordance with the existing legislation.

Land Registry

§ 3064

As regards rights registered in the Land Registry before the date of commencement of this Act and as regards rights registered in the Land Registry within one year from the date of commencement of this Act, the effects under § 980 to 986 shall take effect on the expiry of one year from the date of commencement of this Act. The time limits set forth in § 983 and 986 shall begin to run upon the expiration of one year from the effective date of this Act.

§ 3065

If the rights are rights in rem which were not subject to registration in the public register before the date of entry into force of this Act, the effects of the priority of registered rights in rem under § 981 and the effects of the order of rights in rem under § 982(1) shall take effect in respect of those rights on 1. January 2018.

§ 3066

Extraordinary acquisitive prescription

The period provided for in § 1095 shall include the period during which the holder, or his predecessor in title, as the case may be, was in continuous possession of the thing before the date of the coming into force of this Act; but such period shall not expire before the expiration of two years from the date of the coming into force of this Act, if the thing is movable, and five years if the thing is immovable.

§ 3067

Abandoning an immovable thing

If an immovable thing is abandoned, the period specified in § 1050(2) shall begin to run on the date this Act comes into force.

§ 3068

If the lien was created before the effective date of this Act, the owner may exercise the right to release the lien only if the lien creditor registered before the effective date of this Act behind the released lien in the next order consents to the release of the lien. The same shall apply mutatis mutandis to the substitution of a lien.

Section 6

Law of succession

§ 3069

The law in force at the date of the testator's death applies to succession.

§ 3070

If the testator died after the effective date of this Act, and if his acquisition on death is contrary to the law in force at the time it was made, it shall be deemed to be valid if it complies with this Act. The same shall apply to a codicil and to ancillary clauses in an arrangement for death if the legislation in force at the time when the codicil or the arrangement for death was made deprives them of legal effect or declares them invalid.

§ 3071

If the testator executed the contract of renunciation of inheritance before the effective date of this Act and died after the effective date of this Act, the contract shall be deemed valid.

§ 3072

If the testator died after the effective date of this Act and his declaration of disinheritance contravenes the law in force at the time it was made, it shall be deemed valid if it complies with this Act.

Section 7

Rights arising from obligations

§ 3073

Collateral rights created before the effective date of this Act, even if they were also created as rights in rem, shall be treated until their termination according to the existing legislation. This shall not preclude an agreement between the parties that such rights and obligations shall be governed by this Act from the date of its entry into force.

§ 3074

(1) A lease shall be governed by this Act from the date of its coming into force, even if the lease was created before that date; however, the creation of the lease, as well as the rights and obligations created before the date of the coming into force of this Act, shall be judged according to the existing legislation. This shall not apply to the lease of movable property or to a lease.

(2) The provisions of § 2249(1) shall not apply if the rent has not been determined by agreement between the lessor and the lessee or by a court decision, but on the basis of another legal provision. In such a case, the landlord shall have the right to propose in writing to the tenant an increase in the rent; the provisions of § 2249(3) shall apply mutatis mutandis.

§ 3075

If, prior to the date of entry into force of this Act, a special purpose apartment was established with state funds or the state contributed to its establishment, a lease agreement for such an apartment may be concluded only on the basis of a recommendation from the municipal authority of the municipality with extended jurisdiction, and the lease may be terminated only with the prior consent of that authority.

§ 3076

If, prior to the effective date of this Act, a proceeding for invalidity of the termination of the lease of a dwelling was initiated, it shall be completed in accordance with the existing legislation; the right of the tenant to housing compensation or other benefits under the existing legislation shall not be affected.

§ 3077

(1) An account shall be governed by this Act from the date of its coming into force, even if the account contract was concluded before that date; however, the formation of that contract, as well as the rights and obligations arising therefrom, before the date of coming into force of this Act shall be considered under the existing legislation.

(2) If, prior to the effective date of this Act, a disbursement from a passbook was tied to a password, to the consent of a third party, or to a fact certain to occur, the binding nature of the disbursement shall be governed by existing law.

§ 3078

If a travel contract concluded before the date of entry into force of this Act is invalid under existing legislation, it shall be deemed to be a valid travel contract in respect of rights exercised when this Act was in force if it complies with this Act; the obligations arising from travel contracts concluded under existing legislation shall also be subject to § 2542 if the right exercised has not yet been decided. If a breach of duty by the organiser or the tour operator occurred even before the date of entry into force of this Act, § 2543 shall apply if

the claim for damages has not yet been decided before the date of entry into force of this Act.

§ 3079

(1) A right to compensation for damages arising from a breach of a statutory duty that occurred before the date of the entry into force of this Act shall be assessed in accordance with existing legislation.

(2) If, on the date of the coming into force of this Act, the court has not decided on compensation for damages arising from a breach of a duty imposed by law that occurred before the date of the coming into force of this Act, may, on the application of the injured person, if there are exceptional reasons worthy of special consideration (§ 2(3)), also award the injured person compensation for non-pecuniary damage under this Act.

Volume 2

Final Provisions

§ 3080

Cancelled:

1. Act No. 40/1964 Coll., Civil Code.
2. Act No. 131/1982 Coll., amending and supplementing the Civil Code and regulating certain other property relations.
3. Act No. 188/1988 Coll. amending and supplementing the Labour Code.
4. Act No. 87/1990 Coll., amending and supplementing the Civil Code.
5. § 33 of Act No. 87/1991 Coll., on out-of-court rehabilitation.
6. Act No. 509/1991 Coll., amending, supplementing and modifying the Civil Code.
7. Articles I and IV of Act No. 264/1992 Coll., amending and supplementing the Civil Code, repealing the Act on State Notaries and on Proceedings before State Notaries (Notarial Code) and amending and supplementing certain other Acts.
8. Act No. 267/1994 Coll., amending and supplementing the Civil Code.
9. Article II of Act No. 104/1995 Coll., amending and supplementing Act No. 634/1992 Coll., on Consumer Protection, as amended by Act No. 217/1993 Coll. and Act No. 40/1995 Coll., and amends Act No. 40/1964 Coll., the Civil Code, as amended.
10. Article XXIV of Act No. 118/1995 Coll., amending and supplementing certain acts in connection with the adoption of Act No. on State Social Support.
11. Article II of Act No. 89/1996 Coll., amending and supplementing Act No. 344/1992 Coll. of the Czech National Council on the Cadastre of Real Estate of the Czech Republic (Cadastral Act), and Civil Code No. 40/1964 Coll, as amended.
12. Article IV of Act No. 94/1996 Coll., amending and supplementing Act No. 328/1991 Coll., on Bankruptcy and Settlement, as amended, Act No. 455/1991 Coll. , on trade business (Life Business Act), as amended, Act No. 513/1991 Coll. , the Commercial Code, as amended, and Act No. 40/1964 Coll., the Civil Code, as amended.
13. Part Two of Act No. 227/1997 Coll., on Foundations and Endowment Funds and on Amendments and Supplements to Certain Related Acts (the Foundations and Endowment Funds Act).
14. Article II of Act No. 91/1998 Coll., amending and supplementing Act No. 94/1963 Coll., on the Family, as amended, and amending and supplementing other Acts.
15. Article III of Act No. 165/1998 Coll., amending Act No. 21/1992 Coll., on Banks, as amended, and certain other Acts.
16. § 12 including the title of Act No. 159/1999 Coll., on certain conditions of business and on the performance of certain activities in the field of tourism and amending Act No. 40/1964 Coll.

, the Civil Code, as amended, and Act No. [455/1991 Coll.](#), the Trade Licensing Act ([Livestock Act](#)), as amended.

17. Part Two of Act No. [363/1999 Coll.](#), on Insurance and on Amendments to Certain Related Acts (the Insurance Act).

18. Part Six of Act No. [27/2000 Coll.](#), amending certain Acts in connection with the adoption of the Public Auctions Act.

19. Part Five of Act No. [103/2000 Coll.](#), amending Act No. [72/1994 Coll.](#), amending Act No. [344/1992 Coll.](#), on the Cadastre of Real Estate of the Czech Republic (Cadastral Act), as amended by Act No. [89/1996 Coll.](#), Act No. [586/1992 Coll.](#), on Income Taxes, as amended, Act No. [549/1991 Coll.](#), on Court Fees, as amended, Act No. [40/1964 Coll.](#), the Civil Code, as amended, and Act No. [357/1992 Coll.](#), on Inheritance Tax, Gift Tax and Real Estate Transfer Tax, as amended.

