

az 1959. évi IV. törvény (Ptk.) angolul

**Act IV of 1959**

**on the Civil Code of the Republic of Hungary**

***PART ONE***

***INTRODUCTORY PROVISIONS***

**Purpose of this Act**

*Section 1.*

(1) This Act governs the financial and certain personal relations of the citizenry, the state, local governments, economic and civic organizations, and other persons. Other statutes pertaining to the aforementioned relations shall, unless they stipulate otherwise, be construed in concert with this Act and in consideration of its provisions.

(2) The provisions of this Act shall be construed in concert with the economic and social structure of the Republic of Hungary.

*Section 2.*

(1) This Act shall protect the property rights, inherent rights, and lawful interests of all persons.

(2) This Act shall ensure the freedom of all persons to exercise the rights to which they are entitled in accordance with the social function of these rights.

*Section 3.*

(1) This Act shall protect all of forms of ownership acknowledged in the Constitution.

(2)-(3)

**Exercising Rights and Fulfilling Obligations**

*Section 4.*

(1) In the course of exercising civil rights and fulfilling obligations, all parties shall act in the manner required by good faith and honesty, and they shall be obliged to cooperate with one another.

(2)-(3)

(4) Unless this Act prescribes stricter requirements, it shall be necessary to proceed in civil relations in a manner deemed reasonable under the given circumstances. No person shall be entitled to refer to his own actionable conduct in order to obtain advantages. Whosoever has not proceeded in a manner deemed reasonable under the given circumstances shall be entitled to refer to the other party's actionable conduct.

*Section 5.*

(1) This Act shall prohibit the abuse of rights.

(2) Exercising any right directed toward an objective that is incompatible with the social function of that right shall be regarded as an abuse of rights, particularly if it would lead to damaging the national economy, harassing persons, impairing their rights and legal interests, or acquiring undue advantages.

(3) Where the abuse of a right is manifested in the repudiation of a statement required by law and this conduct does injury to an important public interest or a private interest deserving special consideration, the court is entitled to substitute its judgment for the party's legal statement, provided there is no other way of averting the injury. A court

judgment may be substituted for a statement, especially if the statement had been made contingent upon the bestowal of an illegal advantage.

#### *Section 6.*

The court may award damages payable in full or in part by a party whose willful conduct has explicitly induced another bona fide person to act in a manner that has brought harm to this person through no fault of his own.

#### *Section 7.*

(1) Each and every government agency shall be obliged to protect the rights provided by law. Unless otherwise stipulated by law, these rights shall be enforced in the court of law.

(2) Parties may resort to arbitration instead of litigation if at least one of them is professionally engaged in an economic activity, if the legal dispute is in connection with that activity, and if the parties are able to freely dispose over the subject of the proceeding.

## ***PART TWO***

### ***PERSONS***

#### **Title I**

#### **MAN AS A SUBJECT AT LAW**

#### **Chapter I**

#### **Legal Capacity**

#### *Section 8.*

(1) All persons in the Republic of Hungary shall have legal capacity; all persons shall be entitled to have rights and obligations.

(2) Legal capacity shall be equal regardless of age, sex, race, ethnic background, or religious affiliation.

(3) Contracts and unilateral statements limiting legal capacity shall be null and void.

#### *Section 9.*

Legal capacity shall be due each person, if born alive, from the day of conception. The three hundredth day preceding the date of birth shall be considered the day of conception, which, however, may be proved to have occurred earlier or later. The day of birth shall be included in the aforementioned period.

#### *Section 10.*

If it is necessary for the protection of a child's rights, particularly if there is a conflict of interest between the child and its legal representative, a conservator must be appointed before the child is born.

## Chapter II

### Legal Competency

#### *Section 11.*

- (1) Everybody whose competency is not limited or disqualified by the law is legally competent.
- (2) Whosoever is competent is entitled to conclude contracts and make other legal statements.
- (3) Any contract or a unilateral statement restricting legal competency shall be null and void.

### Limited Capacity and Legal Incompetency of Minors

#### *Section 12.*

Persons who have not yet reached the age of eighteen years shall be deemed minors, unless they are married. Adulthood shall not be conferred upon marriage if it is annulled by court order owing to the absence of the guardian's consent, where one is required due to the lack of competency or minority.

#### *Section 12/A.*

- (1) A minor shall be of limited capacity if he or she has reached the age of fourteen years and is not incompetent.
- (2) Unless otherwise provided by law, the legal statement of a minor with limited capacity shall not be deemed valid without the consent or subsequent approval of that person's legal representative. If and when minors of limited capacity become competent, they shall be entitled to make their own decisions concerning the validity of their pending legal statements.
- (3) Minors of limited capacity shall, without the participation of their legal representatives, be entitled
  - a) to make legal statements of a personal nature for which they are authorized by legal regulation;
  - b) to conclude contracts of minor importance aimed at satisfying their everyday needs;
  - c) to dispose of the earnings they acquire through work and undertake commitments up to the extent of their earnings;
  - d) to conclude contracts that only offer advantages.
- (4) With the permission of the guardian, legal representatives shall be entitled to refuse gifts - in accordance with Paragraph d) - that are promised or given to minors of limited capacity. If the guardian declines to approve the legal representative's statement of refusal, the guardian's such decision shall replace the legal representative's statement of acceptance.
- (5) Legal representatives shall be entitled to issue legal statements in the name of minors of limited capacity, except when the law requires the statement to be made by the minor with limited capacity himself/herself or when the statement concerns earnings acquired through work.

#### *Section 12/B.*

- (1) Minors under the age of fourteen years are legally incompetent.
- (2) Minors over the age of fourteen whom the court has placed under conservatorship precluding legal competency shall also be legally incompetent. The procedure for placing a minor under conservatorship shall be governed by the provisions of Section 15. Conservatorship shall come into effect when reaching legal age, however, the minor loses his/her legal competency on the date on which the relevant decision becomes legally binding.

#### *Section 12/C.*

- (1) Legal statements made by incompetent minors shall be null and void; their legal representatives shall proceed on their behalf.
- (2) Contracts of minor importance that are generally concluded in large numbers and do not require special consideration and have been concluded directly by incompetent minors and have already been performed shall not be considered null and void.

## *Section 12/D.*

As regards any statement of a legal representative that effects the person or property of a minor, it shall be made with a view to the minor's opinion if he/she is of limited capacity, or if deemed legally incompetent but is not impaired mentally.

## **Common Provisions Pertaining to Minors of Limited Capacity or Legal Incompetency**

### *Section 13.*

(1) The approval of the guardian is required for the validity of statements made by legal representatives, if the legal statements concerns

- a) the waiver of maintenance of a minor,
- b) rights or obligations that, by virtue of inheritance, are conferred upon a minor; and refusals to inherit any property that can be individually refused,
- c) the transfer or any form of encumbrance of the real property of a minor, with the exception when any beneficiary right is established simultaneously upon acquiring a real property without consideration,
- d) the assets of a minor surrendered in accordance with specific other legislation,
- e) any other property of a minor, tangible or intangible, the value of which exceeds the amount limit prescribed in specific other legislation.

(2) The approval of the guardian is not required for the validity of a legal statement that has been judged valid by a court or notary public.

### *Section 13/A.*

(1) A minor shall not be entitled, even with the approval of his/her guardian, to make valid legal statements by which he/she gives gifts, undertakes obligations without adequate consideration, or waives his/her rights without consideration.

(2) This provision shall not prevent minors of limited capacity from having control over the earnings that they acquire through work; nor shall it exclude usual and customary gift giving.

### *Section 13/B.*

(1) Nullity on the basis of incompetence or limited capacity can only be cited in the interest of a person who is incompetent or of limited capacity.

(2) Any person who misleads another party regarding his/her legal competence shall be held accountable for such conduct and may be compelled to perform the contract under such liability.

## **Competency Limited or Precluded by Order of Conservatorship**

### *Section 14.*

(1) Persons of legal age shall be of limited capacity if a court has placed them in the custody of a conservator to that effect.

(2) Conservatorship may be requested by the spouse, next of kin, the brother or sister of a person of legal age, or by the guardian or the public prosecutor's office.

(3) The guardian shall initiate the conservatorship procedure upon receiving notice that it is necessary to place a person in the custody of a conservator, if it is not initiated by a close relative referred to in Subsection (2) within sixty (60) days of the guardian's receipt of notification concerning the requirement for legal action.

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(4) Persons whose necessary discretionary ability for conducting their affairs is - owing to their mental state, unsound mind, or pathological addiction - generally, or in respect of certain matters, permanently or recurrently diminished shall be placed by a court under conservatorship that limits their competency.

(5) If the loss of discretionary ability is only partial the person under conservatorship shall himself/herself be able to make legal statements in all matters concerning which the court did not limit their competency in its ruling restricting legal competency.

(6) The legal competency of persons placed under conservatorship may be completely restricted by court order regarding the following matters:

1) applying for social security, welfare and unemployment benefits and disposition over such benefits and any income received for work, whether by employment contract or other relationship of the like, that is in excess of the measure defined in Paragraph c) of Subsection (2) of Section 14/B;

2) right of disposition over movable and immovable property;

3) making legal statements related to family affairs, such as

a) statements related to the assets and property of married persons,

b) statements in connection with descent,

c) naming his/her child or changing the name of his/her child,

d) consent for the adoption of his/her child;

4) decision concerning the financial aspects of obligation to provide support;

5) statements in connection with the rental of a residence (conclusion and termination of contract);

6) probate matters;

7) statements in connection with placement in a social institution;

8) exercise of rights in connection with health care;

9) selecting a place of domicile.

#### *Section 14/A.*

(1) The court ruling on restricting the legal competency of a person shall specify the date by which to initiate the statutory review of conservatorship; this date must be fixed within five years from the date when the ruling becomes legally operative.

(2) The review procedure shall be initiated by the guardian. The petition for review may request the termination of conservatorship, the extension of conservatorship, the transfer of conservatorship of limited competency to preclude legal competency, the transfer of conservatorship of precluded competency to allow limited competency, or the revision of the sphere of rights that cannot be exercised by a person under conservatorship of limited competency.

#### *Section 14/B.*

(1) By general principle or in respect of the matters specified in the court ruling - with the exception of what is defined in Subsection (2) - the legal statement of a person with limited capacity shall not be deemed valid without the consent or subsequent approval of that person's conservator. Any disagreement between the conservator and the person in his custody shall be resolved by the guardian court. If and when persons of limited capacity become competent, they shall be entitled to make their own decisions concerning the validity of their pending legal statements.

(2) Persons of limited capacity shall, without the participation of their conservator, be entitled

a) to make legal statements of a personal nature for which they are authorized by legal regulation;

b) to conclude contracts of minor importance aimed at satisfying their everyday needs;

c) to dispose over 50 per cent of their income received for work, whether by employment contract or other relationship of the like, social security, welfare and unemployment benefits, and assume obligations up to the same percentage;

d) to conclude contracts that only offer advantages.

(3) A ward with limited capacity may grant overall authority in a public document to his conservator, provided the conservator consents, to act in his/her name and on his/her behalf, and to make legal statements with the exception of those defined in Subsection (2), and with the exception of the matters where legal statement is only accepted by law from the person of limited capacity.

(4) The person under conservatorship may revoke the overall authorization referred to in Subsection (3) by way of a private document of full probative force, of which the conservator must be informed as well.

(5) In matters requiring prompt attention, or as defined in another law, the conservator shall be entitled to act in the name and on behalf of a person in his custody in the absence of the agreement referred to in Subsection (3).

## *Section 15.*

(1) Persons of legal age whom the court has placed in a conservatorship precluding legal competency are legally incompetent.

(2) Conservatorship may be requested by the spouse, next of kin, the brother or sister of a person of legal age, or by the guardian or the public prosecutor's office.

(3) The guardian shall initiate the conservatorship procedure upon receiving notice that it is necessary to place a person in the custody of a conservator, if it is not initiated by a close relative referred to in Subsection (2) within sixty (60) days of the guardian's receipt of notification concerning the requirement for legal action.

(4) Persons of legal age whose necessary discretionary ability for conducting their affairs is - owing to their mental state or unsound mind - completely and perpetually absent shall be placed by a court under conservatorship that limits their competency.

(5) The court ruling of limited legal competency shall specify the date by which to initiate the statutory review defined in Section 14/A, unless the lack of discretionary ability of the person affected appears permanent, which shall be attested by a forensic medical expert.

## *Section 15/A.*

(1) Legal statements made by incompetent persons, with the exception set forth in Subsection (2), shall be null and void; their conservator shall proceed on their behalf. Prior to making a decision the conservator shall hear the views and requests of the person in his custody, if he/she is of sound mind, i.e. regarding his/her place of domicile, and shall abide by such requests if possible. A conservator who repeatedly breaches this obligation shall be subject to dismissal in accordance with Subsection (2) of Section 19/C.

(2) Incompetent persons can themselves conclude contracts of minor importance that are generally concluded in large numbers and do not require special consideration.

## **Common Provisions Concerning Persons of Limited Capacity or Legal Incompetency by Order of Conservatorship**

## *Section 16.*

(1) The approval of the guardian is required for the validity of statements made by the conservator of an incompetent person or by a person of limited capacity and his/her conservator, if the legal statement concerns

a) the maintenance of a person who is incompetent or of limited capacity,

b) rights or obligations that, by virtue of inheritance, fall upon a person who is incompetent or of limited capacity,

c) the transfer or any form of encumbrance of real property of a person who is incompetent or of limited capacity, with the exception when any beneficiary right is established simultaneously upon acquiring a real property without consideration,

d) the assets of a person who is incompetent or of limited capacity surrendered in accordance with Section 20/B,

e) other property, whether tangible or intangible, of a person who is incompetent or of limited capacity, the value of which exceeds HUF 50,000 or the amount specified in the order of conservatorship.

(2) If justified by the relevant circumstances the guardian may approve

a) upon the request of the conservator of a person who is incompetent or upon the joint request of the conservator and the person in his custody if he/she is of limited capacity, for a descendant of the person under conservatorship to establish and uphold his/her own household or to achieve some other vital objective as financed from the assets of

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the person under conservatorship; this support, however, shall not exceed the compulsory share of inheritance of the descendant;

b) upon the joint request of the conservator and the person in his custody if he/she is of limited capacity, for the person under conservatorship to surrender any property as gifts or to surrender any of his/her rights without consideration or donate such for public purposes, if such transaction does not endanger the livelihood of the person under conservatorship.

(3) The approval of the guardian is not required

a) for the validity of a legal statement that has been judged valid by a court or notary public,

b) if the legal capacity of the person placed under conservatorship of limited capacity by court order is not restricted by that order in respect of the legal statements referred to in Subsection (1).

#### *Section 16/A.*

(1) Nullity on the basis of incompetence or limited capacity can only be cited in the interest of a person who is incompetent or of limited capacity.

(2) Any person who misleads another party regarding his/her legal competence shall be held accountable for such conduct and may be compelled to perform the contract under such liability.

## **Incapacity without Conservatorship**

#### *Section 17.*

(1) Persons who completely lack the mental ability, either permanently or temporarily at the time of making a legal statement, to conduct their affairs are legally incompetent even if they are not placed in the custody of a conservator.

(2) Legal statements made by incompetent persons who have not been placed in the custody of a conservator shall be null and void, with the exception set out in Subsection (3).

(3) Legal statements, exclusive of testamentary dispositions, made by incompetent persons of legal age who have not been placed in the custody of a conservator shall not be considered null and void on the grounds of incompetence, if the contents and circumstances of any legal statement lead to the conclusion that the statement would also have been justified had the party been legally competent.

## **Sequestration and Appointment of a Temporary Conservator**

#### *Section 18.*

(1) If legal action for the placement of a person under conservatorship to limit or preclude competency is justified, and the protection of the assets of this person demands urgent action, the guardian shall order sequestration and shall appoint a sequestrator. A writ of sequestration cannot be appealed.

(2) Sequestration and the actions of sequestrators shall be governed by the provisions of the Chapter of the Judicial Execution Act pertaining to the implementation of precautionary measures.

#### *Section 18/A.*

(1) In cases demanding immediate action, the guardian may appoint a temporary conservator to persons of legal age whose necessary discretionary ability for conducting their affairs is - owing to their mental state or unsound mind - completely and perpetually absent and if their interests cannot be protected by other means, by sequestration in principle. An order of appointment of a temporary conservator cannot be appealed.

(2) The guardian shall specify in its order of appointment of a temporary conservator the particular matters, from among those defined under Subsection (6) of Section 14, concerning which the temporary conservator has powers to act in the name and on behalf of the person in his custody.

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*Section 18/B.*

The guardian shall file for legal action for placement under conservatorship within eight (8) days from the order of sequestration or the appointment of a temporary conservator; the court on the other hand shall review the sequestration or the appointment of a temporary conservator within thirty (30) days following receipt of said petition.

## **Appointment of a Conservator**

*Section 19.*

(1) The guardian shall appoint a conservator for the person placed under conservatorship by court order. The detailed regulations concerning the appointment of conservators are laid down in specific other legislation.

(2) Any person of legal age with legal competency can be appointed a conservator. The person appointed a conservator must accept the office for the appointment to be valid.

*Section 19/A.*

(1) For the office of conservator the person designated by the person placed under conservatorship in a public document before losing legal capacity, or if this is not possible, his or her spouse living in the same household, shall be appointed, if it is within his interest. In the absence of such person, or if having his/her spouse appointed would jeopardize the interest of the person under conservatorship, the guardian shall appoint a person for the office of conservator who appears competent in view of all applicable circumstances.

(2) For the office of conservator, of the persons deemed competent, the parents or the person named in a public document or in their will by the parents in the event of their death shall be preferred, or, in the absence of such persons, other relatives shall be granted equal treatment, provided they are able and willing to provide care should it be necessary.

(3) If a conservator cannot be appointed in accordance with Subsections (1) and (2), a career conservator shall be appointed for the person under conservatorship. Career conservators must have clean criminal records. Persons recommended by non-governmental organizations (e.g. societies) from their members providing care to persons with disabilities, persons of pathological addiction or psychiatric patients may also be appointed career conservators.

(4) A person cannot be appointed conservator if an objection to such person is expressly made by the person under conservatorship.

*Section 19/B.*

(1) Under special circumstances more than one conservator may be appointed to a person under conservatorship, if

- both parents or two close relatives of the person under conservatorship accept the office of conservator, or
- management of the assets or handling certain other matters of the person under conservatorship requires special expertise.

(2) As regards Paragraph b) of Subsection (1), the guardian court shall define the separate duties of each conservator.

(3) In addition to a conservator the guardian may also appoint a substitute conservator for the person under conservatorship. The substitute conservator shall have powers to proceed in matters which concern the person under conservatorship and which require immediate attention if the conservator is absent or is unable to carry out his duties for other reasons.

*Section 19/C.*

- (1) The guardian shall relieve a conservator from office
- if the court has terminated conservatorship,
  - upon the death of the person under conservatorship,
  - if so requested by the conservator citing substantial reasons,

d) if any reason serving grounds for exclusion of the conservator's appointment arises subsequently.

(2) The guardian shall remove the conservator from office, preceded by suspension in cases for which prompt action is required, if the conservator fails to fulfill his obligations or if he engages in conduct by which to cause serious injury to or endanger the interest of the person under conservatorship.

(3) When a conservator is relieved from office pursuant to Paragraph b) of Subsection (1) the guardian shall notify the court ordering conservatorship of the death of the person under conservatorship in order to have the death registered in the register of persons under conservatorship.

## Activities of Conservators

### *Section 20.*

(1) By general principle or in respect of the matters specified in the court order limiting competency, the conservator shall manage the assets of the person in his custody and shall be the official representative of this person.

(2) If so required by the circumstances the conservator - if agreed in principle - shall also provide care for the person in his custody.

### *Section 20/A.*

Conservators shall be supervised by the competent guardian. Conservators shall be required to report to the guardian concerning the condition of the persons in their custody when so requested or on an annual basis.

### *Section 20/B.*

Upon the guardian's request the conservator shall submit the assets (money, securities and other valuables) of the person in his custody if such assets are not immediately required for ongoing expenses according to the rules of financial management and with due observance to Section 20/C. For any transaction concerning the assets deposited with the guardian the guardian's prior consent is required.

### *Section 20/C.*

The conservator shall manage the assets of the person in his custody so as to best serve the well being of that person. The conservator shall be obliged to hear the personal requests of the person under conservatorship and shall satisfy such requests as appropriate depending on the funds available.

### *Section 20/D.*

(1) With the exception set forth in Subsection (2), conservators shall file annual statements of accounts on the management of assets. If the conservator is a close relative of the person under conservatorship and his/her financial situation requires no accounting as a normal course, the guardian shall authorize simplified accounting.

(2) With the exception of career conservators, an annual statement of accounts is not required if the person in the conservator's custody has no assets, and if the monthly amount of his/her income from employment, pension or other benefits is below the limit prescribed in specific other legislation.

(3) If the person under conservatorship is the member (shareholder) of an economic organization, the conservator shall request the guardian's approval for any commitment to be assumed by the person in his custody that is in excess of 50 per cent of his capital contribution or HUF 100,000. If the economic organization in question is subject to reporting according to the Accounting Act, the conservator shall submit a copy of this report to the guardian together with the annual statement of accounts.

(4) The guardian shall be entitled to order any conservator, in addition to the requirements specified in Subsections (1) and (3), to produce ad hoc accounts. Such order can also be issued if requested by the person under conservatorship to whom it pertains.

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(5) The detailed regulations concerning the management of assets by conservators are laid down in specific other legislation.

## **Termination and Revision of Conservatorship**

### *Section 21.*

(1) The court shall terminate conservatorship concerning competency if the grounds on which it was ordered no longer prevail.

(2) Petition for the termination of conservatorship may be filed by the person under conservatorship himself/herself, by his/her spouse, next of kin, brother or sister, by the guardian or by the public prosecutor's office.

(3) Legal action for the termination of conservatorship may also be initiated before the statutory review procedure defined in Section 14/A.

(4) The parties referred to in Subsection (2) may, in addition to the termination of conservatorship, also request the revision of the sphere of matters in connection with which the court has restricted the competency of the person under conservatorship, as well as the transfer of conservatorship of limited competency to preclude legal competency, or the transfer of conservatorship of precluded competency to allow limited competency.

## **Chapter III**

### **Cessation of Legal Capacity; Legal Declaration of Death**

#### *Section 22.*

Legal capacity ceases upon death.

#### *Section 23.*

Missing persons may be declared legally dead by the court five years after the date of disappearance if there has been no information of any kind during this five-year period to indicate that they are alive.

#### *Section 24.*

(1) The court shall declare the date of death upon due consideration of the circumstances.

(2) If consideration of the circumstances fails to be conclusive, the date of death shall be the fifteenth day of the month following the month of the person's disappearance.

#### *Section 25.*

(1) A person declared legally dead shall be considered dead until there is evidence to the contrary.

(2) If it is conclusively resolved that the person declared legally dead had disappeared before or after the date indicated in the relevant decision, and the conditions for the declaration of death are otherwise valid, the court shall amend the legal declaration of death accordingly. In this case, the legal consequences shall change in accordance with the revised ruling.

(3) If it has been conclusively resolved that a person declared legally dead had disappeared after the date indicated in the relevant decision and the conditions for the legal declaration of death are not valid, the court shall repeal the decision pertaining to the declaration of death. Unless an exemption is granted by law, the legal consequences that have proceeded from the decision shall be null and void.

(4) If a person who has been declared legally dead is found, the decision shall be set aside, and, unless an exemption is granted by law, the legal consequences proceeding therefrom shall be null and void.

## Title II

### Chapter IV

*Sections 26-27.*

## Title III

### LEGAL PERSONS

#### Chapter V

#### **Legal Capacity; Establishment and Termination of Legal Persons**

*Section 28.*

(1) The State, when a party to any relationship concerning property, shall be deemed a legal person. Unless otherwise prescribed by law, the Minister of Finance shall represent the State in civil relations; he may exercise such jurisdiction by way of other State agencies, or may transfer such to other State agencies.

(2) The State shall be required to honor obligations of restitution, reimbursement and compensation and commitments to *bona fide* persons even in the absence and in excess of budgetary appropriations.

(3) According to the legal regulations that govern them, state, local government, economic, social, and other organizations shall also have legal personalities.

(4) All legal persons have legal capacity. Unless otherwise provided by legal regulations, the legal capacity of legal persons shall cover all rights and obligations that do not inherently pertain solely to individual human beings.

*Section 29.*

(1) The conditions for establishing and terminating legal persons shall be defined by law for each type of legal person. Legal persons may also be created by virtue of law.

(2) The name, activity, headquarters, and (unless stipulated in specific other legislation) the representatives of each legal person shall be described in the legal regulation, resolution, or document pertaining to the foundation of the legal person.

(3) The representative of a legal person shall be authorized to sign on behalf of the legal person. If a document required by law to be issued in writing is not signed by the representative, the signatures of two persons vested with the right of representation shall be necessary. The signatures of two persons with the right of representation shall always be required for any orders pertaining to a bank account. A legal regulation may deviate for these provisions.

(4) Where the creation of a legal person is rendered contingent upon registration by statutory provision, any change in the registered data shall only be effective in respect of third parties if it is registered.

*Section 30.*

(1) Unless otherwise provided by legal regulation or, on the basis of authorization granted by such legal regulation, a declaration of foundation or charter, the organizational units of a legal person (factories, branch offices, business premises, plants, offices, local representations or groups, basic units, sections, etc.) shall not have legal personality.

(2) The head of an organizational unit shall act as the representative of the legal person in the area determined by the intended operation of the unit. A legal regulation, declaration of foundation or charter may provide otherwise.

## Chapter VI

### Special Provisions Pertaining to Different Types of Legal Persons

#### 1. State-Owned Companies

##### Section 31.

- (1) State-owned companies are legal persons.
- (2) State-owned companies shall independently manage the assets entrusted to them in a manner and with the responsibility prescribed by law.
- (3) State-owned companies shall bear responsibility for their obligations with the assets entrusted to them.
- (4) The state shall govern and supervise the management and other activities of companies in the manner prescribed by legal regulation.
- (5) The name of a state-owned company shall generally refer to the activity of the company. The name of a company shall be selected so as to distinguish the company from other economic organizations.
- (6) State-owned companies are represented by their directors. Directors may, on occasion or with respect to a specific category of affairs, transfer this power to one of the company's employees.

##### Section 32.

- (1) The general management of state-owned companies is provided by
  - a) the company council,
  - b) the general meeting or assembly of delegates of the company's employees, or
  - c) the director.
- (2) Directors shall act independently and with personal responsibility with regard to matters that do not fall within the realm of corporate jurisdiction.
- (3) State-owned companies shall not be deprived of the assets they manage; although legal regulations can stipulate otherwise.

##### Section 33.

The specific rules pertaining to state-owned companies shall be prescribed in a separate law.

#### 2. Trusts

##### Section 34.

- (1) A founding body may establish a trust to promote the efficient operation and development of several companies under its control and direct these companies. The trusts and the companies managed by the trust are legal persons.
- (2) The companies managed by a trust shall be listed in the trust's declaration of foundation.
- (3) The specific regulations pertaining to trusts shall be prescribed in a separate law.

#### 3. Other State-Owned Economic Organizations

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*Section 35.*

Unless otherwise provided by legal regulations, the provisions pertaining to state-owned companies shall govern the legal personality of other state-owned economic organizations as well.

## *4. Budgetary Agencies*

*Section 36.*

- (1) Budgetary agencies are legal persons.
- (2) Each budgetary agency shall be represented by the head of the agency, who may, on occasion or with respect to a specific category of affairs, transfer this power to one of the agency's employees.

*Section 37.*

- (1) Budgetary agencies shall be under the obligation to make restitution, reimbursement and compensation and shall also bear responsibility for commitments to bona fide persons, even to an extent that exceeds their budgets.
- (2) In such cases, funding by the central budget shall be provided in accordance with the regulations governing the management of the central budget.

## *5. Cooperatives*

*Section 38.*

A cooperative is an economic organization with legal personality that is established with investment fund share capital whose amount is specified in its charter; it operates under the principle of open membership and variable capital with the objective of lending assistance to its members so as to improve their rate of success in the

management of their own livelihood (including consumption in respect of members who are natural persons) and to lend assistance in the education and social welfare of its members, employees and their relatives on a case-to-case basis.

*Section 39-50.*

*Section 51.*

The specific rules pertaining to cooperatives shall be established by a separate law.

## *6. Business Associations with Legal Personality*

*Section 52.*

- (1) The state, legal persons, unincorporated business associations and natural persons may found economic associations with their own corporate names to pursue and promote economic activities within a business partnership.
- (2) Joint enterprises, limited liability companies, and joint-stock companies are business associations that operate as legal persons.
- (3)

*Section 53.*

(1)

(2) Joint enterprises are business associations, founded by their members, which are liable for their obligations primarily to the extent of their assets. Should the assets of the company be insufficient to cover debts, the members shall, as sureties, be jointly liable, in the percentage of their capital contributions, for the debts of the joint enterprise.

(3) Limited liability companies are business associations founded with an initial capital (subscribed capital) consisting of capital contributions of a predetermined amount, in the case of which the members' obligations to the company extend only to the provision of their capital contributions, and to other possible contributions as set forth in the articles of incorporation. With the exceptions defined by law, members shall not bear liability for the company's obligations.

(4) Joint-stock companies are business associations founded with a share capital (subscribed capital) consisting of shares of a predetermined number and nominal value, in the case of which the obligations of members (shareholders) to the joint-stock company extend to the provision of the nominal value or issue value of shares. With the exceptions defined by law, shareholders shall not bear liability for the obligations of a joint-stock company.

#### *Section 54.*

(1) Articles of incorporation (charter) shall be required for the foundation of a business association, while the foundation of a joint-stock company requires bylaws (charter).

(2) Articles of incorporation shall include the following:

- a) name and registered address of the company,
  - b) members of the company including, with the exception of shareholders in the bylaws, name (corporate name) and domicile (registered address),
  - c) the company's sphere of activities,
  - d) the company's subscribed capital and the method and date of provision of the subscribed capital (members' contributions),
  - e) the method of signing for the company,
  - f) the name and domicile of executive officers,
  - g) the duration of the business association, if founded for a fixed period of time, and
  - h) any other information required by the Act on Business Associations for each form of business association.
- (3) Business associations come into existence on the day on which they are entered into the register of companies.

#### *Section 55.*

Business associations are represented vis-a-vis third persons and before courts and authorities by the director (in joint enterprises), the managing director (in limited liability companies), or the members of the board of directors (in joint-stock companies).

#### *Section 56.*

(1) Business associations shall be terminated, if

- a) the time of operation defined by the articles of incorporation (or bylaws) has expired or another condition of termination has occurred;
- b) they resolve to terminate themselves without a legal successor;
- c) they resolve to terminate themselves with a legal successor (transformation);
- d) if the number of their members falls to one, with the exception of limited liability companies and joint-stock companies, and no new member is registered at the court of registry within the period prescribed by law;
- e) the court of registry declares them terminated;
- f) the court of registry orders their cancellation ex officio;
- g) the court terminates them in the course of liquidation;
- h) the provisions of the Act on Business Associations relating to certain forms of business associations so prescribe.

(2) The specific regulations pertaining to business associations shall be determined by a separate law.

## 7. Non-profit Companies

### Section 57.

(1) Non-profit companies are legal persons, serving the common interests of society on a regular basis, without aiming to acquire profits or accumulate assets. Non-profit companies may engage in business-type economic activities in the interest and for the benefit of their non-profit activities. Profits generated by a company's activities may not be distributed among the members.

(2) In respect of non-profit companies, the common regulations pertaining to business associations and the provisions on limited liability companies prescribed in the Act on Business Associations shall be duly applied, with due regard to the exceptions set forth in this Act.

(3) The articles of incorporation of non-profit companies shall specify the public service activities and, when applicable, any business-type economic activities performed by the non-profit company. The articles of incorporation shall also prescribe the mode of utilizing the assets, described in Subsection (3) of Section 60, for public purposes in the event of the company's dissolution.

### Section 58.

(1) Non-profit companies may also be established as the companies of certain legal persons, including companies whose names includes the term 'institution', or if a business association is transformed into a non-profit company. In this case, the non-profit company shall become the legal successor of the company (institution) of said legal persons or of the business association.

(2) In respect of the foundation of non-profit companies as described in Subsection (1), the provisions on the transformation of business associations shall be duly applied, unless the legal predecessor is a limited liability company that may be transformed into a non-profit company by having its articles of incorporation amended accordingly.

(3) Non-profit companies come into existence on the day on which they are entered into the register of companies.

(4) The designation 'non-profit company' or its abbreviation ('kht.') shall be included in the company's registered name.

(5) Members may also be invited to join non-profit companies through public announcements.

### Section 59.

(1) All contracts concerning the pursuit of public service activities that non-profit companies conclude with agencies responsible for fulfilling the common needs of society shall be approved by the non-profit company's members' meeting. Such contracts shall be deposited at the court of registry within thirty days of the date of signing.

(2) All non-profit companies are required to set up supervisory boards and choose auditors. The supervisory board, upon revealing any violation of a contract concerning the conditions for pursuing public service activities, shall immediately call a general meeting of the non-profit company's members.

(3)

### Section 60.

(1) Non-profit companies may not be transformed into business associations; they may only merge with other non-profit companies or demerge into several such companies. The provisions of the Act on Business Associations shall be duly applied to such mergers and demergers.

(2) Upon termination, the court of registry shall remove the non-profit company from the register of companies following which it shall be deemed terminated.

(3) In the event of the termination of a non-profit company without a legal successor, only the members' core deposits may be disbursed at their original value after all liabilities have been settled. Any assets remaining thereafter shall be used for public purposes.

## *8. Societies and Public Corporations*

### *Section 61.*

Societies are voluntarily established self-governing organizations that are formed for the purposes defined in their statutes, have registered membership, and organize their members' activities in order to achieve their objectives. Societies are legal persons.

### *Section 62.*

(1) The bylaws of societies shall include provisions regarding the society's name, objective, registered office, and organizational structure.

(2) Societies come into existence when they are registered by the court.

(3) Societies shall manage their assets independently. Societies may not be formed with the principal objective of performing economic activities.

(4) Societies shall be liable for their debts with their own assets. The members, above and beyond the payment of membership dues, shall not be responsible for the liabilities of the society with their own assets.

### *Section 63.*

Societies shall cease to exist if

- a) their dissolution or merger with other societies is resolved by its supreme body;
- b) they are dissolved or declared terminated by a duly authorized agency.

### *Section 64.*

For the purposes of this Act, the provisions pertaining to societies shall govern civic organizations formed on the basis of the right of association.

### *Section 65.*

(1) Public corporations are self-governing organizations with registered membership whose establishment has been ordered by law. Public corporations perform public duties related to their membership and/or the activities performed by their membership. Public corporations are legal persons.

(2) Public corporations are, in particular, the Hungarian Academy of Sciences, the chamber of commerce, and professional associations.

(3) The law can prescribe certain public duties that must be performed by public corporations. Public bodies have the authorization, conferred by law, to fulfill public duties, and they shall exercise such rights through self-management.

(4) The law may prescribe that certain public duties be performed exclusively by public corporations and that certain activities may only be performed by members of public corporations.

(5) Data relating to public duties performed by public corporations are of public interest.

(6) Unless otherwise provided by law, the provisions pertaining to societies shall be duly applied to public corporations.

## *National Sports Associations*

*Section 66.*

(1) The national association of a specific sport (hereinafter referred to as 'sports association') is a self-governed organization with registered members, that is established by associations of the specific sport according to the conditions laid down in specific other legislation.

(2) The sports association shall perform the duties laid down in specific other legislation and in its charter. The association is a legal person.

(3) Certain duties which are to be performed exclusively by sports associations may be defined by law. Sports associations are vested with all necessary authorizations defined by law, and shall exercise these powers by way of self-government.

(4) Unless otherwise prescribed by law, the provisions on societies shall be applied to sports associations.

*Section 67-69.*

## *9. Companies of Certain Legal Persons*

*Section 70.*

(1) Local governments and the national association of cooperatives shall be entitled to establish companies. Such companies are legal persons.

(2) Societies shall only be entitled to establish companies if the authority to do so is granted by the society's statutes.

*Section 71.*

(1) A company's charter must specify, in addition to the facts and circumstances defined in Subsection (2) of Section 29, the name of the founding legal person, the company's starting assets, and other facts and circumstances stipulated by legal regulations.

(2) The name of a company shall contain an indication of the company's activities and its name shall be selected so as to distinguish the company from other economic organizations.

(3) Companies are deemed established upon registration in the register of companies and they are deemed terminated upon being stricken from the register of companies.

*Section 72.*

(1) The founding legal person shall, within the limits of the law, determine the sphere of activities of a company and shall provide the assets necessary for such activities.

(2) The founding legal person may receive a share of the company's profits remaining after obligations to the state budget have been met to the extent determined in the charter.

(3) The founding legal person is responsible for the liabilities of the company as surety.

(4) The director of a company is appointed and removed by the founding legal person, which exercises other employer's rights regarding the director's employment.

(5) The founding body shall be entitled to stipulate that the general management of the company be carried out by an executive body (in addition to the appointed director). The order of establishing the executive body, the number of its members, and the scope of its authority must be prescribed in the charter, and this and the other matters pertaining to its operation must also be included in the organizational and operating regulations.

(6) The founding legal person shall be entitled to terminate the company.

(7) If the company is terminated without a legal successor (with the exception of liquidation), there shall be a final settlement. The provisions of Act VI of 1977 on State-Owned Companies (frequently amended) shall be applied to the manner in which the final settlement is conducted, with the difference that any remaining assets may be claimed by the founding body.

## *Section 73.*

(1) The director represents the company vis-a-vis third persons, before courts and other authorities. The director shall be entitled to transfer such authority occasionally, or with respect to specific categories of affairs, to employees of the company. The authority to represent and sign for the company shall be registered in the proxy book.

(2) The organizational and operating regulations of a company shall be determined by the director in order to ensure the most appropriate organizational structure possible for carrying out the company's activities.

## *10. Subsidiaries*

### *Section 74.*

(1) Economic organizations and other legal persons engaged in economic activities, defined in legal regulations, shall be entitled to establish subsidiaries. Subsidiaries are legal persons.

(2) The charter of a subsidiary shall prescribe, in addition to the facts and circumstances defined in Subsection (2) of Section 29 and in Subsection (1) of Section 71, the manner in which the subsidiary and the founding body will cooperate as well as the rights and obligations of the founding body and the subsidiary in connection with their cooperation.

(3) The provisions pertaining to the companies of certain legal persons shall be applied to subsidiaries with the exception that, unless otherwise provided by legal regulation, the prior consent of the Minister of Finance is not required for the establishment of a subsidiary.

(4) Additional provisions pertaining to subsidiaries are contained in specific other legislation.

## *11. Foundations*

### *Section 74/A.*

(1) Private persons, legal persons, and unincorporated business associations (hereinafter referred to collectively as 'founders') shall be entitled to form a foundation in a charter in order to serve a long-term public interest. A foundation may not be formed for the principal purpose of performing economic activities. A foundation shall have allocated sufficient assets for achieving its objectives. A foundation is a legal person.

(2) A foundation is deemed established once it has been registered by the court. Registration cannot be refused if the charter is in conformity with the requirements prescribed in this Act. The foundation may commence operations on the operative date of the resolution on its registration.

(3) A founder may not withdraw a foundation after registration.

(4) A foundation is registered by the county court of where the foundation's registered office is situated or by the Metropolitan Court of Budapest (hereinafter referred to collectively as 'court'). The application for registration shall be submitted to the court by the founder with the documents decreed by the Minister of Justice attached.

(5) The court shall adopt its decisions concerning registrations in nonlitigious proceedings. The court shall also send a copy of its decision on registration to the public prosecutor's office.

(6) A foundation is deemed terminated upon removal from the register. The relevant provisions concerning the registration of a foundation shall be duly applied to removal.

### *Section 74/B.*

(1) The charter of a foundation shall contain the fund's

a) name,

b) objective,

c) assets and the manner in which they are to be utilized, and

d) registered address.

(2) The founder may stipulate in the charter the conditions for joining the foundation and other options.

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(3) A founder shall, in the charter, be entitled to confer legal personality upon an organizational unit of the foundation, if such organizational unit has an independent administrative and representative body, and if it has the necessary assets allocated from the assets assigned for the purposes of the foundation.

(4) If a founder allows others to join the foundation (open foundation), anybody may join the foundation under the conditions set forth in the charter. The assets provided upon the creation of an open foundation must be sufficient for the foundation to commence operations.

(5) A founder shall be entitled, in justified cases, to amend the charter, without causing any injury to the foundation's name, purpose, or assets. When implementing such amendments the provisions on the registration of a foundation shall be duly observed.

(6) The provisions governing the financial management of societies [Subsection (3) of Section 62] shall be applied to the financial management of foundations.

#### *Section 74/C.*

(1) A founder shall be entitled to designate a managing body in the charter or create a separate organization for such purpose. The managing body (organization) shall be the official representative of the foundation. The founder may install a clause in the charter - within the framework laid down in Subsection (3) - to render the term of the managing body (organization), or the term in office of a member of such body, for a fixed period or subject to a specific condition. This provision, however, shall become effective only when the new managing body (organization) or the new member is registered by the court, even after the fixed period has expired or the aforementioned condition has occurred.

(2) The court shall order the appointment of a managing body (organization) if the founder has failed to provide for one or if the managing body (organization) declined to undertake to perform this task.

(3) A managing body (organization) in which the founder is entitled, directly or indirectly, to exercise any controlling influence regarding the utilization of the foundation's assets may not be appointed or established.

(4) The founder, if establishing a separate organization for the management of the foundation, shall prescribe the composition thereof in the charter and designate the person authorized to represent the foundation. If more than one person is authorized to represent the foundation, the founder shall also prescribe the manner and extent to which the right of representation can be exercised. Any limitation on the right of representation shall have no effect vis-a-vis bona fide third persons. The founder may install a clause in the charter to entitle the managing body (organization) to authorize an employee of the foundation to represent the foundation specifying the manner and extent to which the right of representation can be exercised.

(5) The foundation shall be liable for any damages caused to a third person by the managing body (organization) or an officer (member) thereof in the course of fulfilling its/his responsibilities. An officer (member) who causes damage to the foundation shall be liable for the damage caused in that capacity in accordance with the general rules of civil law.

(6) If the activities of the managing body (organization) jeopardize a foundation's objectives, the founder shall be entitled to dismiss the managing body and appoint another body (organization) to replace it.

(7) The founder may install a clause in the charter to designate a person to exercise his rights provided by this Act in his name and on his behalf under specific circumstances, such as his death or dissolution. The said person shall be subject to the same provisions as the founder. This clause may not be withdrawn after the foundation is registered. In the absence of the founder or a designated person to exercise his rights, such rights shall devolve upon the court, following notification by the managing body (organization) or the public prosecutor's office.

#### *Section 74/D.*

If a foundation has been endowed by will, the court shall be notified thereof; such foundation shall be deemed a public interest enjoinder if its endowment is not in conformity with the conditions prescribed by law.

#### *Section 74/E.*

(1) The court shall remove a foundation from the register if:

- a) the objective defined in the charter has been realized;
- b) the period of time defined in the charter has elapsed;
- c) the condition defined in the charter has occurred.

(2) A foundation shall also be removed from the register if the court orders it to be terminated or merged with another foundation.

(3) On the basis of a petition filed by the public prosecutor's office, the court shall order the termination of a foundation if it has become impossible to achieve its objective, or if the foundation's registration is to be refused owing to a change in the law. If requested by the founder, the court shall order the termination of a foundation if it has become impossible to achieve its objective.

(4) The court may terminate a foundation if any of the activities of the managing body (organization) jeopardize the objective of the foundation and the founder, despite a court order, fails to dismiss the managing body and appoint another body (organization) to replace it.

(5) Unless otherwise stipulated in the charter, the assets of a terminated foundation shall be allocated by the court for the support of another foundation with a similar purpose.

(6) Upon the joint request of the founders, the court shall, for the purpose of establishing a new foundation or merging with another foundation, be entitled to order the merger of the foundations, if such merger is in consonance with realizing the objectives of the foundations concerned. For the court proceeding, the new or duly amended charter, containing stipulations for the succession of the terminated foundation, shall also be attached to the application for the merger of foundations, while the provisions pertaining to the registration of foundations shall be applied with regard to other issues.

#### *Section 74/F.*

(1) The public prosecutor's office shall, in accordance with the relevant regulations, have judicial supervisory competence over foundations.

(2) The public prosecutor shall be entitled to file for court action if the legitimacy of a foundation's activities cannot be otherwise ensured. The court shall order the foundation's management to restore the lawful operation of the foundation by a specific deadline. The court shall terminate the foundation if the management fails to comply by the aforementioned deadline.

#### *Section 74/G.*

(1) A public foundation may be established by Parliament, the Government, or the representative body of a local authority or a minority local government for the purpose of continuous performance of public responsibilities. The establishment of public foundations can be made mandatory by law.

(2) For the purposes of Subsection (1), the state or local government responsibilities that are prescribed by law or local government regulation to be provided by the state, the local authorities or minority local governments shall be deemed as public responsibilities. The establishment of a public foundation shall not affect the obligation of the state or local government for fulfilling such responsibilities.

(3) A public foundation may also be formed by a foundation donating its entire assets, with the consent of the founder, to a duly authorized body in order to establish a public foundation with the same objective. The party entitled to form a public foundation, if it accepts the donation, shall establish the public foundation together with the foundation's founder. The foundation shall be terminated upon the establishment of the public foundation, which shall thereby become its legal successor, and the founders of the public foundation shall, unless otherwise provided in the charter, exercise the founders' rights together.

(4) Bodies entitled to found a public foundation shall only be entitled to establish foundations that are public foundations. A public foundation may participate in an economic organization only if it has majority control and its liability is limited to its financial contribution. Majority control means that the public foundation holds over fifty per cent of the voting rights by virtue of its own right as a member (shareholder) or by virtue of an agreement with another member (shareholder) of the economic organization. An economic organization established by a public foundation may not establish other economic organizations and may not acquire any share in an economic organization.

(5) When a public foundation is established, the charter shall also specify the managing body; or a separate body, including the body entitled to supervise the managing body, shall be created for this purpose.

(6) The charters of public foundations must be published in an official gazette.

(7) Unless otherwise provided by law, anybody shall be entitled to join a public foundation without conditions; however, the charter can stipulate that joining is contingent upon the approval of the managing body (organization).

(8) The managing body (organization) shall report to the founder annually on the operation of the public foundation, and it shall publish the most important details of its financial affairs. The legitimacy and propriety of the financial management of public foundations, with the exception of public foundations founded by the representative body of a local authority or a minority local government, shall be overseen by the State Audit Office.

(9) The court shall, upon the founder's request, terminate a public foundation in a nonlitigious proceeding if there is no longer any need for the public objective for which it was established, or if the public duty can be performed more efficiently in another way or through a different organizational structure. When a public foundation is terminated, the foundation's assets shall, after satisfying any creditors, remain with the founder, who shall use the assets for a purpose similar to that of the terminated public foundation and shall appropriately inform the public thereof.

(10) Additional requirements may be stipulated concerning the establishment of public foundations and the transfer of founders' rights.

(11) Concerning those matters not specifically regulated, the provisions pertaining to foundations shall also apply to public foundations.

## *12. Professional Associations*

### *Section 74/H.*

(1) A professional association is an incorporated cooperative association founded by its members in order to improve the efficiency of their financial management, to coordinate their economic activities, and represent their professional interests. A professional association shall not aim for profit; its members shall sustain unlimited joint and several liability for any liabilities exceeding its assets.

(2) A professional association may also pursue other service and joint economic activities in support of its coordination duties.

(3) Professional associations come into existence when they are entered into the register of companies, effective as of the day of registration.

(4) The designation 'professional association' shall be indicated in the corporate name of the cooperative association.

(5) The detailed regulations on professional associations shall be established in a separate law.

## **Title IV**

### **PROTECTION OF PERSONS UNDER CIVIL LAW**

#### *Chapter VII*

#### *Inherent Rights and Rights Related to Intellectual Products*

##### *Inherent Rights*

###### *Section 75.*

(1) Inherent rights shall be honored and respected by everyone. Inherent rights are protected by law.

(2) The provisions on the protection of inherent rights shall also apply to legal persons, unless such protection, by virtue of its very nature, can only be given to private persons.

(3) Inherent rights shall not be deemed violated by conduct that is approved by the holder of the rights, provided the granting of such approval is not in violation or breach of the interests of society. Any contract or unilateral statement that otherwise restricts inherent rights is null and void.

#### *Section 76.*

Any breach of the principle of equal treatment; any violation of the freedom of conscience; any unlawful deprivation of personal freedom; injury to body or health; contempt for or insult to the honor, integrity, or human dignity of private persons shall be deemed as violations of inherent rights.

#### *Section 77.*

- (1) Everybody has the right to bear a name.
- (2) Scientific, literary, or artistic activities or activities accompanying public performances may be pursued under an assumed name without injuring the rights and legal interests of other persons.
- (3) The name of a legal person must be different from the names of other previously registered legal persons who are engaged in similar activities in the same field of endeavor.
- (4) The illegal use of another person's name or a name similar to that of another person shall be deemed a violation of the right to bear a name. A person engaged in scientific, literary, or artistic activities, if his name can be confused with the name of another person who has already been engaged in similar activities, shall not even be entitled to use his own name without a distinctive addendum or omission while engaged in such activities.

#### *Section 78.*

- (1) The protection of inherent rights shall also include protection against defamation.
- (2) The statement, publication, or dissemination of an injurious untrue fact pertaining to another person or a true fact with an untrue implication that pertains to another person shall be deemed defamation.

#### *Section 79.*

- (1) If a daily newspaper, a magazine (periodical), the radio, the television, or a news service publishes or disseminates false facts or distorts true facts about a person, the person affected shall be entitled to demand, in addition to other actions provided by law, the publication of an announcement to identify the false or distorted facts and indicate the true facts (rectification).
- (2) The rectification shall be published within eight days of receipt of the relevant demand in the case of daily papers, in the next issue of a periodical or a news service in the same manner, or (also within eight days) at the same time of the day if the defamation had been broadcast over radio and television.

#### *Section 80.*

- (1) Any misuse of the likeness or recorded voice of another person shall be deemed as a violation of inherent rights.
- (2) With the exception of public performances, the consent of the person affected shall be required for the public use of his/her likeness or recorded voice.
- (3) A likeness (recorded voice) of a missing person or a person under criminal prosecution for a felony offense may be used for substantial public interests or a justifiable private interest with the permission of the authorities.

#### *Section 81.*

(1) Any person who has violated the sanctity of the mails or has come into the possession of a private or business secret and publishes such secret without authorization or abuses it in any other manner shall be construed as having violated an inherent right.

(2) Business secrets shall comprise all of the facts, information, conclusions or data pertaining to economic activities that, if published or released to or used by unauthorized persons, are likely to imperil the rightful financial, economic or market interest of the owner of such secrets, provided the owner has taken all of the necessary steps to keep such information confidential.

(3) Any data that is related to the central budget; the budget of a local government; the appropriation of moneys received from the European Communities; any subsidies and allowances in which the budget is involved; the management, control, use and appropriation and encumbrance of central and local government assets; and the acquisition of any rights in connection with such assets shall not be deemed business secrets, nor shall any data that specific other legislation, in the public interest, prescribes as public information. Such publication, however, shall not include any data pertaining to technological procedures, technical solutions, manufacturing processes, work organization, logistical methods or know-how that, if made public, would be unreasonably detrimental for the business operation to which it is related, provided that withholding such information shall not interfere with the publication of public information in the public interest.

(4) Any person entering into a financial or business relationship with a sub-system of the central budget shall, upon request, supply information in connection with such relationship that is deemed public under Subsection (3). Disclosure of information may take place on the website or in the registered publication medium of the person concerned. In the event of non-compliance or if the information supplied is deemed insufficient by the party requesting it, a judicial oversight proceeding may be initiated at the competent agency.

#### *Section 82.*

The rights pertaining to private dwellings and to the premises used by legal persons are protected by law.

#### *Section 83.*

(1) Data management and data processing by computer or other means may not violate inherent rights.

(2) Information from recorded data may only be disclosed to duly authorized bodies or persons (in addition to the person concerned).

(3) If any registered fact or datum is false, the person affected shall be entitled to demand that the false fact or datum be corrected in a manner prescribed in specific other legislation.

#### *Section 84.*

(1) A person whose inherent rights have been violated shall have the following options under civil law, depending on the circumstances of the case:

- a) demand a court declaration of the occurrence of the infringement,
- b) demand to have the infringement discontinued and the perpetrator restrained from further infringement;
- c) demand that the perpetrator make restitution in a statement or by some other suitable means and, if necessary, that the perpetrator, at his own expense, make an appropriate public disclosure for restitution;
- d) demand the termination of the injurious situation and the restoration of the previous state by and at the expense of the perpetrator and, furthermore, to have the effects of the infringement nullified or deprived of their injurious nature;
- e) file charges for punitive damages in accordance with the liability regulations under civil law.

(2) If the amount of punitive damages that can be imposed is insufficient to mitigate the gravity of the actionable conduct, the court shall also be entitled to penalize the perpetrator by ordering him to pay a fine to be used for public purposes.

(3) The above provisions shall also apply if the infringement occurred through the publication of an illegal advertisement.

## *Section 85.*

(1) Notwithstanding the provisions of Subsections (2) and (3), inherent rights may only be enforced personally. A person with limited capacity may take action himself in the protection of his inherent rights.

(2) The legal representative of an incompetent person, or the relative or conservator of a missing person whose whereabouts are unknown shall be entitled to proceed in the protection of that person's inherent rights.

(3) In the case of injury to the memory of a deceased person, the relative and/or the person having been named heir apparent in the will of the deceased shall be entitled to file for court action. If conduct causing defamation to a

deceased person (former legal person) infringes upon the public interest, the public prosecutor shall also be entitled to enforce this inherent right.

(4) If a legal injury has been duly evidenced and delay might result in irreparable damage, the court shall be entitled to take provisional measures, in the course of which it shall be entitled to issue an injunction to seize the instruments of legal injury.

## *Rights Related to Intellectual Products*

### *Section 86.*

(1) Intellectual products are protected by law.

(2) In addition to the provisions of this Act, protection is prescribed for certain specified types of works and creations and for related activities by copyright law, industrial rights protection (patent, trademark, certification of origin and design protection) and legal regulations protecting the producers of sound recordings.

(3) Intellectual products that are not regulated in other legislation but which can be used by the general public and have not yet become part of the public domain shall also be protected by law.

(4) Persons shall also be entitled to protection with respect to their economic, technical, and organizational knowledge and experience that has pecuniary value. The beginning and duration of the period of protection shall be determined by a legal regulation.

### *Section 87.*

(1) A person whose rights with regard to intellectual products have been violated may file charges under the civil law titles governing violations of inherent rights (in addition to the protection prescribed in specific other legislation).

(2) Within the sphere of protection provided for intellectual products that do not fall within the scope of other legal regulations and for economic, technical, and organizational knowledge and experience of pecuniary value, obligees may also demand a share of the financial proceeds from persons who have expropriated or used their achievements.

## ***PART THREE***

### ***OWNERSHIP***

#### **Title I**

#### **GENERAL RULES OF OWNERSHIP**

#### ***Chapter VIII***

#### *Sections 88-90.*

*Section 91.*

*Sections 92-93.*

## ***Chapter IX***

### ***Objects of Ownership***

*Section 94.*

- (1) There may be ownership of all things which are capable of appropriation.
- (2) Unless otherwise provided by law, the provisions pertaining to ownership shall duly apply to money and securities as well as to natural resources that can be utilized in the same way as things.

*Section 95.*

- (1) Ownership extends to everything that is permanently joined with a thing in such a way that disjunction would cause the thing or its disjoined part to be destroyed or would significantly reduce its value or usefulness (components).
- (2) In the case of doubt, ownership shall also extend to parts that are not components but are usually necessary or beneficial for the proper use or maintenance of a thing (accessories).

*Section 96.*

The ownership of land shall not extend to the 'treasures of the earth', nor does it extend to natural resources.

*Section 97.*

- (1) Ownership of a building may be claimed by the owner of the land.
- (2) Ownership of a building may be claimed by the builder if so prescribed by law or by a written agreement concluded with the owner of the land.
- (3) The owner of the land shall have right of preemption in respect of the building, while the owner of the building shall have right of preemption in respect of the land.

## **Chapter X**

### **Content and Protection of Ownership**

#### ***Right of Possession***

*Section 98.*

An owner has the right of possession and is entitled to protect the possession.

#### ***Usufruct and of Collection of Proceeds***

## *Section 99.*

An owner is entitled to use and to collect the proceeds from a thing; he bears the liabilities attaching to the thing as well as the damages for which no one can be obliged to make compensation.

## *Section 100.*

An owner is obliged, while using a thing, to refrain from any conduct that would needlessly disturb others, especially his neighbors, or that would jeopardize the exercise of their rights.

## *Section 101.*

(1) An owner may not deprive the neighboring building from its necessary ground-support without providing another appropriate means of securing it.

(2) An owner may keep the fruits fallen from branches reaching over his land if they are not gathered by the owner of the tree; he is not entitled to cut branches bending over or roots spreading over his land, unless they prevent him from the proper use of his land, and the owner of the tree does not remove them in spite of being requested to do so.

## *Section 102.*

(1) An owner shall permit entrance to his property for compensation if it is necessary for doing works of public interest, harnessing animals, gathering fruit from branches reaching over his land, removing branches or roots, or for other important reasons.

(2) An owner may use the neighboring land for compensation if it is necessary for the construction, demolition, reconstruction or maintenance of a building located on his land.

## *Section 103.*

(1) If two parcels of land are separated by a fence (hedge) or field boundary, the affected neighbors shall be entitled to use it jointly.

(2) Costs of maintenance shall be borne by neighbors in proportion to their statutory obligation to erect a fence. If it is not prescribed by legal regulation, costs shall be borne in proportion to the length of the land to be enclosed.

## *Section 104.*

(1) A tree or bush standing on the boundary of two plots of land and the fruit thereof may be claimed by the affected neighbors in equal proportions. Maintenance costs are borne by the affected neighbors in the same proportions.

(2) If a tree or bush standing on the boundary of two plots of land impedes the proper use of one of the plots of land, the affected owner shall be entitled to demand its removal, the costs of which shall be shared jointly by the owners.

## *Section 105.*

A stray animal may be withheld by the user of the land until compensation is provided by its owner for any damage that has been caused.

## *Section 106.*

A legal regulation or an agreement of the parties may depart from the provisions of this Act that pertain to neighbors' servitude.

## *Section 107.*

(1) In the event of danger (emergency) constituting a direct threat to the life, safety or property of another person that cannot be prevented in any other way, an owner shall tolerate his thing to be used, utilized or damaged to the extent necessary for abolishing the emergency situation. This obligation shall be binding on an owner in the case of an emergency endangering another person's property only if the imminent damage is estimated to substantially exceed the damage likely to be caused to the owner as a consequence of the intervention.

(2) Owners shall be entitled to demand compensation from persons in an emergency and indemnification from persons who caused unjustifiably great damage in the course of eliminating the emergency.

(3) If a danger that threatens the lives or properties of several persons is prevented by sacrificing some endangered articles, the damage originating therefrom shall be borne jointly by the affected persons in proportion to their risked

interests, if such sacrifice was necessary; this provision shall also apply to the sharing of costs necessary for preventing the danger.

## *Section 108.*

(1) The owner of a real property is obliged to tolerate agencies authorized by specific other legislation to use the real property for a period of time, obtain servient tenement or restrain ownership rights in other ways to the extent that is necessary for the performance of their professional tasks. In such cases, the owner of the real property shall be entitled to compensation according to the extent of the hindrance (restraint).

(2) If the servitude or another restraint terminates or considerably impedes the proper use of the real property, the owner may request that the real property be purchased or expropriated.

(3) Provisions pertaining to production, construction, health care, water management and other issues concerning the exercise of ownership rights are prescribed in specific other legislations.

## *Section 109.*

(1) If an owner had a house built beyond the boundary line of his land in good faith, the neighbor shall be entitled to demand the builder either

a) pay compensation for damages for the use of the part of land occupied and for the depreciation in value caused therewith,

b) purchase the part of the land occupied if the land is divisible, or

c) purchase the entire parcel of land.

(2) A neighbor may demand that the builder purchase his entire land if

a) the construction has rendered the remaining part of the land unusable,

b) the exercise of a right or profession related to the land has become impossible or considerably more expensive due to the construction.

## *Section 110.*

(1) If the builder has acted in bad faith or the neighbor has protested against the construction at a time when restoration of the original state would not have caused unreasonable damage to the builder, the neighbor shall, in addition to the options prescribed in Subsection (1) of Section 109, be entitled to demand the builder either

a) transfer ownership of his land and the building in return for proper compensation of actual gains, or

b) demolish the building.

(2) A neighbor may demand the demolition of a building if it is not against the requirements of reasonable management. The costs of demolition and of the restoration of the original state shall be borne by the builder; however, he shall have possession of the material recovered.

## *Section 111.*

(1) A court decision may resolve the consequences of construction in a manner that differs from the neighbor's choice; however, such a decision may not prescribe a solution that is protested by both parties.

(2)

## *Right of Disposition*

### *Section 112.*

(1) An owner has the right to surrender the possession, use or usufruct of a thing to another person, to use it as security or encumber it in another way, and, furthermore, to transfer or abandon ownership.

(2) The ownership of real property may not be abandoned.

### *Section 113.*

If ownership of a building may be claimed by the owner of the land, the ownership of the building may only be transferred or encumbered together with the ownership of the land.

### *Section 114.*

(1) If a legal regulation or court decision excludes or restricts the right of disposition, any disposition contrary to this prohibition or restriction shall be null and void.

(2) The right to alienate or encumber property may be restricted or excluded by contract only in the event of the transfer of ownership and only for the purpose of securing the right of the transferor or another person in respect of the thing. With regard to real property, the right secured by the prohibition shall also be indicated in the real estate register.

(3) Any disposition contrary to a prohibition of alienation or encumbrance stipulated by contract shall be null and void provided that

- a) the prohibition has been entered in the real estate register,
- b) the person claiming a right for disposition has otherwise acted in bad faith, or
- c) the disposition did not include any consideration.

## *Protection of Ownership Rights*

### *Section 115.*

(1) Ownership claims shall not lapse.

(2) Pursuant to the regulations on the protection of possession, an owner may arbitrarily restrain or prevent any and all illegal intrusion or influence that impedes, restricts, or obliterates the exercise of his ownership rights.

(3) An owner may demand the termination of illegal intrusions or influences and, if things have been removed from his possession, to have them returned.

### *Section 116.*

(1) The owner of a real property, if he has acquired ownership title from an owner other than the holder of record, may request to have his ownership indicated in the real estate register.

(2) If other legal regulations do not make exceptions, the real estate register shall be deemed authentic certification of the existence of ownership and other entitlements.

(3) The detailed provisions on real estate registration are prescribed in specific other legislation.

## Chapter XI

### Acquisition of Ownership

#### *Acquisition by Transfer*

##### *Section 117.*

(1) If other laws do not make exceptions, ownership by transfer may be acquired only from the owner of the thing.

(2) For the acquisition of ownership, in addition to the contract for transfer and other legal titles, the thing must be surrendered. Surrendering shall be accomplished by the actual transfer of possession of the thing or in any other way to substantiate beyond doubt that control of the thing has been conveyed from the transferor to the transferee.

(3) Registering the change of owners in the real estate register as well as providing the contract for transfer and other legal titles are required in order to transfer ownership of a real property.

(4) In the event a real property is sold more than once, the buyer taking first possession of the property in good faith or, if there is no such person, the previous buyer may demand his ownership registered in the real estate register, except if the ownership of the subsequent buyer has already been entered in the real estate register. This provision shall also be applied to multiple donations.

##### *Section 118.*

(1) A bona fide buyer shall acquire ownership of a thing that has been sold commercially, even if the dealer was not the owner of the thing.

(2) A person who has, outside of commercial circulation, acquired a thing in good faith and for consideration from a person to whom the thing was entrusted by its owner, shall obtain ownership. However, the owner may reacquire the thing within one year of the initial acquisition by refunding the consideration. Otherwise the rules of bona fide possession without legal grounds shall apply to the parties' legal relationship.

##### *Section 119.*

A transferee of cash or a bearer security shall become the owner, even if the transferor was not the owner.

#### *Acquisition of Ownership by Means of Official Resolution or Auction*

##### *Section 120.*

(1) A person who has acquired a thing in good faith by means of official resolution or auction shall gain ownership irrespective of the previous owner. This provision shall not apply to the sale of real property by auction.

(2) The state, if it acquires ownership pursuant to a court decision or other official resolution without indemnification, shall be liable for the obligations of the ex-owner existing at the time of acquisition of ownership to a bona fide person on the basis of a legal regulation, court decision, or other official resolution or a commutative contract to the extent of the value of the property. However, the state shall be liable only if the attachment of other property items of the ex-owner has been unsuccessful.

(3) Acquisition of ownership by the state shall not affect the rights of a bona fide third person that have been entered in the real estate register.

#### *Adverse Possession*

##### *Section 121.*

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(1) A person who has continuously had possession of a real property for fifteen years, or any other object for ten years as his own, shall acquire ownership through adverse possession.

(2) A person who has taken possession of a thing by committing a crime or in another violent or treacherous way shall not acquire ownership through adverse possession.

(3)

(4) Ownership of real property shall not be acquired through adverse possession, if the conditions of adverse possession exist only for a section of the land and that parcel of land is indivisible.

(5) An adverse possessor, in the event of failure to have his ownership registered in the real estate register, shall not be entitled to claim acquisition of ownership against a person who has acquired a right on the real property for payment of a consideration, as relying upon the real estate register.

### *Section 122.*

A new possessor shall be entitled to add to the period of his own adverse possession the time that qualified as time of adverse possession during the possession of his predecessor.

### *Section 123.*

If an owner is not in the position to exercise his ownership rights for a reason that can be justified, adverse possession shall not take place for one year from the termination of the impediment, even if the time of adverse possession has elapsed or there is less than one year left.

### *Section 124.*

(1) Adverse possession is discontinued, if

- a) the owner summons the possessor in writing to surrender the thing or files a lawsuit thereto,
- b) the owner has control of the thing (Section 112),
- c) the possessor loses the property against his will and does not acquire it again within one year or does not file for court action within one year to have the thing returned by its new possessor.

(2) If adverse possession is discontinued, the time of adverse possession that has elapsed up to that date may not be taken into consideration, and the period of adverse possession begins again following the termination of the reason for discontinuance.

## *Appropriation of Products, Produce, and Progeny*

### *Section 125.*

(1) A person who has a right in respect of a thing of another person which entitles him to take possession of products, produce, or progeny, shall acquire ownership by separation, if he has not previously acquired ownership thereof. If the entitled person does not possess the thing from which the product, produce, or progeny originates, he shall become owner by taking possession thereof.

(2) If the right of a person entitling him to acquisition of ownership of a product, produce, or progeny ceases before he acquires ownership thereof, such person may demand that the owner deliver the products, produce, or progeny primarily in kind, in proportion to his work, and up to the extent of his expenses that cannot be recovered from elsewhere.

(3) A bona fide possessor acquires ownership of products, produce, or progeny of a thing by separation up to the day on which he becomes mala fide, or the thing is reclaimed from him before a court or town (city, metropolitan district) clerk.

## *Accretions*

## *Section 126.*

The owner of a parcel of land shall acquire ownership of everything that has become part of the land subsequently (accretions). This provision shall not apply to products, produce, and progeny if these can be claimed by another person on the basis of a legal relationship.

## *Acquisition of Abandoned Property*

### *Section 127.*

If a thing has no owner, anybody may acquire ownership by taking possession thereof.

## *Acquisition of Ownership of Game and Fish*

### *Section 128.*

(1) Game, the fish living in rivers and natural lakes, and other useful aquatic animals comprise the property of by the state, unless otherwise prescribed by law.

(2) Game that perishes or is killed or captured in hunting grounds shall be owned by a party authorized to hunt.

(3) The ownership of fish and other useful aquatic animals caught by persons authorized to exercise fishing rights shall be acquired by the person authorized to exercise fishing rights, unless otherwise prescribed by law. The ownership of fish and other useful aquatic animals caught by unauthorized persons shall be acquired by a person authorized to exercise fishing rights, unless otherwise prescribed by law.

## *Found Property*

### *Section 129.*

(1) A person who finds a thing that is presumably owned by somebody else and claims ownership thereof shall acquire ownership, if

a) he has done everything prescribed by law in order to return the thing to its rightful owner, and

b) the owner has not come forward to take possession of the thing within one year of the day on which it was found.

(2) The finder shall not acquire ownership of objects found in offices, companies, or other buildings or rooms open to the public or on the vehicles of a public transportation company. In such a case, the office or company shall be entitled to sell the thing after keeping it for three months; the owner shall be entitled to demand that the thing or its purchase price be delivered within a year of the day on which it was found.

### *Section 130.*

If a thing that has been found is of substantial value and its finder does not acquire ownership thereof, he shall be entitled to a reasonable finder's fee on condition that he has done everything prescribed by law to have the thing returned to its owner.

### *Section 131.*

If the owner of a thing that has been found does not come forward within a period of one year, and the finder does not acquire ownership thereof, ownership or the purchase price received for the sale of the thing may be claimed by the state.

## *Section 132.*

(1) If a person finds a valuable thing which has been hidden by unknown persons or the ownership of which has otherwise been forgotten, he shall be obliged to offer it to the state.

(2) If the state does not claim the thing, it shall become the property of the finder; otherwise the finder shall be entitled to a finder's fee proportionate to the value of the thing.

(3) If the found thing described in Subsection (1) is a museum piece or a historical relic, its ownership may be claimed by the state. The rules of procedure related to the finding of such objects and the extent of the finder's fee shall be determined in specific other legislation.

## *Processing and Assembling*

### *Section 133.*

(1) A person who manufactures a new thing for himself in good faith by processing or converting another person's thing shall reimburse the value of the thing or surrender ownership of the new thing in return for reimbursement of the value of his work, whichever is chosen by the owner of such thing.

(2) If the value of the work significantly exceeds the value of the processed or converted thing, the owner of the thing shall not have the right to choose, as he may claim only reimbursement for the value of the thing.

(3) If the person performing the processing or conversion has acted in bad faith, the right to choose shall, in all cases, belong to the owner of the material; if the owner of the material chooses ownership of the new thing, he shall pay reimbursement only up to the extent of his actual gains.

### *Section 134.*

(1) If the objects of several persons are merged or combined in a way that the separation of such objects may only be accomplished by inflicting substantial damage or unreasonably high cost or if it cannot be accomplished at all;

ownership of the final product shall be claimed jointly by the persons affected. If either of the owners should wish not to participate in joint ownership, the person whose thing was more valuable before the combination shall be entitled to choose whether to assume ownership of the thing by recompensing the other owners or to surrender it to them in return for compensation.

(2) The right to choose may not be claimed by the person causing the merger or combination himself in bad faith. In such case the mala fide ex-owner may demand reimbursement only up to the extent of actual gains.

### *Section 135.*

(1)

(2) If ownership of a converted, processed, merged or combined thing is claimed by neither of the parties, it shall be sold; and the received price shall be distributed as appropriate among the entitled parties.

(3) In such a case, the party who is entitled to claim compensation only up to the extent of his actual gains shall be entitled to no more than the part of the received price remaining after the satisfaction of those entitled to full indemnification.

### *Section 136.*

(1) If a person uses another person's material for construction on his land or on the land used by him, he shall acquire ownership of the built-in material, but shall make reimbursement for the value thereof.

(2)

### *Section 137.*

(1) If a person builds a structure on another person's land without authorization, ownership of the structure shall be acquired by the owner of the land; however, he shall reimburse the encroachment builder to the extent of his actual gains. The court shall be entitled to compel such builder to buy the land or a part thereof (if the land is divisible) at the request of the land's owner.

(2) The encroachment builder shall acquire ownership of the land or an adequate part thereof if the value of the building considerably exceeds the value of the land or the relevant part of the land. At the request of the landowner, the court may resolve that the builder has acquired ownership of the building alone; in such a case, the builder shall have usufruct on the land.

(3) If a person builds an extension or new addition to a building owned by another person or reconstructs such a building, or if there is an existing building on the other person's land; ownership of the final product of such encroachment shall be claimed jointly by the persons affected, unless there is an agreement to the contrary. The builder's share of the property shall be determined on the basis of the value of the new addition in proportion to the total value of the real property.

(4) The provisions pertaining to the acquisition of ownership by encroachment [Subsections (2) and (3)] shall not apply if the builder has acted in bad faith or if the owner of the land has protested against the construction at a time when the restoration of the original state would not have caused unreasonably great damage to the builder.

#### *Section 138.*

(1) If an encroachment builder acquires ownership of the land or the relevant part of the land, he shall be obliged to compensate the owner of the land for the market value of the land; if the builder acquires usufruct on the land, he shall be obliged to pay a consideration for use of the land. If the builder does not acquire ownership of the entire parcel of land, he shall also pay the owner of the land compensation for the loss in value caused by the construction.

(2)

(3) The rules of overconstruction must otherwise be applied to encroachment.

## ***Chapter XII***

### ***Joint Ownership***

#### *Section 139.*

(1) Ownership of the same thing, by specific shares, can be claimed by two or more persons.

(2) In the event of doubt, the property shares of the joint owners shall be equal.

#### *Section 140.*

(1) Each co-owner has the right to possess and use the thing; however, none of them shall exercise this right if it adversely affects the rights and rightful interests of the others in connection with the thing.

(2) Unless otherwise provided by law, co-owners shall decide by majority vote on issues of possession, use, utilization and expenses not exceeding standard measures; each co-owner has the right to vote in proportion to his ownership share.

#### *Section 141.*

Proceeds from a thing shall be claimed by the co-owners in proportion of their ownership shares; costs of maintenance and other expenses related to the thing, as well as obligations originating from co-ownership, and any damage to the thing shall be borne by the co-owners in the same proportion.

## *Section 142.*

Any of the co-owners is entitled to carry out works that are essential for the preservation and maintenance of the thing, and each co-owner shall be obliged to bear his share of such costs. However, if possible, the co-owners shall be notified before such expenses are incurred.

## *Section 143.*

(1) If a majority decision is required by law and if such decision infringes reasonable management or substantially violates the rightful interests of the minority, the minority shall be entitled to contest the decision in court. The contest shall not prevent execution of the decision; however, the court shall be entitled to suspend execution on reasonable grounds.

(2) This provision shall also be applied if there is disagreement among the co-owners as to whether the proposed work is absolutely necessary for the preservation and maintenance of the condition of the thing.

(3) If a majority decision is required by law and there is no such decision, the court shall pass a decision on matters related to possession, use, or utilization at the request of either of the co-owners.

## *Section 144.*

A unanimous decision by the co-owners shall be required for

- a) expenses in excess of standard measures,
- b) transferring ownership of the entire thing, surrendering it for usufruct or use, pledging it as security or collateral, or encumbering it in any other way.

## *Section 145.*

(1) Each of the co-owners may freely dispose of his share of the property.

(2) The other co-owners shall have the right of preemption before third persons to buy, rent, or lease the property share of a co-owner.

(3) Unless otherwise prescribed by law, the right of preemption provided for other persons in specific other legislation shall precede the preemption rights of co-owners.

## *Section 146.*

Any of the co-owners may act independently in protection of his proprietary rights.

## *Termination of Co-Ownership*

### *Section 147.*

Any of the co-owners may demand termination of co-ownership; any waiver of this right shall be null and void.

### *Section 148.*

(1) Objects of co-ownership shall be divided primarily in kind.

(2) The objects of co-ownership, or a part thereof, may be given by court into the ownership of one or several co-owners in return for the payment of an appropriate consideration if it is justified with regard to the conditions of the co-owners. This requires the agreement of the co-owner acquiring ownership, unless ownership of part of a real property is transferred by court order to the co-owner residing on such property and such action does not violate the reasonable interests of the tenant.

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(3) If co-ownership cannot be otherwise terminated, or division in kind would cause a significant decrease in value or prevent proper use, the objects of co-ownership shall be sold and the price received shall be appropriately divided among the co-owners. Co-owners shall have the right of preemption in respect of selling as well before third persons.

(4) A mode of termination of co-ownership against which all of the co-owners launch a protest shall not be applied by the court.

## *Condominium*

### *Section 149.*

(1) Co-ownership of a building may also be established by having specific sections of the building, primarily apartment units, separately owned by the co-owners (condominium).

(2) An agreement of the co-owners incorporated in a charter, and the registration of the condominium property in the real estate register are required for the establishment of a condominium property.

(3) Transformation of a joint property into condominium property may be ordered by the court at the request of any of the co-owners. In such a case, the court decision shall function in lieu of the charter.

(4) The provisions pertaining to joint ownership shall be applied to condominium properties with the exceptions prescribed in specific other legislation.

## **Chapter XIII**

### **Rights of Use**

#### *Sections 150-154.*

### *Land Use*

#### *Section 155.*

If ownership rights for a building are acquired by the builder [Subsection (2) of Section 97, Subsection (2) of Section 137], the owner of the building shall have usufruct in respect of the land (part of the land) for the life of the building.

#### *Section 156.*

(1) The owner of a building is entitled to use the land (part of the land) and to collect its proceeds, and he shall be liable for all maintenance costs thereof by virtue of his usufruct of the land granted on the basis of an agreement or a court decision.

(2) In the event of acquisition of ownership of a building by inheritance or conveyance, the new owner of the building shall have usufruct of the land under the same conditions.

### *Beneficial Interest and Usufruct*

#### *Section 157.*

(1) A person may possess, use, and collect the proceeds of a property owned by another person by virtue of beneficial ownership.

(2) For the duration of beneficial ownership, the owner may exercise the right of possession, use, and collection of proceeds only if the holder of beneficial interest does not exercise his rights thereto.

(3) Beneficial interest shall remain in force even if ownership of the property is transferred.

(4) Beneficial ownership shall be granted for only a limited period of time, not to exceed the lifetime of the holder of beneficial interest.

#### *Section 158.*

(1) On the basis of a contract, beneficial ownership enters into effect upon delivery of the property, or, in respect of real properties, upon the beneficial interest being registered in the real estate register.

(2) Beneficial interest in a real property, if granted pursuant to legal regulation or by virtue of a court decision or official resolution, shall be registered in the real estate register; in the absence thereof, beneficial interest shall be enforceable only against a mala fide acquirer of the property or an acquirer who has not given any consideration for the property.

#### *Section 159.*

(1) The holder of beneficial interest shall act in accordance with the rules of normal management when exercising his right thereto and shall be liable for the maintenance costs thereof, with the exception of extraordinary repairs and renovations, and, furthermore, for the obligations related to the use of the thing as well as for all public dues.