20. Part Two of Act No. [227/2000 Coll.](#), on Electronic Signature and on Amendments to Certain Other Acts (the Electronic Signature Act).

21. Part One of Act No. [367/2000 Coll.](#), amending Act No. [40/1964 Coll.](#), the Civil Code, as amended, and certain other Acts.

22. Article I of Act No. [317/2001 Coll.](#), amending Act No. [40/1964 Coll.](#), the Civil Code, as amended, and amending other Acts.

23. Part Three of Act No. [125/2002 Coll.](#), amending certain Acts in connection with the adoption of the Payment Act.

24. Act No. [135/2002 Coll.](#) amending Act No. [40/1964 Coll.](#), the Civil Code, as amended.

25. Act No. [136/2002 Coll.](#), amending Act No. [40/1964 Coll.](#) , Civil Code, as amended, and Act No. [65/1965 Coll.](#), Labour Code, as amended.

26. Part thirty-eight of Act No. [320/2002 Coll.](#), amending and repealing certain Acts in connection with the dissolution of district authorities.

27. Part Two of Act No. [88/2003 Coll.](#), amending Act No. [513/1991 Coll.](#), the Commercial Code, as amended, Act No. [40/1964 Coll.](#) , the Civil Code, as amended, Act No. [99/1963 Coll.](#), the Code of Civil Procedure, as amended, Act No. [591/1992 Coll.](#), the Securities Act, as amended, Act No. [358/1992 Coll.](#), on notaries and their activities ([Notarial Code](#)), as amended, Act No. [370/2000 Coll.](#), amending Act No. [513/1991 Coll.](#), the Commercial Code, as amended, Act No. [358/1992 Coll.](#), on Notaries and their Activities ([Notarial Code](#)), as amended, Act No. [15/1998 Coll.](#), on the Securities Commission and on amendments and supplements to other acts, as amended by Act No. [30/2000 Coll.](#), Act No. [200/1990 Coll.](#), on misdemeanours, as amended, Act No. [99/1963 Coll.](#), the Code of Civil Procedure, as amended, and Act No. [328/1991 Coll.](#), on Bankruptcy and Settlement, as amended, as amended by Act No. [501/2001 Coll.](#) and the ruling of the Constitutional Court announced under No. [476/2002 Coll.](#), Act No. [219/2000 Coll.](#) [455/1991 Coll.](#), on trade business ([Livestock Act](#)), as amended.

28. Part Two of Act No. [37/2004 Coll.](#), on Insurance Contract and on Amendments to Related Acts (Insurance Contract Act).

29. Part Four of Act No. [47/2004 Coll.](#), amending Act No. [168/1999 Coll.](#), on insurance against liability caused by the operation of a vehicle and amending certain related Acts (the Vehicle Liability Insurance Act), as amended, Act No. [586/1992 Coll.](#), on Income Taxes, as amended, Act No. [200/1990 Coll.](#), on Misdemeanors, as amended, and Act No. [40/1964 Coll.](#), on Civil Code, as amended.

30. Part Two of Act No. [480/2004 Coll.](#), on Certain Information Society Services and on Amendments to Certain Acts (Act on Certain Information Society Services).

31. Part One of Act No. [554/2004 Coll.](#), amending Act No. [40/1964 Coll.](#), on the protection of the information society. , the Civil Code, as amended, Act No. [99/1963 Coll.](#), the Code of Civil Procedure, as amended, Act No. [358/1992 Coll.](#), on notaries and their activities ([Notarial Code](#), as amended, Act No. [513/1991 Coll.](#) , the Commercial Code, as amended, and Act No. [337/1992 Coll.](#), the Tax Administration Act, as amended.

- 32.** Part One of Act No. [359/2005 Coll.](#), amending Act No. [40/1964 Coll.](#), the Civil Code, as amended, and certain related Acts.
- 33.** Part Four of Act No. [56/2006 Coll.](#), amending Act No. [256/2004 Coll.](#), on Capital Market Undertakings, as amended, and other related Acts.
- 34.** Part thirty-three of Act No. [57/2006 Coll.](#), on amendments to laws in connection with the unification of financial market supervision.
- 35.** Part Two of Act No. [107/2006 Coll.](#), on unilateral increases in the rent of apartments and amending Act No. [40/1964 Coll.](#), the Civil Code, as amended.
- 36.** Part Six of Act No. [115/2006 Coll.](#), on registered partnerships and on amendments to certain related Acts.
- 37.** Part Three of Act No. [160/2006 Coll.](#), amending Act No. [82/1998 Coll.](#), amending Act No. [358/1992 Coll.](#), on notaries and their activities ([Notarial Code](#)), as amended, Act No. [201/2002 Coll.](#), on the Office for State Representation in Property Matters, as amended, and Act No. [40/1964 Coll.](#), the Civil Code, as amended.
- 38.** Part Forty-three of Act No. [264/2006 Coll.](#), amending certain acts in connection with the adoption of the Labour Code.
- 39.** Part Two of Act No. [315/2006 Coll.](#), amending Act No. [26/2000 Coll.](#), on public auctions, as amended, and certain other acts.
- 40.** Part Three of Act No. [443/2006 Coll.](#) amending Act No. [178/2005 Coll.](#), on the abolition of the National Property Fund of the Czech Republic and on the competence of the Ministry of Finance in the privatisation of the property of the Czech Republic (Act [on the abolition of the National Property Fund](#)), and Act No. [319/2001 Coll.](#), amending Act No. [21/1992 Coll.](#), on Banks, as amended.
- 41.** Part Six of Act No. [296/2007 Coll.](#), amending Act No. [182/2006 Coll.](#), amending Act No. , on bankruptcy and methods of its resolution ([insolvency law](#)), as amended, and certain acts in connection with its adoption.
- 42.** Part Ten of Act No. [230/2008 Coll.](#), amending Act No. [256/2004 Coll.](#), on Capital Market Undertakings, as amended, and other related Acts.
- 43.** Part Three of Act No. [306/2008 Coll.](#), amending Act No. [155/1995 Coll.](#), on the Capital Markets Act. , on pension insurance, as amended, Act No. [582/1991 Coll.](#), on the organisation and implementation of social security, as amended, and certain other acts.
- 44.** Part Six of Act No. [384/2008 Coll.](#), amending Act No. [155/1998 Coll.](#), on sign language and amending other related acts.
- 45.** Part Six of Act No. [215/2009 Coll.](#), amending Act No. [513/1991 Coll.](#), the Commercial Code, as amended, Act No. [627/2004 Coll.](#), on the European Company, as amended, Act No. [21/1992 Coll.](#), on Banks, as amended by Act No. [126/2002 Coll.](#), Act No. [357/1992 Coll.](#), on Inheritance Tax, Gift Tax and Real Estate Transfer Tax, as amended, Act No. [125/2008 Coll.](#), on transformations of companies and cooperatives, and Act No. [40/1964 Coll.](#), the Civil Code, as amended.
- 46.** Part Three of Act No. [227/2009 Coll.](#), amending certain acts in connection with the adoption of the Basic Registers Act.
- 47.** Part Five of Act No. [285/2009 Coll.](#) amending certain Acts in connection with the adoption of the Act on Payment.
- 48.** Part Two of Act No. [155/2010 Coll.](#) amending certain acts to improve their application and reduce the administrative burden on entrepreneurs.
- 49.** Part One of Act No. [28/2011 Coll.](#), amending Act No. [40/1964 Coll.](#), the Civil Code, as amended, and other related acts.
- 50.** Act No. [132/2011 Coll.](#), amending Act No. [40/1964 Coll.](#), the Civil Code, as amended, and Act No. [102/1992 Coll.](#), which regulates certain issues related to the issuance of Act No. [509/1991 Coll.](#), which amends, supplements and regulates the Civil Code, as amended.