(2) The holder of beneficial interest may not transfer his right to such interest; however, he may allow another person to exercise this right. The right to exercise beneficial interest may be surrendered for a consideration only upon the owner's waiver of using the property under the same conditions.

(3) The holder of beneficial interest shall notify the owner of any imminent danger to the property and any damage incurred, including any attempt by a third party to obstruct him from exercising his beneficial right; he shall, furthermore, tolerate the owner to take the necessary measures to prevent any potential danger or to eliminate the consequences of the damage.

(4) The holder of beneficial interest shall return the property upon the termination of his beneficial right. The holder of beneficial interest is liable for any damages in the property, unless he is able to prove that he has acted in a manner that can generally be expected in the given situation. The holder of beneficial interest shall not be liable for reimbursing any regular depreciation resulting from the use the property.

#### *Section 160.*

The holder of beneficial interest may dispose of the expendable objects, business equipment, and livestock existing at the time the beneficial right is established to a degree justified by normal management; however, he shall replace these when the beneficial right is terminated or, if replacement is not possible, reimburse the value thereof.

#### *Section 161.*

(1) Owners are entitled to regularly inspect the exercise of beneficial ownership.

(2) If the holder of beneficial interest uses the property improperly, damages it or otherwise jeopardizes the return of the property after the termination of the beneficial right, and if the owner has protested to no avail; the owner may demand security.

(3) If the holder of beneficial interest fails to provide security, the court shall be entitled, upon the owner's request, to order the suspension of the exercise of beneficial rights until such security is provided.

(4) An owner shall also have these rights against the person to whom the exercise of beneficial right has been surrendered by the holder of beneficial interest.

#### *Section 162.*

(1) The holder of beneficial interest shall be entitled to have extraordinary repairs or renovations made upon the owner's failure, despite the request of the holder of beneficial interest, to do so.

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(2) Upon the termination of beneficial ownership, the holder of beneficial interest may demand reimbursement from the owner for the necessary expenses, less the appropriate depreciation. The owner, if his actual gains are in excess of the amount so determined, shall refund the difference as well.

*Section 163.*

- (1) If a thing is destroyed entirely or to a significant extent, the owner shall not be obliged to restore it.
- (2) If the owner restores the thing, the beneficial interest shall be consequently reestablished; however, the owner may request a limitation of beneficial rights in proportion to the costs of restoration.
- (3) If the owner does not restore the thing, the beneficial interest shall be abrogated; however, if the object of beneficial interest is replaced by another thing, the beneficial right shall extend thereto. If the thing has been replaced by a sum of money, the holder of beneficial interest may demand that sum be spent on the restoration or replacement of the thing.

*Section 164.*

- (1) Concerning the beneficial ownership of interest-bearing receivables and other profit-yielding rights, the provisions pertaining to the beneficial ownership of things shall be duly applied.
- (2) A right encumbered by beneficial interest may be canceled or amended to the disadvantage of the holder of beneficial interest with a contract having an effect extending to the beneficial right, but this may be done solely upon the consent of the holder of beneficial interest.

*Section 165.*

- (1) Persons entitled to beneficial use may use a thing and collect its proceeds up to an extent not exceeding his own needs and those of his relatives living in the same household. The exercise of the right of beneficial use may not be surrendered to another person.
- (2) In respect of other issues, the provisions on beneficial ownership shall be applied regarding the right of beneficial use.

## *Easement*

*Section 166.*

- (1) Easement may be granted to and held by the possessor of a real property on another person's real property to use such property to a specific extent or to demand the possessor of the servient tenement to refrain from otherwise rightful conduct proceeding from his entitlement.
- (2) Easement may be granted for the purpose of passage, supply and drainage of water, building a cellar, installing pylons, buttressing a building or other similar purpose benefiting the holder of the easement.

*Section 167.*

If a piece of land is not connected to a suitable public road, neighbors shall tolerate the holder of an easement to pass through their land.

*Section 168.*

- (1) The provisions on the establishment of beneficial ownership of real property shall be applied to the granting of easement.

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(2) The possessor of a real property shall obtain easement by adverse possession if the possessor of the other real property has not protested against its use for ten years. The exercise of a right allowed as a favor or until withdrawal shall not lead to adverse possession.

(3) Easement per se shall not be subject to transfer.

*Section 169.*

(1) Easement may be exercised by due respect to the interests of the possessor of the servient estate.

(2) If the grant of easement also involves the use of any equipment or instruments, the costs of maintenance shall, unless otherwise agreed, be borne by the holder and grantor of the easement in the proportion of their respective use of the equipment or instruments.

*Section 170.*

(1) The court shall be entitled to cancel or suspend easement if it is not required for the proper use of the real property of the holder of such easement.

(2) Easement shall be abrogated if the easement's holder, despite his ability to do so, does not exercise the easement for a period of ten years or if he has endured being prevented from exercising it for the same period of time.

## *Right of Use*

*Section 171.*

(1) For due compensation, servitude or another right of use may be imposed upon a real property by the decision of a state agency acting in the public interest, to the benefit of agencies authorized under specific other legislation.

(2) The cases in which the right of use may be granted and the provisions on compensation shall be laid down in specific other legislation.

## Title II

### SPECIAL RULES RELATING TO PUBLIC PROPERTY

#### Chapter XIV

#### State Ownership

##### *Objects of State Ownership*

*Section 172.*

Unless otherwise provided by law, the following shall remain under exclusive state ownership:

- a) the 'treasures of the earth',
- b) underground waters, the natural basins of underground waters, rivers and natural lakes, and the beds thereof,
- c) abandoned riverbeds and newly evolved islands of rivers,
- d) national public roads, railroads, international commercial airports, and the airspace over the territory of the country,
- e) frequencies to be used for telecommunications purposes,

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f) the full range of authentication codes used for communication networks, for the provision of communication services, and for cooperation between communication networks and services.

g)

### *Section 173.*

(1) The following are not subject to trade:

- a) things owned exclusively by the state,
- b) other things prescribed by law.

(2) Any alienation of the things specified in Subsection (1) shall be deemed null and void.

## *Management of State Property*

### *Section 174.*

The state, in a manner regulated by law, shall be entitled to surrender the possession, use, and the right to collect the proceeds of a thing owned exclusively by the state to another person.

### *Section 175.*

The state may entrust some of its property items to the care of another person, in which case such person shall, in accordance with the provisions of legal regulations, exercise the rights and fulfill the obligations of the owner by virtue of civil relations.

### *Section 176.*

## *Expropriation*

### *Section 177.*

(1) Real property may be expropriated in special cases and in the public interest, for the reasons and in the manner prescribed by law. Full, unconditional, and prompt compensation shall be made for expropriated real properties.

(2) The specific provisions on expropriation shall be prescribed in a separate law.

### *Section 178.*

## *Protection of State Property*

### *Sections 179-180.*

### *Section 181.*

(1) A person who suffers a loss in consequence of performing appropriate activities in order to protect state property or prevent imminent hazards of extraordinary proportions shall be entitled to request compensation therefor, unless he is under immediate obligation to perform such activities as part of his duty. In the event of such person's death in the line of duty, his dependents and/or those whom the person had been required by law to provide for shall be taken care of, if necessary.

(2) The aforementioned claims shall not be affected by the qualification of the injury as an occupational accident or by whether the aggrieved person had acted to prevent the loss, as this can generally be expected in the given situation.

(3) Compensation shall be paid by the manager of the state property or, if the damage incurred in connection with the prevention of imminent hazards of extraordinary proportions, by the state.

## Chapter XV

*Sections 182-186.*

### Title III

#### Possession

## Chapter XVI

### Possession and Protection of Possession

#### *Possession*

*Section 187.*

(1) Possession shall be acquired by the person who takes a thing to himself or secures control over a thing in any other way (possessor).

(2) The person temporarily losing control of a thing to another person, and the person whose land is burdened with an easement is also deemed a possessor.

#### *Protection of Possession*

*Section 188.*

(1) If a possessor is deprived of his possession without legal grounds or is restrained in maintaining such possession (illicit power), he shall be entitled to protection of his possession.

(2) A possessor is entitled to protection of his possession against anybody, with the exception of the person from whom he has acquired the possession by illicit power.

(3) A possessor shall, on the basis of his title, be entitled to protection of possession against the person from whom his possession originates or to whom such possession was temporarily surrendered.

*Section 189.*

(1) In the event of joint possession, protection of possession may be claimed by each possessor individually, and each possessor shall be entitled to demand the thing to be rendered available for joint possession.

(2) On the basis of their relationship, joint possessors are also entitled to protection of possession against each other.

*Section 190.*

(1) A possessor shall be entitled to use his own might and power to avert an attack directed against his possession to the extent necessary for protection of the possession.

(2) A person shall be allowed to act on his own might and power in the interest of reacquiring a lost possession only if the time lost through the use of other means of protection would frustrate protection of the possession.

## *Section 191.*

(1) A person who is deprived of his possession or is restrained in its enjoyment shall, within one year, be entitled to file a request with the town clerk for the restoration of the original state of possession or for the discontinuance of restraint.

(2)

(3) The town clerk shall restore the original state of possession and prohibit the trespasser from continuing in this conduct, unless it is obvious that the person who has requested protection of possession is not entitled to possession or has been obliged to tolerate such restraint. The town clerk may also resolve the issues of profits, damages, and costs.

(4) There is no remedy through state administration channels against the decision of the town clerk; decisions on the issue of possession shall be executed within three days.

## *Section 192.*

(1) The party who finds the decision of the town clerk prejudicial may appeal to the court within fifteen days of receipt of the decision to have the decision overturned.

(2) After one year, a possessor shall be entitled to request the restoration of the original state of possession or the discontinuance of restraint directly from the court. A possessor may also resort directly to the court if the title of possession is also disputed in the case.

(3) The court shall resolve lawsuits concerning possession claims on the basis of eligibility for holding possession; eligibility of the party disturbed in peaceful possession shall be presumed.

## *Possession Without Legal Grounds*

### *Section 193.*

(1) Any person who possesses a thing without legal grounds shall be obliged to surrender the thing to its legitimate possessor.

(2) A possessor may refuse to surrender a thing until his demands claimed in connection with possession are satisfied; the provisions on responsible custody shall apply to his legal status. The possessor who has acquired the thing by committing a felony offense or in another violent or treacherous way may not refuse to surrender the thing.

### *Section 194.*

(1) A possessor under obligation to surrender a thing shall be entitled to demand reimbursement regarding the necessary expenses related thereto, with the exception of minor expenses normally required for the maintenance of the thing, and shall be entitled to remove the furnishings and accessories installed by him.

(2) A possessor, if acting in good faith, may also demand reimbursement for his useful expenses that are not covered by proceeds, while a mala fide possessor may demand compensation according to the rules of unjust enrichment.

(3) The right of removal shall be exercised only without damaging the condition of the thing.

### *Section 195.*

(1) A possessor shall be obliged to yield the existing proceeds from a thing to the party entitled thereto, unless he has acquired possession in return for a consideration and has acted in good faith.

(2) A bona fide possessor shall not be liable for proceeds and damages for the duration until possession is reclaimed from him in front of a town clerk or the court. As of the date of reclamation the general provisions shall

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apply regarding his liability, unless he has obviously become a mala fide possessor, and the provisions on responsible custody shall be authoritative regarding his right of use and his right to collect proceeds.

(3) A mala fide possessor shall pay the value of the proceeds consumed by him or which he has failed to collect, and shall be liable for all damages that would not have occurred in the thing had it been with the entitled party.

## *Responsible Custody*

### *Section 196.*

(1) A person who keeps a thing in the interest of another person without being entitled or obliged thereto by a special legal relationship shall provide for the safekeeping of the thing at the cost and risk of the entitled party until such party takes over the thing from him (responsible custody). A responsible custodian may retain the thing until his expenses are reimbursed.

(2) A responsible custodian shall not use the thing during the period of responsible custody, unless its use is required for maintenance. If he uses the thing in spite of such prohibition, he shall be liable to the entitled party for all damages that would not otherwise have occurred.

(3) A responsible custodian shall surrender the existing proceeds of a thing and reimburse the value of the proceeds consumed or not collected by him, less his claims proceeding from the custody.

### *Section 197.*

(1) If an entitled party fails to remove a thing within a reasonable period of time, despite being requested to do so, and the relocation of the thing would involve unreasonable difficulties or require an advance on costs, the responsible custodian shall be allowed to sell or utilize the thing.

(2) Perishable things, whenever possible, shall be sold or utilized.

(3) The sum received from the sale or consideration of a utilized thing shall be due to the entitled party.

## **PART FOUR**

## **OBLIGATIONS**

### **Title I**

## **CONTRACTS**

## **Chapter XVII**

## **General Rules**

### *Section 198.*

(1) A contract constitutes an obligation to perform services and an entitlement to demand such services.

(2) Conclusion of a contract can be rendered obligatory by legal regulation.

(3) An obligation or an entitlement to services may be constituted, by virtue of statutory provision or official order, without the conclusion of a contract if so ordered by a legal regulation or an authority with proper authorization, and if the obligor, the obligee, and the service are accurately specified. In such case, the provisions on contracts shall be duly applied, unless otherwise provided by the legal regulation or the authority in question.

## *Section 199.*

Entitlement to demand services shall be established from a unilateral statement only in the cases defined by legal regulations; unless otherwise provided by law, the provisions on contracts shall be duly applied to unilateral statements.

## *Section 200.*

(1) The parties to a contract are free to define the contents of their contract, and they shall be entitled, upon mutual consent, to deviate from the provisions pertaining to contracts if such deviation is not prohibited by legal regulation.

(2) Contracts in violation of legal regulations and contracts concluded by evading a legal regulation shall be null and void, unless the legal regulation stipulates another legal consequence. A contract shall also be null and void if it is manifestly in contradiction to good morals.

## *Section 201.*

(1) Unless the contract or the applicable circumstances expressly indicate otherwise, a consideration is due for services set forth in the contract.

(2) If at the time of the conclusion of the contract the difference between the value of a service and the consideration due, without either party having the intention of bestowing a gift, is grossly unfair the injured party shall be allowed to contest the contract.

## *Section 202.*

If a contracting party has gained excessive benefit or unfair advantage at the conclusion of the contract by exploiting the other party's situation, the contract shall be null and void (usurious contract).

## *Section 203.*

(1) A contract by which the basis for satisfying a third person's claim has been deprived entirely or in part shall have no legal force in respect of such third person if the other party acted in bad faith or had a gratuitous advantage originating from the contract.

(2) If a person concludes such a contract with a relative, an economic organization in which such relative is involved by way of concentration, a member or executive employee of the economic organization or one of their relatives, bad faith and/or gratuitous promise shall be presumed. Bad faith and/or gratuitous promise shall also be presumed when a contract is concluded between economic organizations that are not directly or indirectly connected by way of concentration, but are controlled by the same person or the same economic organization.

(3) A party who has lost the gratuitous advantage originating from a contract in a manner for which he is not accountable shall not be held liable towards the third person.

## *Section 204.*

(1) The following claims may not be enforced in the court of law:

a) claims originating from gambling or betting, unless the gambling or betting operation has been authorized by the state;

b) claims originating from a loan promised or granted explicitly for the purposes of gambling or betting;

c) claims that may not be enforced through a state agency by virtue of law.

(2) A contract signed for securing a claim which cannot be enforced in the court of law shall be null and void; however, voluntary performances shall not be reclaimed.

(3) Where a claim cannot be enforced in the court of law it must be recognized ex officio. Unless otherwise provided by legal regulation, this provision shall not apply to lapsed claims.

## Chapter XVIII

### Conclusion of Contracts

#### *Contractual Intent and the Expression Thereof*

##### *Section 205.*

- (1) Contracts are concluded upon the mutual and communicated expression of the parties' intent.
- (2) It is fundamental to the validity of a contract that an agreement is reached by the parties concerning all essential issues as well as those deemed essential by either of the parties. The parties need not agree on issues that are regulated by statutory provisions.
- (3) Contract terms which have not been individually negotiated shall become part of a contract, in the event that the provisions of Subsections (1) and (2) are also satisfied, only if they have previously been made available to the other party for perusal and if the other party has accepted the terms explicitly or through conduct that implies acceptance.
- (4) Parties shall cooperate during the conclusion of a contract, and they shall respect each other's rightful interests. Parties shall inform each other regarding all essential circumstances in relation to the proposed contract before the contract is concluded.
- (5) The other party shall be explicitly informed of any standard contract conditions that differ substantially from the usual contract conditions, the regulations pertaining to contracts, or any stipulations previously applied by the same parties. Such conditions shall only become part of the contract if, upon receiving special notification, other party has explicitly accepted it.
- (6) If a standard contract condition and another condition of the contract differ from one another, the latter shall be integrated into the contract.
- (7) If there is discrepancy between contract statements where contracting is obligatory the parties shall be required to attempt to reconcile their positions.

##### *Section 206.*

- (1) Should the parties fail to reach an agreement under contracting obligation, the court, unless otherwise provided by legal regulation, shall be entitled to bring the contract into existence and determine its contents. The court shall not establish a contract if the party that is subject to the contracting obligation provides proof that it is incapable of performing the contract or that the performance of the contract would be detrimental to the national economy.
- (2) Within the scope of contracting obligations the court may amend, terminate, cancel, or validate contracts in order to accommodate the interests of national economy.
- (3)
- (4) If the parties' agreement does not include an issue of minor importance, and if this issue is not addressed by any legal regulation or other statutory provision, the court shall, with due regard to the purpose and contents of the contract, be entitled to supplement such a contract on the basis of standard measures.

##### *Section 207.*

- (1) In the event of a dispute, the parties shall, in light of the presumed intent of the person issuing the statement and the circumstances of the case, construe statements in accordance with the general accepted meaning of the words.
- (2) If the contents of a consumer contract cannot be clearly established by applying the provision stipulated in Subsection (1), the interpretation that is more favorable to the consumer shall be authoritative.
- (3) Should a person waive his rights in part or in full, such a statement cannot be broadly construed.
- (4) The parties' secret reservations or concealed motives shall be immaterial with regard to the validity of the contract.

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(5) A false contract shall be null and void, and if such contract is intended to disguise another contract, the contract is to be judged on the basis of the disguised contract.

## *Preliminary Contract*

### *Section 208.*

(1) Parties may agree in principle on concluding a contract at a later date (preliminary contract). The preliminary contract shall be concluded in the form stipulated for the contract and shall be binding for the parties to conclude a contract.

(2) Conclusion of a preliminary contract can be rendered obligatory by legal regulation.

(3) If no contract is concluded, the court shall be entitled, if so requested by either party, to bring a contract into existence and determine its content. The court shall also be entitled to establish a contract if the preliminary contract does not contain an agreement concerning the key issues of the contract, provided that, in due consideration of the interests of the parties and the national economy, the content of the contract can be determined on the basis of the parties' negotiations and pre-existing contracts and all of the circumstances of the case.

(4) Under special circumstances the court may bring a contract into existence by modifying the terms specified in the preliminary contract if it is justified by the interests of the national economy or any interest of the parties deserving special consideration.

(5) Either party shall be entitled to refuse to conclude a contract if it provides proof of inability to perform the contract by virtue of a circumstance that has occurred after the conclusion of the preliminary contract or if the performance of the contract would be detrimental to the national economy, or if, on the basis of such a circumstance, avoidance or termination of the contract might apply.

(6) Concerning other issues, the provisions pertaining to a contract to be concluded on the basis of an agreement in principle shall be duly applied regarding the preliminary contract.

## *Standard Contract Conditions*

### *Section 209.*

(1) Any standard contract condition that is deemed unfair may be contested by the injured party.

(2) If an economic organization exploits an unfair standard contract condition when a contract is concluded, the prejudicial clause may be contested before a court of law by an organization described in specific other legislation.

(3) If the contention described in Subsection (2) is found to be substantiated, the court shall declare the unfair term null and void in favor of all of the parties with which the party imposing the condition has a contractual relationship. Having the term overturned by the court shall not affect the contracts that have already been performed prior to the date on which the contention was filed.

### *Section 209/A.*

A consumer may contest any unfair term in a consumer contract regardless of whether or not such clause is regarded as a standard contract condition.

### *Section 209/B.*

(1) A standard contract condition, or the term of a consumer contract, shall be regarded unfair if the clause or term, in violation of the obligation to act in good faith, unilaterally and unjustifiably establishes the contractual rights and obligations of the parties to the detriment of one of the parties.

(2) The definition of rights and obligations is unilaterally and unjustifiably detrimental, in particular if

- a) it substantially deviates from major provisions of the contract; or
- b) it is incompatible with the subject matter or purpose of the contract.

(3) When establishing the unfair nature of a contract condition, it shall be necessary to examine all of the circumstances leading to the conclusion of the contract as well as the nature of the stipulated service and the relationship of the condition in question with other contract conditions and other contracts.

(4) Other legal regulations may define the conditions that are regarded to be unfair in respect of a consumer contract or that shall be regarded as unfair until proven otherwise.

(5) The provisions on unfair contract conditions shall not be applied to a contract clause stipulating the service and the consideration for such, if the phrasing of such clause is clear and understandable for both parties.

(6) The contract conditions defined by legal regulation, or established in accordance with the provisions of legal regulations, shall not be deemed unfair.

#### *Section 209/C.*

Any term that been drafted in advance by one of the parties in the context of a pre-formulated standard contract, and the other party has therefore not been able to influence the substance of the term shall be construed as a standard contract condition.

#### *Section 209/D.*

The party applying a standard contract condition shall be liable to prove that the other party has participated in the drafting of the condition.

### *Mistake, Deception, Intimidation*

#### *Section 210.*

(1) A person acting under a misapprehension regarding any essential circumstance at the time a contract is concluded shall be entitled to contest his contract statement if his mistake had been caused or could have been recognized by the other party.

(2) A contract statement may be contested on the grounds of misapprehension of a legal issue if such misapprehension is deemed significant and if the advice of legal counsel, acting within the scope of his competence, to the parties affected has been patently erroneous in terms of the contents of legal regulations.

(3) If the parties had the same mistaken assumption at the time the contract was concluded, either of them may contest the contract.

(4) A person who has been persuaded to conclude a contract by deception or duress by the other party shall be entitled to contest the contract statement. This provision shall also apply if deception or duress was committed by a third person and the other party had or should have had knowledge of such conduct.

(5) A gratuitous contract may be contested on the grounds of mistake, deception or duress even if these circumstances could not have been recognized by the other party.

### *Concluding Contracts*

#### *Section 211.*

(1) A person who offers to conclude a contract shall be bound by his offer, unless the offer contained a clause to the contrary.

(2) The offeror may specify the period for his offer to remain binding. In the absence thereof, an offer made personally or by telephone shall cease to be binding unless the other party accepts the offer immediately. An offer made to an absent person shall cease to be binding upon the expiration of the period of time within which the person who made the offer can expect (in light of the nature of the services specified in the offer and the manner in which

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the offer was delivered) to receive a response under normal conditions. The period in which an offer is binding can be otherwise regulated by law.

#### *Section 212.*

(1) By disclosing the necessary details and sending the necessary documents, the obligee may request the person who is subject to contracting obligation (obligor) to make an offer. The obligor shall present his offer within thirty days of receipt of the request.

(2) If the request for an offer does not contain the necessary details or documents, the obligor shall request these details and/or documents to be furnished within fifteen days of receipt of the request. In this case, the deadline for presenting the offer shall commence upon the provision of the missing details and/or documents.

(3) The deadlines may be determined differently by legal regulation or, if allowed by legal regulation, by the parties under mutual consent.

#### *Section 213.*

(1) A contract comes into existence between persons who are present at the moment the contract is concluded, while, for those who are not present, it comes into existence when the offeror receives the statement of acceptance.

(2) An acceptance with contents that deviate from the offer shall be deemed a new offer.

(3) If a contract is concluded by persons who are not present, the place where the contract is concluded shall be the offeror's domicile or registered office (premises).

#### *Section 214.*

(1) A contract statement, if made orally or by verbal message, shall become operative when it becomes known by the other party. A written statement or one sent by telegraph must be delivered to and received by the other party in order to be valid.

(2) An as yet inoperative statement can be withdrawn. The statement of withdrawal must reach the other party or be made known to him no later than the arrival of the withdrawn statement.

(3) If both parties are economic organizations, the party assuming to pay consideration (purchase price, fee) may withdraw its statement before the conclusion of the contract; however, that party shall reimburse the expenses of the other party.

(4) If the statement of an offeree made in due time is belatedly received by the offeror, the offeror shall immediately notify the other party that the contract has not been concluded. Failure to do so shall validate the contract.

#### *Section 215.*

(1) If the consent of a third party or official approval is required for the validity of a contract, the contract shall not be concluded until this has been given; however, the parties shall be bound by their statements. Either party shall be relieved from obligation if the third party fails to give its consent or the authority fails to grant its approval before the applicable deadline as communicated by one party to the other.

(2) Once consent and/or approval has been received, the contract shall become effective as of date on which it is signed, unless otherwise prescribed in legal regulation.

(3) In the absence of consent and/or approval, the legal consequences of invalidity shall apply to the contract.

### *Formal Requirements*

#### *Section 216.*

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(1) A contract may be concluded either verbally or in writing, unless otherwise provided by legal regulation. The intent to conclude a contract can also be expressed by conduct that implies such intent.

(2) Failure to make a statement, if it is not implicit conduct, shall be deemed as acceptance only if legal regulation has so prescribed or the parties have so agreed.

#### *Section 217.*

(1) A legal regulation may prescribe definite forms for contracts. A contract concluded in violation of formal requirements shall be null and void, unless otherwise provided by legal regulation.

(2) A form stipulated by the parties shall be a condition to the validity of a contract, if the parties have expressly so agreed. In such cases, the contract shall become valid by acceptance of performance or partial performance, even if no formal requirement had been stipulated.

#### *Section 218.*

(1) If a written form is prescribed by legal regulation or an agreement, at least the essential content of the contract must be put in writing.

(2) If written form is prescribed by legal regulation and the contracting party is illiterate or is unable to write, a public document or a private document with full probative force shall be required for the validity of the contract.

(3) If the validity of a contract is tied to a definite form determined by legal regulation or the agreement of the parties, termination or cancellation of the contract concluded in such form shall also be valid only in the specified form. Termination or cancellation of the contract by disregarding the specified form shall also be valid, if the actual state of affairs conforming thereto has been established upon the parties' mutual consent.

## **Chapter XIX**

### **Representation**

#### *Section 219.*

(1) It shall be possible to conclude contract or make other legal statements through another person (representative), unless it is provided by legal regulation that the legal statement can only be made in person. Persons with limited capacity shall be entitled to represent competent persons.

(2) The person who is represented shall become an obligor or obligee on the basis of his representative's actions.

#### *Section 220.*

(1) Employees or members of a legal person that is regularly engaged in buying or selling goods or providing other services who work in the customer area of the legal person shall be regarded as representatives of that legal person in concluding and performing the contracts that are customary in that place, unless otherwise provided by legal regulation or otherwise indicated by the circumstances.

(2) Restrictions on the scope of authority of an employee or member shall be inoperative towards third persons, unless the third person is or could have been aware of the restrictions.

(3) These provisions shall also apply to the employees of private persons.

#### *Section 221.*

(1) A person who transgresses the scope of his authority to represent in good faith or who has concluded a contract in the name of another person without having the right to represent and the person in whose name he has proceeded does not approve his action, such shall pay compensation to the other contracting party for damages incurred in result of the conclusion of the contract. However, the court shall be entitled to grant exemption from such indemnification,

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particularly if the person had previously been a representative and was, through no fault of his own, unaware of the cessation of his right to represent at the time the contract was concluded.

(2) A mala fide false representative shall be liable for full recompense.

(3) A representative shall not proceed if the opposite or otherwise interested party is himself or a person whom he also represents. The representative, if a legal person, shall also be allowed to proceed in a case of conflicting interests with the express consent of the person represented.

## *Power of Attorney*

### *Section 222.*

In addition to representation that is based on the law, official orders, or statutes; the right to represent may be established by a statement (power of attorney) addressed to the representative, the other party, or the authority involved.

### *Section 223.*

(1) A power of attorney shall be subject to the same formal requirements as prescribed by legal regulation for contracts to be concluded on the basis of the power of attorney. A general power of attorney shall not be valid unless it is written.

(2) A power of attorney shall be valid until withdrawn, unless otherwise provided; its withdrawal that concerns a bona fide third person shall be operative only if he has been informed thereof. The right of withdrawal cannot be validly waived.

(3) A power of attorney shall cease to exist with the death of either party.

## *Representation of Persons Who are Unable to Conduct their Affairs*

### *Section 224.*

(1) Upon request, the guardian shall appoint a conservator for a person who is unable to conduct his affairs, particularly if the whereabouts of that person are unknown, or if the whereabouts of the person are known, but he is under duress.

(2) The appointment of a conservator shall not affect the legal competency of the person in the custody of a conservator.

(3) Conservators shall, within the scope of their power to represent, manage the property of the persons in their custody and perform the duties conferred on them by specific other legislation. Furthermore, the conservator of an absentee may take any measure, with the prior consent of the guardian, in order to protect the person in his custody from damages. Approval by the guardian shall not be required for imminently urgent measures; however, the guardian shall be notified thereof as soon as possible.

## *Ad Hoc Conservatorship*

### *Section 225.*

(1) If, owing to a conflicting interest or physical obstacle, a parent, guardian, or conservator is not able to proceed pursuant to a legal regulation or a conservator's orders, the guardian shall appoint an ad hoc conservator.

(2) An ad hoc conservator shall also be appointed if

a) measures are urgently required and the person who is incompetent or of limited capacity has no legal representative, or if the identity of the legal representative cannot be determined, and

b) it is necessary for the protection of the rights of a person who is unknown, absent, or otherwise unable to conduct his affairs.

(3) An ad hoc conservator shall act with the same authority as a guardian or conservator.

(4) The authority of a parent exercising parental supervision, a guardian, or a conservator shall not apply to the affairs for which an ad hoc conservator has been appointed.

## Chapter XX

### Content and Subject Matter of Contracts

#### *Section 226.*

(1) Legal regulations can prescribe certain content elements of contracts and provide that such elements shall constitute a part of a contract even if the parties provide otherwise.

(2) Legal regulations can amend the content of contracts that have been concluded prior to the date on which the legal regulations enter into force only under special circumstances. If the amended content of a contract injures any substantial and rightful interest of any of the parties, the party so affected shall be entitled to request the court to amend the contract, or, unless otherwise provided by legal regulation, the party shall be entitled to rescind from the contract.

(3) The provisions on establishing official prices are contained in specific other legislation.

(4)-(5)

#### *Section 227.*

(1) Services stipulated in contracts can be aimed toward the provision of some thing, an activity, abstaining from an activity, or some other conduct.

(2) Contracts aimed toward impossible services shall be null and void.

### *Conditions and Terms*

#### *Section 228.*

(1) If the parties have made the effective date of a contract contingent upon an unpredictable future event (condition precedent), the contract shall become effective when such condition occurs.

(2) If the parties have made the termination of a contract contingent upon an unpredictable future event (condition subsequent), the contract shall expire when such condition occurs.

(3) Incomprehensible, contradictory, illegal or unattainable conditions shall be null and void; the provisions of limited invalidity (Section 239) shall apply to contracts with such conditions.

#### *Section 229.*

(1) As long as a condition is pending, neither party shall be entitled to do anything that would infringe upon or violate the other party's rights upon the realization or frustration of the condition. This provision shall not affect the rights of third persons acquired in good faith and for consideration.

(2) Persons who have actionably caused the realization or frustration of a condition shall not be entitled to establish any right thereupon.

(3) The provisions pertaining to conditions shall also be duly applied in the event the parties have linked the validity or termination of a contract to a certain date.

### *Alternative Services*

## *Section 230.*

(1) If the parties have defined several services as the subject matter of a contract in a manner that makes it possible to choose among the services, the obligor shall have the right to choose, unless otherwise prescribed by legal regulation. This right of the obligor shall pass to the obligee upon the expiration of the performance deadline stipulated by court decision.

(2) If the obligee is presented with a choice, but he is late in making it, this right shall pass to the obligor.

## *Cash Debt, Interest*

### *Section 231.*

(1) A cash debt shall, unless otherwise stipulated, be repaid in the legal tender of the place of performance.

(2) A debt specified in a different currency or in gold shall be converted on the basis of the exchange rate (price) prevailing at the place and time of payment.

(3)

### *Section 232.*

(1) Contractual relations, unless otherwise provided by legal regulation, shall entail interest. Interest shall be due in the contractual relations of private persons only if so stipulated.

(2) The annual interest rate shall be the same as the central bank base rate unless otherwise prescribed by legal regulation. The interest payable shall be calculated for the entire calendar half-year period by using the base rate in effect on the last day preceding the calendar half-year to which it pertains.

(3) Any unreasonably excessive interest rate established by the parties may be reduced by the court.

## *Contracts Concluded in Favor of a Third Party*

### *Section 233.*

(1) If the parties have concluded a contract for services to be performed for a third party, the third party will be an immediate beneficiary only if the parties have expressly stipulated.

(2) A third party shall be entitled to exercise the rights stipulated in its favor as of the date on which it receives notice of the contract from either party. If these rights are declined by the third party, they shall become the property of the party that has made the contract in its favor.

(3) The obligor shall be entitled to enforce his objections to the contract in respect of third persons, as well.

## **Chapter XXI**

### **Nullity and Avoidance**

#### *Section 234.*

(1) Unless otherwise provided by law, anybody shall be entitled to plead the invalidity of an annulled contract without a time limit. No special procedure is required for the establishment of invalidity.

(2) If a nullified contract is in conformity with the validity requirements of another contract, this latter contract shall be valid, unless it is in contradiction with the presumed intent of the parties.

#### *Section 235.*

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(1) An avoidable contract shall, in consequence of being avoided, become invalid as of the date on which it is concluded.

(2) The aggrieved party and persons with a legitimate interest in the avoidance of a contract shall be entitled to do so.

#### *Section 236.*

(1) The other party shall be given written notification of avoidance within one year, and if the notification is not successful, the avoidance shall be immediately enforced in court.

(2) The time limit for avoidance shall commence

a) upon recognition of the mistake or deception;

b) in the case of unlawful menace, upon the cessation of duress;

c) in the event of any apparent discrepancy between the services of the parties or an unfair contractual condition [Subsection (1) of Section 209 and Section 209/A], on performance by the injured party (in the case of performance by installments at the time of first performance) or, if this party was under duress at the time of performance, upon cessation thereof.

(3) The provisions pertaining to the abeyance and interruption of limitation shall be duly applied to the time limit for avoidance. The party entitled to avoid a contract shall be entitled to enforce this right by challenging a claim originating from the contract, even if the time limit for avoidance has already expired.

(4) The right of avoidance shall be suppressed if the party entitled to avoid the contract confirms the contract in writing or otherwise waives his right to do so in writing after the expiration of the time limit for avoidance.

#### *Section 237.*

(1) With regard to invalid contracts, the state of affairs having existed prior to the conclusion of the contract shall be restored.

(2) If the state of affairs having existed prior to the conclusion of the contract cannot be restored, the court shall declare the contract valid for the period up to the date of judgment. An invalid contract may be declared valid if the cause of invalidity can be abolished, in particular by eliminating the excessive benefit in the case of a usurious

contract or the unreasonable advantage between the services of the parties. In such cases, it shall be necessary to provide for the return of any services that might remain without consideration.

(3) With regard to usurious contracts, the court may cancel reimbursement in full or in part if, even in those cases in which installation payments are permitted, the aggrieved party would find itself in dire straits. Nevertheless, the party who caused the injury shall be obliged to reimburse the aggrieved party for that part of the received services that is equivalent to the excessive advantage.

(4) Based on a motion filed by the public prosecutor, the court shall be entitled to award to the state the performance that is due to a party who has concluded a contract that is contrary to good morals, who has deceived or illegally threatened the other party, or who has otherwise proceeded fraudulently. In the case of a usurious contract, the performance to be returned to the party who caused the injury shall be awarded to the state. Allotments due the state shall usually be awarded in cash.

#### *Section 238.*

(1) If an invalid contract is declared valid, the contracting parties shall be liable for the breach of contract as if the contract had been valid from the very beginning.

(2) A person who has, in good faith, believed in the existence of an invalid contract can demand compensation from the parties for damages that originate from the conclusion of the contract. However, if invalidity is attributable to the conduct of one of the parties, the court shall not condemn the other party. If either of the parties has acted in bad faith towards the third person, such party shall be liable for full compensation for damages even if invalidity is not attributable to his conduct. The court shall also be entitled to award such indemnification by maintaining the validity of the contract either in part or in full.

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*Section 239.*

In the event of limited invalidity of a contract, the entire contract shall fail only if the parties would not have concluded it without the invalid part. Legal regulation may provide otherwise.

## **Chapter XXII**

### **Amendment of Contracts, Acknowledgment of Debts**

#### *Amendment by Contract and Composition*

*Section 240.*

(1) Unless otherwise provided by legal regulation, the parties shall be entitled to amend the content of a contract by mutual consent or change the legal title of their commitment.

(2) The parts of a contract not affected by amendment in terms of content or legal title shall remain unchanged. Any lien or suretyship pledged as security for the obligation shall prevail; however, this cannot result in regress of the position of the lien holder or the obligor without his consent, and his objections made prior to the amendment shall also remain in force.

(3) A contract may also be amended by composition. Composition shall be construed as the parties' settlement of disputed or indeterminate contract issues by making mutual concessions to one another.

(4) The validity of contract amendment by composition shall not be affected by any misapprehension of the parties regarding a circumstance that was disputed or deemed indeterminate. This also applies to cases in which the dispute or uncertainty could have been avoided by evidence uncovered after the composition had been made.

#### *Amendment of Contracts by Court*

*Section 241.*

The court may amend a contract when it is injurious to any substantial rightful interest of one of the parties in consequence of a circumstance arising in the long-term relationship of the parties following the conclusion of the contract.

#### *Acknowledgment of Debt*

*Section 242.*

(1) Acknowledgment of debt shall not change the legal title of a debt; however, the burden of proof lies with the person making the acknowledgment to demonstrate that he has no debt, the debt cannot be judicially enforced, or that the contract is invalid.

(2) A debt is acknowledged by a written statement addressed to the other party.

## **Chapter XXIII**

### **Collateral Commitments for Securing Contracts**

#### *Earnest*

## *Section 243.*

- (1) Earnest may be given when a contract is concluded as a sign of commitment.
- (2) A sum of cash or another thing that is delivered at the time the contract is concluded shall be construed as earnest only if this intent is expressly indicated in the contract.

## *Section 244.*

If a contract is performed, the earnest shall be included in the consideration for the service, however, if the earnest cannot be included in the consideration or if the contract is terminated for reasons attributable to neither or both of the parties, the earnest shall be returned.

## *Section 245.*

- (1) The person responsible for the failure of performance shall forfeit the earnest that he has given, or he shall refund twice the amount of the earnest he has received.
- (2) Waiver of the right to demand a refund of earnest or the double repayment of the earnest shall not constitute an exemption from the consequences of breach of contract; however, the amount of the earnest shall be included in the indemnification.
- (3) An excessive earnest may be reduced by court.

## *Liquidated Damages*

### *Section 246.*

(1) An obligor may pledge to pay a certain sum of money in case he fails to perform the contract or his performance is not in conformity with the contract for reasons attributable to him (liquidated damages). A clause stipulating liquidated damages shall only be deemed valid if made in writing. Any interest attached to liquidated damages shall be null and void.