51. Part Eleven of Act No. [139/2011 Coll.](#) amending Act No. [284/2009 Coll.](#), on payment transactions, as amended by Act No. [156/2010 Coll.](#), and certain other acts.
52. Act No. [116/1990 Coll.](#), on the lease and sublease of non-residential premises.
53. Part Five, in respect of § 24(3), of the Act No. [403/1990 Coll.](#), on the alleviation of the consequences of certain property injustices.
54. Act No. [529/1990 Coll.](#), amending and supplementing Act No. [116/1990 Coll.](#), amending and supplementing Act No. , on the Lease and Sublease of Non-residential Premises, as amended by Act No. [403/1990 Coll.](#), on the Alleviation of the Consequences of Certain Property Injustices.
55. § 26(1) of Act No. [229/1991 Coll.](#), on the regulation of property relations to land and other agricultural property.
56. Act No. [540/1991 Coll.](#), amending and supplementing Act No. [116/1990 Coll.](#) , on the lease and sublease of non-residential premises, as amended by Act No. [403/1990 Coll.](#) and Act No. [529/1990 Coll.](#)
57. Act No. [302/1999 Coll.](#), amending Act No. [116/1990 Coll.](#), on the Lease and Sublease of Non-residential Premises, as amended.
58. Act No. [522/2002 Coll.](#), amending Act No. [116/1990 Coll.](#) , on the lease and sublease of non-residential premises, as amended, and repealing Act No. [124/1990 Coll.](#) on the competence of national committees in implementing certain provisions of the Act on the lease and sublease of non-residential premises.
59. Act No. [360/2005 Coll.](#), amending Act No. [116/1990 Coll.](#), on the Lease and Sublease of Non-residential Premises, as amended.
60. Act No. [72/1994 Coll.](#), regulating certain co-ownership relations to buildings and certain ownership relations to flats and non-residential premises and supplementing certain acts (Act on Ownership of Flats).
61. Act No. [97/1999 Coll.](#), amending Act No. [72/1994 Coll.](#), amending Act No. , regulating certain co-ownership relations to buildings and certain ownership relations to flats and non-residential premises and supplementing certain acts (Act on Ownership of Flats), as amended.
62. Part One of Act No. [103/2000 Coll.](#) amending Act No. [72/1994 Coll.](#) [344/1992 Coll.](#), on the Cadastre of Real Estate of the Czech Republic (Cadastral Act), as amended by Act No. [89/1996 Coll.](#), Act No. [586/1992 Coll.](#), on Income Taxes, as amended, Act No. [549/1991 Coll.](#), on Court Fees, as amended, Act No. [40/1964 Coll.](#), the Civil Code, as amended, and Act No. [357/1992 Coll.](#), on Inheritance Tax, Gift Tax and Real Estate Transfer Tax, as amended.
63. Part Three of Act No. [229/2001 Coll.](#), amending Act No. [219/2000 Coll.](#), which amends Act No. [492/2000 Coll.](#), on the property of the Czech Republic and its conduct in legal relations, as amended by Act No. [492/2000 Coll.](#), and certain other acts.
64. Part One of Act No. [451/2001 Coll.](#), amending Act No. [72/1994 Coll.](#), amending Act No. , regulating certain co-ownership relations to buildings and certain ownership relations to flats and non-residential premises and supplementing certain acts (Act on Ownership of Flats), as amended, and certain other acts.
65. Part seventy-one of Act No. [320/2002 Coll.](#), amending and repealing certain Acts in connection with the closure of district offices.
66. Part Three of Act No. [437/2003 Coll.](#), amending Act No. [563/1991 Coll.](#), on Accounting, as amended, and certain other Acts.
67. Act No. [171/2005 Coll.](#), amending Act No. [72/1994 Coll.](#), which amends the Act No. regulating certain co-ownership relations to buildings and certain ownership relations to flats and non-residential premises and supplementing certain acts (Act on Ownership of Flats), as amended.
68. Part Thirty of Act No. [179/2005 Coll.](#) amending certain acts in connection with the adoption of the Act on the abolition of the National Property Fund of the Czech Republic.

- 69.** Part Thirty-four of Act No. [296/2007 Coll.](#) amending Act No. [182/2006 Coll.](#) , on bankruptcy and methods of its resolution ([insolvency law](#)), as amended, and certain acts in connection with its adoption.
- 70.** Part Fifty-first of Act No. [227/2009 Coll.](#) amending certain Acts in connection with the adoption of the Basic Registers Act.
- 71.** Part One of Act No. [345/2009 Coll.](#), amending Act No. [72/1994 Coll.](#), amending Act No. regulating certain co-ownership relations to buildings and certain ownership relations to flats and non-residential premises and supplementing certain acts (Act on Ownership of Flats), as amended, and Act no. [183/2006 Coll.](#), on spatial planning and building regulations ([Construction Act](#)), as amended.
- 72.** Act No. [513/1991 Coll.](#), [Commercial Code](#).
- 73.** Article VII of Act No. [264/1992 Coll.](#), amending and supplementing the Civil Code, repealing the Act on State Notaries and on Proceedings before State Notaries (Notarial Code) and amending and supplementing certain other Acts.
- 74.** Article III of Act No. [286/1993 Coll.](#), amending and supplementing Act No. [63/1991 Coll.](#), on the Protection of Competition, as amended by Act No. [495/1992 Coll.](#), on the Protection of Competition. , and Act No. [513/1991 Coll.](#), the Commercial Code, as amended by Act No. [264/1992 Coll.](#) , Act No. [591/1992 Coll.](#) and Act No. [600/1992 Coll.](#)
- 75.** Article II of Act No. [156/1994 Coll.](#), amending and supplementing Act No. [21/1992 Coll.](#), on Banks, as amended, supplements Act No. [513/1991 Coll.](#), the Commercial Code, as amended, and Act No. [328/1991 Coll.](#), on Bankruptcy and Settlement, as amended.
- 76.** Article II of Act No. [84/1995 Coll.](#), amending and supplementing Act No. [530/1990 Coll.](#) , the Bonds Act, as amended, Act No. [513/1991 Coll.](#), the Commercial Code, as amended, Act No. [328/1991 Coll.](#), the Bankruptcy and Settlement Act, as amended, Act No. [99/1963 Coll.](#), the Code of Civil Procedure, as amended, and Act No. [21/1992 Coll.](#), the Banking Act, as amended.
- 77.** Article III of Act No. [94/1996 Coll.](#), amending and supplementing Act No. [328/1991 Coll.](#), on Bankruptcy and Settlement, as amended, Act No. [455/1991 Coll.](#) , on trade business ([Life Business Act](#)), as amended, Act No. [513/1991 Coll.](#) , the Commercial Code, as amended, and Act No. [40/1964 Coll.](#), the Civil Code, as amended.
- 78.** Article I of Act No. [142/1996 Coll.](#), amending and supplementing Act No. [513/1991 Coll.](#) , the Commercial Code, as amended, and amends Act No. [99/1963 Coll.](#), the Code of Civil Procedure, as amended.
- 79.** Part Six of Act No. [15/1998 Coll.](#), on Capital Market Supervision and on Amendments and Additions to Other Acts.
- 80.** Article II of Act No. [165/1998 Coll.](#), amending Act No. [21/1992 Coll.](#), on Banks, as amended, and certain other Acts.
- 81.** Part Five of Act No. [356/1999 Coll.](#), amending Act No. [455/1991 Coll.](#), which amends Act No. , on trade business ([Livestock Act](#)), as amended, and some other laws.
- 82.** Part Seven of Act No. [27/2000 Coll.](#) amending certain Acts in connection with the adoption of the Public Auctions Act.
- 83.** Part Twelve of Act No. [29/2000 Coll.](#) on postal services and on amendments to certain acts (the Postal Services Act)
- 84.** Part Three of Act No. [30/2000 Coll.](#), amending Act No. [99/1963 Coll.](#), the Code of Civil Procedure, as amended, and certain other Acts.
- 85.** Part Five of Act No. [105/2000 Coll.](#), amending Act No. [328/1991 Coll.](#), on Bankruptcy and Settlement, as amended, and certain other Acts.
- 86.** Part Four of Act No. [367/2000 Coll.](#), amending Act No. [40/1964 Coll.](#), the Civil Code, as amended, and certain other Acts.

- 87.** Part One of Act No. [370/2000 Coll.](#), amending Act No. [513/1991 Coll.](#), the Commercial Code, as amended, Act No. [358/1992 Coll.](#), on Notaries and their Activities ([Notarial Code](#)), as amended, Act No. [15/1998 Coll.](#) [30/2000 Coll.](#), on the Securities Commission and on the amendment and supplementation of other acts, as amended by Act No. [200/1990 Coll.](#), on offences, as amended, Act No. [99/1963 Coll.](#), the Code of Civil Procedure, as amended, and Act No. [328/1991 Coll.](#), on Bankruptcy and Settlement, as amended.
- 88.** Part Two of Act No. [120/2001 Coll.](#), on bailiffs and enforcement activity (the Enforcement Code) and on amendments to other acts.
- 89.** Part Five of Act No. [353/2001 Coll.](#), amending Act No. [563/1991 Coll.](#), on Accounting, as amended, and certain other Acts.
- 90.** Part Five of Act No. [15/2002 Coll.](#), amending Act No. [238/1992 Coll.](#), which amends the Act No. on certain measures related to the protection of public interest and on the incompatibility of certain functions (Act on Conflict of Interest), as amended, and certain other acts.
- 91.** Part Two of Act No. [125/2002 Coll.](#) amending certain Acts in connection with the adoption of the Payment Act.
- 92.** Part Five of Act No. [126/2002 Coll.](#), amending Act No. [21/1992 Coll.](#), on Banks, as amended, Act No. No. [219/1995 Coll.](#), the Foreign Exchange Act, as amended, Act No. [593/1992 Coll.](#), on reserves for determining the income tax base, as amended, Act No. [239/2001 Coll.](#), on the Czech Consolidation Agency and on Amendments to Certain Acts (Act on the Czech Consolidation Agency), as amended by Act No. [15/2002 Coll.](#), Act No. , Commercial Code, as amended, and Act No. [363/1999 Coll.](#), on Insurance and on Amendments to Certain Related Acts (Insurance Act), as amended.
- 93.** Part Twenty-second of Act No. [151/2002 Coll.](#) amending certain Acts in connection with the adoption of the Administrative Procedure Code.
- 94.** Part Seven of Act No. [308/2002 Coll.](#), amending Act No. [15/1998 Coll.](#), on the Securities Commission and on amending and supplementing other Acts, as amended, and certain other Acts.
- 95.** Part Thirty-seven of Act No. [309/2002 Coll.](#), amending the Acts related to the adoption of the [Act on the service of civil servants in administrative offices and on the remuneration of such employees and other employees in administrative offices \(the Service Act\)](#).
- 96.** Part Three of Act No. [312/2002 Coll.](#) on officials of local self-government units and on amendments to certain acts.
- 97.** Part One of Act No. [88/2003 Coll.](#), amending Act No. [513/1991 Coll.](#), the Commercial Code, as amended, Act No. [40/1964 Coll.](#) , the Civil Code, as amended, Act No. [99/1963 Coll.](#), the Code of Civil Procedure, as amended, Act No. [591/1992 Coll.](#), the Securities Act, as amended, Act No. [358/1992 Coll.](#), on notaries and their activities ([Notarial Code](#)), as amended, Act No. [370/2000 Coll.](#), amending Act No. No. [513/1991 Coll.](#), the Commercial Code, as amended, Act No. [358/1992 Coll.](#), on Notaries and their Activities ([Notarial Code](#)), as amended, Act No. [15/1998 Coll.](#), on the Securities Commission and on amendments and supplements to other acts, as amended by Act No. [30/2000 Coll.](#), Act No. [200/1990 Coll.](#), on misdemeanours, as amended, Act No. [99/1963 Coll.](#), the Code of Civil Procedure, as amended, and Act No. [328/1991 Coll.](#), on Bankruptcy and Settlement, as amended, as amended by Act No. [501/2001 Coll.](#) and the ruling of the Constitutional Court announced under No. [476/2002 Coll.](#), Act No. [219/2000 Coll.](#) [455/1991 Coll.](#), on trade business ([Livestock Act](#)), as amended.
- 98.** Part Two of Act No. [437/2003 Coll.](#), amending Act No. [563/1991 Coll.](#), on Accounting, as amended, and certain other Acts.
- 99.** Part Three of Act No. [85/2004 Coll.](#), amending Act No. [252/1997 Coll.](#), on Agriculture, as amended, and certain other Acts.
- 100.** Part Two of Act No. [257/2004 Coll.](#) amending certain acts in connection with the adoption of the [Capital Market Undertakings Act](#), the Collective Investment Act and the [Bonds Act](#).

- 101.** Part Two of the [360/2004 Coll.](#) Act on the European Economic Interest Grouping (EEIG) and amending the [513/1991 Coll.](#) Act on the European Economic Interest Grouping (EEIG). , the Commercial Code, as amended, and Act No. [586/1992 Coll.](#), the Income Tax Act, as amended, (the European Economic Interest Grouping Act).
- 102.** Part Two of Act No. [484/2004 Coll.](#), amending Act No. [143/2001 Coll.](#), on the Protection of Competition and on Amendments to Certain Acts (the Act on the Protection of Competition), as amended by Act No. [340/2004 Coll.](#), Act No. [513/1991 Coll.](#), the Commercial Code, as amended, and Act No. [526/1990 Coll.](#), the Prices Act, as amended.
- 103.** Part Five of Act No. [499/2004 Coll.](#), on Archives and Records Management and on Amendments to Certain Acts.
- 104.** Part Four of Act No. [554/2004 Coll.](#), amending Act No. [40/1964 Coll.](#), on the archiving and records management of the archives and records of the European Union. , the Civil Code, as amended, Act No. [99/1963 Coll.](#), the Code of Civil Procedure, as amended, Act No. [358/1992 Coll.](#), on notaries and their activities ([Notarial Code](#), as amended, Act No. [513/1991 Coll.](#) , the Commercial Code, as amended, and Act No. [337/1992 Coll.](#), the Tax Administration Act, as amended.
- 105.** Part Five of Act No. [179/2005 Coll.](#) amending certain acts in connection with the adoption of Act No. [on the abolition of the National Property Fund](#) of the Czech Republic.
- 106.** Part One of Act No. [216/2005 Coll.](#), amending Act No. [513/1991 Coll.](#), which amends the Act No. , the Commercial Code, as amended, Act No. [99/1963 Coll.](#), the Code of Civil Procedure, as amended, Act No. No. [189/1994 Coll.](#), on senior judicial officers, as amended, and Act No. [358/1992 Coll.](#), on notaries and their activities ([Notarial Code](#)), as amended.
- 107.** Part Nine of Act No. [377/2005 Coll.](#), on the supplementary supervision of banks, savings and credit cooperatives, insurance companies and securities dealers in financial conglomerates and on the amendment of certain other acts (Act on financial conglomerates).
- 108.** Part Nine of Act No. [413/2005 Coll.](#), amending the Acts in connection with the adoption of the Act [on the protection of classified information and on security clearance](#).
- 109.** Part Twelve of Act No. [56/2006 Coll.](#), amending Act No. [256/2004 Coll.](#), on Capital Market Undertakings, as amended, and other related Acts.
- 110.** Part Twenty-third of Act No. [57/2006 Coll.](#), on amendments to laws in connection with the unification of financial market supervision.
- 111.** Part Eleven of Act No. [79/2006 Coll.](#), amending Act No. [85/1996 Coll.](#), on advocacy, as amended, and other related Acts.
- 112.** Part Seven of Act No. [81/2006 Coll.](#), amending Act No. [365/2000 Coll.](#), on public administration information systems and on amending certain other acts, as amended, and other related acts.
- 113.** Part One of Act No. [308/2006 Coll.](#) amending certain acts in connection with the adoption of the Act [on the European Cooperative Society](#).
- 114.** Part Three of Act No. [269/2007 Coll.](#), amending Act No. [365/2000 Coll.](#), on public administration information systems and amending certain other acts, as amended, and other related acts.
- 115.** Part Twelve of Act No. [296/2007 Coll.](#), amending Act No. [182/2006 Coll.](#) , on bankruptcy and methods of its resolution ([insolvency law](#)), as amended, and certain acts in connection with its adoption.
- 116.** Part One of Act No. [344/2007 Coll.](#), amending Act No. [513/1991 Coll.](#), which amends Act No. , the Commercial Code, as amended, and Act No. [200/1990 Coll.](#), on misdemeanors, as amended.
- 117.** Part Three of Act No. [36/2008 Coll.](#), amending Act No. [634/1992 Coll.](#), on Consumer Protection, as amended, Act No. [40/1995 Coll.](#), on the Protection of Consumers, as amended. [468/1991 Coll.](#), on the regulation of advertising and on amending and supplementing Act No.