(2) The obligee shall be entitled to demand payment of liquidated damages even if he sustains no damage, and he shall be entitled to enforce payment for those of his damages exceeding the liquidated damages as well as other rights resulting from the breach of contract. The obligee shall be entitled, in accordance with the relevant regulations,

to demand compensation for damages caused by the breach of contract, even if he has not enforced his claim for liquidated damages.

(3) Enforcement of liquidated damages stipulated for nonperformance precludes any demand for performance. Payment of liquidated damages stipulated for late performance and lack of conformity shall not constitute an exemption from performance.

(4)

### *Section 247.*

- (1) Excessive liquidated damages can be reduced by court.
- (2) The provisions on default interest shall be applied to default penalties for late payment of cash debts.
- (3) Liquidated damages stipulated as security for a claim that cannot be judicially enforced cannot be enforced in the court of law.

## *Guarantee*

### *Section 248.*

(1) Where guarantee is to be provided under contract or legal regulation for the faultless performance of a contract, the guarantor shall be released from liability during the guarantee period if he is able to prove that the cause of the defect occurred after performance. This guarantee shall not affect the consumer's legal rights.

(2) The guarantor shall be subject to liability in accordance with the conditions laid down in the guarantee statement of the contract to which the guarantee pertains, the applicable legal regulation, or the relevant advertising.

(3) For consumer contracts, the guarantee shall specify the name and address of the guarantor, the contents of the guarantee and the duration and territorial scope of the guarantee as well as the essential particulars necessary for making claims under the guarantee; it shall also state that the consumer has legal rights under applicable legislation. At the consumer's request, the guarantee statement shall be made available in writing or in another durable medium available and accessible to him. Concerning the guarantee statement, additional requirements may be stipulated by legal regulation where it is made mandatory. Noncompliance with the provisions set out in this Subsection shall not affect the validity of the guarantee obligation.

(4) Consumers shall be allowed to communicate a complaint at any time within the guarantee period.

(5) The legal provisions on exercising warranty rights shall be duly applied concerning the application of binding guarantees.

## *Bank Guarantee*

### *Section 249.*

Banks shall be entitled to assume obligations to effect payment to a beneficiary up to a specific amount within a predetermined time limit under certain conditions, such as the occurrence or absence of a certain event or the submission of documents.

## *Stipulation of Forfeiture of Right*

### *Section 250.*

(1) Parties shall be entitled to agree in writing that the party responsible for any breach of contract shall forfeit a right or a benefit to which he would be entitled on the basis of the contract.

(2) If the forfeiture of a right afflicts the obligor excessively, such adverse disposition may be mitigated by the court.

## **Lien**

### **1. Common Rules**

#### *General Provisions*

### *Section 251.*

(1) Upon the obligor's failure to perform, a lien holder shall be entitled, in the absence of any provision of law to the contrary, to seek satisfaction prior to other claims against a property pledged as security for his claim that has been stipulated or can be stipulated in monetary terms. The creation of a lien as security for a claim that cannot be enforced in court shall be null and void.

(2) Liens may also be created for securing future or conditional claims.

(3) The scope of liability through a lien shall be adjusted to the claim for which it was pledged as security. It shall include interest, the costs of enforcing the claim or lien, and the necessary expenditures in connection with the property pledged as security.

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(4) A lien shall be transferred to the new obligee when the claim is transferred. In the absence of any provision of law to the contrary, a lien can only be transferred together with the claim.

## *Pledged Property*

### *Section 252.*

(1) A lien may be put on all things which are capable of appropriation, and on any transferable right or claim.

(2) If so agreed by the parties, a lien can also be put on the proceeds from the pledged property. If, however, the pledged property is not held by the lien holder, the pledge shall not include any separated proceeds, unless the pledged property had previously been placed under attachment.

### *Section 253.*

(1) If a lien is put on more than one pledged property to secure the same claim, all of the pledged properties shall, in the event of any doubt, serve as security for the entire claim.

(2) If the pledged property is owned by several persons from whose relationship does not imply otherwise, the owners shall bear liability in proportion to the value of the pledged property. Whoever is obliged to make satisfaction in excess of this proportion shall be entitled to demand reimbursement for the excess share from the other owners according to their respective ownership shares.

## *Creation of a Lien*

### *Section 254.*

(1) Liens are created under contract or pursuant to legal regulations and on the basis of court and, if so prescribed by law, other official decisions.

(2) Lien contracts shall be concluded in writing. For the creation of liens on certain properties, additional formal requirements may be prescribed by law.

## *Enforcement of Liens*

### *Section 255.*

(1) Unless otherwise provided by law, satisfaction from the pledged property shall take place on the basis of court order by a writ of execution.

(2) Agreements that are concluded before the claim is due and grant the lien holder the right to acquire ownership of the pledged property in the event of the failure to fulfill the obligation shall be null and void.

### *Section 256.*

(1) The right of satisfaction shall not be affected by any rights acquired after pledging, unless otherwise prescribed by law. If the same pledged property is encumbered by more than one lien, the lien holders shall, unless otherwise provided by law, be satisfied in the order in which the liens were created (order of priority).

(2) If a lien is put on several things, the lien holder may determine the order of satisfaction. Sale, however, can only involve as many pledged properties as necessary to provide satisfaction.

### *Section 257.*

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(1) The parties can agree in writing to sell the pledged property together before the claim to which it pertains falls due by establishing the lowest sale price or a formula for calculating the sale price, and a deadline from the date on which the claim falls due. If the pledged property cannot be sold before the deadline and/or under the conditions set forth in the agreement, the agreement for joint sale shall become inoperative.

(2) If the pledged property has an official market price or if the lien holder is engaged in providing loans against security commercially (in terms of claims secured by lien, including all credit institutions), the parties can, before the claim is due, agree, under the terms and conditions prescribed in Subsection (1), to permit the lien holder to sell the pledged property himself without judicial execution.

(3) If the provisions set forth in Subsection (2) cannot be applied or if the parties decide not apply them, the parties can agree, under the terms and conditions prescribed in Subsection (1), to permit the lien holder to appoint a person who is commercially or ex officio engaged in providing loans against security or organizing auctions to sell the thing.

#### *Section 258.*

(1) A person authorized to sell a pledged property or have an agent do it [Subsections (2) and (3) of Section 257], shall be entitled - on the basis of such authorization - to transfer title to the pledged property instead and on behalf of the owner of such property. If the pledged property is not in his possession, he may request that it be surrendered for the purpose of sale.

(2) Prior to selling the pledged property, the obligor shall be notified regarding the mode, place and time of the sale.

(3) The lien holder shall be entitled to claim the proceeds from the sale of the pledged property; however, the lien holder shall settle all accounts with the obligor and surrender any proceeds exceeding the amount of the claim, any interest and the costs of sale. Any agreement to exempt the obligor from the obligation to keep records that is made prior to the termination of the lien shall be null and void.

(4) Legal regulation may prescribe further provisions pertaining to sale by means other than judicial execution.

### *Termination of a Lien*

#### *Section 259.*

(1) If the owner of a pledged property and the obligor are not the same person (individual obligor) and if the lien holder has been satisfied from the pledged property, the lien shall be extinguished, and the claim, together with its other securities, shall be transferred to the owner.

(2) If a lien holder is not otherwise satisfied by the individual obligor, the lien shall be transferred to the person providing satisfaction up to the extent of the claim or to the demand for reimbursement created on the basis of satisfaction. This person shall be entitled to demand the surrender of the pledged property or the required statement for having the lien registered in his favor.

(3) A lien shall be terminated upon the termination of the claim or if the claim is transferred without the transfer of the lien, unless a provision of law prescribes that the lien be retained as security for the reimbursement claim.

(4) A lien shall, furthermore, be terminated if the lien holder acquires ownership of the pledged property or the lien holder acquires the claim that is secured by lien; liens, however, if the new owner of the claim is not deemed an individual obligor, shall remain for the holders of subordinate liens.

(5) A lien shall be terminated if so prescribed by law as part of an execution or some other proceeding.

#### *Section 260.*

(1) A lien shall also be terminated if the pledged property is destroyed.

(2) If the pledged property is destroyed or depreciated owing to reasons attributable to the owner, and, furthermore, if the pledge has been attached under an obligation to provide security and the lien holder is not responsible for the damages, an adequate new pledged property or additional security to cover the depreciation can be demanded from the party obliged to provide security.

(3) A security deposit, reimbursement, or other value provided as alternative security for the destruction or depreciation of the pledged property shall replace the pledged property or supplement the lien security. In the case of mortgages, both the owner and the mortgage holder shall be entitled to demand such amount to be spent on the restoration of the pledged property.

(4) If a pledged property is sold to avoid damages, the sale price shall replace the pledged property. The owner's consent is required for such sale, if there is no insurmountable obstacle thereto.

## 2. Lien on Things

### *Mortgage*

#### *Section 261.*

(1) In respect of mortgages, the pledged property remains in the possession of the obligor, who is entitled to use and utilize the property; however the obligor shall maintain such pledged property in good condition. In the event the obligor or a third person is endangering the condition of the pledged property, the lien holder shall be entitled to demand that the endangering act be prohibited and that an order be issued to take the necessary measures to eliminate the danger.

(2) If any deterioration in the condition of the pledged property jeopardizes the satisfaction of a claim, the lien holder may demand replacement of the pledged property or security that corresponds to the degree of endangerment. Should the obligor fail to comply with request of the lien holder within due time, the lien holder may enforce his right to satisfaction.

(3) Mortgages cannot be put on fractions or parts of a property; however, the full share of ownership held by the obligor in a joint property may be pledged as security. In the case of real property, a lien may only be put on the entire property that is registered in the real estate register or on the full title of ownership to the obligor's property.

#### *Section 262.*

(1) Real property may be pledged as security only in the form of a mortgage. A mortgage shall be considered valid only if contracted in writing and recorded in the real estate register.

(2) For the creation of a mortgage on other things, the lien contract shall, unless otherwise provided by legal regulation, be documented in front of a notary public, and the lien shall be recorded in the register maintained by the Hungarian Association of Notaries Public (lien register) in accordance with the provisions of a separate law. If a lien is put on several properties, or if the pledged property cannot be labeled in itself, the pledged property or the group of properties may be described by type and quantity or by elaborate description.

(3) The records referred to in Subsections (1) and (2) must contain - in addition to the data and information prescribed by the regulations on such records - the amount of the claim (or, in the case of future claims, the largest amount intended to be secured) and the appurtenances covered by the lien; the latter two may also be specified by reference to the contents of the lien contract. Any reduction in the claim or the termination of the claim shall affect the lien regardless of the contents of the record on file.

(4) The owner of a real property may have recorded in the real estate register his intention to mortgage his property within a year at or below the amount specified. If an application for registration of such mortgage is submitted before the deadline specified, it shall be recorded as consistent with the order of priority (ranking) previously recorded.

(5) A lien may also be registered in the lien register on a thing (contingent upon the effective date of the right of disposition), which shall be acquired by the obligor after the lien contract has been concluded. The ranking of such lien shall be determined by the date on which it is registered; however, this provision may not be cited with regard to a person on whose behalf the former holder of the right of disposition has filed the lien.

(6) A mortgage registered in the lien register shall be terminated if the pledged property is sold in commercial circulation or under normal measures to a bona fide buyer. It shall also be terminated if such bona fide buyer acquires, for consideration, ownership of a thing generally used for everyday needs.

## *Section 263.*

(1) Should parties create a lien to secure claims that have originated or are likely to originate from a legal relationship or a legal title stipulated in the lien contract, the record shall describe the legal relationship or the title and the largest amount within which the lien holder may seek satisfaction from the pledged property (limited security lien).

(2) If a new obligor is admitted into an already existing relationship, the limited security lien shall serve as security for the claims that are stipulated in the legal relationship to be borne by the new obligor as well as those that had previously been established by the legal relationship.

(3) If the relationship stipulated in a lien contract is terminated and the obligor's debt originating from such lien contract or from a claim created under a title specified in the lien contract no longer prevails, the obligor shall be entitled to demand that the lien holder forfeit his limited security lien.

## *Section 264.*

(1) An mortgage shall be terminated upon the expiration of the claim.

(2) The owner may create a new mortgage at the place of ranking of the terminated mortgage and in the extent of termination simultaneously with the termination of the recorded mortgage and not to exceed the amount thereof, or he may retain the ranking of the canceled record for one year. The owner shall be entitled to waive this right in favor of a third person or a person holding a lien in the next rank. In this case, the owner shall be entitled to exercise the rights connected with such ranking with the consent of the person in whose favor it was waived.

## *Possessory Lien*

## *Section 265.*

(1) To create a possessory lien, it shall be necessary to conclude a lien contract and to surrender the pledged property. Such property may also be delivered into the hands of a third person (pledge holder). In commercial circulation, liens can be acquired in good faith even if the person providing the pledged property is not the owner.

(2) Possessory liens cannot be put on fractions or parts of a thing nor on the ownership of such thing. Nothing excluded by law from being pledged property can serve as a pledge.

(3) The holder of a possessory lien shall maintain the pledged property in good condition and return it upon the termination of the lien.

(4) The lien holder, unless otherwise provided by legal regulation, shall not be entitled to use or utilize the pledged property. He shall, however, be entitled and required to reap the proceeds therefrom. Such proceeds shall be primarily for covering the necessary expenses. The lien holder shall be obliged to account for all proceeds.

(5) Should there be any possibility of a deterioration in the condition of the pledged property or a substantial decrease in the value of the pledged property, the obligor or the owner shall be entitled to request the return of the pledged property, while offering adequate security in replacement.

(6) A possessory lien shall be terminated when the lien holder returns the pledged property to its owner. A possessory lien shall also be terminated if the lien holder fails within one year to recover a pledged property that has been removed from his possession without his consent and he does not go to court therefor.

## **3. Lien on Financial Assets**

## *Section 266.*

(1) The creation of a lien on the financial assets of a legal entity or an unincorporated business association, whether on the whole or on a strategic business unit (asset) - without having to specify the things, rights and claims comprising it (property) - shall be made in a lien contract and documented in front of a notary public, and the lien

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shall be registered in the lien register. Such lien shall apply to any and all property acquired by the obligor after the contract has entered into effect, commencing with the date on which the obligor acquires the right of disposition; it shall, however, cease when the property in question is no longer in the obligor's possession.

(2) Once the claim is due, the holder of a lien on financial assets shall be entitled to seek satisfaction from the assets of the obligor, given that the assets are maintained intact, or he shall be entitled to convert the lien on the property to a lien on specified property items with a written statement addressed to the obligor. This statement shall not replace any further conditions made necessary under the lien contract for creating the liens to be established by it.

(3) The holder of a lien on financial assets or a lien created through a conversion statement shall be entitled to seek satisfaction on the basis of the rank achieved by the date of registration. However, the lien holder shall not be entitled to cite this provision with regard to any person who has, on any property item that is construed part of the entire assets,

- a) acquired a lien before it became part of such assets,
- b) acquired a lien registered in records other than the lien register,
- c) acquired, in good faith, a possessory lien in commercial trade or a lien on a claim or right.

(4) In the event of any depreciation in the assets on which the lien was put to an extent jeopardizing satisfaction, the lien holder shall be entitled to make the conversion statement before the claim is due.

(5) In the event of any depreciation in the assets on which the lien was put to an extent jeopardizing satisfaction, the obligor must notify the lien holder. Parties may include a clause in the lien contract in which they stipulate the extent of depreciation that is considered to jeopardize satisfaction. Parties may also agree to stipulate the lien holder's right to inspect the manner in which the obligor cares for the pledged property.

(6) In respect of other issues, the provisions on mortgages shall be applied regarding liens on financial assets.

## 4. Lien on Rights and Claims

### *Section 267.*

(1) A lien can be put on a right or claim by contract. It may include future rights and claims that may be created in favor of the obligor. The rights and claims pledged may be specified by elaborate description. If the right or claim is substantiated by some official record and the pertinent legal regulation prescribes having the lien entered in such record as a prerequisite, the lien shall be construed effective when recorded. Liens can also be put on a specific part of a divisible claim.

(2) For enforcing the lien, the obligor of the right or claim shall be notified when the lien is created. The lien holder shall be entitled to demand that the obligor surrenders the documents necessary to enforce the lien.

(3) In respect of a lien on a claim or right, the obligor, with a force extending to the lien, shall, with the consent of the lien holder, be entitled to make a legal statement to terminate or adversely alter the lien holder's grounds for satisfaction. This provision shall be applied to a lien on a claim prevailing on the basis of a bank account contract, regarding the right of disposition of the account holder, if it is expressly stipulated by the parties in the lien contract.

### *Section 268.*

(1) If a claim encumbered by a lien becomes due before the lien is to be satisfied from the pledged property, the obligor of the claim shall only be able to pay the lien holder and claimant together, unless otherwise stipulated in the lien contract; money claims, however, shall be placed in court deposit in favor of both the lien holder and the claimant if so requested by either one of them. If a claim encumbered by a lien is for the delivery of a thing and if, by agreement of the parties, the lien holder is entitled to possession of the pledged property, the obligor of the claim may pay just the lien holder.

(2) If a claim encumbered by a lien becomes due after the lien is to be satisfied from the pledged property and if it was not sold in the course of enforcing the lien, the obligor of the claim can pay just the lien holder, unless otherwise stipulated in the lien contract.

(3) If a pledged property is to be delivered into the hands of the lien holder, the provisions on security deposits shall apply in respect of money claims, while the provisions on possessory liens shall apply to other things.

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(4) If the maturity of a claim encumbered by a lien or the exercise of a right depends on the legal statement of the claimant or on a condition to be performed by him, the lien holder shall be entitled, after the claim is due, to make the legal statement or perform the condition required for maturity.

(5) If the pledged property is a right or claim, within the meaning of the common rules on liens, the owner of the pledged property shall be understood as the beneficiary of the right or claim, and the ownership right to the pledged property shall be understood as the right or the claim.

## Independent Liens

### *Section 269.*

(1) Liens can be created so as to encumber the pledged property without any personal claim. In this case, the lien holder shall be entitled to seek satisfaction, up to the amount specified in the lien contract including interest, solely from the pledged property to which the lien pertains.

(2) To satisfy the lien holder, the independent lien is to be cancelled by notice from the obligor or lien holder, unless otherwise agreed by the parties. The term of notice shall be six months, unless the parties agree otherwise.

(3) Independent liens are negotiable. The obligor shall enforce his rights and complaints from the legal relationship serving as the basis for the independent lien solely in respect of the person or the successor of such person who has directly acquired the independent lien without consideration and who was aware of the legal relationship on which it was based.

(4) An independent lien can be converted into a secured lien and vice versa if so agreed by the parties, under the same ranking. If the lien in question is registered in the lien register, the conversion shall be considered effective when it is recorded. For the above-specified conversion, the consent of lien holders of the same or lower ranking shall not be required.

(5) In respect of other issues, the provisions of Sections 251-268 shall be duly applied regarding independent liens.

## Security Deposit

### *Section 270.*

(1) Financial collateral may be provided under a financial collateral arrangement to secure a claim in the form of cash, money on account, security and other financial instruments specified in specific other legislation, upon delivery of the collateral. If the financial collateral pledged is some other thing, the regulations on liens shall apply.

(2) Delivery shall mean any procedure upon which the financial collateral is transferred from the possession or from under the control of the collateral provider to the possession or control of the collateral taker or otherwise designated so as to be in the possession or under the control of the collateral taker, such as when credited to the bank account, securities account or securities deposit account of the collateral taker or of a person acting on the collateral taker's behalf. If the collateral is not delivered the regulations on liens shall apply.

(3) Parties may agree to grant the right of the collateral taker to use and dispose of the financial collateral as the owner. Where a collateral taker exercises a right of use, he thereby incurs an obligation to transfer equivalent collateral to replace the original financial collateral at the latest on the due date for the performance of the relevant financial obligations covered by the financial collateral arrangement. The equivalent collateral shall replace the original financial collateral.

(4) "Equivalent collateral" in relation to money on account, means a payment of the same amount and in the same currency. In relation to securities and other financial instruments, it means securities and financial instruments of the same issuer or debtor, forming part of the same issue or class and of the same nominal amount, currency and description or, where a financial collateral arrangement provides for the transfer of other assets following the occurrence of any event relating to or affecting any security or financial instruments provided as financial collateral, those other assets.

(5) By way of derogation from Subsection (3), parties may agree that the collateral provider may, on the due date for the performance of the relevant financial obligations, set off the value of the equivalent collateral against or apply it in discharge of the relevant financial obligations.

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(6) Parties may agree to stipulate the right for the collateral provider to replace the original financial collateral with other equivalent collateral at the latest on the due date for the performance of the relevant financial obligations. The equivalent collateral shall be treated the same as the original financial collateral.

(7) Parties may stipulate an obligation to provide additional financial collateral in order to take account of changes in the value of the financial collateral or in the amount of the relevant financial obligations, and that the collateral

taker is required to release any excess collateral to the collateral provider. The additional collateral shall be treated the same as the original financial collateral.

#### *Section 271.*

(1) Upon the due date for the performance of the relevant financial obligations the collateral taker shall be able to realize the financial collateral if it is cash, money on account, security or other financial instrument whose market price is listed publicly or can be determined at that time independent from the parties. The collateral taker shall be able to realize the financial collateral provided in other forms of security or financial instruments if the parties have so agreed in the financial collateral arrangement and have stipulated the method of valuation of the financial instruments.

(2) If the financial collateral arrangement contains an agreement for the valuation of the securities and other financial instruments, sale and appropriation shall be subject to the terms of the financial collateral arrangement.

(3) The collateral taker shall settle all accounts with the collateral provider within reasonable time, and shall surrender any proceeds exceeding the amount of the claim and any interest, and the costs of sale where applicable, to the collateral provider.

(4) If the agreement between the parties contains any clause for realization that is considered commercially unreasonable, it may be contested by the party whose right or lawful interest is injured thereby.

(5) Any party whose right or lawful interest is injured by the manner of realization, particularly any failure to abide by the obligation referred to in Subsection (3), shall be able to demand compensation for damages from the collateral taker. The collateral taker shall be relieved if able to evidence that he has acted in a commercially reasonable manner.

#### *Section 271/A.*

In respect of other issues concerning financial collateral arrangements, the common provisions on liens shall be duly applied with the exception to what is contained in Subsection (2) of Section 254.

## **Suretyship**

#### *Section 272.*

(1) With a contract of suretyship, the surety assumes the obligation of performance to the creditor in the event of nonperformance by the principal debtor.

(2) Suretyship shall be treated valid if made in writing.

#### *Section 273.*

(1) The obligation of a surety shall be adjusted to the obligation for which he has promised to answer; he may effect the same objections that can be enforced by the debtor against the creditor.

(2) The obligation of a surety shall not and cannot subsequently exceed the original obligation; however, it shall include the accessory services that fall due after the suretyship is undertaken. A surety shall be liable for court costs and execution costs only if he has been invited to perform prior to taking legal action.

(3) No claim can be enforced in court against the surety of a claim that cannot be enforced in court.

#### *Section 274.*

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(1) A surety shall be entitled to refuse performance as long as the claim can be recovered from the debtor and/or from other sureties who assumed suretyship before him and without regard to him. This provision shall not prevent joint litigation to be filed against the debtor and the sureties.

(2) A surety shall not be entitled to demand that the creditor recover his claim from the debtor first (absolute suretyship) if

a) the parties have so agreed,

b) suretyship has been assumed for indemnification,

c) suretyship has been assumed by a bank.

#### *Section 275.*

If suretyship is concurrently or jointly promised by more than one person for the same liability, the sureties shall, if there is any doubt, be subject to joint and several liability.

#### *Section 276.*

(1) In the event of a surety satisfying the creditor, the claim shall devolve on him together with the rights securing the claim and with those created prior to the assumption of suretyship, as well as the right of execution.

(2) A surety shall be released if the creditor waives the right securing the claim, on the basis of which the surety could have received satisfaction of the claim devolving on him, or if the claim has become otherwise irrecoverable for reasons attributable to the creditor.

## **Chapter XXIV**

### **Performance and Setoffs**

#### *Performance*

#### *Section 277.*

(1) Contracts shall be performed as stipulated, at the place and time set forth and in accordance with the quantity, quality, and range specified therein. Services, at the time when supplied,

a) shall be suitable for their intended purpose and in conformity with other services of the like, and

b) shall be of a quality and performance that are normal in services of the same type and that the consumer can reasonably expect, given the nature of the services and taking into account any public statements on the specific characteristics of the services made about them by the guarantor, the seller, the producer or his representative, particularly in advertising or on labeling, and

c) shall be for any particular purpose for which the consumer requires them and which the consumer made known to the seller at the time the contract was concluded and which the seller accepted, and

d) shall comply with the description given by the guarantor and possess the qualities of the services the guarantor presented to the consumer as a sample or model.

(2) The guarantor shall not be bound by the public statements referred to in Paragraph b) of Subsection (1) if he demonstrates that

a) he was not and could not reasonably have been aware of the statement in question, or

b) the statement had been adequately corrected by the time the contract was concluded, or

c) the decision to enter into the contract could not have been influenced by the statement.

(3) Within the meaning of Paragraph b) of Subsection (1), any person purporting to be a producer or manufacturer by placing his name, trademark or other distinctive sign on the consumer goods shall be regarded as a producer or manufacturer.

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(4) The parties shall be under obligation to cooperate in the performance of a contract. The obligor shall act to perform the contract in the manner that can generally be expected in the given situation, while the obligee shall promote performance in the same manner.

(5) The parties shall be under obligation to inform each other of all important circumstances affecting performance of the contract.

(6) In the case of a contract concluded for the supply of a thing, the obligor shall mark the thing in a way suitable for identification, and he shall provide all of the necessary information and instructions for the proper use and utilization of the thing, in accordance with the provisions of legal regulations and professional standards. If the obligor is an economic organization, it shall also be obliged to certify the quality of the thing.

## *Place of Performance*

### *Section 278.*

(1) The place of performance is the domicile or registered place of business of the obligor, unless

- a) it is otherwise provided by legal regulation,
- b) the object or purpose of the service suggests otherwise,
- c) the object of the service is at a different location, which is known to the parties.

(2) If the object of a service is to be sent to a place other than the domicile or registered place of business of the obligor, and if such place or an intermediate location has not been stipulated as the place of delivery, performance shall be deemed accomplished when the obligor delivers the object of service to the beneficiary, a shipping agent, or a carrier. In the case of consumer contracts, performance shall be deemed effected upon delivery to the consumer.

(3) If the obligor delivers the thing by its own means of transportation or through its representative, the place of performance shall be the domicile or registered place of business of the latter.

(4) Regarding contracts between economic organizations, the place of performance shall be the registered office (place of business) of the beneficiary, unless otherwise requested by the beneficiary, or the destination if performance is effected through a carrier. Legal regulations can prescribe otherwise.

## *Place of Domicile*

### *Section 279.*

(1) If one of the contracting parties changes his domicile or registered address prior to performance, that party shall bear the extra expenses resulting therefrom.

(2) Risk of damages shall fall on the other contracting party upon performance, unless otherwise provided by law.

## *Time of Performance*

### *Section 280.*

(1) If the time of performance is not specified,

- a) either of the parties may demand simultaneous performance by the other party,
- b) in the case of a gratuitous contract, the beneficiary shall be entitled to invite the obligor to tender performance at any time.

(2) An obligor shall effect performance after the preparation time necessary for performance.

(3) Alimony, life annuities, and accident compensation shall be paid in advance for each time period. Beneficiaries shall not be entitled to initiate court action to demand any payments that are six months overdue and have not been enforced without substantial reason.

## *Section 281.*

(1) If on the basis of legal regulation or contract, the parties are bound to simultaneous performance, neither party shall be compelled to perform his own service until the other party offers his service.

(2) The contracting party who is required to perform first shall be entitled to withhold his service, in the absence of security, if

a) the service is to be performed in phases or continuously and the other party is tardy with his own service, for as long as the delay subsists;

b) the reciprocal service is jeopardized by any substantial deterioration in the other party's financial conditions;

c) the other party has outstanding debts owed to him owing to financial insolvency.

(3) The party entitled to refuse the service shall be entitled to rescind the contract if he sets an appropriate deadline for the provision of security and it passes to no avail.

(4) Concerning other issues pertaining to the rights and obligations of the party that is entitled to refuse performance, the provisions on responsible custody shall be applied.

## *Section 282.*

(1) The day on which the contract is concluded shall not be included in the performance period; if the last day of the performance period falls on an official holiday the performance period shall expire on the next working day.

(2) An obligor may complete performance before the deadline or prior to the initial date of the performance period with the consent of the obligee. In the absence of consent, the obligee shall proceed in observation of the provisions on responsible custody.

## *Mode of Performance*

### *Section 283.*

(1) Unless otherwise provided by legal regulation, the obligee shall, within the shortest possible time, verify whether performance is as contracted.

(2) When taking delivery of a thing, it is not necessary to inspect those characteristics whose quality has been certified or those that are covered by warranty.

(3) Unless otherwise provided by legal regulation, the costs of physical delivery, including the costs of packaging and measuring, shall be borne by the obligor, while the costs of receiving delivery shall be borne by the obligee.

### *Section 284.*

(1) The obligor shall be entitled to demand a receipt upon performance, and he shall be entitled to demand the return of his promissory note.

(2) The costs of a receipt shall be borne by the obligor, unless the obligee fails to return the promissory note.

(3) A person presenting a receipt bearing the signature of the obligee shall be construed as a person authorized to accept performance, unless this is rendered doubtful by any apparent circumstance.

### *Section 285.*

If a service is divisible, the obligee shall also accept partial performance, unless he has excluded partial performance in the contract or if partial performance damages his fundamental interests.

### *Section 286.*

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(1) The obligee shall also accept performance offered by a third person if the obligor has given consent thereto and the service is not bound to a specific person, and if it does not require any expertise or skill that is not possessed by the third person. The obligor's consent shall not be required if the third party has a lawful interest in completing performance.

(2) In such case, the collateral securing the claim shall remain in force if the claim passes to a third person who effects performance or if such third person is entitled to demand reimbursement from the obligor.

#### *Section 287.*

(1) If the identity of the obligee is uncertain, his domicile or registered place of business is unknown, or if he is late, an obligation to pay cash or deliver securities or other documents can also be performed through deposit in court.

(2) When making the deposit, the obligor shall be entitled to stipulate that the deposit can only be surrendered to the obligee upon his performance of consideration or upon the provision of security therefor; the deposit may be withdrawn until the obligee is notified thereof.

(3) The deposit shall be effected at the court of jurisdiction for place of performance or the domicile or registered office of the obligor. The costs of performance for deposit in court shall be borne by the obligee.

### *Performance of Services Defined by Type and Quantity*

#### *Section 288.*

If the parties have not stipulated the quality of the object defined by type and quantity, performance must be made in accordance with commercially available things of standard good quality.

#### *Section 289.*

If a person undertakes an obligation for the delivery of a specific type of thing of his own production but is unable to deliver it in its entirety or in part, he shall not have to procure the missing thing from another source in order to effect performance. This provision shall not apply to liability for breach of contract.

#### *Section 290.*

(1) If an obligor has several debts to an obligee and his performance does not cover all of these debts, the performance shall be reckoned in accordance with the obligor's instructions, and, in the absence of such instructions, it must be applied to offset the debt for which the obligor has discernibly intended it.

(2) If an obligor has not issued instructions thereto and his intention is indiscernible, performance shall be applied to offset

- a) the claim that expired the earliest,
- b) in the case of simultaneous maturity, the claim more burdensome for the obligor,
- c) the least secured claim from among equally burdensome debts.

(3) Equally secured claims shall be proportionally reduced by performance.

#### *Section 291.*

(1) If a person is to deliver a specific type and quantity of things to the same person but to different locations, and he is unable to deliver the entire quantity; he shall distribute the available quantity as instructed by the obligee.

(2) If the obligee fails to issue instructions in spite of being requested to do so, the obligor shall reduce the quantities allocated to any location proportionately, unless the interests of the national economy as known to him justify another distribution.

## *Performance of Cash Debts*

### *Section 292.*

(1) Unless otherwise provided by legal regulation, the place of performance of a cash debt is the obligee's domicile or registered place of business.

(2) The obligee shall also accept performance that is provided before the deadline or prior to the initial date of the performance period; in such cases, no interest or compensation is due for the period between performance and the deadline. Any agreement between the parties concerning interest or compensation, as they are not permitted by law, shall be null and void; invalidity shall not affect other provisions of the contract.

### *Section 293.*

If an obligor owes both interest and costs and the sum paid is insufficient to cover the entire debt, this sum shall be applied to offset the costs first, then the interest, and, finally, the principal debt. Any instructions given by the obligor to the contrary shall be inoperative.

### *Section 294.*

The provisions pertaining to payments by organizations included in the system of accounts of state financial institutions shall be contained in a separate legal regulation.

## *Legal Statements*

### *Section 295.*

If there is an obligation to make a legal statement, performance shall be substituted by a court decision.

## *Setoffs*

### *Section 296.*

(1) Unless otherwise provided by legal regulation, an obligor shall be entitled to include those of his overdue claims that are of the same type due from the obligee to offset his debts by a statement addressed to the obligee or issued in the course of court proceedings.

(2) Obligations shall cease to exist up to the value of setoffs.

### *Section 297.*

(1) No setoffs can be applied against a service that is to be allocated for a definite purpose on the basis of an agreement or, with the exception of overpayment, against claims for support, life annuity, or accident benefits, as well as for compensation for willfully caused damages.

(2) Obligees shall not be entitled to include claims that cannot be enforced in court; they may, however, offset their lapsed claims if they have not yet lapsed by the time the counterclaim comes into existence.

(3) Only claims originating from the same legal title can offset claims which are exempt from execution.

(4) Only counterclaims of the same nature or those incorporated in a public document can offset claims established by a writ of execution or by composition.

## Chapter XXV

### Breach of Contract

#### *Default by the Obligor*

##### *Section 298.*

An obligor shall be in default

- a) if the time of performance, as stipulated in the contract or as can be inferred beyond doubt from the intended purpose of the service, has elapsed without any result;
- b) in other cases, if he does not perform his obligation in spite being requested to do so by the obligee.

##### *Section 299.*

(1) The obligor shall reimburse the obligee for damages caused by his default, unless he is able to prove that he has acted in the manner that can generally be expected in the given situation in order to prevent such default.

(2) If the obligor is unable to offer any reasonable excuse for his default, he shall be liable for all damages incurred in the object of the service during the period of default, unless he is able to prove that such damage would have occurred regardless.

##### *Section 300.*

(1) An obligee shall be entitled to demand performance, or, if performance no longer serves his interest, he shall be entitled to rescind from the contract irrespective of whether or not the obligor has offered an excuse for his default.

(2) It shall not be necessary to prove the cessation of an interest in performance if, according to the agreement of the parties or due to the imminent purpose of the service, the contract had to be performed at a definite time and none

other, or if the obligee has stipulated a reasonable deadline for subsequent performance and this period too elapsed without result.

(3)

##### *Section 301.*

(1) In respect of a monetary debt, the obligor, unless otherwise provided by law, shall pay an annual interest at the central bank base rate in effect on the last day preceding the calendar half-year to which it pertains, even if the debt is otherwise free of interest. The obligation to pay interest shall be effective even if the obligor justifies his default.

(2) If, on the basis of a legal regulation or contract, any interest is due to the obligee up to the date of default, the obligor, unless otherwise provided by law, shall be liable to pay additional interest as of the due date at a rate equal to one-third of the central bank base rate in effect on the last day preceding the calendar half-year to which it pertains, and the combined amount of these shall be no less than the interest specified in Subsection (1).

(3) The court shall be entitled to reduce the rate of the default interest if the interest fixed by parties is excessive.

(4) Obligees shall be entitled to demand compensation for losses in excess of the default interest.

##### *Section 301/A.*

(1) The provisions on interest for late payment shall apply to economic organizations with the exceptions laid down in this Section.

(2) Interest for late payment shall be calculated by the central bank base rate in effect on the last day preceding the calendar half-year to which it pertains, plus seven per cent.

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(3) Interest shall become payable thirty days following the date of the debtor's receipt of the invoice or an equivalent request for payment or thirty days after the date of receipt of the goods or services if the debtor receives the invoice or the equivalent request for payment earlier than the goods or the services or if the date of the receipt of the invoice or the equivalent request for payment is uncertain.

(4) Any statutory deviation from the provisions of Subsection (2) and (3) must be made to the benefit of the creditor.

(5) If the rate of interest determined by the parties is substantially lower than what is defined in Subsection (2) or if the due date of the interest for late payment differs from that specified in Subsection (3), they may be corrected by court order unless deviation from statutory provisions have been necessitated by the circumstances prevailing at the time of contracting.

## *Default by the Obligee*

### *Section 302.*

An obligee is in default if

- a) he refuses to accept performance offered according to the terms of the contract;
- b) he fails to take measures or make the required statements for enabling the obligor to perform his obligation properly;
- c) he does not issue a receipt or does not return the securities.

### *Section 303.*

(1) An obligee shall pay reimbursement to the obligor for those of his losses originating from the default, unless he is able to prove that he has acted in the manner that can generally be expected in the given situation in order to prevent the default.

(2) An obligee, irrespective of whether he has been able to excuse his default,

- a) shall reimburse the expenses originating from obligor's responsible custody;
- b) shall bear the risks for the destruction, loss, or damage of a thing as if he had accepted performance;
- c) shall not be entitled to demand any interest for the duration of his default.

(3) Default of the obligee excludes any simultaneous default of the obligor.

### *Section 304.*

The provisions pertaining to the default of the obligee must also be applied if a service has been specified by type and quantity, even though the parties have marked the things designated for performance or have separated them from similar things for the obligee.

## *Lack of Conformity*

### *Section 305.*

(1) On the basis of a contract in which the parties owe mutual services to one another, lack of conformity occurs on the part of the obligor if the goods provided do not, at the time of performance, correspond to the requirements stipulated by law or by the contract.

(2) Any lack of conformity resulting from incorrect installation of the consumer goods shall be deemed to be equivalent to lack of conformity of the goods if installation forms part of the contract of sale of the goods and the goods were installed by the obligor or under his responsibility. This shall apply equally if the product, intended to be installed by the consumer, is installed by the consumer and the incorrect installation is due to a shortcoming in the installation instructions. Any clause of a consumer contract that deviates from these provisions to the detriment of the consumer shall be null and void.

(3) The obligor shall be subject to liability for lack of conformity (implied warranty).

#### *Section 305/A.*

(1) If the consumer was or could reasonably have been aware of a defect at the time the contract was concluded, the obligor shall be excused of liability. The obligor shall also be excused of liability if lack of conformity has its origin in materials supplied by the consumer, provided that the consumer had been informed that the material was defective.

(2) Unless proved otherwise, any lack of conformity that becomes apparent within six months of delivery of the goods shall be presumed to have existed at the time of delivery unless this presumption is incompatible with the nature of the goods or the nature of the lack of conformity. Any agreement of the parties to the contrary shall be null and void.

#### *Section 306.*

(1) In the case of non-conformity with the contract,

a) consumers shall, in the first place, be entitled to choose either repair or replacement unless this is impossible or it results in disproportionate expenses on the part of the obligor as compared to the alternative remedy, taking into account the value the goods would have had there been no lack of conformity, the significance of the lack of conformity, and whether the alternative remedy could be completed without significant inconvenience to the consumer;

b) if the consumer is entitled to neither repair nor replacement or if the obligor refuses to provide repair or replacement or is unable to meet the conditions described in Subsection (2), the consumer may require an appropriate reduction of the price or have the contract rescinded. The consumer is not entitled to have the contract rescinded if the lack of conformity is minor.

(2) Any repair or replacement shall be completed within a reasonable time and without any significant inconvenience to the consumer, taking account of the nature of the goods and the purpose for which the consumer required the goods.

(3) If the obligor is unable or unwilling to repair the goods within a reasonable time, the consumer shall be entitled to repair the goods himself or have them repaired by others at the expense of the obligor.

(4) Until repair or replacement is completed, consumers shall be entitled to withhold a proportionate portion of the purchase price of the goods in question.

(5) Any clause in a consumer contract that deviates from the sequence of statutory guarantee rights to the detriment of the consumer shall be null and void.

#### *Section 306/A.*

A consumer shall be entitled to switch from the remedy he has selected to the alternative remedy. The costs of the obligor incurred thereby shall be reimbursed unless it was made necessary by the obligor's conduct or for other reasons.

#### *Section 307.*

(1) Consumers shall be required to inform the obligor of any lack of conformity within the shortest time permitted by the prevailing circumstances.

(2) In the case of consumer contracts, if notification of the lack of conformity is made within two months of the time it is detected, it shall be deemed that notification was made in due time. Any agreement of the parties to the contrary shall be null and void.

(3) The consumer shall be liable for any damage that results from late notification.

#### *Section 308.*

(1) The consumer shall be entitled to enforce his guarantee rights in a six-month limitation period that commences upon delivery of the goods or services. If the minimum useful life is determined by official regulation, standard, or statutory technical specifications (statutory use period) and it is less than six months, this time period shall apply to the enforcement of the claim.

(2) In the case of contracts for the delivery of animals, the limitation period shall last for sixty days from the date of delivery.

(3) The limitation period shall be suspended for the time during which the goods are being repaired and the consumer cannot use them. If the goods or any major component of the goods is replaced or repaired, the guarantee period shall recommence for the goods or major components that have been replaced or repaired as well as for any defect resulting in consequence of the repair.

(4) By way of derogation from Subsections (1) and (2), the consumer shall, in the case of consumer contracts, be entitled to enforce his guarantee rights in a two-year period of limitation that commences upon delivery of the goods or services. Any clause stipulating a shorter period shall be null and void. If the goods supplied under contract are second-hand, the parties may agree on a shorter limitation period, which may not be less than one year.

#### *Section 308/A.*

(1) If the consumer is unable to enforce his claim for an excusable reason, particularly if lack of conformity, owing to its character or the nature of the goods, is not apparent within the time limit described in Section 308, the consumer may enforce his guarantee rights within one year or, in the case of goods designated for long-term use, within three years of delivery. If the statutory use period exceeds three years, this time limit shall apply to the enforcement of such claim. The omission of these time limits shall result in forfeiture of rights.

(2) Any clause in consumer contracts stipulating a period shorter than the three-year period defined in Subsection (1) shall be null and void.

#### *Section 308/B.*

Any guarantee claim that is made for a specific defect shall be deemed satisfied in due time for all other associated defects. If, however, the consumer files a guarantee claim only for a specific (in terms of the given defect) part of the item, the guarantee claim shall not be deemed as having been made for the item's other parts.

#### *Section 308/C.*

Guarantee rights can be enforced, as an exception, against a claim originating from the same legal grounds, even after the time limit.

#### *Section 309.*

(1) The costs incurred in bringing goods into conformity with the guarantee, particularly the costs of postage, labor and materials shall be borne by the obligor. In the case of consumer contracts, any agreement of the parties to the contrary shall be null and void.

(2) When the goods are replaced or the contract is rescinded, the consumer shall not be liable to compensate for the loss in value resulting from proper use.

#### *Section 310.*

Apart from guarantee rights, consumers shall be entitled to demand reimbursement for damages resulting from lack of conformity under the rules of indemnification.

## *Section 311.*

(1) If lack of conformity in a consumer contract is the result of non-conformity by a third party (previous obligor) acting under contract with the obligor, the obligor of the consumer contract shall be entitled to demand compensation from the previous obligor for those costs of bringing the goods into conformity that are attributable to the previous obligor, provided that the obligor has fulfilled his obligation to conduct a quality inspection.

(2) The obligor of a consumer contract shall be entitled to enforce the claim referred to in Subsection (1) within sixty days of the date of bringing the goods into conformity. The limitation period for enforcing such claims shall be five years from the date of delivery by the previous obligor; failure to do so within the above deadline shall result in forfeiture of this right.

(3) The previous obligor shall also be entitled to demand compensation pursuant to Subsection (1) from the previous obligor who was contracting with him within the deadlines specified in Subsection (2).

## *Section 311/A.*

The provisions pertaining to the legal consequences of non-conformity shall be duly applied to the supply of services as well; in such cases, replacement shall be construed as repeated performance of the service.

## *Impossibility of Performance*

### *Section 312.*

(1) If performance has become impossible for a reason that cannot be attributed to either of the parties, the contract shall be extinguished. The party gaining knowledge of the impossibility of performance shall immediately notify the other party thereof. The party failing notification shall be liable for damages originating therefrom.

(2) If performance has become impossible for a reason for which the obligor is liable, the obligee may demand indemnification for nonperformance.

(3) If performance has become impossible for a reason for which the obligee is liable, the obligor shall be relieved of his obligation and shall be entitled to demand compensation for damages therefrom.

(4) If performance of any of the alternative services becomes impossible, the contract shall be limited to the other services.

(5) If the party who has no right to choose is liable for subsequent impossibility, the other party may choose either the possible service or the consequences of subsequent impossibility.

(6) If the remnants of the object of a service that has become impossible have remained in the possession of the obligor, or if the obligor has received or might demand compensation instead of the object of the service from another person, the obligee shall be entitled to demand surrender of the remainder or compensation against a proportional part of the consideration.

## *Withholding Performance*

### *Section 313.*

If an obligor withholds performance without legitimate reason, the obligee shall be entitled to apply the consequences of either default, or subsequent impossibility.

## *Common Provisions Pertaining to Breach of Contract*

### *Section 314.*

(1) Liability for a breach of contract damaging life, physical integrity or health that has been caused willfully, by gross negligence, or by a felony offense cannot be validly excluded.

(2) Unless otherwise prescribed by law, liability for breach of contract shall not be excluded or restricted, unless the disadvantage incurred thereby can be offset by the adequate reduction of the consideration or by some other advantage.

(3) Legal regulations on domestic contracts connected with foreign trade contracts can provide for breach of contract and for its consequences differently from this Act and can allow limitation or exclusion of liability with the exception contained in Subsection (1).

#### *Section 315.*

A person who employs another person to perform his obligations or exercise his rights shall be liable for the conduct of that person.

#### *Section 316.*

(1) If an obligee accepts performance while having knowledge of a breach of contract, he can later raise a claim on the basis of the breach only if he has retained his rights to that effect.

(2)

#### *Section 317.*

(1) In the case of a breach of contract concerning a part of a divisible service, the consequences of breach shall stand only in respect of that part. However, the obligee shall be entitled to exercise his rights originating from the breach of contract with regard to the entire contract if he is able to prove that further performance no longer serves his interest due to the breach of contract.

(2) If a breach of contract concerns a part of an indivisible service, its consequences shall stand in respect of the entire contract.

#### *Section 318.*

(1) The provisions of tort liability shall be applied to liability for breach of contract and to the extent of indemnification, with the difference that such indemnification may not be reduced, unless otherwise prescribed by legal regulation.

(2) The enforcement of claims based on a breach of contract is compulsory if the consideration stipulated in the contract is performed in part or in whole from the central budget. Unless otherwise provided by legal regulation, an obligee shall be entitled to forebear enforcement of a claim, if he has made certain on the basis of available information that the breach of contract is the consequence of conditions for which the obligor is not liable, or if the breach of contract has no significance in terms of the national economy and cooperation between the parties.

(3) If the enforcement of claims based on a breach of contract is compulsory and the obligee fails to perform this obligation without good reason, a monetary claim (indemnification, liquidated damages, price reduction) can be enforced on behalf of the state by the financial institution making the payments from the central budget.

## **Chapter XXVI**

### **Extinction of Contracts**

#### **Period of Limitation**

## *Extinction of Contracts*

### *Section 319.*

- (1) Parties shall be entitled to terminate or cancel contracts by mutual consent.
- (2) In the case of termination of a contract, the contract shall be extinguished for future purposes, and the parties shall not owe further services. Contractual monetary considerations for services performed before termination shall be paid off, and if the other party has not yet performed the reciprocal service for a monetary service that has already been performed, the money shall be refunded.
- (3) In the case of cancellation of a contract, the contract is extinguished with retroactive effect as of the date of conclusion, upon which the services already performed shall be returned.

### *Section 320.*

- (1) A person who is entitled to avoidance on the basis of a contract or legal regulation shall exercise this right by making a statement to the other party. Avoidance terminates the contract.
- (2) Parties shall also be entitled to stipulate the right of avoidance for payment of earnest money; the court shall be entitled to reduce the sum of the earnest, if it is unreasonably high.
- (3) Parties who cannot return services already received or are able to do so only in a considerably diminished value shall not be entitled to exercise their contractual right of avoidance.

### *Section 321.*

- (1) A person authorized to rescission by virtue of a contract or a legal regulation shall exercise such right by issuing a statement to the other party. Rescission terminates the contract.
- (2) Where rescission is not of immediate effect the contract shall remain in force until the notice period stipulated in the contract or provided by law has lapsed.

### *Section 322.*

A contract shall be extinguished if the same person becomes the obligor and the obligee. Extinction of the contract shall not affect the rights and obligations of third persons.

### *Section 323.*

- (1) A contract shall not be extinguished upon the death of the obligor, unless it concerns a service that can only be performed personally.
- (2) The death of the obligee shall terminate a contract if the service was specifically intended for his support or was used exclusively to meet his personal needs.

## *Period of Limitation*

### *Section 324.*

- (1) The period of limitation for claims shall be five years, unless otherwise prescribed by law.
- (2) If the principal claim lapses, all of the dependent collateral claims shall also lapse. The principal claim shall not be affected when independent collateral claims lapse.
- (3) The lapse of a claim shall not prevent satisfaction from the pledge placed in security thereof.

### *Section 325.*

- (1) A lapsed claim may not be enforced in court.
- (2) Parties shall be entitled to agree on a shorter period of limitation; the agreement shall be valid only in writing. If the period of limitation is shorter than one year, the parties shall be entitled to extend it to a maximum of one year in writing; otherwise, an agreement on the extension of a period of limitation shall be null and void.

*Section 326.*

- (1) The period of limitation commences upon the due date of the claim.
- (2) If the obligee is unable to enforce a claim for an excusable reason, the claim shall remain enforceable within one year from the time when the said reason is eliminated or, in respect of a period of limitation of one year or less, within three months, even if the period of limitation has already lapsed or there is less than one year or less than three months, respectively, remaining therein. This provision shall also apply if the obligee has granted a respite for performance after expiration.

*Section 327.*

- (1) A period of limitation shall be suspended by a written notice for performance of a claim, the judicial enforcement of a claim, the amendment of a claim by agreement (inclusive of composition), and the acknowledgment of a debt by the obligor.
- (2) The period of limitation shall recommence after suspension or following the non-appealable outcome of a suspension proceeding.
- (3) If a writ of execution is issued in the course of a suspension proceeding, the period of limitation shall be suspended only by the acts of enforcement.

## **Chapter XXVII**

### **Assignment and Assumption of Debt**

#### *Assignment*

*Section 328.*

- (1) An obligee shall be entitled to transfer his claim to another person by contract (assignment).
- (2) Claims that are bound to the person of the obligee and claims whose assignment is not permitted by legal regulation shall not be assigned.
- (3) The obligor shall be notified of assignments; the obligor is entitled to tender performance to the assignor before notification.
- (4) If the obligor is notified by the assignor, the obligor shall be allowed to tender performance only to the new obligee (assignee) after notification; in the case of notification by the assignee, the obligor shall be entitled to demand certification of the assignment. In the absence thereof, he shall be entitled to tender performance to the person who acted as assignee solely at his own risk.

*Section 329.*

- (1) An assignee shall subrogate the original obligee through the assignment, and the rights proceeding from the lien and suretyship that secure the claim shall also pass to him.
- (2) Notification of the obligor regarding assignment suspends the period of limitation.
- (3) An obligor shall be entitled to enforce the objections and offset the counterclaims against the assignee that arise with regard to the assignee on the legal grounds prevailing at the time of notification.

*Section 330.*

(1) The assignor shall, as a surety, be liable for the obligor's services to the assignee, up to the value of the consideration received in return for assignment, unless

- a) he has assigned the claim to the assignee expressly as an indefinite claim;
- b) he has otherwise excluded his liability.

(2) Otherwise, the provisions on contracts of sale shall apply to assignments against consideration, while the provisions on donations shall apply to gratuitous assignments.

*Section 331.*

If a claim is transferred to another person on the basis of a legal regulation or official order, unless otherwise prescribed therein, the provisions on assignment shall be duly applied. In such case, the liability of the previous obligee, as surety, shall be maintained only if so prescribed by a specific provision.

## *Assumption of Debt*

*Section 332.*

(1) If a person agrees with an obligor to assume his debts, he shall request approval from the obligee; and if the obligee refuses to grant such approval, he shall make arrangements to enable the obligor to perform at maturity.

(2) If the obligee approves the assumption of debt, the person assuming the debt shall subrogate the obligor. Such person shall be entitled to all rights to which the obligor was entitled in respect of the obligee; however, he shall not be entitled to offset the previous obligor's existing claims against the obligee.

(3) The suretyship and liens securing a claim shall cease to exist upon the assumption of debt in the absence of statements of approval from the surety and the obligor of the lien.

*Section 333.*

If an obligation passes to another person by virtue of a legal regulation or official order, unless otherwise provided therein, the provisions on the assumption of a debt shall be duly applied.

## **Chapter XXVIII**

### **Multiple Obligees or Multiple Obligors in Contracts**

*Section 334.*

(1) If a service is owed by several persons or can be claimed by several persons and this service is divisible, each obligor shall owe only his own share, and each obligee may claim only his due share, unless provided otherwise by legal regulation. In case of doubt, the share of the obligors or obligees shall be equal.

(2) If a service is indivisible, performance can be demanded from any or all of the obligors (joint and several liability of obligors).

(3) If several persons are entitled to demand an indivisible service, it shall be performed into the hands of all of them (collectivity of obligees). Any of the obligees may demand the service to be deposited in court to the benefit of all of them.

*Section 335.*

(1) If a claim is due to several obligees in such a manner that each is entitled to demand the entire service but the obligor is bound to a single service (joint and several obligees), the obligation to each obligee shall cease to exist if any of them is satisfied.

(2) Each obligee shall be affected by the default of an obligee, the impossibility of a service or a legal statement from any of the parties that is a condition of enforcement of a claim or performance of a service, particularly a notice of termination, a warning, and the exercise of the right to choose.

(3) A claim shall not lapse in respect of any of the obligees until the conditions of the period of limitation have materialized in respect of all of them.

(4) If any of the obligees files for legal action regarding performance, the obligor may refuse performance to the other obligees, without being exempted thereby from the legal consequences of default, until the non-appealable conclusion of the action.

#### *Section 336.*

Obligees shall be entitled to equal shares of a claim, unless their legal relationship suggests otherwise.

#### *Section 337.*

(1) In the case of joint and several liability, each obligor owes the entire service; however, should any of them perform or terminate the obligation by offset, the obligation of the other obligors towards the obligee shall also cease to exist.

(2) Persons under joint and several liability shall also be liable for each other's breach of contract.

(3) Each obligor shall be entitled to refer to objections due the others only as far as these objections are connected with the satisfaction of the obligee. However, the claims of co-obligors cannot be used for offsetting.

(4) Default of an obligee towards one of the obligors shall stand in respect to all obligors.

#### *Section 338.*

(1) Persons under joint and several liability shall bear obligations in equal shares, unless their legal relationship implies otherwise. If a co-obligor has performed a service for the obligee that exceeds his own obligation, he shall have a claim for reimbursement from the other co-obligors up to the value of their share of the claim.

(2) None of the obligors may refer to an advantage against the others that he has received from the obligee.

(3) The rights due the obligee that also serve as security for the performance of the other obligors shall pass to the obligor who has effected performance to the obligee, if he is entitled to demand reimbursement from the other obligors.

## **Chapter XXVIII/A**

### **Securities**

#### *Section 338/A.*

(1) A person who makes out (issues) a security on a pecuniary claim shall undertake an unconditional and unilateral obligation that he himself or another person named in the security shall provide a certain sum of money to the security's obligee in exchange for the security.

(2) A security is a document bearing the requisites prescribed by legal regulation or data recorded, registered, and forwarded in some other way, as specified by legal regulation, and the printing and issuing of which, or publication in such form, is permitted by legal regulation.

(3) Securities can be issued as either bearer and registered securities, unless otherwise provided by legal regulation.

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*Section 338/B.*

(1) Any claim specified in a security can only be enforced, disposed of, or encumbered by the security and in possession thereof, unless otherwise prescribed by law.

(2) Unless otherwise prescribed by law, 'bearer security' shall mean when the security does not indicate the name of the holder, or when it is registered, but contains instructions to render it payable on demand to the bearer, whether or not such person is the registered holder (payable to order). Ownership of bearer securities is transferred by conveyance of possession.

(3) Printed certificates of registered securities can be transferred by special or blank endorsement.

(4) Special endorsement is a written statement, which bears the holder's signature and is made on the negotiable instrument itself or on an attached sheet (attachment) declaring the holder's intention to transfer the security and specifying the name of the transferee. Such endorsement is not a prerequisite to render a contract of transfer valid (agreement in principle).

(5) Blank endorsement is a written statement which bears the holder's signature and is made on the back of the security or on an attachment, declaring the holder's intention to transfer the security, however it does not specify the name of the transferee. The holder's signature on the back of the security or on the attachment shall also be construed a blank endorsement.

(6) When a security is transferred by blank endorsement the holder of such security may

a) make the endorsement out in his or somebody else's name,

b) transfer the security again, either by blank endorsement or by full endorsement specifying the name of another person,

c) hand over the security to a third person without filling out the blank endorsement or affixing a new endorsement.

(7) Legislation may authorize the issuer to install restrictive clause in the security, hence to make it non-negotiable by endorsement (negative endorsement). Such instruments can be transferred within the facilities of assignment.

(8) Dematerialized securities are considered transferred when credited to the securities account of the transferee in accordance with the regulations laid down in specific other legislation.

(9) Legal regulations specific to securities may depart from the provisions laid down in this Section concerning the transfer of securities.

*Section 338/C.*

(1) The beneficiary of rights afforded by a negotiable instrument shall mean

a) the person having possession in respect of bearer securities;

b) in respect of registered securities

1) the person whose name is indicated in the original printed certificate, or who is named in the chain of endorsements as the transferee, even if the endorsement is blank. If a blank endorsement is followed by another endorsement in succession, the signatory of the latter shall be considered to have obtained the instrument by way of blank endorsement;

2) the person on whose securities account the instrument is registered in respect of dematerialized securities.

(2) All rights originating from a bearer security or from a registered security that does not contain a negative endorsement shall pass to the new holder upon the transfer of the security irrespective of the transferor's previous rights.

(3) Apart from the objections evident from the contents of the security, the obligor of the security may not cite any other objections, which are based on his personal relationship with a previous holder of the security.

(4) Unless otherwise prescribed by law, the rights of a bona fide person who qualifies as beneficiary under Subsection (1) shall be in force irrespective of whether a previous transfer was illegitimate, or it took place under invalidated or void title.

*Section 338/D.*

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Securities can also be issued, in accordance with other legal regulations, on ownership or other rights concerning a thing or on an entitlement proceeding from membership. The provisions on securities for pecuniary claims shall be duly applied to these securities, unless a legal regulation provides otherwise.

## Title II

### TORT LIABILITY AND LIABILITY FOR UNJUST ENRICHMENT

#### Chapter XXIX

##### General Rules of Indemnification

###### *Section 339.*

(1) A person who causes damage to another person in violation of the law shall be liable for such damage. He shall be relieved of liability if he is able to prove that he has acted in a manner that can generally be expected in the given situation.

(2) The court shall, under special and equitable circumstances, be entitled to grant partial exemption from liability to a person liable for damages.

###### *Section 340.*

(1) In order to prevent or mitigate damages, the aggrieved person shall act in a manner that can generally be expected in the given situation. No liability shall apply to the portion of the damage incurred due to the failure of the aggrieved person to perform this obligation.

(2) The aggrieved person shall be liable for any omission by the persons for whose conduct he is responsible.

###### *Section 341.*

(1) In the event of the presence of imminent danger, the endangered person shall be entitled to request the court to restrain the person imposing such danger from continuing such conduct and/or to order such person to take sufficient preventive measures and, if necessary, to provide a guarantee.

(2) This provision shall be applied also if the danger of imminent damage has been caused as a result of unfair economic activities.

###### *Section 342.*

(1) Any contractual clause shall be null and void if it beforehand limits or excludes liability for damage proceeding from willful or gross negligence; injury to life, physical integrity, or health; or the consequences of a crime.

(2) No compensation shall apply if the damage is caused with the assent of the aggrieved person and the damage does not injure or endanger any social interest.

###### *Section 343.*

Any damages caused to an assailant in order to prevent an unlawful assault or a threat suggesting an unlawful direct assault shall not be compensated for if the defender did not use excessive measures to avert the assault.

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*Section 344.*

(1) If the damages are caused jointly by two or more persons, their liability shall be joint and several towards the aggrieved person, while their liability towards one another shall be divided in proportion to their respective degree of responsibility.

(2) Liability for damages shall be divided in equal proportions among the responsible persons if the degree of their responsibility cannot be established.

(3) The court shall be entitled to put aside a declaration of joint and several liability and condemn the persons having caused the damage in proportion to their respective contributions, if

- a) doing so does not jeopardize or considerably delay compensation for damage, or
- b) the aggrieved person has himself contributed to the occurrence of the damage or has procrastinated in enforcing his claim without any excusable reason.

## **Chapter XXX**

### **Definition of Liability**

#### *Damages Originating from Hazardous Operations*

*Section 345.*

(1) A person who carries on an activity involving considerable hazards shall be liable for any damage caused thereby. Being able to prove that the damage occurred due to an unavoidable cause that falls beyond the realm of activities involving considerable hazards shall relieve such person from liability. These provisions shall also apply to persons who cause damage to other persons through activities that endanger the human environment.

(2) Damage shall not be compensated for to the extent that it originates from an activity attributable to the aggrieved person.

(3) Any exclusion or limitation of liability shall be null and void; this prohibition shall not apply to damage caused to a thing.

(4) The period of limitation for claiming damages shall be three years.

*Section 346.*

(1) If damage is caused by two or more persons through activity that involves considerable hazard, the general rules and regulations governing liability shall apply to their relationship with one another.

(2) If the cause of damage is not attributable to either party, but it derives from a malfunction that occurred within the realm of activity involving considerable hazard performed by one of the parties, that party shall be liable for paying damages.

(3) If the cause of damage is a malfunction that occurred in the sphere of both parties' activity involving considerable danger and, furthermore, if such malfunction cannot be attributed to one of the parties, each party shall, since individual responsibility cannot be established, bear liability for his own loss.

(4) The regulations pertaining to liability for occupational accidents are established by separate legal regulations.

#### *Liability for Damage Caused by Persons With Deficient or No Mental Capacity*

*Section 347.*

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(1) A person with deficient or no mental capacity shall not be held liable for his actions. Liability for his actions shall be borne by his custodian, unless he is able to prove that, in the interest of performing his custodianship, he has acted in a manner that can generally be expected in the particular situation.

(2) If a person causing damage has no custodian or the liability of the custodian cannot be established, under special circumstances the person causing the damage can be ordered to provide total or partial compensation if it is clearly warranted by the circumstances of the case and the financial conditions of the parties.

(3) A person causing damage may not allege his mental incapacity or impairment if such condition was inflicted by the person himself.

(4) If damage has been caused by a minor with sufficient mental capacity who nevertheless has an appointed custodian, and it is proved that the custodian has knowingly breached his obligations, the custodian as well as the person who caused the damage shall be subject to joint and several liability.

## *Damages Caused by Employees, Members of Cooperatives, Representatives, and Agents*

### *Section 348.*

(1) If an employee causes damage to a third person in connection with his employment, the employer shall bear liability towards the injured person unless otherwise provided by law. This provision shall also apply in the instance of a member of a cooperative who causes damages to a third person in connection with his membership.

(2)

### *Section 349.*

(1) Liability for damages caused within the jurisdiction of government administration shall be established only if the damage cannot be abated by common legal remedies or the aggrieved person resorts to the ordinary legal remedies for the abatement of damages.

(2)

(3) Unless otherwise provided by legal regulation, these provisions shall also apply to liability for damages caused within the jurisdiction of a court or public prosecutor.

### *Section 350.*

(1) A principal shall be subject to joint and several liability with his agent for any damage caused to a third person by the agent in this capacity. The principal shall be relieved of liability if he is able to prove that he has not acted delinquently in choosing, instructing, and supervising his agent. This provision shall not apply to the liability of persons who perform activities involving considerable hazard.

(2) In respect of permanent agency, moreover, if the principal and the agent are economic organizations, the court shall be entitled to apply the regulations governing the liability for damages caused by employees in the relationship between the aggrieved person and the principal.

(3) A client shall not be liable for damages caused by his legal representative.

(4) In accordance with the provisions of this Act, an agent shall be liable to the principal for any damage he causes, as shall a representative not employed by a client to that client. A principal or client shall, also in accordance with this Act, be entitled to demand reimbursement from an agent or representative for compensation paid by the agent or representative to a third person.

(5) The provisions of the Labor Code and the provisions of separate legal regulations shall be applied to such claims between employees and employers and between cooperatives and their members.

## *Liability of Animal Keepers*

## *Section 351.*

(1) Persons who keep animals shall be liable, in accordance with general provisions, for damages caused by their animals to other persons.

(2) Keepers of animals that are wild by nature shall be subject to liability in the same way as persons pursuing activities that involve considerable hazard.

## *Damages Caused by Objects Falling off Buildings*

### *Section 352.*

(1) The owner of a building shall be liable for damage caused to other persons by parts of the building that have fallen off or any other deficiency in the building, unless the owner is able to prove that the regulations pertaining to construction and maintenance have not been violated and that, in order to abate damages, he has, in both construction and maintenance, acted in a manner that can generally be expected.

(2) Persons in whose interest objects have been installed on the exterior of a building shall be liable for damages caused by such objects falling down.

(3) These provisions shall not affect the right of responsible parties to demand compensation from the persons who have caused the damage.

### *Section 353.*

(1) The tenant of a dwelling or the user of the premises shall be liable for damages caused by objects that are thrown out, dropped, or poured out from the dwelling or premises.

(2) If the tenant or user identifies the person who caused the damage, he shall bear liability as a surety. The tenant or user shall be relieved of liability if he proves that the person who caused the damage was on the premises unlawfully.

(3) The owner of a building shall be liable for damage caused by an object being thrown out, dropped, or poured out from any room of the building that is used for common purposes. The owner, if he identifies the person who caused the damage, shall be liable as a surety.

(4) These provisions shall not affect the right of the responsible party to demand compensation from the person otherwise responsible for the damage.

## *Non-Material Damages*

### *Section 354.*

## **Chapter XXXI**

### **Mode of Liability, Extent of Compensation**

#### *Section 355.*

(1) The person responsible for the damage shall be liable for restoring the original state, or, if this is not possible or if the aggrieved party refuses restoration for a substantiated reason, he shall indemnify the aggrieved party for material and non-material damages.

(2) Damage shall be indemnified in cash, unless compensation in kind is justified by the circumstances. Compensation in kind may be justified particularly if the object of indemnification is produced by the person responsible for the damage or is otherwise at his disposal.

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(3) An annuity can also be awarded as indemnification. On general principle, an annuity shall be awarded if indemnification is designed to support or assist in the support of the aggrieved person or those of his relatives entitled to be supported by him.

(4) On the grounds of indemnification, compensation must be made for any depreciation in value of the property of the aggrieved person and any pecuniary advantage lost due to the damage as well as the indemnity or costs necessary for the attenuation or elimination of the material and non-material losses sustained by the aggrieved person.

#### *Section 356.*

(1) A person whose capacity to work has been reduced as a result of an accident shall be entitled to demand an annuity only if his earnings (income) after the accident are less than his earnings before the accident for reasons beyond his control.

(2) In the case of an incapacity or reduced capacity for work proceeding from an accident, the amount of lost earnings (income) less the social security benefits shall be paid as an annuity.

(3) When establishing the amount of annuity, the earnings (income) which are gained by the victim of the accident through extraordinary performance of work in spite of his considerable physical disability originating from the accident shall not be taken into account in favor of the person responsible for the accident.

#### *Section 357.*

(1) The loss in earnings (income) of a person who has suffered an accident shall be generally determined on the basis of the regular monthly average earnings (income) gained in the year preceding the accident. If during said period the amount of earnings (income) changed permanently, only the average earnings (income) after this change can be taken into account.

(2) If a person who has suffered an accident had a regular and fixed salary at the time of the accident, this shall be taken into account when determining the loss of earnings.

(3) If the loss of earnings (income) cannot be assessed under Subsections (1) and (2), the average monthly salary of persons performing the same or similar work on the basis of employment (membership) shall govern the determination of the loss.

(4) When determining the loss of earnings (income), any future change the occurrence of which is anticipated with absolute certainty for a specific date shall also be taken into account.

#### *Section 358.*

(1) Dependents of a person who has died in an accident shall be entitled to claim an annuity that will supplement any support and ensure the satisfaction of their needs in accordance with the standard of living to which they were accustomed before the accident (by considering their actual or expected earnings [income]).

(2) An annuity can also be claimed if the person who has died in an accident had in fact failed to discharge his obligation to provide support or if the person claiming the annuity has not enforced his claim for support for an excusable reason.

(3) When establishing the amount of an annuity, it shall be considered whether the person claiming an annuity has enforced or is eligible to enforce a claim against the persons whose obligation to support him is equal to that of the person who died in the accident.

#### *Section 359.*

(1) If the extent of damage cannot be precisely calculated, even if only in part, the person responsible for causing the damage can be compelled by court to pay a general indemnification that would be sufficient for providing the aggrieved person with full financial compensation.

(2) There is no place for reclaiming a general indemnification on the grounds that the extent of actual damage did not subsequently reach the amount of the general indemnification. If, however, the obligor is paying an annuity as a

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general indemnification, he shall be entitled to demand a reduction in the amount of the annuity or a change in the annuity payment period in accordance with any changes in the conditions.

*Section 360.*

- (1) Indemnification shall be due immediately upon the occurrence of the damage.
- (2) Concerning the status of the persons responsible for damage, the provisions pertaining to obligors who have defaulted in performance of a contract shall be duly applied.
- (3) The provisions pertaining to assignment, assumption of debt, securing of claims, performance, and offsetting shall also be duly applied to damage claims.
- (4) The provisions on periods of limitation shall be applied with the exception that the period of limitation for a claim cannot be less than five years if the damage has been caused willfully or criminally. However, in respect of damages caused by the commission of a crime, the period of limitation for a claim shall not expire even after five years as long as the criminal offense remains punishable under the statute of limitations.

## **Chapter XXXII**

### **Unjust Enrichment**

*Section 361.*

- (1) Persons who illicitly acquire a material advantage at the expense of another shall be obliged to return the advantage.
- (2) Persons who have been deprived of gains before they are reclaimed shall not be obliged to return them, unless
  - a) the obligation to return the gains was an imminent possibility and the person can be held accountable for the loss of the gains, or
  - b) the gains had been acquired in bad faith.
- (3) If a person to whom any gains are due to be returned has created such gains himself through unlawful or immoral conduct, the court shall be entitled to award the material gains to the state at the motion of the public prosecutor.

*Section 362.*

Grants that are provided and used for subsistence cannot be reclaimed, unless legal regulation provides otherwise or the grant has been criminally obtained.

*Section 363.*

- (1) The provisions on possession without legal grounds (Section 195) shall apply to the return of material advantages related to financial gains; the person obliged to return such material advantages shall be entitled to demand compensation for those of his expenses that were necessarily appropriated for the thing.
- (2) If a material advantage cannot be returned in kind, its value must be compensated.

*Section 364.*

Concerning other issues, the regulations governing indemnification shall be duly applied to unjust enrichment.

## **Title III**

### **EXPRESS CONTRACTS**

## Chapter XXXIII

### Sale and Exchange

#### *1. Sale*

##### *Section 365.*

- (1) By concluding a sale contract the seller shall be obliged to transfer title of ownership and cede possession of a thing to the buyer, and the buyer shall be obliged to pay the purchase price and take possession of the thing.
- (2) All things that are not withdrawn from circulation can be subject to sale.
- (3) Real property sale contracts shall only be valid if concluded in writing.
- (4) A real property sale contract shall include agricultural implements and livestock only if the parties have expressly agreed to include them.

##### *Section 366.*

- (1) If the market price has been stipulated as the purchase price, the average price prevailing on the date of performance in the market regarded as the place of performance shall be paid.
- (2) Unless otherwise provided by law, a purchase price that has been determined according to weight shall be calculated on the basis of net weight.

#### *Rights and Obligations of Parties*

##### *Section 367.*

- (1) The seller shall inform the buyer regarding the essential characteristics of and all important requirements pertaining to the thing, particularly any potential rights in connection with or any encumbrances on the thing. The seller must also convey the documents concerning such circumstances, rights, or encumbrances to the buyer.
- (2) The seller shall bear all of the costs related to the transfer of a real property and the correction of the status recorded in the real estate register.
- (3) The buyer shall bear the contract costs, title transfer fees, the costs of conveyance, and the costs of changing ownership registration in the real estate register.

##### *Section 368.*

- (1) The seller shall be entitled to retain title of ownership only on conclusion of the contract, in writing, until the purchase price is paid in full.
- (2) The buyer, during the operative period of title retention, shall not alienate and/or encumber the thing. This provision shall not affect the rights acquired in return for consideration by third persons acting in good faith.
- (3) The buyer of a real property, if taking possession before the registration of title in the real estate register, shall, as of the date of taking possession, collect any proceeds of the thing, and shall, furthermore, be liable for its encumbrances and for the damages for which no indemnification can be demanded from anyone.

#### *Guarantee for the Transfer of Title Free and Clear*

##### *Section 369.*

(1) If a third person has a right to an object of a sale that prevents the buyer from acquiring ownership, the buyer shall be entitled to rescind the contract and demand punitive damages.

(2) Prior to exercising this right, the buyer shall serve notice to the seller demanding that the restraints on his acquisition of ownership be eliminated or adequate security thereto be provided within a reasonable period.

(3) A buyer, if conveying a thing to a third person or returning it to the seller on account of a third party's right thereto, shall be entitled to demand indemnification from the seller.

(4) If a seller has acted in good faith, he shall pay only the damages incurred by the conclusion of the contract. This shall not affect the buyers' right of rescission.

## *Section 370.*

(1) If a third person has a right to a thing that impedes a buyer's ownership rights, the buyer shall be entitled to demand disencumbrance within a reasonable period and refuse payment of the sum necessary therefor until the encumbrance has been removed.

(2) After the lapse of the aforementioned period without any result, the buyer shall be entitled to disencumber the thing from the sum thus available or, otherwise, at the expense of the seller.

(3) If disencumbrance is not possible or if it would require unreasonable expenses, the buyer shall be entitled to rescind from the contract and demand indemnification or to have the purchase price appropriately reduced in exchange for assumption of the encumbrance. The buyer shall be entitled to these rights even if the deadline set for disencumbrance has elapsed without any result and the buyer does not wish the disencumbrance of the thing.

(4) The buyer shall not be entitled to these rights if it is known at the time the contract is concluded that unrestricted ownership of the thing cannot be acquired, unless the seller had guaranteed the buyer acquisition of unrestricted ownership. Sellers shall guarantee that the thing is unfettered by any lien, even if the buyer is aware of the lien.

## *Special Modes of Sale*

### *Section 371.*

(1) If a thing has been bought for the purpose of inspection or testing, the effect of the contract shall be conditional upon the buyer's statement. No explanation shall be required from the buyer regarding such statements.

(2) The seller shall be entitled to set a deadline for filing the statement; the buyer's failure to meet this deadline shall render the contract inoperative.

(3) If the buyer has received a thing for testing and has not made a statement within the period set by the seller, the contract shall be operative.

(4) The seller shall not be liable for defects that could be recognized by the buyer.

### *Section 372.*

(1) If purchase is made on the basis of a sample the seller shall deliver things that correspond to the sample.

(2) The seller shall be liable under warranty for any latent defect in a thing, even if the defect also existed in the sample.

(3) The buyer, if he fails to present the sample, shall be liable for proving that the thing does not correspond to the sample.

### *Section 373.*

(1) If an owner grants a right of preemption to a specific thing in a written agreement and wishes to sell the thing, he shall notify the person who has the right of preemption of the offer he has received before he concludes the contract. The owner shall not be subject to this obligation if compliance would imply extraordinary difficulties or a substantial delay on account of the location of the beneficiary's domicile or other circumstances.

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(2) If the person with the right of preemption issues a statement of acceptance to the owner regarding the conditions of the offer, the contract shall be deemed concluded between them. If the beneficiary fails to issue a statement within the period generally established for acceptance of a proposal, the owner shall be entitled to sell the thing according to the offer or under better terms.

(3) If a right of preemption is recorded in the real estate register, it shall affect everybody who acquires any right to the real property following such registration.

(4) Unless otherwise provided by law, transfer of a right of preemption shall be null and void; however, economic organizations shall be entitled to designate a person who is authorized to exercise this right.

(5) Unless otherwise provided by law, a right of preemption shall not pass to heirs.

(6) The provisions on the right of preemption shall also be applied to rights of preemption based on legal regulation. Rights of preemption based on legal regulation shall precede contractual rights of preemption.

#### *Section 374.*

(1) The right to repurchase a thing sold shall be put in writing simultaneously with the sales contract. Repurchase shall be effected upon the seller's statement to the buyer.

(2) The right of repurchase can be stipulated for a maximum of five years; any agreement to the contrary shall be null and void.

(3) The repurchase price shall be the same as the original sale price; the original buyer, however, shall be entitled to demand, in addition to the repurchase price, his expenditure on the thing up to the date of repurchase, resulting in actual increase of value, while the repurchaser shall be entitled to deduct any depreciation of the thing incurred during the same period.

(4) The original buyer shall be responsible for any forfeiture or restraint of the right of repurchase; however, if the thing is destroyed due to reasons beyond the buyer's control, the right of repurchase shall be abrogated.

(5) Concerning other issues, the regulations governing the rights of preemption shall apply to repurchase rights.

#### *Section 375.*

(1) If an owner grants a right of purchase (option) to another person, the beneficiary shall be entitled to buy the thing with a unilateral statement. Agreements on options to purchase shall be put in writing with the thing and the purchase price specifically indicated.

(2) An option to purchase stipulated for an indefinite period of time shall expire after six months; any agreement to the contrary shall be null and void.

(3) Unless otherwise provided by law, the court may relieve an owner of his obligation deriving from the option to purchase if the owner is able to prove that, after granting the option, his circumstances have altered significantly, as a consequence of which performance of his obligation cannot be reasonably expected.

(4) Concerning other issues, the regulations governing the rights of repurchase shall apply to the rights of option to purchase.

#### *Section 376.*

(1) Parties shall be entitled to agree for the buyer to pay the purchase price in several installments at specific dates and the thing shall be delivered before the purchase price is fully paid (installment sale).