[468/1991 Coll.](#), on the operation of radio and television broadcasting, as amended, and Act No. [513/1991 Coll.](#), the Commercial Code, as amended.

118. Part Two of Act No. [104/2008 Coll.](#), on Takeover Bids and on Amendments to Certain Other Acts (the Takeover Bids Act).

119. Part Two of Act No. [126/2008 Coll.](#), amending certain Acts in connection with the adoption of the Act [on takeovers of companies and cooperatives](#).

120. Part Eight of Act No. [130/2008 Coll.](#), amending Act No. [455/1991 Coll.](#), which amends Act No. , on trade business ([Livestock Act](#)), as amended, and other related laws.

121. Part Five of Act No. [230/2008 Coll.](#), amending Act No. [256/2004 Coll.](#), on Capital Market Business, as amended, and other related Acts.

122. Part One of Act No. [215/2009 Coll.](#), amending Act No. [513/1991 Coll.](#), the Commercial Code, as amended, Act No. [627/2004 Coll.](#), on the European Company, as amended, Act No. [21/1992 Coll.](#), on Banks, as amended by Act No. [126/2002 Coll.](#), Act No. [357/1992 Coll.](#), on Inheritance Tax, Gift Tax and Real Estate Transfer Tax, as amended, Act No. [125/2008 Coll.](#), on transformations of companies and cooperatives, and Act No. [40/1964 Coll.](#), the Civil Code, as amended.

123. Part Three of Act No. [217/2009 Coll.](#), amending Act No. [182/2006 Coll.](#) , on bankruptcy and methods of its resolution ([insolvency law](#)), as amended, and other related laws.

124. Part Twenty-second of Act No. [227/2009 Coll.](#) amending certain acts in connection with the adoption of the Basic Registers Act.

125. Part Seven of Act No. [230/2009 Coll.](#), amending Act No. [256/2004 Coll.](#), on Capital Market Business, as amended, and other related Acts.

126. Part Six of Act No. [285/2009 Coll.](#), amending certain Acts in connection with the adoption of the Act on Payment.

127. Part One of Act No. [420/2009 Coll.](#), amending Act No. [513/1991 Coll.](#), the Commercial Code, as amended, and other related Acts.

128. Act No. [152/2010 Coll.](#), amending Act No. [513/1991 Coll.](#), the [Commercial Code](#), as amended.

129. Part Three of Act No. [409/2010 Coll.](#), amending acts in connection with the adoption of the Financial Collateral Act.

130. Part Thirteenth of Act No. [427/2010 Coll.](#), amending Act No. [326/1999 Coll.](#), on the residence of foreigners in the territory of the Czech Republic and on the amendment of certain acts, as amended, Act No. [325/1999 Coll.](#), on asylum and on amending Act No. [283/1991 Coll.](#), on the Police of the Czech Republic, as amended, (Act No. [on asylum](#)), as amended, and other related laws.

131. Part Five of Act No. [188/2011 Coll.](#), amending Act No. [189/2004 Coll.](#), on collective investment, as amended, and other related Acts.

132. Act No. [94/1963 Coll.](#), [on the Family](#).

133. Act No. [132/1982 Coll.](#), amending and supplementing the Family Act.

134. Act No. [234/1992 Coll.](#) amending and supplementing Act No. [94/1963 Coll.](#), [on the family](#), as amended by Act No. [132/1982 Coll.](#)

135. Article I of Act No. [91/1998 Coll.](#), amending and supplementing Act No. [94/1963 Coll.](#), on the Family, as amended, and amending and supplementing other Acts.

136. Part Two of Act No. [360/1999 Coll.](#), amending certain Acts in connection with the adoption of Act No. [on the Social and Legal Protection of Children](#).

137. Part Two of Act No. [301/2000 Coll.](#), on civil registry, name and surname and amending certain related Acts.

138. Part Two of Act No. [109/2002 Coll.](#), on the performance of institutional education or protective education in school establishments and on preventive educational care in school

establishments and on amendments to other acts.

139. Part Forty-three of Act No. [320/2002 Coll.](#), on the amendment and repeal of certain Acts in connection with the termination of the activities of district authorities.

140. Act No. [321/2002 Coll.](#), amending Act No. [94/1963 Coll.](#), on the Family, as amended.

141. Part Two of Act No. [315/2004 Coll.](#), amending Act No. [117/1995 Coll.](#), on State Social Support, as amended, Act No. [94/1963 Coll.](#), on the family, as amended, and Act No. [359/1999 Coll.](#), on social protection of children, as amended.

142. Part Three of Act No. [383/2005 Coll.](#), amending Act No. [109/2002 Coll.](#), on the protection of social welfare. , on the performance of institutional education or protective education in school establishments and on preventive educational care in school establishments and on amending other acts, as amended, and other related acts.

143. Part Two of Act No. [112/2006 Coll.](#), amending certain acts in connection with the adoption of Act No. [on the minimum subsistence level](#) and Act No. [on assistance in material need](#).

144. Part Four of Act No. [115/2006 Coll.](#), on registered partnership and on amendments to certain related Acts.

145. Part Two of Act No. [134/2006 Coll.](#), amending Act No. [359/1999 Coll.](#), amending Act No. [94/1963 Coll.](#), on social-legal protection of children, as amended, Act No. [99/1963 Coll.](#), the Code of Civil Procedure, as amended, Act No. [117/1995 Coll.](#), on State Social Support, as amended, and Act No. [200/1990 Coll.](#), on Misdemeanors, as amended.

146. Part Seven of Act No. [227/2006 Coll.](#), on research on human embryonic stem cells and related activities and on amendments to certain related acts.

147. Part Forty-three of Act No. [342/2006 Coll.](#), amending certain acts related to the area of population registration and certain other acts.

148. Part Two of Act No. [259/2008 Coll.](#), amending Act No. [99/1963 Coll.](#), the Code of Civil Procedure, as amended, and certain other Acts.

149. Act No. [42/1980 Coll.](#), [On Economic Relations with Foreign Countries](#).

150. Act No. [102/1988 Coll.](#) amending and supplementing Act No. [42/1980 Coll.](#), [on economic relations with foreign countries](#).

151. Act No. [113/1990 Coll.](#), amending and supplementing Act No. [42/1980 Coll.](#) , [on economic relations with foreign countries](#), as amended by Act No. [102/1988 Coll.](#)

152. Part Three, as regards § 5, of Act No. [223/1994 Coll.](#), on the merger of the Czechoslovak Chamber of Commerce and Industry with the Chamber of Commerce of the Czech Republic, on certain related measures and on amending and supplementing Act No. [301/1992 Coll.](#), on the Chamber of Commerce of the Czech Republic and the Chamber of Agriculture of the Czech Republic, as amended by Act No. [121/1993 Coll.](#)

153. Part Six of Act No. [227/2009 Coll.](#) amending certain acts in connection with the adoption of the Basic Registers Act.

154. Act No. [83/1990 Coll.](#), [on the association of citizens](#).

155. Act No. [300/1990 Coll.](#), amending and supplementing Act No. [83/1990 Coll.](#), [on the association of citizens](#).

156. Article I of Act No. [68/1993 Coll.](#), amending and supplementing certain acts in the field of general internal administration.

157. Part Eight of Act No. [151/2002 Coll.](#) amending certain Acts in connection with the adoption of the Administrative Procedure Code.

158. Part Two of Act No. [230/2006 Coll.](#), amending Act No. [89/1995 Coll.](#), on the State Statistical Service, as amended, and other related acts.