(2) The seller shall be entitled to stipulate in writing the right to cancel a contract or revoke the advantage of payment by installments if the buyer fails to make an installment payment when due. The seller shall be entitled to exercise this right the first time an installment payment is defaulted only if the buyer has been informed thereof in advance and sufficient time has been allowed for performance.

(3) If the seller rescinds from the contract, the buyer shall pay a charge for use as well as compensation for any loss in value that exceeds depreciation from the proper use of the thing.

(4) Any risk of destruction or depreciation of a thing conveyed to a buyer shall be borne by the buyer even if the title is retained.

*Section 377.*

If the seller has received an article for selling through door-to-door sales from a third party, the law prescribes the joint and several liability of the third party and the sales person toward the buyer.

## *2. Exchange*

*Section 378.*

If the contracting parties undertake reciprocal transfer of the ownership of things, the provisions pertaining to sale shall be duly applied. In such cases each party shall be deemed as the seller in respect of his own service and the buyer in respect of the other party's service.

## **Chapter XXXIV**

### **Supply and Public Utility Contracts**

#### *1. Supply Contracts*

*Section 379.*

(1) Under a supply contract the seller shall be obliged to deliver the thing defined therein to a customer at a later agreed date or period, and the customer shall be obliged to accept delivery of the thing and pay its price.

(2)

*Section 380.*

Parties shall be entitled to define the quality of a thing; the manner of the inspection of quality and quantity; and the order of lodging quality and quantity complaints by on the basis of standards, technical conditions, other regulations, common practices, and sample rules known to both parties or by providing a sample or a detailed description.

*Section 381.*

(1) The customer shall be entitled to cancel a contract at any time, but shall be liable for paying compensation for damages sustained by the supplier.

(2) If the situation prevailing before the conclusion of a contract cannot be restored, or if it is justified by the interest of the national economy or by any other appreciable interest, the court, if requested by either party, shall terminate the contract for future considerations in the case of cancellation by the customer. The customer shall indemnify the supplier in this case as well.

*Section 382.*

(1) Suppliers shall notify customers of the date of performance at least three days in advance.

(2) In the absence of different trade customs, suppliers shall deliver things packaged and weighed. Packaging shall be suitable for protecting the condition of the thing during shipping and storage.

*Section 383.*

(1) It is sufficient to accept delivery of packaged and weighed things by gross weight and quantity in the presence of the supplier or the carrier.

(2) Quality inspection shall take place on the customer's premises.

(3) The customer shall immediately commence completion of the remaining part of quantity inspection as well as quality inspection, but within no more than eight days of the date of delivery, and shall carry it out continuously during the time necessary for inspection.

(4) The customer shall immediately notify the supplier of any discrepancies in quality whenever such discrepancies are noticed, and shall make warranty claims at the same time.

#### *Section 383/A.*

(1) In the case of delivery by a carrier, the customer shall, in the supplier's interest, take the necessary measures to enforce claims against the carrier and notify the supplier thereof without delay.

(2) In the case of failure to take the measures prescribed in Subsection (1), the customer shall not be entitled to demand compensation from the supplier for the damage, and he shall be liable for the damage that could have been enforced against the carrier.

#### *Section 384.*

(1) The customer shall be entitled to forward things within three days of receipt without unpacking and inspecting them.

(2) If the supplier is to perform a service directly for a third person, the third person must conduct the quality and quantity inspection.

(3) Third persons, upon discovering any discrepancy in quality or quantity at the time of receiving delivery, shall immediately notify the supplier and the customer thereto.

#### *Section 385.*

On the grounds of a contributor's deficient performance, the supplier shall be entitled to enforce his rights against the contributor as long as he continues to be liable to the customer for breach of contract, provided that the supplier has performed his obligation to conduct a quality inspection.

#### *Section 386.*

## *2. Public Utility Contracts*

#### *Section 387.*

Under a public utility contract the service provider shall be obliged to provide users with public utility services (such as gas, electricity, and water) on a safe and regular basis as of a specific date and in a volume determined according to the user's needs, and the user shall be obliged to make periodic payments for such services.

#### *Section 388.*

(1) Legal regulation can declare that a contract comes into force when the services are used.

(2) Service providers shall only be entitled to refuse to conclude contracts in cases prescribed by legal regulation, and the contents of contracts can only be made contingent upon conditions prescribed by legal regulation.

(3) Service providers shall only be entitled to suspend or limit performance for a user in cases prescribed by legal regulation.

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(4) Service providers shall only be entitled to terminate contracts under the grounds prescribed by legal regulation.

## Chapter XXXV

### Professional Services

#### 1. General Rules

##### *Section 389.*

Under a contract for professional services the contractor shall be obliged to design, fabricate, process, convert, install, or repair things or to create some other result by work, and the customer shall be obliged to accept delivery of such services and pay the contracted fee for them.

#### *Rights and Obligations of Parties*

##### *Section 390.*

(1) Parties may agree for the contractor to prepare a proposal containing detailed technical and financial data and the customer will accept the proposal and pay a fee therefor.

(2) Unless otherwise provided by law or in the absence of an agreement by the parties to the contrary, the customer shall be free to use the detailed proposals even if no contract is concluded with the contractor on the basis thereof.

(3) Parties may also define services with reference to technical plans and cost breakdown.

##### *Section 391.*

(1) The contractor shall perform work at his own expense and shall organize work so as to ensure that it will be completed efficiently and rapidly.

(2) Contractors shall be entitled to engage subcontractors.

(3) The contractor shall be responsible for the work of any legitimately employed subcontractor as for his own work; in respect of any illegitimate employment of a subcontractor, the contractor shall be liable for all damages that would not otherwise have occurred.

##### *Section 392.*

(1) The contractor shall proceed in accordance with the customers' instructions. Instructions cannot be given for the organization of work and shall not render performance more burdensome. The parties shall be entitled to deviate from these provisions.

(2) The contractor shall immediately notify the customer regarding all instances that jeopardize or impede the success of the undertaking or completion by the due date. The contractor shall be liable for all damages caused by his failure to communicate such notification.

(3) If a customer provides inadequate material or gives imprudent or unsuitable instructions, the contractor shall be obliged to warn him thereof. The contractor shall be liable for damages caused by his failure to provide warning. If, however, the customer should insist on his instructions or fail to provide adequate material in spite of the contractor's warning, the contractor shall be entitled to rescind the contract. If the contractor chooses not to rescind the contract, he shall carry out the work with the material received or in accordance with the customer's instructions, and it shall be done at the customer's risk.

(4) The contractor shall not carry out the work with the material provided by the customer or in accordance with the customer's instructions if it would lead to the violation of a law or statutory provision or if it would imperil the safety of life and property.

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*Section 393.*

(1) If work is to be performed at a place designated by the customer, the customer shall render the site available to the contractor in an appropriate condition.

(2) The contractor shall be entitled to refuse to commence work until the customer satisfies this obligation. If the customer fails to satisfy this obligation within a reasonable period of time set by the contractor, the contractor shall be entitled to rescind the contract and demand compensation for damages.

(3) If two or more contractors are working on the same project, the customer shall provide the necessary conditions for doing the work that had been arranged with the contractors efficiently and quickly, and the contractors shall coordinate the performance of work. Any damage caused by the inadequate organization of work to another person shall be compensated for by the party in default.

(4) In respect of work performed by two or more contractors, the customer and the contractors shall be entitled to conclude contracts with one another in order to specify the manner and conditions of cooperation. The mode of dividing savings and other benefits that can be achieved by coordinating work and the extra expenses incurred by each party can be specified in the contract.

*Section 394.*

(1) The customer shall be entitled and, in those instances defined by law or in the contract, obliged to inspect the work and check the materials used. The contractor shall not be relieved of liability if a customer has failed to perform such an inspection or has performed it inadequately.

(2) If the contractor builds over (covers) certain parts of the work and subsequently inspection necessitates repeated completion of a part of the work, the contractor shall duly notify the customer of this in advance. If the customer fails to perform the inspection in spite of being duly notified, at a later date, he shall only be entitled to inspect the part of the work that has been built over if he pays the contractor for the costs of any new work that is done.

(3) If the customer acquires knowledge of a new concept, method, or technical information through a contractor's performance, he shall not be entitled to disclose such to another person without the consent of the contractor.

*Section 395.*

(1) The customer shall be entitled to cancel the contract at any time, but he shall be liable for paying compensation for any damages suffered by the contractor.

(2) If the situation prevailing before the conclusion of the contract cannot be restored or if the interest of the national economy or any other substantial interest so justifies it, the court shall terminate the contract with regard to the future if the customer rescinds it (or at the request of any of the parties). The customer shall indemnify the contractor in this case as well.

(3) If the customer rescinds the contract because it becomes obvious before the contracted date of completion that the contractor cannot carry out the work without a considerable delay on account of which performance is no longer in the customer's interest, the customer shall be entitled to demand punitive damages according to the regulations governing breach of contract.

(4) If, while the work is being done, the circumstances would make it possible to conclude that performance will be defective, the customer shall be entitled to exercise the rights that proceed from defective performance after the period for eliminating the insufficiencies has lapsed without result.

*Section 396.*

(1) At the time service is delivered, the parties shall jointly perform the customary tests that are warranted and necessary for verifying the quality of performance.

(2) Unless it is otherwise customary for a particular profession, the customer shall, at contractor's expense, provide the necessary conditions for the contractor to conduct the tests.

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(3) The contractor shall provide the customer with the necessary information for utilizing and maintaining the thing delivered.

(4) If the thing cannot be properly used without such information, the customer shall not be obliged to pay remuneration until the contractor has performed his obligation to supply the above-specified information.

#### *Section 397.*

(1) Unless otherwise provided by law, remuneration shall be due upon completion of performance.

(2) The contractor have liens for service charges on the property of the customer that comes into their possession in consequence of the contract for professional services.

#### *Section 398.*

On the grounds of non-conformity of the subcontractor or contributor, the contractor shall be entitled to enforce his rights to the extent to which the contractor is liable to the customer for breach of contract, provided that the contractor has performed his obligation to make a quality inspection.

#### *Section 399.*

If performance becomes impossible for a reason that cannot be attributed to either party and

a) the cause of impossibility has occurred within or beyond the control of both parties, the contractor shall be entitled to a proportionate amount of the remuneration for the work done and for his expenses;

b) the cause of impossibility has occurred within the control of the contractor, he shall not be entitled to demand remuneration;

c) the cause of impossibility has occurred within the control of the customer; the contractor shall be entitled to remuneration, but the customer shall be entitled to deduct the amount that the contractor had saved in expenses because of impossibility and the amount that the contractor had earned or could, without great difficulty, have earned elsewhere in the time gained.

#### *Section 400.*

(1) Risk of loss regarding a work that has been started or completed but not delivered shall be divided between the customer and the contractor in accordance with the regulations pertaining to the impossibility of performance.

(2) The contractor shall not be obliged to re-create a work that has been destroyed for a reason that cannot be attributed to anybody, and the customer shall not be obliged to accept delivery of such.

(3) The general regulations must be applied in the matter of damages sustained in material and equipment that are necessary for performance of a contract.

#### *Section 401.*

Under a contract for professional services for implementing a complex economic or technical unit suitable for performing independent functions, the contractor shall be obliged to provide the necessary conditions for the efficient and expeditious execution of work in coordination with other contractors working on the same project and, moreover, to conclude the necessary contracts for determining the terms and conditions of cooperation with the other

contractors. The contractor's liability for the fulfillment of the technical, financial, and other conditions stipulated in such a contract shall obtain even if the contractor has not himself prepared, in full or in part, the necessary plans for fulfillment (general contracting).

## *2. Construction Contracts*

#### *Section 402.*

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Under a construction contract the contractor is obligated to perform building and installation work and the customer is obligated to receive delivery of and pay the contracted fees for such work.

#### *Section 403.*

(1) If, at the time the contract is concluded, all of the plans required for execution (budget, specifications, etc.) are not yet available, the various deadlines for furnishing the plans and an estimation made on the basis of a cost estimate for the entire construction and installation project shall be stipulated in the contract.

(2) Unless otherwise suggested by the nature of the service, the service shall be indivisible. However, if the parties agree in the contract on progress delivery in specific phases, the service shall be considered divisible.

(3) Unless otherwise provided by law, the customer shall be responsible for making arrangements for the official licensing procedures that are required for carrying out the work and, moreover, for obtaining the official permits.

(4) The contractor shall complete work which are included in the plans but not in the cost breakdown (extra work) as well as technically necessary work without which the structure cannot be properly used. The settlement of fees for such extra work is governed in specific other legislation.

#### *Section 404.*

(1) A site shall be deemed suitable for construction and installation work if the condition of the site does not impede fulfillment of the contract and if the designated reference points and a list of them have been furnished.

(2) The customer shall be obliged to inspect the progress of work at certain intervals.

(3) The parties shall use the journal kept at the project site to keep each other informed of all important details, circumstances, and instructions pertaining to the work.

(4) If requested by the contractor, the customer shall, if necessary, provide an interpretation of plans and detailed instructions for implementing them.

#### *Section 405.*

(1) The customer shall inspect the work during the delivery procedure designated for the date specified by the contractor in his notification, and the customer shall also record all deficiencies and defects, the sums appropriate therefor, and the warranty claims he intends to enforce.

(2) If the customer accepts delivery of certain parts of the work prior to completion on a temporary basis (preliminary delivery), the risk of loss with regard to these shall be transferred to the customer as of the date of delivery.

(3) The contractor shall be deemed to have performed before the deadline, if the delivery procedure commences prior to or on the date of final completion, unless the customer has received delivery of the service.

(4) Delivery cannot be refused on the grounds of insignificant defects or deficiencies in the service that, in connection with other defects or deficiencies or as a result of work concomitant with the repair or replacement of such, do not prevent proper use.

(5) The work shall be re-inspected in accordance with the provisions of Subsection (1) within one year of the delivery procedure (post-inspection procedure). The customer shall make the preparations for the post-inspection procedure and shall invite the contractor to attend.

#### *Section 406.*

### *3. Installation Contracts*

#### *Section 407.*

(1) Under an installation contract the contractor shall be obliged to carry out technological installation work, and the customer shall be obliged to accept delivery of and pay the contracted fees for such work.

(2) Unless otherwise provided by legal regulation, the regulations governing construction contracts shall be duly applied to installation contracts.

(3)

#### *Section 407/A.*

(1) Delivery shall take place by trial operation. The period of trial operation shall be thirty days.

(2) Prior to trial operation it shall be made certain whether the equipment is suitable for the trial operation. The statements in respect thereof, any defects and discrepancies, and the deadlines set for repairs and replacement shall be put in a protocol.

(3) The contractor shall furnish the necessary professional staff to provide direction throughout the entire trial operation period if the manufacture of the equipment also falls within his sphere of activities.

(4) The energy; the basic, raw, and auxiliary materials; and any special instruments necessary for the trial operation shall be provided by the customer.

(5) The customer shall not be entitled to refuse delivery if the trial operation reveals any minor defects or discrepancies that do not prevent the proper permanent and specified mode of operation and the equipment is otherwise in conformity with the conditions specified in the contract.

## *4. Design Contracts*

#### *Section 408.*

Under a design contract the contractor shall be obliged to provide engineering-commercial design services, and the customer shall be obliged to accept delivery of and pay the contracted fees for such services.

#### *Section 409.*

(1) The parties shall also be entitled to agree in the contract on progress delivery of the engineering-commercial design services.

(2) The parties shall be entitled to stipulate the limitation of liability for damages in the contract if the contractor undertakes preparation of a design containing an engineering-commercial solution that is not known or used in Hungary.

(3) The customer shall be entitled to use the design only for the purpose and under the conditions defined in the contract, and they shall not disclose it.

#### *Section 410.*

(1) If implementation has commenced within three years of delivery of the design, the period of limitation for the warranty rights that can be enforced due to any defect in the design shall begin on the date on which the service implemented on the basis of the design is performed.

(2) If implementation commences after three years following the delivery of the design, the parties shall be entitled to agree that the contractor should review the design to determine whether the design is suitable for implementation or whether any changes are required, and whether he should revise the design, for which the customer shall pay remuneration (follow-up revision). Follow-up revisions can be made mandatory by legal regulation.

(3) If the implementation of a follow-up revision commences within three years of declaring the design serviceable or of the date of delivery of the revised design, the initial date for the period of limitation of any claims under

warranty enforceable on the grounds of any defects in the design shall be the date of the performance of the service implemented on the basis of the design.

(4) Contractors shall guarantee that no third person has any right that can prevent or restrict implementation. The provisions pertaining to seller's guarantee for the transfer of ownership shall be applied to this guarantee.

(5) The regulations governing research contracts shall be duly applied to the intellectual products subject to legal protection that are furnished in connection with a contract.

*Section 411.*

## *5. Research Contracts*

*Section 412.*

(1) Under a research contract the contractor shall be obliged to perform research activities, and the customer shall be obliged to pay the contracted fees for such activities. The parties shall be entitled to agree that remuneration is due even if these activities fail to produce any results.

(2) Contracts shall be concluded in writing and can be made for an indefinite period of time.

(3) With regard to intellectual products subject to legal protection that are furnished in connection with a contract,

a) if the customer reserves the right of disposal, the contractor shall be entitled to use these intellectual products only for his own internal activities; he shall not be entitled to make them public or disclose them to third persons; in this case, the customer is free to dispose over such intellectual products;

b) if the customer does not reserve the right of disposal, the intellectual products can be used only within the scope of his own business activities; they cannot be published and they cannot be disclosed to third persons; in this case, the contractor is free to dispose over the intellectual products.

*Section 413.*

(1) The contractor shall be entitled to employ subcontractors only with the customer's consent. No approval shall be required from the customer if the contractor has promised to achieve a specific result.

(2) The customer shall be entitled to use the services of the contractor only for the purposes defined in the contract, and he shall not disclose them.

(3) The contractor shall guarantee that no third person has any right that can prevent or restrict the utilization of services. The provisions pertaining to the seller's guarantee for the transfer of ownership shall be applied to this guarantee.

(4) The contractor shall be entitled to stipulate the limitation of his liability for damages in the contract.

*Section 414.*

Contracts concluded for an indeterminate period can be terminated by the parties with six months' notice.

*Section 414/A.*

The general rules and regulations governing contracts for professional services and the regulations governing agency contracts shall be duly applied to research contracts for all matters not specifically regulated.

## *6. Contracts for Travel Services*

*Section 415.*

(1) Under a contract for travel services the travel agency shall be obliged to perform contractually specified travel-related services, including transportation, accommodations at points of excursion, and all related services (particularly lodging and meals); and the customer shall be obliged to pay the contracted fees for such services.

(2) If the travel agency is only able to fulfill its contractual obligations in ways other than specified, the customer shall be entitled to demand a fee reduction and compensation for damages.

#### *Section 416.*

The detailed regulations on contracts for travel services, inclusive of contracts for mediating certain travel-related services, shall be established in specific other legislation.

## **Chapter XXXVI**

### **Contracts for the Sale of Agricultural Products**

#### *Section 417.*

(1) Under a contract for the sale of agricultural product the producer shall be obliged to deliver crops and/or produce of his own production or livestock that he himself has raised in the quantity specified and at a predetermined future date into the possession and ownership (management) of the customer, and the customer shall be obliged to accept delivery of such crops, produce, or livestock and pay the contracted purchase prices for them.

(2) The object of such contracts can also be the production of a product in a designated area or the raising of livestock.

(3) Economic organizations shall also be entitled to enter into contracts for the sale of agricultural product for the resale of crops or produce produced by other parties or livestock raised by other parties.

#### *Section 418.*

(1) The parties shall be entitled to define quantity by a unit of measurement corresponding to the characteristics of the agricultural product, the entire production of a certain area, the full yield of a specific animal, or a fraction thereof. The parties shall be entitled to define the quality, the manner of the inspection of quality and quantity, and the order of lodging quality and quantity complaints with reference to standards or other specifications, common practices, and sample rules known to both parties or by providing an elaborate description.

(2) Contracts shall be deemed valid only if concluded in writing. Contracts not concluded in writing shall also be valid if either of the parties has performed his contractual obligations.

#### *Section 418/A.*

(1) In contracts for the sale of agricultural product the contracting parties shall be entitled to oblige the customer to provide the producer (or vice versa) with services that will promote performance and offer information with regard to these services, while the other party shall be obliged to use the services in accordance with the instructions that are given.

(2) Producers shall only be entitled to use the sowing-seed or other propagation material provided by the customer, when applicable. However, the sowing-seed or propagation material may not be used if the producer objects on the grounds of deficient quality and the objection is accepted by the customer, or if the authorized quality certification body has verified the deficient quality.

#### *Section 419.*

(1)

(2) The producer shall not be entitled to refuse repayment of services performed by the customer on account or as prepayment on the grounds that such repayments cannot be covered by the results of production.

(3) Any loss in value, owing to the nature of the object of the services, sustained during a delay in delivery shall be the responsibility of the party causing the delay, unless that party is able to prove that the other party is responsible for the loss in value.

#### *Section 420.*

(1) If the performance of any contractual obligation meets with predictable difficulties, the parties shall notify one another thereof, unless the other party should have been aware of the difficulties even without notification.

(2) Any failure to make notification of potential difficulties shall be taken into account in litigation for breach of contract.

#### *Section 421.*

(1) The producer shall also be entitled to effect performance before the deadline or even before the beginning of the performance period; however, the customer shall be notified in advance of commencement of performance, and ample time must be provided to make the necessary preparations. The producer shall be liable for any damages resulting from the failure to make notification.

(2) The producer shall be entitled to perform ten per cent below the quantity stipulated in the contract.

(3) Delivery shall take place on the producer's premises.

(4) In the case of transportation by a carrier, the customer shall, in the producer's interest, take the necessary measures for enforcing claims against the carrier, and he shall notify the producer thereof without delay.

(5) In the case of failure to take the measures stipulated in Subsection (4) the customer shall not be entitled to demand compensation from the producer for any damage, and he shall be liable for the damages that could have been enforced against the carrier.

#### *Section 422.*

(1)

(2) Contracts for the sale of agricultural product can also be concluded for two or more years; in such cases, the parties shall not be obliged to agree on a price.

(3) In respect of contracts concluded for two or more years, the parties shall also be entitled to agree

a) to carry on production, processing, or sales by bearing the risks jointly;

b) to share the profit generated by production, processing, or sales in the proportions specified in the contract.

(4) Unless otherwise provided by legal regulation, the regulations on sale and entrepreneurial activity shall be duly applied to contracts for the sale of agricultural products.

(5)

## **Chapter XXXVII**

### **Leases**

#### *1. Lease of Things*

#### *Section 423.*

Under a lease contract the lessors shall be obliged to grant the use of things to the lessee for a period of time, and the lessee shall be obliged to make the appropriate lease payments therefor.

#### *Rights and Obligations of Parties*

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*Section 424.*

(1) Unless otherwise provided by legal regulation, the lessor shall guarantee that the thing leased out is and will be suitable for use as contracted for the entire duration of the lease period and that it is otherwise in conformity with the provisions of the contract. Concerning this guarantee, the regulations governing guarantees for defective performance shall be applied with the exception that the lessee is entitled to terminate the contract with immediate effect instead of rescission and he shall not be entitled to demand replacement.

(2) The lessor shall guarantee that no third person has any right to the leased thing that can prevent or restrain the lessee's use of it. Concerning this guarantee, the regulations pertaining to sellers' guarantees for the transfer of ownership shall be applied with the exception that the lessee is entitled to terminate the contract with immediate effect instead of rescission.

*Section 425.*

(1) The lessee shall be entitled to use the thing properly and in accordance with the contract. The lessee shall be liable for all damages resulting from improper use or non-contractual use.

(2) The lessor shall be entitled

a) to inspect use without causing any unnecessary disturbance to the lessee;

b) to demand discontinuance of use that is improper or in violation of the contract and indemnification for damages originating from such use;

c) if such use is continued or if a request for discontinuance fails to bring about success because of the gravity of the danger threatening the leased thing, the lessor shall be entitled to terminate the lease with immediate effect and demand indemnification.

(3) If the lessee transforms a thing for which the permission of the lessor or an authority would have been required, the lessee shall be obliged to restore the original state at the lessor's request.

(4) The lessor shall be entitled to exercise these rights even if the lessee has sublet the thing or has otherwise leased it to a third person either with or without the lessor's permission.

*Section 426.*

(1) Unless otherwise provided by legal regulation, real properties or dwellings can be sublet or otherwise leased to others without the lessor's permission. Other things shall not be sublet or leased to third persons by the lessee without the lessor's permission.

(2) If the lessee has leased a thing to another person with the lessor's permission, the lessee shall be liable for the conduct of the user as if it were his own.

(3) If the lessee leases a thing to another person without the lessor's permission, the lessee shall be liable for damages that would not otherwise have occurred.

*Section 427.*

(1) Minor expenses required for the maintenance of a thing shall be borne by the lessee; other expenses as well as public duties in connection with the thing shall be borne by the lessor.

(2) The lessee shall notify the lessor if any work for which the lessor is responsible is required, and the lessee shall permit the lessor to carry out such work and take appropriate measures for preventing damages. The lessee shall be liable for damages resulting from any failure to notify the lessor.

(3) The lessee shall be entitled to claim reimbursement for the unavoidable costs he incurs because of the thing; the lessee shall be entitled to demand reimbursement for other expenses according to the regulations on impromptu agency.

*Section 428.*

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(1) The lessee shall be obliged to make lease payments in advance of each period. No lease payments shall be made for the period when the thing cannot be used for reasons beyond the lessee's control.

(2) In the instance of failure to make lease payments, the lessor shall be entitled to terminate the lease with immediate effect, provided that the lessor has issued a written demand for remittance of overdue payments within a reasonable period of time and notified the lessee of the consequences, and the lessee has failed to remit payment within this period.

#### *Section 429.*

(1) The lessor (sub-lessor) of a real property or dwelling shall hold a lien on the lessee's property found within the rental property for the value of unpaid rent and any additional costs.

(2) The lessor shall be entitled to block the removal of hypothecated property as long as his lien remains in effect.

(3) If the lessee files a written protest against a lien, extent of it, or the lessor's action to block the removal of property items other than those already providing full cover for his claim, the lessor shall enforce his lien by court action within eight days. Failure to do so shall be construed as forfeiture of the lien.

(4) If the lessee removes the hypothecated thing without the lessor's permission and does not provide other appropriate security, the lessor shall be entitled to demand the return of the thing at the lessee's expense. The lien shall be re-established upon the return of the thing.

### *Extinction of Lease*

#### *Section 430.*

(1) A lease contract shall be extinguished upon the expiration of the contract term or upon the occurrence of the conditions defined in the contract.

(2) A lease contract shall also be extinguished if the thing is destroyed.

#### *Section 431.*

(1) Lease contracts concluded for an indefinite period of time can be terminated by giving fifteen days' notice.

(2) A lease contract concluded for a specific term shall be transformed into a lease for an indefinite period of time if the lessee continues to use the thing beyond the contracted lease term and if the lessor does not file a protest thereto within fifteen days.

(3) A lessee's heirs shall be entitled to terminate by notice a lease contracted for a specific term; however, such heirs shall exercise this right within thirty days of taking possession or receiving delivery of the estate.

#### *Section 432.*

(1) The lessee shall be obliged to permit any potential buyers of a thing to inspect it at an appropriate time and in an appropriate manner.

(2) A lease contracted for a specific term cannot be canceled by the buyer of the leased thing, unless the lessee has misled the buyer regarding the existence of a lease or material lease conditions.

(3) If there is a change in the person of the lessor, the regulations governing assignment shall be applied regarding the date on which the claim to lease payments is transferred.

(4) A buyer shall be entitled to demand that lease payments be made for the period for which the lessee had made such payments in advance to the seller, only if he was not aware of such prepayments at the time the sales contract was concluded and if he could not have known of them, particularly if the lessee had misled him regarding said prepayments.

#### *Section 433.*

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(1) Prior to the termination of the lease term, the lessee shall permit any potential lessees of the thing to inspect it at an appropriate time and in an appropriate manner.

(2) Upon termination of the lease term, the lessee shall return the thing to the lessor; however, the lessee shall be entitled to withhold the thing without using it until his claims against the lessor originating from the lease are settled. This provision shall not apply to the lease of real properties and dwellings.

(3) If the lessee illegitimately withholds a thing, he shall be liable for all damages that would not otherwise have been incurred.

(4) The lessee shall be entitled to remove any and all items that he has added to the thing at his own expense without causing any damage to the thing.

## *2. Residential Lease*

### *Creation of Residential Lease*

#### *Section 434.*

(1) Residential tenancy is established by a contract between the lessor and the lessee.

(2) The provisions pertaining to the creation of residential tenancy, the rights and obligations of the parties, and the extinction of such contracts are prescribed in a separate law.

(3) Unless otherwise provided by legal regulation, the regulations governing residential leases shall be duly applied to leases for non-residential premises.

(4) Further conditions for the creation, extinction, and continuation of residential leases and for the alienation of dwellings can also be prescribed within the framework of the law described in Subsection (2).  
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## **Chapter XXXVIII**

### **Leasehold**

#### *Section 452.*

(1) Under a leasehold contract the lessee shall be entitled to use and collect the proceeds of a designated parcel of agricultural land or some other profitable thing for a specific time, and he shall be obliged to pay appropriate rent therefor.

(2) Leasehold payments shall be paid in cash or in kind, as agreed by the parties.

(3) A written contract is required to lease agricultural land; administrative approval may be prescribed by statutory provision for the validity of such contracts. Unless otherwise prescribed by law, any sublease of agricultural land shall be null and void.

### *Rights and Obligations of Parties*

#### *Section 453.*

(1) The lessee shall be entitled to use and collect the proceeds of a thing only in accordance with the rules of proper management.

(2) The lessee of agricultural land shall cultivate the land according to its designated purpose and shall preserve the fertility of the land in the course of doing so.

#### *Section 454.*

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(1) The lessee shall bear responsibility for the renovation and repairs that are necessary for the maintenance of the thing as well as all applicable public duties on the thing.

(2) Extraordinary renovations and repairs shall be the responsibility of the lessor.

#### *Section 455.*

(1) Leasehold payments shall be paid subsequent to the period to which it pertains.

(2) For years in which the crop yield remains below two-thirds of the average due to natural disaster or some other extraordinary event, the lessee shall be entitled to request a reduction or consolidation of lease payments. The lessee shall be obliged to communicate such a request to the lessor prior to harvesting.

(3) No additional payments can be demanded from the crops of subsequent years for recovering reduced or consolidated lease payments.

#### *Section 456.*

The lessor has a lien on the proceeds of a thing and/or on the lessee's property found in the leasehold area up to the extent of overdue lease payments.

### *Extinction of Leasehold Contracts*

#### *Section 457.*

(1) Agricultural leasehold contracts concluded for an indefinite period of time can be terminated by the end of the fiscal year by giving six months' notice. Concerning the leasehold of other things, the period of notice shall be one month.

(2) The lessor shall be entitled to cancel a leasehold contract with immediate effect if the lessee

a) despite a warning, willfully damages or seriously endangers the condition of the thing;

b) despite a warning, fails to cultivate the leased land or is generally engaged in conduct that seriously jeopardizes the overall success of production, the fertility of the land, the livestock, or equipment;

c) fails to remit overdue lease payments or public duties within the period specified, despite being requested to do so.

(3) In the event of the lessee's failure to respond to a notice of immediate termination within three days, the lessor shall be entitled to file for court action within another eight days. Any action to the contrary shall render the termination inoperative.

(4) A notice of termination shall be valid only in writing.

#### *Section 458.*

(1) The lessee's heirs shall be entitled to terminate his agricultural leasehold by the end of the fiscal year, even if the decedent died within the last six months of the fiscal year.

(2) Heirs shall be entitled to exercise this right within thirty days of the date of the final conclusion of the probate proceeding.

#### *Section 459.*

#### *Section 460.*

Upon the extinction of an agricultural leasehold, the land and other leased things shall be returned in a condition that allows immediate and proper continuance of production.

## *Miscellaneous Provisions*

### *Section 461.*

(1) Unless otherwise provided by legal regulation, the regulations on the lease of things shall be duly applied to leaseholds.

(2) Legal regulations can stipulate provisions on agricultural leaseholds that differ from those stipulated in this Act.

## **Chapter XXXIX**

### **Deposit**

#### *Section 462.*

(1) Under a deposit contract the depositary shall be obliged to safeguard things that are temporarily put into his care by the depositor.

(2) The depositary shall be entitled to refuse to accept a thing under conditions in which he could demand repossession of a deposited thing [Subsection (2) of Section 466].

### *Rights and Obligations of Parties*

#### *Section 463.*

(1) The depositary shall be obliged to safeguard a thing in the manner specified in the contract concluded therefor. He shall not use the thing or give it to another person to keep unless the depositor has consented thereto or unless it is necessary in order to protect the depositor from suffering any losses; if the depositary violates this prohibition, he shall be liable for all damages that would not otherwise have happened.

(2) The depositary shall be liable for the actions of a legitimately employed third person as if he had safeguarded the thing himself. However, if employment of a third person is required in order to protect the depositor from suffering any losses, the depositary shall not be liable for the employed person if he is able to prove that he has acted in a manner that is generally expected in the particular situation with regard to choosing, training, and supervising the third person.

#### *Section 464.*

(1) The depositary shall be required to render any service if it is expressly stipulated or necessitated by the nature of the deposited thing; in this case, the regulations on agency shall be applied.

(2) The depositary shall be obliged to notify the depositor with regard to all material events concerning the deposit; he shall be liable for damages originating from his failure to do so.

#### *Section 465.*

(1) The depositor shall pay an appropriate fee, unless the circumstances, particularly the relation of the parties, suggest that the depositary has assumed custody without any consideration. The fee shall be due subsequently and shall include all costs commonly attached to safeguarding deposits.

(2) The depositary shall be entitled to demand reimbursement for his other necessary expenses.

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(3) The depositary shall be entitled to demand reimbursement for necessary expenses, even if the deposit is otherwise gratuitous.

(4) In order to secure his due claims for fees and expenses, the depositary shall hold a lien on the depositor's property that is in his possession as a consequence of the deposit.

## *Termination of Deposit Contracts*

### *Section 466.*

(1) The depositor shall be entitled to reclaim a thing at any time. If the duration of the deposit is not stipulated in the contract, a depositary shall be entitled to terminate the deposit contract at any time by giving fifteen day's notice.

(2) If the duration of a deposit can be inferred from the contract, a depositary shall return the thing when this period lapses and the depositor shall take it back. Prior to this, the depositary shall be entitled to demand recovery of a thing only if safeguarding the thing is not part of his profession and circumstances of which he was unaware at the time the contract was concluded have emerged to render further custody of the thing considerably difficult for him.

(3) If a remunerated deposit is terminated before expiration of the time that can be inferred from the contract, the depositor shall pay a commensurate proportion of the fee. If deposit has been terminated by the depositary, the depositor shall be entitled to deduct from the fee his damages originating from the premature return of the thing.

(4) A thing deposited shall be returned at the place of custody. If the depositor refuses to receive the thing, the regulations governing responsible custody shall be applied.

## *Special Types of Deposit*

### *Section 467.*

(1) Hotels shall be liable for damages suffered by guests because of the loss, damage, or destruction of their things, unless the hotel is able to prove that the damages are the result of an unavoidable cause beyond the control of the hotel's employees and guests or that the damages have been caused by the guest himself.

(2) Liability shall apply to damage to things put by guests in places that are designated or usually used for this purpose or in their rooms and to things he has handed over to an employee of the hotel whom he could believe to be authorized to receive his things.

(3) Hotels shall be liable for valuables, securities, and cash - and the liability shall be unlimited - only if

a) the hotel has expressly taken possession of the thing for safekeeping;

b) the hotel has expressly refused to take possession of the thing for safekeeping;

c) damages have occurred due to a cause for which the hotel is liable in accordance with the general rules and regulations. In such cases, the burden of proof lies with the guest.

### *Section 468.*

(1) A hotel shall not be able to limit or exclude its liability validly.

(2) The extent of indemnification can be limited by legal regulation. Limitation shall not apply to those cases in which a guest proves that the hotel has not proceeded in a manner that can generally be expected in the particular situation; nor shall there be any limit on liability for valuables, securities, and cash.

### *Section 469.*

Guests shall report any and all damages immediately. If the report is not filed, the hotel shall be liable for damage in accordance with the general rules and regulations, but the burden of proof shall rest with the guest.

### *Section 470.*

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Hotels hold liens on the things that guests bring to the hotel for their claims originating from lodging. The regulations governing lessors' liens shall be duly applied to this lien.

*Section 471.*

(1) The regulations governing hotel liability shall be applied to the liability of baths, cafés, restaurants, theaters, and similar establishments as well as cloak room operators, with the following exceptions:

a) the liability of the enterprise shall apply only to the things that are usually taken to such establishments by their patrons or visitors;

b) if there is an appropriate place provided for patrons and visitors for the safekeeping of their things, the enterprise shall be liable only for damages to things deposited in such place.

(2) These limitations on liability shall be disregarded if a patron or visitor is able to prove that the enterprise has not proceeded in a manner that can generally be expected in the particular situation.

*Section 472.*

If the object of deposit is cash or another replaceable thing and if according to the agreement the depositary is required to return a thing of the same kind and quantity, the regulations governing loans shall be applied with the difference that the regulations governing deposit shall be authoritative regarding the place and date of returning a thing and that only counterclaims related to the deposit can be setoff against the claim of a depositor.

*Section 473.*

(1) Unless otherwise provided by legal regulation, the provisions of this Chapter shall be applied to bank deposits, securities deposits, court deposits, and deposits in public collections.

(2) Regulations regarding deposit contracts for warehousing things that differ from the provisions of this Chapter can be established in favor of depositors.

## **Chapter XL**

### **Agency. Impromptu Agency**

#### *1. Agency*

*Section 474.*

(1) Agency contracts are concluded to oblige an agent to carry out the matters entrusted to him.

(2) An agent must fulfill the principal's instructions and represent his interests regarding the authority conferred upon him.

(3) If a contract is required for the performance of agency, the same formal requisites shall be necessary for the agency as those stipulated in law for contracts to be concluded on the basis of the agency.

#### *Rights and Obligations of Parties*

*Section 475.*

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(1) The agent shall proceed in person; he shall, however, be entitled to employ other persons if the principal has agreed thereto or if it is implied by the nature of the agency. An agent shall be liable for the persons he employs as if he himself had carried out the matter entrusted to him.

(2) The agent shall also be entitled to employ other persons if it is required in order to protect the principal from sustaining injury. In such cases, the agent shall not be liable for the persons employed if he is able to prove that he has acted in a manner that can generally be expected in the particular situation in respect of choosing, instructing, and supervising such persons.

(3) If the agent has not been authorized to employ other persons, he shall be liable for damages that would not have occurred without the employment of such person.

(4) If a person employed by the agent has been selected by the principal, the agent shall not be responsible for this person if he is able to prove that he has acted in a manner that can generally be expected in the particular situation with regard to instructing and supervising the person.

#### *Section 476.*

If the principal issues imprudent or incompetent instructions, the agent shall call the principal's attention to the matter. If the principal insists on the instructions despite the warning, he shall be liable for the damages sustained on account of the instructions.

#### *Section 477.*

(1) The agent shall inform his principal of his activities and the state of affairs upon request or, if necessary, even without a request, particularly if employment of another person has become necessary or if the instructions need to be changed due to the occurrence of new circumstances.

(2) The agent shall be entitled to depart from the principal's instructions only if it is essential for the principal's interest and if there is no time to notify the principal in advance. In such a case the principal shall be notified without delay.