159. Part Thirty-fifth of Act No. [342/2006 Coll.](#), amending certain acts related to the field of population registration and certain other acts.

- 160.** Act No. [33/2008 Coll.](#), amending Act No. [83/1990 Coll.](#), on the association of citizens, as amended.
- 161.** Part Twelve of Act No. [227/2009 Coll.](#) amending certain acts in connection with the adoption of the Basic Registers Act.
- 162.** Part Six of Act No. [424/2010 Coll.](#) amending Act No. [111/2009 Coll.](#), on the basic registers, as amended by Act No. [100/2010 Coll.](#), and other related acts.
- 163.** Act No. [248/1995 Coll.](#), on Benefit Corporations and on Amendments and Additions to Certain Acts.
- 164.** Act No. [208/2002 Coll.](#), amending Act No. [248/1995 Coll.](#), on Benefit Societies and on Amendments and Additions to Certain Acts.
- 165.** Part Sixteen of Act No. [320/2002 Coll.](#), on the amendment and repeal of certain Acts in connection with the closure of district authorities.
- 166.** Part Four of Act No. [437/2003 Coll.](#), amending Act No. [563/1991 Coll.](#), on Accounting, as amended, and certain other Acts.
- 167.** Part Forty-four of Act No. [296/2007 Coll.](#), amending Act No. [182/2006 Coll.](#), which amends Act No. , on bankruptcy and methods of its resolution ([insolvency law](#)), as amended, and certain acts in connection with its adoption.
- 168.** Part Eleven of Act No. [126/2008 Coll.](#), amending certain Acts in connection with the adoption of the Act [on the transformation of companies and cooperatives](#).
- 169.** Part 60 of Act No. [227/2009 Coll.](#) amending certain acts in connection with the adoption of the Basic Registers Act.
- 170.** Act No. [231/2010 Coll.](#), amending Act No. [248/1995 Coll.](#) , on public benefit corporations and on amending and supplementing certain acts, as amended.
- 171.** Act No. [59/1998 Coll.](#), on liability for damage caused by product defects.
- 172.** Act No. [209/2000 Coll.](#), amending Act No. [59/1998 Coll.](#), on liability for damage caused by product defect.
- 173.** Part One and in Part Nine of § 35 and 36 of the Act No. [227/1997 Coll.](#), on Foundations and Endowment Funds and on Amendments and Supplements to Certain Related Acts (the Act on Foundations and Endowment Funds).
- 174.** Part One of Act No. [210/2002 Coll.](#), amending Act No. [227/1997 Coll.](#), which amends the Act No. , on foundations and endowment funds and on amending and supplementing certain related acts (the Act on Foundations and Endowment Funds), and Act No. [586/1992 Coll.](#), on income taxes, as amended.
- 175.** Part Sixteen of Act No. [Col.](#) amending certain acts in connection with the adoption of the [Capital Market Undertakings Act](#), the [Collective Investment Act](#) and the [Bonds Act](#).
- 176.** Part Fifty-second of Act No. [296/2007 Coll.](#) amending Act No. [182/2006 Coll.](#) on the issue of bonds. , on bankruptcy and methods of its resolution ([insolvency law](#)), as amended, and certain acts in connection with its adoption.
- 177.** Part Twelve of Act No. [126/2008 Coll.](#), amending certain Acts in connection with the adoption of the Act [on the transformation of companies and cooperatives](#).
- 178.** Part Seventy-first of Act No. [227/2009 Coll.](#) amending certain laws in connection with the adoption of the Basic Registers Act.
- 179.** Act No. [158/2010 Coll.](#), amending Act No. [227/1997 Coll.](#) , on foundations and endowment funds and on amending and supplementing certain related acts (Act on Foundations and Endowment Funds), as amended.
- 180.** Part Eight of Act No. [160/2010 Coll.](#) amending certain acts in connection with the adoption of the Regulation of the European Parliament and of the Council on credit rating agencies.

- 181.** Part Thirteen of Act No. [188/2011 Coll.](#), on collective investment, as amended, and other related laws.
- 182.** Act No. [102/1992 Coll.](#), regulating certain issues related to the issuance of Act No. [509/1991 Coll.](#), amending, supplementing and modifying the [Civil Code](#)
- 183.** Part Eight of Act No. [227/1997 Coll.](#), on Foundations and Endowment Funds and on Amendments and Additions to Certain Related Acts (the Foundations and Endowment Funds Act).
- 184.** Act No. [126/1998 Coll.](#), amending Act No. [102/1992 Coll.](#) of the Czech National Council. [509/1991 Coll.](#), amending, supplementing and modifying the Civil Code, as amended by Act No. [227/1997 Coll.](#)
- 185.** Part Thirty-ninth of Act No. [320/2002 Coll.](#), amending and repealing certain Acts in connection with the closure of district authorities.
- 186.** Part Two of Act No. [359/2005 Coll.](#), amending Act No. [40/1964 Coll.](#), the Civil Code, as amended, and certain related Acts.
- 187.** Act No. [591/1992 Coll.](#), [On Securities](#).
- 188.** Act No. [89/1993 Coll.](#), amending Act No. [591/1992 Coll.](#) of the Czech National Council, [on securities](#).
- 189.** Part Eight of Act No. [331/1993 Coll.](#), on the State Budget of the Czech Republic for the year 1994 and on the amendment and supplementation of certain acts.
- 190.** Article II and Article III, point 15 of Act No. [259/1994 Coll.](#), amending and supplementing Act No. [586/1992 Coll.](#) of the Czech National Council. , on income taxes, as amended, and Act of the Czech National Council No. [591/1992 Coll.](#), on securities, as amended.
- 191.** Act No. [152/1996 Coll.](#), amending and supplementing Act of the Czech National Council No. [591/1992 Coll.](#) , [on Securities](#), as amended, and Act No. [214/1992 Coll.](#), [on the Stock Exchange](#), as amended.
- 192.** Part Three of Act No. [15/1998 Coll.](#), on capital market supervision and on amendments and supplements to other Acts.
- 193.** Article II of Act No. [70/2000 Coll.](#), amending Act No. [229/1992 Coll.](#), on Commodity Exchanges, as amended, Act No. [591/1992 Coll.](#), on Securities, as amended, and Act No. [214/1992 Coll.](#), on Stock Exchange, as amended.
- 194.** Part Two of Act No. [307/2000 Coll.](#), on agricultural warehouses and agricultural public warehouses and amending certain related Acts.
- 195.** Part One of Act No. [362/2000 Coll.](#), amending Act No. [591/1992 Coll.](#), on Securities, as amended, and certain other Acts.
- 196.** Part Two of Act No. [259/2001 Coll.](#) [591/1992 Coll.](#), on the state bond programme for the coverage of the losses of Konsolidační banka Praha, a state monetary institution, for 1999 and amending Act No. [591/1992 Coll.](#), on securities, as amended.
- 197.** Part Two of Act No. [308/2002 Coll.](#), amending Act No. [15/1998 Coll.](#), on the Securities Commission and on amending and supplementing other Acts, as amended, and certain other Acts.
- 198.** Part Four of Act No. [88/2003 Coll.](#), amending Act No. [513/1991 Coll.](#), the Commercial Code, as amended, Act No. [40/1964 Coll.](#) , the Civil Code, as amended, Act No. [99/1963 Coll.](#), the Code of Civil Procedure, as amended, Act No. [591/1992 Coll.](#), the Securities Act, as amended, Act No. [358/1992 Coll.](#), on notaries and their activities ([Notarial Code](#)), as amended, Act No. [370/2000 Coll.](#), amending Act No. No. [513/1991 Coll.](#), the Commercial Code, as amended, Act No. [358/1992 Coll.](#), on Notaries and their Activities ([Notarial Code](#)), as amended, Act No. [15/1998 Coll.](#), on the Securities Commission and on amendments and supplements to other acts, as amended by Act No. [30/2000 Coll.](#), Act No. [200/1990 Coll.](#), on misdemeanours, as amended, Act No. [99/1963 Coll.](#), the Code of Civil Procedure, as amended, and Act No. [328/1991 Coll.](#), on Bankruptcy and Settlement, as amended, as

amended by Act No. [501/2001 Coll.](#) and the ruling of the Constitutional Court announced under No. [476/2002 Coll.](#), Act No. [219/2000 Coll.](#) [455/1991 Coll.](#), on trade business ([Livestock Act](#)), as amended.