(3) The agent shall notify the principal as soon as he fulfills his agency.

#### *Section 478.*

(1) The principal shall pay an appropriate fee, unless the circumstances, or the relationship between the parties suggest that the agent has assumed the agency without any consideration.

(2) The agent shall be entitled to demand remuneration even if his actions brought no results. The principal shall be entitled to reduce the remuneration or refuse to pay it if he is able to prove that success was not achieved in part or in whole for a reason for which the agent is responsible.

(3) If the contract is terminated before the agency has been fulfilled, the agent shall be entitled to demand an appropriate fraction of the fee for his activities.

(4) Fees shall be payable at the time a contract is extinguished.

#### *Section 479.*

(1) Costs that arise in connection with the handling of a matter shall be borne by the principal. The agent shall not be obliged to advance any costs.

(2) At the time the contract is extinguished, the agent shall be obliged to settle his accounts and give the principal everything that has been acquired for the purpose of fulfilling his agency or as a result of doing so, except for what he has lawfully used in the course of his agency.

(3) Upon termination of contract the principal shall exonerate the agent from obligations assumed against third persons on the basis of the agency and shall reimburse his necessary and useful expenses.

#### *Section 480.*

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In order to secure their claims for expenses and remuneration, the agent shall hold a lien on the property of the principal that comes into his possession in consequence of the agency.

## *Extinction of Agency*

### *Section 481.*

The contract shall be terminated even if the agency has not been fulfilled, if

- a) either party cancels the contract by notice;
- b) either party dies or, if a legal person, is dissolved, unless the dissolved legal person has a legal successor;
- c) the principal becomes partially or fully incompetent or if the agent becomes incompetent;
- d) the object of the agency becomes obsolete.

### *Section 482.*

(1) If the agency is terminated for a reason that is inherent in the person of the principal, termination shall take effect on the date on which the agent credibly acquires knowledge of the cause of termination.

(2) In the event of cancellation or the principal's death or loss of legal competency, the agent shall take measures as it is necessary to protect the interests of the principal even after the cancellation of the contract as long as the principal or its legal successor is unable to tend to the business at hand.

### *Section 483.*

(1) The principal shall be entitled to abrogate the contract with immediate effect at any time; the principal, however, shall be obliged to uphold the obligations already assumed by the agent.

(2) The agent shall also be entitled to abrogate the contract at any time; however, the period of notice must be sufficient for allowing the principal to handle the matter. In the event of the principal's grave breach of contract, abrogation can have immediate effect.

(3) If the agency is canceled without substantial grounds, the damages that are caused shall be indemnified, unless the agency is gratuitous and the period of notice is sufficient for allowing the principal to handle the matter.

(4) Any limitation or exclusion of the right of cancellation shall be null and void; however, the parties shall be entitled to agree on the limitation of the right of cancellation with regard to continuous agencies.

## *2. Impromptu Agency*

### *Section 484.*

A person proceeding in a matter on behalf of another person without being authorized thereto by agency or otherwise shall be obliged to handle the matter as required by the interest and probable intent of the person in whose favor he has intervened.

### *Section 485.*

(1) Intervention in the affair of another person without authority shall be considered fitting and proper if it is in conformity with the interest and probable intent of the other person, especially if the intervention saves him from loss or injury.

(2) Intervention is fitting and proper in order to avert life threatening situations even against the will of the person whose life is endangered, prevent or avert extensive potential hazards even against the will of the owner or another duly authorized person, or fulfill the obligation to provide support even against the will of a person who is obliged to provide support.

*Section 486.*

(1) An impromptu agent shall immediately inform the person in whose favor he has intervened; otherwise, he shall be subject to the same obligations as an agent.

(2) If intervention by an impromptu agent has been fitting and proper, he shall be entitled to the rights of an agent, irrespective of whether his intervention was successful or not.

(3) If intervention has not been fitting and proper, an impromptu agent shall not be entitled to demand remuneration; he shall be entitled to demand reimbursement for his expenses only in accordance with the regulations governing unjust enrichment, and he shall be liable for all damages that would not have occurred without his intervention.

*Section 487.*

If a person, knowing he has no right to do so, involves himself in the affairs of another person, it shall be possible to enforce the rights proceeding from impromptu agency. If these rights are enforced, the proceeding person shall be entitled to include his expenses according to the regulations governing unjust enrichment.

## **Chapter XLI**

### **Carriage of Goods**

*Section 488.*

(1) Under a carriage contract the carrier shall be obliged to transport the consignment to its destination and deliver it to the consignee in return for remuneration.

(2) The contract shall come into existence when carriage is undertaken. Legal regulation can provide that the acceptance of a consignment shall be construed as undertaking carriage.

### *Bill of Lading*

*Section 489.*

(1) If contracting parties make out a bill of lading regarding the carriage of goods it shall prove conclusion of a carriage contract and/or receipt of the consignment. The date of receipt, until proven to the contrary, shall be the day on which the carrier signs (stamps) the bill of lading.

(2) Having a bill of lading attached, with the formal and content requirements specified, can be rendered mandatory by law.

(3) Upon the consignor's request, a carrier shall sign (stamp) and surrender a duplicate of the bill of lading or proof of receipt of the consignment to the consignee.

### *Rights and Obligations of Parties*

*Section 490.*

(1) The consignor shall package the consignment in order to provide sufficient protection for the goods and prevent it from jeopardizing the physical safety or property of others.

(2) If the packaging discernibly fails to meet these requirements the carrier may undertake carriage of the consignment only if the consignor so requests in writing and the consignment does not jeopardize the physical safety or property of others.

## *Section 491.*

(1) The consignor shall furnish the carrier with all of the documents required for the carriage of goods and official inspection in transit. The carrier shall be entitled to refuse to accept the consignment until the above documents have been furnished.

(2) The carrier shall be obliged to use the furnished documents as appropriate.

## *Section 492.*

(1) The carrier shall be obliged to present the means of transport at the proper place in due time in a condition suitable for carriage and, unless otherwise provided by legal regulation, to commence carriage without delay.

(2) Unless otherwise provided by legal regulation, loading and unloading the consignment shall be the responsibility of the consignor and consignee, respectively.

(3) If the carrier is late in presenting the means of transport before accepting the consignment, the consignor shall be entitled to cancel the contract and demand

a) compensation for damages for the expenses incurred by the unsuccessful attempt to load the goods and for any extra freight charges paid to another carrier;

b) the value of the consignment if the goods are lost or destroyed (damaged, perished) or compensation for any loss in value due to the consignment being delivered late. The consignor, however, shall only be entitled to enforce this right if he has informed the carrier of the nature of the consignment or if the carrier was or should have been aware thereof.

(4) If the consignor is late in loading, the carrier shall be entitled to demand indemnification and even rescind the contract.

## *Section 493.*

(1) The carrier must strive to achieve economy and safety in the transportation of goods.

(2) The carrier shall be obliged to follow the instructions of the consignor. However, the right of consignors to give instructions can be limited by legal regulations.

(3) In the event of receiving instructions that jeopardize the economical, expeditious, and safe performance of carriage, the carrier shall immediately apprise the consignor thereof.

(4) If the consignor repeats the instructions in writing, the carrier shall execute them at the risk and expense of the consignor; however, he shall refuse to comply with such instructions if compliance would jeopardize the safety or property of others.

## *Section 494.*

(1) If carriage is in any way obstructed, the carrier shall immediately ask the consignor for instructions; this obligation of carriers can be limited or excluded by legal regulations.

(2) The consignor shall be obliged to pay the portion of freightage up to the point at which obstruction occurred and the carrier's expenses, if he would profit by not paying them and if the carrier proves that the obstruction had come about due to a cause arising outside the scope of carriage.

## *Section 495.*

(1) The carrier shall be obliged to notify the consignor immediately of all important circumstances related to carriage. The carrier shall be liable for damages caused by his failure to do so.

(2) The obligation to provide notification shall prevail particularly if the consignment has been damaged, if a significant delay in the completion of carriage can be expected, if the consignment is exposed to potential danger or if it cannot be delivered.

(3) The obligation to provide notification can be limited by legal regulations.

## *Section 496.*

(1) The consignor shall be entitled to rescind from the contract prior to the commencement of carriage; however, he shall be obliged to indemnify the carrier for damages.

(2) The consignor shall be entitled to reserve all rights to the consignment until it is delivered or the consignee receives it. Such entitlement shall include the consignor's right to stop the consignment in transit, have it returned, or designate another consignee or destination.

(3) The consignor shall bear responsibility for any extra freightage and expense incurred when subsequent orders are issued.

## *Section 497.*

(1) The carrier shall be obliged to notify the consignee immediately of the arrival of the consignment. After notification has been received, the consignment shall be available to the consignee.

(2) In order to ensure the safety of the consignment and make the appropriate preparations for receiving it, the consignee shall be entitled to give instructions to the carrier prior to receiving notification of the arrival of the consignment. The carrier shall be bound by such instructions only if they do not contradict the consignor's instructions. Any expenses that arise because of these instructions shall be borne by the consignee. The right of consignees to give instructions can be limited by legal regulations.

(3) If the consignment cannot be delivered or if the consignee does not settle claims due on delivery, the carrier shall immediately notify the consignor and safeguard the consignment according to the regulations governing responsible custody.

(4) The consignee as well as the consignor shall be entitled to enforce claims against the carrier after receiving notification of the arrival of the consignment. Enforcement by either party shall terminate the other party's right.

## *Section 498.*

(1) The carrier shall be entitled to delegate other carriers to forward the consignment.

(2) Carriers participating in carriage shall be subject to joint and several liability; if, however, other carriers have been appointed by the consignor, each carrier shall be subject to individual liability.

(3) If two or more carriers are involved, each carrier shall be entitled to demand due payment for freightage and expenses. The first carrier, however, shall be entitled to enforce the claims of subsequent carriers for freightage and expenses against the consignor, while the last carrier shall be entitled to do so with regard to the claims of the preceding carriers against the consignee.

## *Section 499.*

(1) The carrier shall be entitled to demand payment of freightage and the requisite and useful expenses spent on carriage.

(2) The carrier shall hold liens for freightage and expenses on things that come into his possession in connection with carriage.

(3) The carrier shall also enforce liens to secure the claims of other carriers that are known to him; carriers who fail to do so shall be liable to the preceding carriers as a surety.

(4) The carrier shall be entitled to satisfy those of his claims secured by lien by selling the encumbered property commercially, without legal action, and in precedence of other lienors.

## *Liability of Carriers and Consignors*

## *Section 500.*

(1) The carrier in delay shall be obliged to pay a penalty in proportion to the duration of the delay but no more than the sum of freightage. The aggrieved party shall be entitled to demand indemnification in excess of the

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aforementioned penalty if the carrier, aware of the interest attached to punctual delivery, has agreed in writing to meet the deadline and is unable to prove that the delay is the result of an unavoidable cause beyond his control.

(2) Such limitation of liability shall not apply to private carriers.

#### *Section 501.*

The carrier shall be liable for damage originating from the total or partial loss, destruction, or breakage of the consignment during the period between receipt and delivery, unless the damage has occurred on account of

- a) an unavoidable cause beyond carrier's control,
- b) an inherent property of the goods in consignment,
- c) a packaging deficiency that is undetectable from the outside,
- d) loading by the consignor or unloading by the consignee, or
- e) the fact that the consignor, the consignee, or an attendant ordered by them did not proceed in a manner that can generally be expected in the particular situation, inclusive of those cases in which the consignor did not furnish the required documents or filled them out improperly or did not inform the carrier of the extraordinary value of the consignment, a fact that could not be discerned from the outside.

#### *Section 502.*

(1) The carrier shall be liable for proving that damage has been caused by an unavoidable event beyond his control. The consignee shall be liable for proving that the damages do not derive from an inherent property of the goods in consignment.

(2) The carrier shall be obliged to prove that the damage is a consequence of a packaging defect, while the consignor and the consignee shall be obliged to prove that the damage does not result from a packaging defect.

(3) If loading and unloading have been done by the consignor and consignee, respectively, they shall be liable for proving that the damage did not occur as a consequence of loading or unloading.

(4) The consignor or the consignee shall be liable for proving that he or the attendant ordered by him has proceeded in a manner that can generally be expected in the particular situation.

#### *Section 503.*

(1) In the case of total or partial loss or destruction of the consignment, the carrier shall not be entitled to demand freightage or an appropriate fraction thereof, and he shall be obliged to pay compensation for the value of the lost thing.

(2) If the consignment has been damaged, the carrier shall be obliged to pay compensation for the depreciation of value or eliminate the damage, at his discretion.

(3) If the carrier willfully causes damage, he shall be liable for all damages therefrom.

#### *Section 504.*

(1) If, at the time of receipt the consignment is apparently incomplete or damaged, claims against the carrier shall be enforced immediately. Failure to do so shall result in forfeiture of rights.

(2) Claims can be filed against the carrier within three days of receipt and only if the defect or damage was not apparent at the time of taking charge.

(3) The period of limitation for claims originating from carriage contracts shall be one year. The initial date of this period shall be the date on which the consignment is delivered or the date on which it should have been delivered.

(4) If enforcement of a claim originating from a carriage contract is contingent upon a preliminary proceeding, the writ initiating the proceeding shall not interrupt the period of limitation; however, the duration of the proceeding cannot be included in the period of limitation.

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*Section 505.*

(1) If the consignor has instructed the carrier in writing to accept a consignment in spite of defective packaging, he shall be obliged to indemnify the carrier or other persons for damages caused by the defect, and he shall also be liable for any damage that appears in the consignment. Nonetheless, if the carrier accepts the consignment in spite of packaging that is apparently defective from the outside without written instructions from the consignor, the carrier and the consignor shall bear the damages suffered by the carrier or other persons because of the deficient packaging on a fifty-fifty basis.

(2) The carrier shall be liable vis-a-vis third persons; they shall, however, be entitled to demand compensation from the consignor in accordance with the general rules and regulations governing liability.

## *Other Provisions*

*Section 506.*

(1) If the consignment is to be conveyed beyond the nation's borders, the provisions of this Chapter can only be applied if an international treaty, convention, or regulation does not provide otherwise.

(2) The provisions of this Chapter can only be applied to the carriage contracts of shipping and air freight companies if an international treaty, convention, or regulation does not provide otherwise.

(3) Unless otherwise provided by legal regulation, the regulations governing professional services shall be duly applied to the carriage of persons.

## **Chapter XLII**

### **Commission Agency**

*Section 507.*

Under a commission agency contract the commission agent is obliged to conclude a sales contract in his own name, in favor of the principal in return for a commission.

*Section 508.*

(1) If the commission agent concludes a sales contract under better conditions for the principal as defined in the commission agency contract, the benefit originating therefrom shall be due to the principal.

(2) If the commission agent makes a sale for a price below the one specified in the commission agency contract, he shall reimburse the principal for the difference, unless he is able to prove that the sales contract could not have been concluded at the stipulated price, that by making the sale he saved the principal from losses, and that he was not able to notify the principal in time.

(3) If the commission agent substantially departs from the conditions stipulated in the commission agency contract, the principal shall be entitled to reject the sales contract, unless the commission agent has effected purchase at a higher price than stipulated but agreed to reimburse the difference.

*Section 509.*

(1) A sales contract concluded under a commission agency contract shall entitle and bind the commission agent against the party contracting with the commission agent.

(2) The commission agent shall be responsible to the principal for performance of all of the obligations that are undertaken by his contracting partner in the contract.

(3) Creditors of a commission agent shall not effect claims in respect of  
a) claims against the party contracting with the commission agent and due to the principal;

- b) things bought by the commission agent in the case of consignment purchases;
- c) amounts of money received by the commission agent and kept or handled separately, which are apparently due to the principal.

#### *Section 510.*

- (1) The commission agent can himself conclude a sales contract with the principal.
- (2) The commission agent's claim for commission shall not be affected if the sales contract with the principal is concluded by the commission agent himself.

#### *Section 511.*

- (1) The commission agent shall be entitled to receive a commission only if the sales contract has been performed.
- (2) The commission shall include the expenses usually involved with consignment, but it shall not include expenses related to carriage.
- (3) The commission agent shall be entitled to demand reimbursement for those of his necessary and useful expenses that are not included in the commission; however, he shall only be entitled to demand those of his substantiated expenses otherwise included in the commission only if the sales contract has not been performed due to reasons within the commission agent's control.

#### *Section 512.*

- (1) Prior to the conclusion of a sales contract, the principal shall be entitled to terminate the contract by notice with immediate effect, and the commission agent by fifteen-days' notice.
- (2) Any limitation or exclusion of the right of rescission shall be null and void.

#### *Section 513.*

- (1) A contract in which a commission agent assumes an obligation to conclude a contract other than a sales contract shall also be deemed a commission agency contract.
- (2) Unless otherwise provided by this Chapter, the regulations governing agency must be applied to commission agency.

## **Chapter XLIII**

### **Forwarding**

#### *Section 514.*

- (1) Under a forwarding contract the forwarding agents shall be obliged to conclude, in his own name and in favor of the principal, carriage and other contracts necessary for forwarding goods and performing other tasks related to forwarding the goods; and the principal shall be obliged to pay the forwarding fee appropriate therefor.
- (2) The contract shall come into existence when the agency is accepted.

### *Rights and Obligations of Parties*

#### *Section 515.*

(1) With regard to selecting a carrier or other forwarding agent, establishing the route of shipment, and performing his other obligations; forwarding agents must strive to achieve economy and the safety of the consignment.

(2) The forwarding agent shall follow the instructions of the principal. If the forwarding agent receives any instructions that jeopardize the economical and safe forwarding of the goods, he shall immediately apprise the principal thereof. If the principal repeats the instruction in writing, the forwarding agent shall execute it at the risk and expense of the principal.

(3) The forwarding agent shall be required to insure the consignment only if so instructed by the principal.

#### *Section 516.*

(1) The forwarding agent shall be entitled to perform carriage himself, and he shall also be entitled to employ other forwarding agents; the other forwarding agents, however, will not have any legal relationship with the principal.

(2) The forwarding agent shall be directly liable for the activities of the other forwarding agents whom he has chosen; however, if the other forwarding agents are employed on the instructions of the principal, these forwarding agents shall be directly liable to the principal.

#### *Section 517.*

(1) The forwarding agent shall enforce the principal's claims against the carrier; the forwarding agent shall be liable for all damages incurred by the principal as a result of his violation of this obligation.

(2) This provision shall not affect the principal's right to enforce his claims himself.

#### *Section 518.*

(1) The forwarding agent shall be entitled to demand reimbursement for forwarding fees and for his necessary and useful expenses incurred in the course of forwarding.

(2) The forwarding agent shall be entitled to any freightage discount granted subsequently and to the referral fees paid by carriers for goods carried with the forwarder's participation.

#### *Section 519.*

(1) The forwarding agent shall hold liens for his fees and expenses on those of the principal's things that have come into his possession in connection with a forwarding contract as well as those things that are at his disposal through the documents in his possession.

(2) The forwarding agent shall also enforce liens for the claims of other forwarding agents known to him; if the forwarding agent fails to do so, he shall be liable to the preceding forwarding agents as a surety.

(3) The forwarding agent shall be entitled to satisfy those of his claims secured by lien, after the carrier but before the other lienors, by selling the encumbered property commercially, without legal action.

### *Liability of Forwarding Agents*

#### *Section 520.*

(1) The forwarding agent shall be liable for damages incurred in the consignment within the scope of his forwarding activity as carriers and liable, moreover, for other damages in accordance with the general provisions.

(2) The forwarding agent shall only be liable, as carriers, for damages incurred within the scope of carriage, if

a) he carries the cargo himself, or

b) he has had the consignment forwarded together with the goods of others, on the same means of transportation and without separating it (collective freight), and if the damages occurred in the process thereof.

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(3) The period of limitation for claims originating from forwarding contracts shall be one year. The initial date of this period is the date on which the consignment is conveyed to the carrier, or if it has already been conveyed, the initial date of the period of limitation for carrier's liability.

## *Other Provisions*

### *Section 521.*

(1) The regulations governing forwarding shall also be applied if a forwarding agent concludes a contract required for forwarding goods in his principal's name and, furthermore, if he is delegated to receive delivery of the goods; in this case, he shall also be liable for the protection of the consignee's interests.

(2) If the forwarding agent has concluded a contract required for forwarding goods in his principal's name, he shall be entitled to enforce the principal's claims against the carrier only if he has been expressly authorized by the principal to do so.

(3) Unless otherwise suggested by this Chapter, the regulations governing commission agency shall be duly applied to the contracts and other legal acts of forwarding agents, and the regulations governing carriage shall be applied to the handling, protection, and forwarding of goods.

## **Chapter XLIV**

### **Bank and Credit Relations**

#### *1. Credit and Loan Contracts*

### *Section 522.*

(1) Under a bank credit contract the financial institution assumes an obligation to maintain a specific line of credit, for a commission, in favor of the other contracting party and, if the conditions stipulated in the contract are satisfied, to conclude loan contracts or effect other credit transactions charged to the line of credit.

(2) Bank credit contracts shall only be valid if concluded in writing.

### *Section 523.*

(1) Under a loan contract the financial institution or other creditor shall be obliged to place a certain amount of money at the disposal of the debtor, and the debtor shall be obliged to repay the loan in accordance with the contract.

(2) Unless otherwise provided by legal regulation, the debtor shall pay interest if the creditor is a financial institution (bank loan).

### *Section 524.*

(1) The creditor shall be entitled to refuse disbursement of loans if able to prove that, due to any material changes in their circumstances or those of the debtor after conclusion of a contract, performance of the contract can no longer be expected or if able to prove that termination with immediate effect can be applied on the grounds of factors that emerge after the conclusion of the contract (Section 525).

(2) The debtor shall not be obliged to accept the loan; in such cases, however, the debtor shall indemnify the creditor for damages arising from the conclusion of the contract. The creditor, if a financial institution, shall not be entitled to indemnification; however, the debtor shall be obliged to pay a commission for the period during which the creditor, either by virtue of a credit contract or without one, keeps the loan amount available in the debtor's favor.

### *Section 525.*

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(1) The creditor shall be entitled to cancel the loan account with immediate effect, if

- a) it is impossible to use the loan for the purpose specified in the contract;
- b) the debtor uses the loan for a purpose other than that stipulated in the contract;
- c) the collateral provided for the loan has significantly depreciated in value and the debtor has not supplemented it at the request of the creditor;
- d) the deterioration of the debtor's financial standing or his conduct, if it is aimed at depleting funds reserved as collateral, jeopardizes repayment of the loan;
- e) the debtor has committed some other serious breach of contract.

(2) The creditor, if a financial institution, shall be entitled to cancel the loan account with immediate effect above and beyond the cases described in Subsection (1), if

- a) the debtor becomes insolvent;
- b) the debtor has deceived the financial institution by stating false facts, concealing data, or acting in some other way in determining the loan amount, if it has influenced the determination of the loan amount;
- c) the debtor, notwithstanding a warning, impedes any investigation concerning collateral, security, or the realization of the purpose of the loan, including those cases in which the debtor fails to meet the disclosure obligation assumed in the contract or prescribed by a legal regulation.

#### *Section 526.*

(1) The loan contract concluded for an open term can be terminated by fifteen days' notice.

(2) The creditor's right of recovery concerning the loan balance shall commence in accordance with the maturity or maturities specified in the contract or, if the contract has been terminated, when the term of notice lapses.

#### *Section 527.*

(1) If the debtor uses the loan amount for a purpose other than that stipulated in the contract in a manner for which he is accountable, the legal consequences resulting from the breach of contract shall be applicable as of the date of this use.

(2) If the debtor is obliged to pay interest, the interest shall be paid subsequent to each quarter, and/or when repayment of the loan becomes due.

#### *Section 528.*

(1) The regulations governing loans and interests shall also be duly applied if the subject of the loan is not money but some other fungible.

(2) Unless otherwise prescribed by legal regulation, the regulations governing bank credits and bank loans shall also be applied to loans that a financial institution extends in a name other than its own or from funds other than its own.

(3) The detailed regulations on bank credit and bank loan contracts are laid down in specific other legislation.

## *2. Bank Account and Deposit Contracts*

#### *Section 529.*

(1) Under a bank account contract the financial institution shall assume an obligation to manage and keep records of the cash assets of the other contracting party (account holder), execute proper payment and transfer orders from these assets, and furnish statements to the account holder regarding any sums debited or credited to his account as well as the account balance.

(2) The financial institution shall be entitled to use the money that comes into an account.

(3) Depletion of funds shall not constitute termination of a checking account contract.

*Section 530.*

Under a deposit contract the financial institution shall be obliged to pay interest on the money deposited by the contracting party and repay the deposited sum as specified in the contract.

### *3. Current Account Contracts*

*Section 531.*

(1) Under a current account contract the parties shall assume an obligation to settle their mutual monetary claims originating from a specific legal relationship in a consolidated account.

(2) The parties shall not be entitled to dispose of any of their claims in the current account; their right of disposal applies to the current account balance. Only the current account balance at the date of the writ of execution can be attached.

(3) The period of limitation on claims placed on current accounts shall commence on the initial date of the period of limitation on the balance.

*Section 532.*

(1) The parties shall be entitled to contest the balance or the receivables and payables that serve as the basis for computing the balance, in writing, within fifteen days of notification.

(2) If the parties have not contested the balance or if they have agreed on the items contested, or if the court has ruled on the contested subject matter; the individual claims shall cease to exist and shall be substituted by the current account balance.

### *4. Savings Deposit Contracts*

*Section 533.*

(1) Under a savings deposit contract the financial institution shall be obliged to receive money from depositor, record it in a savings book or some other document, and repay such money as specified in the contract.

(2) The savings deposit account must be registered under the holder's name. Savings deposits can also be placed in credit institutions in favor of another beneficiary.

(3) The financial institution shall pay interest on savings deposits for the period of deposit or - in respect of a prize drawing deposit - on the winnings, consistent with the results of the drawing.

(4) No period of limitation shall apply to claims for the repayment of savings deposits or the payment of interest or prize winnings.

*Section 534.*

*Section 535.*

(1) The detailed regulations on savings deposits are laid down in specific other legislation.

(2) The regulations governing savings deposit contracts shall be duly applied to cash instruments deposited by private persons under bank account contracts.

(3) The provisions of Subsection (4) of Section 533 and the regulations governing bank account contracts shall be applied to the bank account contracts of private persons, inclusive of their unincorporated business associations, subject to the obligation of contracting pursuant to other legal regulations.

## **Chapter XLV**

## Insurance

### 1. Common Provisions

#### *Section 536.*

(1) Under an insurance contract the insurer shall be obliged to pay a certain amount of money or perform another service upon the occurrence of a specific future event (insurance event), and the insured or the other contracting party shall be obliged to pay an insurance premium therefor.

(2) Insurance event means, among others:

- a) an event of loss defined in the contract;
- b) death or attainment of a certain age;
- c) an accident causing injury, disability, or death.

#### *Section 537.*

(1) Insurance contracts shall come into existence through a written agreement between the parties.

(2) A contract shall also be created if an insurer does not respond to an offer within fifteen days. In such a case, the contract shall be created retroactively as of the date on which the offer is conveyed to the insurer or its representative.

(3) If a contract that is concluded without the explicit statement of the insurer deviates from the insurance regulations, the insurer shall be entitled to make a written proposal within fifteen days to have the contract amended in accordance with the regulations. This period shall be calculated as of the day on which the proposal is conveyed to the insurer's office that is authorized to issue insurance policies. If the contracting party does not accept the offer or does not respond to it within fifteen days, he shall be entitled to terminate the contract in writing with thirty-days' notice within fifteen days of receiving the refusal or the proposal for amendment.

#### *Section 538.*

(1) The written agreement or the insurer's statement of acceptance shall be replaced by the issuance of an insurance policy (certificate, insurance stamp). If the conditions of the policy differ from the party's offer and if this difference is not contested by the party within fifteen days, the contract shall be created in accordance with the contents of the policy. This provision can be applied to significant discrepancies only if the insurer expressly points out such discrepancies to the contracting party in writing at the time the policy is delivered. In the absence of a warning notice, a contract shall be created in accordance with the contents of the offer.

(2) Contracting parties shall be entitled to demand delivery of an insurance policy even if the contract has already come into existence in another manner.

#### *Section 539.*

(1) Insurance coverage shall take effect on the day following the date on which the contracting party makes the first premium payment to the insurer by transfer or in cash, the date on which an agreement is reached on a premium payment deferment, or the date on which the insurer files for court action regarding premium payments.

(2) If the contracting party has made a premium payment to the insurer's representative, the premium shall be considered to be received by the insurer on or before the fourth day following the date of payment; however, the contracting party shall be entitled to prove that the premium had been received earlier.

#### *Section 540.*

(1) For the purpose of an insurance contract, the insured must disclose all of the circumstances of which he was or must have been aware that are important in terms of providing insurance coverage. The party shall satisfy his disclosure obligation by truthfully filling out the questionnaire furnished by the insurer. Leaving the questions unanswered shall not in itself constitute a violation of the disclosure obligation.

(2) The parties shall be entitled to agree that the insured and the contracting party are obliged to promptly report any changes regarding any of the important conditions specified in the contract to the insurer in writing.

(3) In the event of a breach of the obligation to make disclosure and report changes, the obligation of the insurer shall not take effect, unless it is proved that the insurer was aware of the concealed or undisclosed circumstance at the time the contract was concluded or that such circumstance had no influence on the occurrence of the insurance event.

#### *Section 541.*

(1) If the insurer becomes aware of any circumstance of significance regarding a contract only after the contract has been concluded and, furthermore, if the insurer is notified of changes in any of the important circumstances specified in the contract, the insurer shall be entitled to make a written proposal, within fifteen days, to amend the contract or, if it cannot undertake indemnification according to the regulations, terminate the contract with thirty days' notice.

(2) If the insured party does not accept the proposal for amendment or fails to respond to it within fifteen days, the contract shall be terminated on the thirtieth day following the day on which the proposal for amendment was communicated. The insured party shall be warned of this consequence when he submits the proposal for amendment.

(3) If an insurer does not exercise these rights, the contract shall remain in force with its original contents.

#### *Section 542.*

(1) The first insurance premium shall be due at the time the contract is concluded, and all subsequent premiums shall be due on the first day of the period to which they pertain.

(2) A one-time premium shall be paid at the time the contract is concluded.

(3) The parties shall be entitled to deviate from these provisions by an agreement.

#### *Section 543.*

(1) A contract shall be extinguished on the thirty-first day following the premium payment due date if the overdue premium is not paid and the insured has not received a deferment, or if the insurer has not filed for court action regarding the premium payment.

(2) Insurers shall be entitled to postpone termination of a contract and the time limit for filing court action by an additional thirty days, if they issue the insured a written payment notice by communicating this circumstance within the aforementioned thirty-day period.

#### *Section 544.*

(1) The occurrence of an insurance event must be reported to the insurer within the period specified in the regulations. The required information must be provided, and the contents of the report and the information shall be made available for inspection.

(2) The insurer's obligation shall not take effect if the insured party fails to perform the obligations prescribed in the previous Subsection, and, as a consequence, important circumstances become undetectable.

#### *Section 545.*

(1) If the insurance event occurs, its occurrence becomes impossible, or interest in insurance ceases before the insurance coverage becomes effective; the contract or the relevant part of it shall not become operative.

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(2) If occurrence of an insurance event becomes impossible or interest in the insurance ceases during the term of the contract, the contract or the relevant part of it shall be extinguished on the last day of the month.

*Section 546.*

(1) If an insurance event occurs, the insurer shall be entitled to demand payment of the premium for an entire year, unless the parties have agreed on a shorter period.

(2) In other cases of contract termination, insurers shall be entitled to claim payment of the premium until the last day of the last month in which it bears risks.

*Section 547.*

(1) If a third person concludes an insurance contract on behalf of the insured, the contracting party shall bear the obligation to pay the premium, the third person must direct legal statements to the insured and he shall be obliged to

make the appropriate legal statements up to the occurrence of an insurance event or the entry of the insured (Section 550).

(2) Both the contracting party and the insured shall be obliged to make disclosure and report any changes. Neither of them shall be entitled to plead ignorance of any circumstance or change that either one had neglected to disclose or report to the insurer though he must have known about it and should have disclosed or reported it.

## 2. Property Insurance

*Section 548.*

Only persons who are interested in protecting a property or those who conclude contracts on behalf of an interested person shall be entitled to conclude property insurance contracts.

*Section 549.*

(1) The coverage shall not exceed the true value of the insured property. Any agreement for coverage that is higher than the true value of the insured property shall be null and void, and the premium shall be reduced accordingly.

(2) These provisions notwithstanding, an insurance policy can include provisions for the estimated future value of a property, and/or for the value of restoration or replacement.

*Section 550.*

If a contract was not concluded by the insured, the insured shall be entitled to supplant the contracting party at any time with a written statement addressed to the insurer. In this case the insured and the contracting party shall be subject to joint and several liability regarding the premiums due for the current insurance period.

*Section 551.*

(1) The parties shall be entitled to cancel any contract that was concluded for an open term at any time.

(2) The parties shall be entitled to include a clause in the contract to exclude the right of termination for a maximum of three years.

(3) If a contract covers a period of over three years and the parties do not stipulate that it can be abrogated before the specified period lapses, either of the parties shall be entitled to abrogate the contract as of the fourth year. If the contract is canceled, the insurer shall, according to the regulations, be entitled to demand repayment of any premium discounts granted to the insured based on a commitment for an extended contract term (term discount).

(4) A contract must be terminated in writing at the end of the insurance period. The period of notice is thirty days.

## *Section 552.*

(1) If only a part of the due premium is paid, the contract shall remain in force, with the same amount of coverage, for a term with which the premium paid corresponds.

(2) If a contract is terminated for nonpayment of the premium, the insurer shall, according to the regulations, be entitled to demand repayment of the term discount.

## *Section 553.*

(1) If an insurance event occurs, the insurer shall be obliged to settle within the period defined by the regulations.

(2) If the amount of coverage is less than the value of the property, the insurer shall be obliged to make compensation in such a manner that the amount of insurance is proportionate to the value of the property.

## *Section 554.*

Insurance coverage for the current insurance year shall be reduced by the amount of compensation that is paid, unless the contracting party supplements the annual premium accordingly. This provision shall not apply to liability and accident insurance policies.

## *Section 555.*

(1) The insured shall be obliged to mitigate damages within their control. The parties shall be entitled to agree on what needs to be done to prevent and mitigate the damages to be covered by the insured.

(2) The cost of mitigating damages shall be borne by the insurer even if mitigation of damages has been unsuccessful.

(3) If the amount of coverage is lower than the value of the property, the insurer shall be obliged to reimburse the cost of mitigating damages in such a manner that the amount of insurance is proportionate to the value of the property.

## *Section 556.*

(1) An insurer shall be exempt from its payment obligation if it is able to prove that damages have been caused unlawfully, either willfully or by gross negligence, by

- a) the insured and/or the contracting party,
- b) a relative living in their household,
- c) employees and/or agents of the insured who are employed in the positions listed in the regulations,
- d) a legal person, members or bodies of the insured listed in the regulations.

(2) Regulation can tie the exemption of the insurer only to the conduct of senior executives and employees, agents, members, or bodies working in positions that are involved in handling the insured property.

(3) These provisions must also be applied to any breach of the obligation to prevent and mitigate damages.

## *Section 557.*

(1) Following the occurrence of an insurance event, the insured shall be entitled to implement any changes regarding the condition of the insured property within a time limit stipulated by regulation only to the extent that is necessary for mitigating damages.

(2) If, as a consequence of any change greater than what is permitted, it becomes impossible to clarify the basic circumstances from the point of view of assessing the payment obligation of the insurer, the insurer's obligation shall not be effective.

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*Section 558.*

(1) The insurer, upon payment of indemnification, shall become entitled to the rights of the insured with regard to the person responsible for damages, unless this person is a relative living in the same household as the insured.

(2) If the right to claim compensation for damages is only partially assigned to the insurer and the insurer files a lawsuit against the person responsible for damages, the insurer shall, at the request of the insured, proceed at the same time to enforce the claims of the insured as well. The insurer shall be entitled to enforce the claims of the insured contingent upon an advance on expenses.

(3) If an insurer and an insured file for joint action to enforce their claims and the indemnification that is received does not cover both claims, the insured shall enjoy priority.

(4) If the insured property is recovered, the insured shall be entitled to make a claim on it; in this instance, however, the amount received in settlement shall be repaid.

## *Liability Insurance*

*Section 559.*

(1) The insured party shall be entitled, under a liability insurance contract, to request the insurer to exempt him, up to the limit specified in the contract, from paying for damages for which he is legally liable.

(2) The insurer must pay the amount of settlement to the aggrieved person; however, the aggrieved person shall not be entitled to enforce his claim directly against the insurer. The insured shall only be entitled to request the insurer to pay him if he settles the aggrieved person's claim.

(3) The willful or grossly negligent conduct of the insured party shall not exempt the insurer with regard to the aggrieved person. The insurer, however, shall be entitled to demand reimbursement from the insured for the amount paid in those cases of willful conduct or gross negligence defined in the contract that result in damage, unless the insured is able to prove that the conduct of the person who caused the damage was not unlawful.

(4) An agreement between the insured and an the aggrieved person shall be operative with respect to the insurer only if the insurer has acknowledged it, while a court ruling against the insured shall be operative only if the insurer has participated in the lawsuit, provided for the insured person's legal representation, or he has waived the above.

## *3. Life Insurance*

*Section 560.*

(1) The following can be named beneficiary of a life insurance contract:

- a) a person named in the contract;
- b) a holder of a bearer policy;
- c) an heir of the insured if no beneficiary has been named in the contract and no bearer policy has been issued.

(2) A contracting party shall be entitled to replace the original beneficiary at any time by designating another in a written statement addressed to the insurer. If the contracting party is not the insured, the written consent of the insured shall be required for such action.

(3) Designation of a beneficiary shall become inoperative if the beneficiary dies before the occurrence of the insurance event.

*Section 561.*

(1) The written consent of the insured shall be required for concluding or amending a life insurance contract if he himself does not conclude it. If the insured is a minor and the contract is not concluded by a parent having legal custody, the guardian's approval shall be required for the validity of the contract.

(2) If an insurance contract is concluded without the approval of the insured, the section in which the beneficiary is named shall be null and void; in such a case, the insured or his heir shall be construed as the beneficiary; he shall,

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however, reimburse the expenses of the contracting party, including premium payments, from the settlement he receives on account of it.

(3) The insured shall be entitled to revoke his approval for conclusion of a contract at any time in writing. If approval is revoked, the contract shall be terminated at the end of the insurance period, unless the insured enters into the contract based on the written approval of the contracting party.

#### *Section 562.*

(1) The insured shall be entitled to enter into a contract based on the approval of the contracting party at any time; approval of the insurer is not required for such entry.

(2) The insured shall be entitled to replace the contracting party by issuing a statement to the insurer before the contract is terminated due to cancellation or default in premium payments.

(3) In such cases, the insured and the contracting party shall be subject to joint and several liability for premium payments due for the current insurance period.

#### *Section 563.*

(1) The insurer, if it subsequently gains knowledge of any important circumstances that existed at the time the contract was concluded, shall be entitled to exercise the rights originating therefrom only during the first five years of the life of the contract.

(2) The insurer's obligation shall take effect notwithstanding an infringement of the disclosure obligation, if the insurance event occurs more than five years after the conclusion of the contract.

#### *Section 564.*

(1) The insurer shall be entitled to file a lawsuit to enforce its claim for premium payments in the first year. The insurer shall only be entitled to exercise this right after the first year if the insured makes any payment in that year, or if they agree on deferred payments.