199. Part One of Act No. [257/2004 Coll.](#) amending certain acts in connection with the adoption of the [Capital Market Undertakings Act](#), the [Collective Investment Act](#) and the [Bonds Act](#).

200. Part Eight of Act No. [56/2006 Coll.](#), amending Act No. [256/2004 Coll.](#), on [Capital Market Undertakings](#), as amended, and other related Acts.

201. Part Twenty-seven of Act No. [296/2007 Coll.](#), amending Act No. [182/2006 Coll.](#), amending Act No. , on bankruptcy and methods of its resolution ([insolvency law](#)), as amended, and certain acts in connection with its adoption.

202. Part Six of Act No. [230/2008 Coll.](#), amending Act No. [256/2004 Coll.](#), on [Capital Market Undertakings](#), as amended, and other related Acts.

203. Part Fortieth of Act No. [227/2009 Coll.](#), amending certain acts in connection with the adoption of the [Basic Registers Act](#).

204. Part Five of Act No. [409/2010 Coll.](#), amending Acts in connection with the adoption of the [Financial Collateral Act](#).

205. Part One of Act No. [37/2004 Coll.](#), on the [Insurance Contract](#) and on [Amendments to Related Acts](#) (the [Insurance Contract Act](#)).

206. Part Fourteen of Act No. [377/2005 Coll.](#), on the supplementary supervision of banks, savings and credit cooperatives, insurance companies and securities dealers in financial conglomerates and on the amendment of certain other Acts (the [Financial Conglomerates Act](#)).

207. Part Eleven of Act No. [57/2006 Coll.](#), on the amendment of laws in connection with the unification of financial market supervision.

208. Part Five of Act No. [198/2009 Coll.](#), on equal treatment and legal means of protection against discrimination and on amendments to certain acts ([Anti-discrimination Act](#)).

209. Part one hundred and forty-two of Act No. [227/2009 Coll.](#), amending certain Acts in connection with the adoption of the [Basic Registers Act](#).

210. Part One of Act No. [278/2009 Coll.](#), amending Acts in connection with the adoption of the [Insurance Act](#).

211. Government Decree No. [142/1994 Coll.](#), establishing the amount of interest on default and default fee under the [Civil Code](#).

212. Government Decree No. [163/2005 Coll.](#) amending Government Decree No. [142/1994 Coll.](#), which establishes the amount of default interest and default fee under the [Civil Code](#).

213. Government Decree No. [33/2010 Coll.](#), amending Government Decree No. [142/1994 Coll.](#), amending Government Decree No. setting the amount of default interest and default fee under the [Civil Code](#), as amended by Government Decree No. [163/2005 Coll.](#)

214. Government Decree No. [258/1995 Coll.](#), implementing the [Civil Code](#).

215. Government Decree No. [174/2009 Coll.](#) amending Government Decree No. [258/1995 Coll.](#) implementing the [Civil Code](#).

216. Government Decree No. [371/2004 Coll.](#), which issues model statutes of the association of unit owners.

217. Government Decree No. [151/2006 Coll.](#) amending Government Decree No. [371/2004 Coll.](#), which issues model statutes of the association of unit owners.

218. Decree No. [47/1964 Coll.](#), on [monetary services to citizens](#).

219. Decree No. [136/1969 Coll.](#), amending Decree No. [47/1964 Coll.](#) , on [monetary services to citizens](#), as amended by Decree No. [45/1965 Coll.](#)

220. Decree No. [27/1982 Coll.](#) amending and supplementing Decree of the Ministry of Finance No. [47/1964 Coll.](#) , on [monetary services to citizens](#), as amended by Decree of the Federal

Ministry of Finance No. 136/1969 Coll.

- 221.** Decree No. 146/1990 Coll. amending and supplementing Decree No. 47/1964 Coll., on money services to citizens, as amended.
- 222.** Decree No. 133/1964 Coll., on road transport regulations.
- 223.** Decree No. 74/1981 Coll., amending and supplementing the Decree of the Ministry of Transport No. 133/1964 Coll., on Road Transport Regulations.
- 224.** Decree No. 106/1984 Coll., amending and supplementing Decree of the Ministry of Transport No. 133/1964 Coll., on Road Transport Regulations.
- 225.** Decree No. 18/1965 Coll., on the conditions of maintenance and repair of road vehicles for motor transport owned by citizens and non-socialist organizations.
- 226.** Decree No. 17/1966 Coll., on air transport regulations.
- 227.** Decree No. 15/1971 Coll., supplementing the Decree of the Ministry of Transport No. 17/1966 Coll., on the Air Transport Code.
- 228.** Decree No. 121/1980 Coll., on financial assistance for the transfer of group houses from cooperative to private ownership.
- 229.** Decree No. 122/1980 Coll., on a one-time contribution to alternative housing arrangements for citizens who vacate an apartment in a building managed by a state socialist organization.
- 230.** Decree No. 69/1982 Coll. amending and supplementing Decree No. 122/1980 Coll., on a one-off contribution for alternative housing measures to citizens who vacate an apartment in a building managed by a state socialist organisation.
- 231.** Decree No. 136/1985 Coll., on financial, credit and other assistance to cooperative and individual housing construction and modernization of family houses in private ownership.
- 232.** Decree No. 74/1989 Coll. amending and supplementing Decree No. 136/1985 Coll., on financial, credit and other assistance to cooperative and individual housing construction and modernization of family houses in private ownership.
- 233.** Decree No. 73/1991 Coll. amending and supplementing Decree No. 136/1985 Coll., on financial, credit and other assistance to cooperative and individual housing construction and modernization of family houses in private ownership, as amended by Decree No. 74/1989 Coll.
- 234.** Decree No. 398/1992 Coll. amending and supplementing Decree No. 136/1985 Coll., on financial, credit and other assistance to cooperative and individual housing construction and modernization of family houses in private ownership, as amended by Decree No. 74/1989 Coll. and Decree No. 73/1991 Coll.
- 235.** Decree No. 89/1998 Coll. amending Decree No. 136/1985 Coll., on financial, credit and other assistance to cooperative and individual housing construction and modernization of family houses in private ownership, as amended.
- 236.** Decree No. 385/2000 Coll. amending Decree No. 136/1985 Coll., on financial, credit and other assistance to cooperative and individual housing construction and modernization of family houses in private ownership, as amended.
- 237.** Decree No. 440/2001 Coll., on compensation for pain and hardship.
- 238.** Decree No. 50/2003 Coll., amending Decree No. 440/2001 Coll., on compensation for pain and hardship in social life.

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Effect

This Act shall take effect on January 1, 2014.

Transitional provisions introduced by Act No. 460/2016 Coll. Article II

1. Where, before the date of entry into force of this Act, the form of a public document is required for a legal act occurring after the date of entry into force of this Act, it shall be sufficient if the form of the power of attorney for that legal act complies with the requirements of Act No. 89/2012 Coll., as in force from the date of entry into force of this Act.
2. Pre-emption right under § 3056(1) of Act No. 89/2012 Coll., to a building under § 509 of Act No. 89/2012 Coll., as in force from the date of the entry into force of this Act, as well as the pre-emption right so created to the land on which the building is established, shall cease on the date of the entry into force of this Act.
3. A trust established before the date of commencement of this Act shall be entered in the register of trusts within six months from the date of commencement of this Act. If no application for registration is made within that period, the trust fund shall cease to be administered.
4. The trustee of a trust fund established for a private purpose that was established before the effective date of this Act, if appointed or otherwise designated before the effective date of this Act, shall be entered in the register of trusts within six months after the effective date of this Act. If no application for registration is made within that period, the effects of his appointment or other designation shall cease.
5. If proceedings for the appointment of a trustee are commenced within the period referred to in paragraph 3 or 4, that period shall not expire until six months after the date on which the trustee is appointed.
6. An association and a community of owners formed before 31. December 2013 are not required, as of the effective date of this Act, to bring the designation of the legal form in their name into compliance with the requirements of § 132(2), § 216 and § 1200(2)(a) of Act No. 89/2012 Coll.
7. Declarations of set-off and set-off arrangements made prior to the effective date of this Act shall be governed by the existing legislation.
8. Agreements on deductions from wages or other income entered into before the effective date of this Act shall be governed by existing law. This shall not preclude the parties from agreeing that their rights and obligations shall be governed by this Act at the earliest on its entry into force.

Transitional Provisions introduced by Act Article II of Act No. 163/2020

1. If the unit owners have departed by the arrangement of the bylaws governing the ratio of the amount of the contribution for the management of the building and the land from § 1180 of Act No. 89/2012 Coll. as in force before the date of the coming into force of this Act, this arrangement shall be deemed to be part of the declaration as from the date of the coming into force of this Act.
2. The founder of an owners' association who was the manager of the house and land before the effective date of this Act under § 1202 of Act No. 89/2012, as in force before the date of commencement of this Act, shall, from the date of commencement of this Act until the establishment of the community of owners, exercise the administration of the house and land under § 1191 to 1193 of Act No. 89/2012 Coll., as in force from the date of commencement of this Act. However, the meeting shall be capable of acting in the presence of a majority of all unit owners and the presence of unit owners holding a majority of all votes, and the affirmative vote of a majority of the unit owners present and the consent of a majority of the unit owners present shall be required to pass a resolution, unless the declaration or bylaws require a greater number.
3. A petition for the registration of an owners' association in the public register shall be filed not later than 60 days after the date on which the founder of the owners' association who was the manager of the building and grounds pursuant to § 1202 of Act No. 89/2012 Coll., as in effect before the effective date of this Act, loses a majority of the votes.
4. If the seller's obligation to offer the item to the preemptor for purchase occurred before the effective date of this Act, the preemptive right of the preemptor shall survive the effective date of this Act.

Transitional Provisions introduced by Act Article II, No. 192/2021

1. The existing legislation shall apply to the legal relations of a person who has reached the twenty-first year of age before the date of entry into force of this Act, arising before the date of entry into force of this Act.
2. The § 1932 of Act No. 89/2012 Coll., as in force before the date of entry into force of this Act, shall apply to the performance of a debt arising from a legal act performed before the date of entry into force of this Act.
3. The right to performance of a contractual penalty or liquidated damages that arose before the date of entry into force of this Act shall be assessed in accordance with the existing legislation. However, the enforcement of such debt may only be enforced against the property of a person who has reached the twenty-first year of age at the earliest on the date of the entry into force of this Act to the extent provided for in § 899a(1) of Act No. 89/2012 Coll., as in force on the date of the entry into force of this Act.
4. If the breach of duty occurred before the date of entry into force of this Act, the right to compensation shall be assessed in accordance with the existing legislation.
5. A remission, waiver of recovery, or other act by a creditor to extinguish or reduce the recoverability of a debt incurred before the effective date of this Act by a person who has not attained full legal capacity at the time the debt was incurred shall not be considered a breach of a duty related to the administration of property.

Transitional provisions introduced by Act Article IV of Act No. 374/2022

1. Legal relations arising prior to the date of entry into force of this Act, as well as rights and obligations arising therefrom, including rights and obligations arising from breach of contracts concluded prior to the date of entry into force of this Act, shall be governed by Act No. 89/2012 Coll., as in force prior to the date of entry into force of this Act.
2. The provision of digital content or a digital content service to a consumer that occurs from the date of entry into force of this Act shall be governed by Act No. 89/2012 Coll. 89/2012 Coll., as in force from the date of entry into force of this Act, even if the conclusion of the contract took place before that date; however, the creation of the obligation, as well as the rights and obligations arising before the date of entry into force of this Act, shall be governed by Act No. 89/2012 Coll., as in force before the date of entry into force of this Act. This shall not apply to § 2174b and 2389q of Act No. 89/2012 Coll., as in force from the date of entry into force of this Act, which shall apply only to contracts concluded from the date of entry into force of this Act.

Signed: Němcová

Signed: Klaus

Signed: Nečas

Footnotes

¹⁾ Council Directive 85/374/EEC of 25. July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products, as amended by Directive 1999/34/ES.

Council Directive 86/653/EEC of 18. December 1986 on the coordination of the laws of the Member States relating to independent sales representatives.

Council Directive 93/13/EEC of 5. April 1993 on abusive terms in consumer contracts, as amended by Directive 2011/83/EU and Directive (EU) 2019/2161.

Directive of the European Parliament and of the Council 98/6/EC of 16. February 1998 on the protection of consumers in relation to the indication of the prices of products offered to consumers, as amended by Directive (EU) 2019/2161.

Directive of the European Parliament and of the Council 2000/31/EC of 8. June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the internal market.

Directive of the European Parliament and of the Council 2002/65/EC of 23. September 2002 concerning

the distance marketing of consumer financial services and amending Council Directive [90/619/EEC](#) and directives [97/7/ES](#) and [98/27/ES](#), as amended by Directive of the European Parliament and of the Council [2005/29/EC](#), Directive of the European Parliament and of the Council [2007/64/EC](#) and Directive (EU) [2015/2366](#).

Directive of the European Parliament and of the Council [2006/114/EC](#) of 12. December 2006 on misleading and comparative advertising (codified version).

Directive of the European Parliament and of the Council [2008/122/EC](#) of 14. January 2009 on the protection of consumers in respect of certain aspects of timeshare, long-term holiday product, resale and exchange contracts.

Directive of the European Parliament and of the Council [2009/138/EC](#) of 25. November 2009 on access to and pursuit of the business of Insurance and Reinsurance (Solvency II), as amended by Directive [2011/89/EU](#), Directive of the European Parliament and of the Council [2012/23/EU](#), Directive [2013/23/EU](#), Directive of the European Parliament and of the Council [2013/58/EU](#), Directive of the European Parliament and of the Council [2014/51/EU](#), Directive (EU) [2016/2341](#), Directive (EU) [2017/2402](#) and Directive (EU) [2018/843](#).

Directive of the European Parliament and of the Council [2011/7/EU](#) of 16. February 2011 on combating late payment in commercial transactions.

Directive of the European Parliament and of the Council [2011/83/EU](#) of 25. October 2011 on consumer rights amending Council Directive [93/13/EEC](#) and Directive [1999/44/EC](#) and repeals Council Directive [85/577/EEC](#) and Directive [97/7/ES](#), as amended by Directive (EU) [2015/2302](#) and Directive (EU) [2019/2161](#).

Directive of the European Parliament and of the Council (EU) [2015/2302](#) of 25. November 2015 on package travel services and package travel services, amending Regulation (EC) No. [2006/2004](#) and Directive [2011/83/EU](#) and to repeal Council Directive [90/314/EEC](#).

Directive of the European Parliament and of the Council (EU) [2019/770](#) of 20. May 2019 on certain aspects of contracts for the provision of digital content and digital services.

Directive of the European Parliament and of the Council (EU) [2019/771](#) of 20. May 2019 on certain aspects of contracts for the sale of goods, amending Regulation (EU) [2017/2394](#) a directive [2009/22/EC](#) and to repeal Directive [1999/44/ES](#).

Directive of the European Parliament and of the Council (EU) [2019/790](#) of 17. April 2019 on copyright and related rights in the digital single market and amending Directives [96/9/EC](#) and [2001/29/EC](#).

²⁾ Regulation (EC) No. [261/2004](#) of 11. 11 February 2004 laying down common rules on compensation and assistance to air passengers in the event of denied boarding, cancellation or long delay of flights and repealing Regulation (EEC) No [295/91](#).

Regulation (EC) No. [1371/2007](#) of 23 October 2007 on the rights and obligations of passengers in rail transport.

Regulation (EC) No [392/2009](#) of 23. April 2009 on the liability of carriers to passengers by sea in the event of accidents.

Regulation (EU) No. [1177/2010](#) of 24. November 2010 on passengers' rights when travelling by sea and inland waterway and amending Regulation (EC) No [2006/2004](#).

Regulation (EU) No. [181/2011](#) of 16. February 2011 on passengers' rights in bus and coach transport and amending Regulation (EC) No [2006/2004](#).