(2) If the insurer has issued a policy, it shall be obliged to pay the sum insured only upon the return of the policy.

#### *Section 565.*

(1) If a contract is terminated for any reason without payment of the sum insured, the insurer shall pay a part of the premiums paid in, as defined in the regulations (repurchase value).

(2) In the event of nonpayment of premium, the contract shall remain in force with the sum insured reduced accordingly; however, the insured shall be entitled to demand termination of the contract and payment of the repurchase value.

(3) The insurer shall be exempt from payment of the sum insured, if the insured dies due to the willful conduct of the beneficiary; in this case the repurchase value can be claimed by the heirs, and the beneficiary shall not have a share therefrom.

(4) A contract shall be terminated without payment of the sum insured and the insurer shall refund the premium reserves instead of the repurchase value if the insured dies

- a) during the act of, or in connection with, willfully committing a felony offense, or
- b) by the act of suicide committed within two years of the conclusion of the contract.

## *4. Accident Insurance*

#### *Section 566.*

(1) The regulations governing life insurance shall be applied to accident insurance policies with respect to

- a) the approval of the insured if he is not the contracting party [Subsection (1) of Section 561];

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b) the revocation of the insured's statement of approval and right of entry [Subsection (3) of Section 561];  
c) the designation and rights of the beneficiary [Section 560, Subsection (2) of Section 561];  
d) the exemption of the insurer if the death of the insured has been caused by the beneficiary of the insurance money [Subsection (3) of Section 565].

(2) The amount of coverage is not limited, and insurers shall not raise any claims against the persons liable for the damage.

(3) The parties shall be entitled to agree that the amount of coverage shall be modified upon a change in the profession of the insured, in accordance with the assumption of risk, even without an express agreement.

(4) The parties shall not be entitled to agree validly on limiting the right of cancellation.

(5) Concerning other issues, the regulations governing property insurance shall be applied to accident insurance.

## 5. Miscellaneous Provisions

### *Section 567.*

(1) The insurance regulations and the contract of the parties shall not deviate from the provisions of this Chapter to the disadvantage of the insured or the beneficiary unless expressly permitted by law. However, regulations can state that if an insurance event occurs in connection with specific extraordinary circumstances, the insurer shall not be obliged to perform.

(2) Different provisions can be established for carrier's insurance; the regulations governing property insurance shall be applied to reinsurance; however, parties can depart from these provisions.

(3) The regulations governing mandatory insurance and non-marketable risk insurance policies can be prescribed by legal regulation in a manner differing from the provisions of this Act.

## Chapter XLVI

### Associations

#### 1. Civil Associations

### *Section 568.*

(1) Under a memorandum of association for the foundation of a civil association the parties shall undertake the obligation to cooperate in business activities in order to achieve their common goals and to place the material contributions necessary for this at their common disposal. The parties shall be entitled to establish such associations, even without material contributions, in order to promote their common economic interests and coordinate their activities to that end.

(2)-(3)

(4) Any agreement to relieve any member of the association from personal participation shall be null and void. If, however, the association has a member that is a legal person or an unincorporated economic association, the contract can stipulate that such member shall only be obliged to make a material contribution.

### *Section 569.*

(1) All material contributions shall become the joint property of the members. The memorandum of association can provide that their material contributions or a specific portion thereof shall be given over to common use.

(2) Interest or remuneration on a material contribution or remuneration for personal involvement resulting from membership cannot be validly stipulated.

## *Section 570.*

(1) Disbursement of a material contribution or its value can be demanded only when the association is dissolved or the member leaves the association.

(2) A material contribution given over to common use shall not be transferred or encumbered without the consent of the other members.

(3) Only that share to which a member is entitled if the association is dissolved or if the member leaves shall be used to cover the claims of the member's creditors. If a creditor files to have this share attached, he shall be entitled to exercise the right of termination that is customarily due the member, but he shall not be entitled to demand that the member's share be delivered in kind.

## *Section 571.*

(1) Unless there is any provision in the memorandum of association to the contrary, any profits and losses exceeding the material contribution shall be equally divided among the members. The share of ownership of the things acquired in the course of operations that are in joint ownership shall be equal, unless otherwise provided by the memorandum of association. Any agreement excluding a member from profits or losses shall be null and void.

(2) Accounts shall be settled annually.

## *Section 572.*

(1) Each member shall be entitled to manage affairs.

(2) Any member entitled to manage the association's affairs must be construed as being entitled to represent the other members within the scope of such management. The right of representation can be revoked by a majority of members even if the representative has been appointed by the memorandum of association.

(3) Inadequate management by any member can be protested by the other members; the dispute shall be resolved by the majority of the members. However, a unanimous decision shall be required for any deviation from the memorandum of association and for affairs outside the normal sphere of activities of the association.

(4) The provisions of this Act on co-ownership shall be applied to the possession, use, utilization, and disposal of joint property, unless otherwise provided by the memorandum of association. However, the members shall not be

entitled to control their shares of the property, and the termination of joint ownership can be demanded only upon the dissolution of the association or if the member leaves the association; any agreement to the contrary shall be null and void.

## *Section 573.*

(1) Participation of a member in specific affairs can be banned by the unanimous decision of the other members.

(2) Any member excluded from the management of specific affairs or from representation shall be entitled to oversee all of the association's affairs; any agreement to the contrary shall be null and void.

## *Section 574.*

Members shall bear joint and several liability for debts originating from the association's activities and for compensating third parties for damages caused by such activities.

## *Section 575.*

(1) Any of the members shall be entitled to terminate an association established for an open term by giving a three-month notice (ordinary notice). If the date of expiration falls on an inopportune day, the other members shall, by unanimous decision, be entitled to extend the term of notice by no more than three additional months.

(2) Members shall be entitled to terminate an association by notice and with immediate effect if any of the other members provides a substantiated reason therefor, particularly if there is a serious violation of the memorandum of

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association or if any member displays conduct that largely jeopardizes further cooperation with that member or the achievement of the association's objectives.

*Section 576.*

(1) In the case of a member's death, termination of a member without a legal successor, or termination by ordinary notice, the remaining members shall be entitled to decide to continue the operation of the association.

(2) In the case of a notice with immediate effect, an association shall not be continued; any agreement to the contrary shall be null and void.

*Section 577.*

The association shall be terminated

- a) if it has achieved its objectives or if achievement is no longer possible;
- b) if the term for which it was established lapses, unless the association is continued by the members;
- c) upon the death of a member, the termination of a member without a legal successor, or by ordinary notice, unless the members continue the association;
- d) by notice with immediate effect;
- e) by termination of the association by joint decision;
- f) if the number of members falls to one.

*Section 578.*

(1) In the case of further continuation of an association, the heir or legal successor who does not become a member of the association by virtue of an agreement with the members and the member who terminates the contract by notice shall be entitled to monetary payment. Payment shall be made pursuant to the regulations governing the termination of associations.

(2) In the cases defined in Subsection (1), material contributions made available for common use shall, unless otherwise provided by the memorandum of association, be returned in kind.

(3) Any member leaving the association, including a legal successor or, in accordance with the regulations governing liability for the debts of a decedent, the heir of a deceased member, shall be liable for the debts incurred up to the expiration of the period of notice or the occurrence of death or legal succession.

*Section 578/A.*

(1) The accounts shall be settled at the time the association is terminated. The provisions governing business management and representation shall be applied to the final settlement of accounts.

(2) After the debts originating from the activities of the association have been settled, the members' material contributions shall be returned in kind, if possible. Surpluses and deficits shall be distributed in accordance with the regulations governing the settlement of profits and losses.

## *2. Building Societies*

*Section 578/B.*

(1) Under a building society contract the parties shall be obliged to cooperate in order to construct buildings and to make the necessary material contributions available for common disposal.

(2) Building societies shall be created by written contract.

(3) The parties shall assume a contractual obligation to regulate their proprietary relations; in particular, to establish the completed building as a condominium and, in the course thereof, to assign contractually specified parts of the building (residential and non-residential areas) to the specific ownership of certain members of the building

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community and to assign the other parts of the building to the common ownership of the members (proportionate to their specific ownership).

*Section 578/C.*

(1) Construction costs shall be borne by the members of the building society in proportion to the part of the building they own.

(2) A person designated in the contract shall be entitled to manage the affairs of the building society and to represent it. The scope of his authority shall be specified in the contract. The members shall be entitled to protest against inadequate management or representation, and all disputes shall be resolved by majority vote. Members shall be entitled to revoke the authority for management or representation by majority vote.

*Section 578/D.*

(1) A member of a building society who seriously endangers the completion of construction by a breach of contract or by other conduct, in spite of receiving a written warning, can be excluded from the society by a majority vote of members. Exclusion shall be communicated in writing. An excluded member shall be entitled to appeal the exclusion in court within thirty days of notification; failure to do so within the above deadline shall result in forfeiture of this right.

(2) An excluded member shall, within thirty days of notification of exclusion, be entitled to transfer his ownership share of the construction site and the members' other common property to a new member, chosen by him and approved by a majority of members, who is joining the building society. If an excluded member files for legal action, the thirty-day time limit shall commence as of the effective date of the court decision. If an excluded member does not transfer his share of ownership within thirty days, the new member, who wishes to join the building society and has been chosen by a majority of the members, shall have an option to purchase the share for the value prevailing at the time of exclusion.

(3) Any of the members shall be entitled to rescind the contract by giving a three-month notice. In such a case, the provisions of Subsection (2) shall be duly applied.

(4) A contract can be terminated by notice with immediate effect if a member transfers his share of ownership to a new member, accepted by a majority of members, who is joining the building society.

*Section 578/E.*

A building society shall be terminated, if

a) construction has been completed and the members have settled their proprietary relations (by establishing a condominium, founding a real estate management cooperative, or some other way), or

b) the members have jointly decided to terminate it.

*Section 578/F.*

The provisions of Sections 569, 570, Subsection (3) of Section 578 and Section 578/A. shall also be duly applied to building societies.

### *3. Financial Relations of Domestic Partners*

*Section 578/G.*

(1) Domestic partners shall acquire joint title to property in proportion to their contribution for acquisition while cohabiting. If the ratio of contribution cannot be determined, it shall be considered equal. Work done in the household shall be construed as contributing to acquisition.

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(2) These provisions shall also apply to the financial relations of other relatives, with the exception of spouses, living in the same household.

## 4. Unincorporated Business Associations

### *Section 578/H.*

(1) Unincorporated business associations are general partnerships and limited partnerships.

(2) By concluding the articles of partnership for the foundation of an unlimited partnership the parties shall undertake the obligation to pursue joint business activities under unlimited and joint and several liability and to make the assets necessary therefor available for the company.

(3) By concluding the articles of partnership for the foundation of a limited partnership the parties shall undertake the obligation to pursue joint business activities in such a manner that liability for the company's obligations shall be unlimited for at least one member (general partner) and joint and several for the other member or members (limited partner).

(4) The detailed regulations on unincorporated business associations shall be prescribed in a separate law.

## 5. Condominium Owners' Association

### *Section 578/I.*

(1) The co-owners' organization created by charter on the basis of condominium ownership to maintain and remodel the building shall exercise the ownership rights and take on the burdens of common ownership.

(2) The detailed regulations governing condominiums shall be determined by a separate law.

## Chapter XLVII

### Donation

#### *Section 579.*

(1) Under a donation contract one of the parties shall be obliged to grant his own property to the other party as a gratuitous material bequest.

(2) Contracts for the donation of real properties shall only be valid if concluded in writing.

#### *Section 580.*

The donor shall be entitled to refuse performance of the donation contract if he is able to prove that his performance of the contract can no longer be expected due to a significant change in his circumstances - particularly in his relationship to the donee - after the offer has been made or the contract has been concluded.

#### *Section 581.*

(1) The donor shall only be liable for any significant deficiency in the donee's acquisition of property or in the subject matter of the gift or for damages sustained in the course of giving the gift if the donee is able to prove that the donor's conduct is willfully or seriously negligent. The donor shall also be liable for damages if he fails to inform the donee regarding any important characteristics of the gift that are unknown to the donee.

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(2) The donor shall be liable, in accordance with the general provisions, for any damage caused to the donee's other property in connection with the gift.

*Section 582.*

(1) The donor shall be entitled to reclaim a still existing gift insofar as the gift is essential for his livelihood and the return of the gift does not jeopardize the livelihood of the donee.

(2) If the donee or a relative of his living in the same household commits a serious legal injury to the detriment of the donor or one of his close relatives, the donor shall be entitled to reclaim the gift or demand the replacement value of the gift.

(3) The donor shall also be entitled to reclaim a gift or demand its replacement value if the assumption that provided the sole basis for giving the gift subsequently and permanently disappears and if the gift would never have been given without this assumption.

(4) A gift cannot be reclaimed if the gift itself or its replacement value no longer exists at the time the legal injury is done or if the donor has condoned the injury. The donor's failure to reclaim the gift for some time without an appropriate reason shall be construed as forgiveness.

(5) Gifts of common value shall not be reclaimed.

## Chapter XLVIII

### Lending Arrangements

*Section 583.*

(1) Under a lending agreement the lender shall be obliged to give temporary possession and use of a thing gratuitously to the borrower for a period defined in the contract, and the borrower shall be obliged to return the same thing upon termination of the contract.

(2) The lender shall be entitled to refuse performance of the contract if he is able to prove that, due to significant changes in his or the borrower's circumstances after the contract has been concluded, performance of the contract can no longer be expected or that termination with immediate effect can be applied on the grounds of factors emerging after the conclusion of the contract [Subsection (4) of Section 585].

*Section 584.*

(1) The borrower shall be entitled to use the thing according to its original purpose. The borrower shall be liable for all damages resulting from improper or non-contractual use.

(2) The borrower shall not be entitled to lend the borrowed thing to a third person without the consent of the lender. Should this provision be violated, the borrower shall be liable for damages that would not otherwise have occurred.

(3) Any increment in the thing shall belong to the lender.

(4) The cost of maintaining the thing shall be borne by the borrower. The borrower shall, in accordance with the regulations governing impromptu agency, be entitled to compensation from the lender for other expenses concerning the thing.

*Section 585.*

(1) A lending agreement shall be terminated

- a) upon expiration of the time stipulated or necessary for the purpose of the lending arrangement;
- b) by cancellation or when the thing is returned;
- c) upon the death of the borrower;
- d) by giving notice with immediate effect.

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(2) If the term of the lending agreement cannot be determined, the lender shall be entitled to cancel the agreement by giving fifteen days' notice. Should the lender die, his heir shall be entitled to exercise the right of cancellation, even if cancellation were not otherwise possible.

(3) The borrower shall be entitled to offer to return the thing at any time, and the lender shall not be entitled to refuse to take the thing back without good cause.

(4) The agreement can be terminated by notice with immediate effect, if

- a) the specified object of the lending arrangement has become impossible;
- b) the borrower damages the thing, uses it in an improper or non-contractual manner, lends it to a third person without permission, or if there is a danger that the borrower will not return the thing intact;
- c) the relationship between the parties has deteriorated due to the conduct of the borrower;
- d) the lender must have the thing for reasons unknown at the time the contract was concluded.

## Chapter XLIX

### Support and Life-Annuity Contracts

#### 1. Support Contracts

##### *Section 586.*

(1) Under a support contract one of the parties shall be obliged to provide proper support for another. Even legal persons shall be entitled, as obligors, to conclude support contracts.

(2) Support contracts must be concluded in writing.

(3) The obligation to provide support shall include general care, medical treatment, nursing, and burial.

(4) Contracts shall remain in force until the death of the dependent. The obligation to provide support shall devolve, according to the regulations governing liability for the debts of a decedent, if the support provided up to the death of the obligor does not cover the consideration.

##### *Section 587.*

(1) If a dependent transfers title to his real property to the provider in exchange for support, the right of support can be recorded in the real estate register.

(2) If the right of support has been recorded in the real estate register, the dependent shall be entitled, in the event of non-performance of the obligation to provide support, to seek satisfaction from the real property in accordance with the regulations governing attachment.

(3) If the support provider alienates the real property, the new owner shall be obliged to endure satisfaction.

##### *Section 588.*

##### *Section 589.*

(1) The court shall be entitled to amend a support contract in consideration of the interests of both parties.

(2) If support in kind has become impossible as a consequence of the conduct or circumstances of one of the parties, either party shall be entitled to request the court to transform the contract into a life-annuity contract either permanently or until the aforementioned circumstances are eliminated or, if the object of the contract cannot thereby be realized, to terminate the contract.

(3) The court shall terminate contracts by providing due satisfaction to the parties.

##### *Section 590.*

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(1) Unless otherwise suggested by the circumstances, no consideration is due for discharging the obligations that proceed from a support contract concluded by close relatives.

(2) A gratuitous support contract shall be terminated upon the death of the provider.

(3) The provider shall be entitled to demand termination of a gratuitous support contract if performing it or transforming it into a life-annuity contract would impose extreme burdens on him due to developments in his financial situation after the contract was concluded.

(4) The regulations governing donation shall also be duly applied to gratuitous support.

## *2. Life-Annuity Contracts*

### *Section 591.*

(1) Under a life-annuity contract one of the parties shall be obliged to provide a specific sum of money or a specific quantity of agricultural produce periodically.

(2) The regulations governing support contracts shall be duly applied to life-annuity contracts.

## **Chapter L**

### **Prizes. Public Commitments**

#### *1. Prizes*

##### *Section 592.*

(1) If a person publicly offers a prize to anyone who achieves a certain performance or accomplishment, he shall be obliged to give the prize to the person who satisfies the requirements stipulated therefor. This person shall be bound by this obligation even if the performance or accomplishment is achieved irrespective of the prize offer.

(2) If two or more persons jointly satisfy the specified requirements, the prize shall be divided among these persons in proportion to their participation or, if this cannot be determined or if the requirements have been met separately by two or more persons, in equal shares.

(3) Withdrawal of a prize offer shall only be valid if the person making the offer has expressly reserved the right to do so and withdrawal is effected before the outcome is achieved with at least the same degree of publicity that accompanied the prize offer.

#### *2. Public Commitments*

##### *Section 593.*

(1) Private individuals, legal persons, and unincorporated business associations shall be entitled to undertake, in writing, the obligation to provide financial contribution(s) for a specific public purpose without any consideration. The gratuitous nature of the contribution shall not be affected by any stipulation that is connected to the memory of a deceased person and whose fulfillment also requires a financial contribution.

(2) The obligor shall be entitled to set forth the conditions according to which his contribution is to be applied to the specified purpose. It shall also be possible to stipulate a condition that the contribution shall be made for the specified purpose by indicating the name of the obligor.

(3) The obligor shall also be entitled to designate the person on whose behalf the contribution is to be utilized.

##### *Section 594.*

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(1) If the obligor has not appointed a body to utilize the contribution for the specified purpose, the court shall appoint one on the basis of the public prosecutor's petition.

(2) If the appointed body fails to utilize the contribution for the specified purpose, the public prosecutor shall also be entitled to enforce the claims arising therefrom.

*Section 595.*

(1) A commitment to perform a one-time contribution can only be revoked prior to performance and only if performance of the contract can no longer be expected due to significant changes that have occurred in the obligor's circumstances since he undertook the obligation.

(2) The obligor shall, at any time, be entitled to withdraw a commitment to make regular contributions for an indefinite period of time.

(3) Unless otherwise provided by legal regulation, a contribution that has already been made cannot be reclaimed.

*Section 596.*

(1) An obligation shall be extinguished if the obligor dies, if the purpose for which the contribution was to be utilized has been accomplished, or if accomplishment is no longer possible.

(2) If an obligation has been extinguished because the purpose has been accomplished or has become impossible, any unused contributions shall be returned to the obligor.

*Section 597.*

## ***PART FIVE***

### ***SUCCESSION***

#### **Title I**

#### **GENERAL REGULATIONS ON THE LAW OF SUCCESSION**

#### **Chapter LI**

#### **General Provisions**

#### ***Estate, Inheritance, and Succession***

*Section 598.*

The estate of a person shall devolve upon an heir in its entirety after the person's death (succession).

*Section 599.*

(1) Succession can occur under the law or by testamentary disposition.

(2) If a testamentary disposition has been left by a decedent, it shall determine the order of succession. If there is no testamentary disposition, the law shall provide for the order of succession.

(3) If there is no other heir, an estate shall pass to the state. The state is a legal heir.

#### ***Disqualification from Inheritance***

## *Section 600.*

A person shall be deprived of inheritance if he

- a) dies before the decedent;
- b) cannot legally acquire the estate at the time of descent and distribution;
- c) is undeserving of the inheritance;
- d) has waived his right to the inheritance;
- e) has been excluded from the inheritance or disinherited by the decedent;
- f) has disclaimed the inheritance.

## *Section 601.*

(1) The spouse of a decedent shall not be entitled to inherit by law if they were separated at the time of descent and distribution and it is conspicuously demonstrated by the circumstances that restitution of conjugal community was not expected.

(2) A decedent's spouse shall not be entitled to inherit by virtue of a will dated prior to their separation if they were already separated at the time of descent and distribution, unless the circumstances suggest that the decedent had not revoked his testamentary disposition because he had intended to bequeath a disposition to his spouse regardless of their separation.

(3) If the spouses were separated at the time of descent and distribution, disinheritance of the decedent's spouse can only be alleged by a person who, as the result of the spouse's disqualification, would himself inherit or would be exempted from an obligation or other burden to which he is bound by virtue of the testamentary disposition.

## *Unworthiness*

### *Section 602.*

(1) A person is unworthy of inheritance if he has

- a) attempted to take the decedent's life;
- b) willfully obstructed the decedent in freely manifesting his last will, frustrated the enforcement of the will, or attempted either of these;
- c) attempted to take the life of the legal beneficiary of the inheritance or the life of a person named devisee in the decedent's will with the intention of receiving a part of the inheritance.

(2) Unworthiness shall not be taken into consideration if the conduct leading to unworthiness, regardless of the person against whom it was directed, has been pardoned by the decedent or the person against whom it was directed.

(3) Unworthiness can only be alleged by a person who, as the result of the unworthy person's disinheritance, would himself inherit or would be exempted from an obligation or other burden to which he is bound by virtue of the testamentary disposition.

## *Disclaiming Inheritance*

### *Section 603.*

(1) Persons eligible for legal inheritance shall be entitled to disclaim their inheritance in whole or in part in a written contract concluded with the decedent.

(2) A disclaimer can be contested, in the same manner as a will, for lack or deficiency of a contractual intent.

### *Section 604.*

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(1) A disclaimer shall only affect the descendants of the disclaimant if it is so stated in the agreement or if it occurs in return for satisfaction reaching the forced share of inheritance.

(2) In the event of doubt, a disclaimer in favor of a specific person shall only apply if that specific person stands to inherit from the decedent. In the event of doubt, any disclaimer made by one of a decedent's descendants shall only be applied in favor of the other descendants.

*Section 605.*

(1) Any disclaimer of an inheritance shall, unless otherwise agreed, also constitute a disclaimer of the forced share of inheritance. However, disclaiming a forced share of inheritance shall not imply disclaiming what comes down to the disclaimant under other titles of inheritance.

(2) In the absence of any agreement to the contrary, a disclaimer shall also extend to property by which the disclaimant's share later increases as a consequence of the disqualification of another person and, likewise, to property acquired by the decedent after the disclaimer has been made, unless the acquisition results in such an extraordinary increase in the estate of the decedent that the disclaimant, had he been aware of the increase, would not have issued a disclaimer.

## *Provisions on Disqualification*

*Section 606.*

The provisions governing disqualification from inheritance shall also be applied to right of survivorship, the forced share of inheritance, and legacies with the exception that the disqualification of the legatee shall, if there has been no substitution in this regard, mean the exemption of the person obliged by the devise.

## **Title II**

### **INTESTATE SUCCESSION**

#### **Chapter LII**

#### **Legal Heirs**

#### *Intestate Succession in General*

*Section 607.*

- (1) The child of a decedent shall be the primary legal heir.
- (2) Two or more children shall succeed in equal shares.
- (3) In the place of a child or a more distant descendant disqualified from inheritance, the children of a disqualified person shall succeed in equal shares.
- (4) If there is no descendant, the spouse shall succeed.

*Section 608.*

- (1) If there is no descendant or spouse, the parents of the decedent shall succeed in equal shares.
- (2) In the place of a parent disqualified from inheritance, the descendants of such parents shall succeed in the same manner in which the descendants of a child succeed in the stead of the child.

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(3) If a parent disqualified from inheritance has no descendant, the other parent alone or his descendants shall succeed.

*Section 609.*

(1) If there are no descendants, spouse, parents, or descendants of parents; the grandparents of the decedent shall become legal heirs in equal shares.

(2) In the place of a grandparent disqualified from inheritance, the descendants of the grandparent shall succeed in the same manner in which the descendants of a disqualified parent succeed in the stead of the parent.

(3) If a disqualified grandparent has no descendant, the mate of such grandparent shall succeed in his stead, and if he too is disinherited, his descendants shall succeed in his place.

(4) If either set of grandparents has been disqualified and their descendants are not eligible for inheritance in their place, the entire estate shall be inherited by the other set of grandparents or their descendants.

*Section 610.*

If neither the grandparents of the decedent nor their descendants are eligible for inheritance, more distant ancestors of the decedent shall become legal heirs in equal shares.

## *Lineal Inheritance*

*Section 611.*

(1) If the legal heir is not a descendant of the decedent, any property that has come down to the decedent from an ancestor by inheritance or gratuitous bequest shall be subject to lineal inheritance.

(2) Property inherited or gratuitously acquired from a brother or sister or his descendant shall also be subject to lineal inheritance if the property had been inherited or gratuitously received by the brother or sister or their descendant from their and the decedent's common ancestor.

(3) Whosoever would put forth an inheritance claim under this title must prove the lineal nature of the property.

*Section 612.*

(1) A parent shall succeed to property that has come down to the decedent from him or one of his ancestors. Descendants of a disqualified parent shall succeed in his place according to the general provisions on intestate succession.

(2) If there is neither a parent who is entitled to succeed to a lineal property nor a parental descendant, the grandparent, and if there is no grandparent, a more distant ancestor of the decedent shall inherit the property that has come down to the decedent from him or one of his ancestors.

(3) If there is no lineal heir, lineal property shall be treated the same as the decedent's other property.

*Section 613.*

(1) The provisions on lineal inheritance shall not apply to

- a) lineal property that no longer exists at the time of the decedent's death;
- b) property that has replaced lineal property or was purchased for the value of the lineal property;
- c) gifts of common value.

(2) Substitution or compensation for the value of lineal property that does not exist at the time of the decedent's death (transferred, perished, consumed, etc.) shall not be effected.

(3) No claim can be filed, on the grounds of lineal inheritance, for furnishings and/or household accessories of common value against a surviving spouse after a marriage of fifteen years.

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*Section 614.*

- (1) Lineal property shall be surrendered in kind.
- (2) If surrender in kind appears to be impractical, the court shall be entitled to order payment of the monetary value of the lineal property.

## *Right of Survivorship*

*Section 615.*

- (1) The spouse of a decedent shall inherit beneficial interest in all property not otherwise inherited by him (right of survivorship).
- (2) If a spouse remarries, his beneficial interest shall cease to exist.

*Section 616.*

- (1) Only descendants shall be entitled to request any limitation of right of survivorship.
- (2) The right of survivorship can be limited at any time. Limitation, however, can only exist to the degree that the limited right provides for the needs of the spouse, in consideration of the property he has inherited, his own property, and the earnings from his labor.
- (3) Both spouses and descendants shall be entitled to request the redemption of a right of survivorship. Redemption of the right of tenancy or the furnishings and household accessories of the dwelling in which the spouse lives cannot be requested.
- (4) A spouse is entitled to a share of the redeemed property, either in cash or in kind, which he, as a legal heir, would, like the child of the decedent, inherit together with the descendants. With respect to lineal inheritance, the spouse is entitled to one-third of the lineal property.
- (5) In the course of the probate proceeding, or in the absence thereof, redemption must be requested, within a year of the time of descent and distribution, from the notary public having competence to conduct the probate proceeding.

## *Provisions on Inheritance Concerning Adoption*

*Section 617.*

- (1) An adopted person shall, during the existence of adoption, succeed as a blood descendant of the adoptive parent.
- (2) Adoption shall not affect the adopted person's legal right to inherit from his blood relatives.
- (3) An adoptive parent or his relatives shall be the heir of the adopted person if he has no descendants and/or a spouse and if adoption did not cease to exist during the life of the adopted person, according to the regulations governing intestate succession.
- (4) If neither an adoptive parent nor his relative succeeds the adopted person, the adopted person's blood relatives shall be legal heirs.

*Section 618.*

Concerning secret adoptions, there is no legal inheritance between the adopted person and his blood relatives during the existence of adoption.

## *Pooling*

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*Section 619.*

(1) If several descendants succeed together, each heir shall add to the value of the estate the value of gratuitous donations received from the decedent during his lifetime if the decedent expressly stipulated consolidation or the circumstances suggest that the bequest was made under the obligation of consolidation (pooling).

(2) Gifts of common value and the support provided to descendants who are in need of support shall not be included in pooling even if the decedent expressly stipulates it.

*Section 620.*

(1) The hereditary share of each heir must be determined by dividing the consolidated total net value of the estate and all of the pooled gratuitous donations into appropriate shares, and the value pooled by each heir must be deducted from this.

(2) The value shall be determined on the basis of the value of the donation at the time it was given. If applying this value as a basis is gravely unjust to any of the concerned parties, the court shall determine the value in light of all of the circumstances.

*Section 621.*

If a person disqualified from inheritance has a descendant, this latter person shall be obliged to pool any donation received by the disqualified person. A donation received by an ancestor shall be deducted from the hereditary share of two or more descendants calculated on the basis of the pooled values in proportion to their shares of the estate.

*Section 622.*

If a value pooled by a co-heir reaches or exceeds the value of his hereditary share as calculated on the basis of pooled values, he shall be considered satisfied from the inheritance to be divided, but he shall not be compelled to refund any excess. In such a case, the donation of the co-heir who does not receive a share from the inheritance and that of the aforementioned co-heir shall not be included when dividing the estate among the other co-heirs.

## Title III

### SUCCESSION BY WILL

#### Chapter LIII

##### Wills

##### *Right to Make a Will*

*Section 623.*

(1) Testators shall be entitled to dispose of their property, or a part thereof, at the time of death by a will.

(2) Wills must be drafted in person.

##### *Types of Wills*

*Section 624.*

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(1) Testamentary disposition can be made by a public will or by a holographic will; disposition by a nuncupative will can only be effected in specific cases defined by law.

(2) Persons of limited capacity shall only be entitled to make public wills. Neither the consent of their legal representatives, nor the approval of a guardian shall be required for the wills of such persons to be valid.

(3) Blind or illiterate persons or persons who are incapable of reading or signing their names shall not be entitled to draft holographic wills.

## *Public Will*

### *Section 625.*

(1) A public will must be drafted before a notary public or a court.

(2) Public wills cannot be validly drafted before a person who is a relative, guardian, or conservator of the testator or the testator's spouse.

(3) Any bequest in favor of a person participating in the drafting of a public will or the relative, guardian, conservator, or ward of such person shall be null and void.

### *Section 626.*

The provisions regulating the validity of notarial deeds shall be applied to the formal requirements of public wills.

## *Holographic will*

### *Section 627.*

A holographic will can be validly made only in a language that the testator understands, reads, and writes.

### *Section 628.*

(1) A holographic will may be hand-written by the testator himself or by another person on his behalf.

(2) Type-writing shall not be considered one's own handwriting, even if typed by the testator himself.

(3) Private wills drafted in shorthand writing or another symbol or code writing other than normal writing shall be invalid.

### *Section 629.*

(1) A holographic will shall be valid if its testamentary competency, place, and date are indicated in the document itself and if the testator

a) writes it himself from the beginning to the end and signs it; or

b) signs it in the presence of two witnesses or, if he has previously signed it, declares the signature to be his own before the two witnesses, and if the will is also signed in both cases by the witnesses, indicating their capacity as such; or

c) signs and deposits it personally with a notary public either as an open document or a sealed document, specifically marked as a will.

(2) A holographic will consisting of several separate pages shall be deemed valid only if each page is numbered in sequence and signed by the testator and, if witnesses are needed for the validity of the will, also signed by both witnesses.

### *Section 630.*

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The witness' knowledge of the contents of a will and his awareness that he has participated in the drafting of a will are not conditions of the validity of a holographic will.

*Section 631.*

A holographic will shall be invalid if a witness is

- a) unable to verify the testator's identity;
- b) a minor or a person under a conservatorship that affects his competency;
- c) illiterate.

*Section 632.*

(1) Any bequest in favor of a witness of a holographic will or another participating person or one of their relatives shall be null and void, unless this section of the will is handwritten and signed by the testator himself.

(2) A bequest in favor of a witness or one of his relatives shall not be null and void if two witnesses other than the witness himself have participated in drafting the will.

## *Common Provisions on Holographic Wills*

*Section 633.*

Neither a public nor a holographic will shall cease to have effect if the document containing the will is destroyed for reasons beyond the control of the testator or if it cannot otherwise be found. However, if a holographic will has remained in the testator's possession but has not been found, it shall, until proven to the contrary, be presumed that the testator has destroyed it.

## *Nuncupative Will*

*Section 634.*

Nuncupative wills can be made by persons who are in an extraordinary life threatening situation and would not be able to make a written will at all or would only be able to make one with considerable difficulty.

*Section 635.*

(1) A nuncupative will shall be valid if a testator orally exhibits his will in its entirety in the presence of two witnesses in a language understood by the witnesses and concurrently announces that his oral statement constitutes his will.

(2) The restrictions concerning the identities of the witnesses of holographic wills and their interests and those of their relatives shall also govern nuncupative wills; however, a witness need not be literate for a nuncupative will to be valid.

## **Chapter LIV**

### **Contents of Wills**

#### *Devise*

*Section 636.*

- (1) A testator shall be entitled to name one or more devisees in his will.
- (2) A devisee is a person to whom a testator leaves his entire estate or a specific portion thereof.
- (3) In the case of doubt, a devisee shall be any person to whom a testator leaves one or more designated properties that constitute a significant part of the value of the entire estate if the recipient also shares in the debts and liabilities of the estate in accordance with the presumable will of the testator.

## *Relationship of Intestate and Testamentary Inheritance. Exclusion*

### *Section 637.*

- (1) If the shares of the devisees do not exhaust an entire estate, intestate succession shall be effected with respect to the remainder, unless otherwise provided by law or otherwise inferred from the will.
- (2) Testators shall be entitled to exclude their legal heirs or persons who could become their legal heirs from intestate succession, either by naming other persons as their heirs or by making an explicit statement in their wills. Exclusion need not be justified.
- (3) Persons eligible for a forced share of inheritance can also be excluded from any intestate succession exceeding the forced share of inheritance.

## *Determination of Hereditary Share. Right of Accretion*

### *Section 638.*

If a testator has named two or more heirs either for the entire estate, a part thereof, or a specific estate item and has not defined the size of their shares, the recipients shall succeed in equal shares.

### *Section 639.*

- (1) If a testator has named two or more devisees for the whole estate or a part thereof, thereby excluding intestate succession, and if a devisee becomes disqualified without having a substitute heir, the shares of the other devisees named for the same part of the estate shall be increased proportionately (right of accretion).
- (2) If a disqualified devisee is also the legal heir of the testator, the hereditary shares of the other devisees who are also legal heirs of the testator shall be increased proportionately on the basis of the right of accretion on condition that there is no alternate devisee for the disqualified person and none can be otherwise inferred from the will.
- (3) A devisee named for a specific object of inheritance shall have a right of accretion only as a result of the disqualification of another devisee named for the same object and only with respect to that object.

## *Alternate Devisees*

### *Section 640.*

- (1) A testator shall be entitled to name another person as devisee in the event a devisee is disqualified from inheritance (alternate devisee).
- (2) If a devisee is also the testator's legal heir, his descendant shall be considered his alternate devisee in the case of his disqualification, unless otherwise prescribed in the will.

## *Legacies and Enjoinders*

### *Section 641.*

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(1) A legacy is any property in an estate that is bequeathed directly to a specific person if such share is not regarded as inheritance.

(2) It shall also be a legacy if a testator obliges an heir to perform a material service for a legatee.

(3) A legacy can also be left to an heir (pre-legacy). A person who is himself a legatee can also be burdened by a legacy (sub-legacy). If there is any doubt, a legacy shall burden the heir.

(4) Legatees named jointly for the same service shall be entitled to the right of accretion in an orderly fashion under the same conditions as devisees named in respect of specific objects of inheritance.

#### *Section 642.*

(1) A testator shall be entitled to burden a person who receives a part of an estate with an obligation that no other person will become entitled to claim (enjoinder). Interested bodies shall be entitled to request the performance of a public interest enjoinder that consists of a service suitable for being the subject of a contract. Should there be any doubt, the heir shall be subject to the enjoinder.

(2) If it is probable that the testator wished to make a bequest contingent upon the discharge of an enjoinder, the person burdened with the enjoinder shall forfeit the bequest if he fails to discharge the enjoinder or if the discharge of the enjoinder becomes impossible for reasons within his control.

#### *Section 643.*

The provisions of testamentary inheritance shall be duly applied to legacies and enjoiners, unless it can be otherwise inferred from the relevant provisions.

## **Chapter LV**

### **Invalid and Inoperative Wills**

#### *Invalid Wills*

#### *Section 644.*

The wills of two or more persons included in the same document in any form shall be invalid.

#### *Section 645.*

(1) A testator's testamentary disposition according to which another heir shall, as of some event or a date, replace the previous heir in respect of the inheritance or a part thereof, shall be invalid. However, in the event of the death of the devisee named in the first place, a devise shall be valid as an alternate devise if the conditions thereof have been satisfied.

(2) This provision shall not preclude a legacy that is contingent on some condition or date. A person who has acquired a legacy shall not be entitled to dispose of it either inter vivos or mortis causa until the condition or date has occurred. Prohibition of alienation and encumbrance shall be recorded in the real estate register in respect of the real property serving as the legacy. This provision shall not affect the rights of a third person, acquired in good faith and for a consideration.

#### *Section 646.*

Naming a devisee not yet conceived at the death of the testator shall be invalid.

#### *Section 647.*

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(1) Unintelligible, impossible, or contradictory conditions shall be invalid. However, the invalidity of a condition shall not affect the validity of a testamentary disposition, unless it can be established that the testator would not have made the disposition without the condition.

(2) A testamentary bequest rendered contingent on an unlawful condition precedent shall be invalid, and an illegal condition subsequent must not be taken into account.

#### *Section 648.*

The will of a person placed under a conservatorship that precludes legal competency shall be valid if the reason for being placed under conservatorship ceases to exist by the time the will is drafted.

#### *Section 649.*

(1) A testamentary disposition shall be invalid if

a) the testator was mistaken concerning the contents of his statements or did not want to make a statement of such content at all;

b) the testator had been persuaded to make the statement by a mistaken assumption or some subsequently frustrated expectation;

c) the testator had been coerced into making the disposition by duress or unfair influence; provided in both cases that the testator would not otherwise have made the disposition.

(2) An invalid provision shall become valid if the testator subsequently approves it in the form prescribed for a will.

### *Inoperative Wills*

#### *Section 650.*

(1) Wills shall become inoperative if abrogated. Unless otherwise provided by law, the regulations governing the making of wills shall govern abrogation.

(2) If a the testator drafts a new will, the previous will shall be deemed abrogated. The dispositions of the previous will that are not in contradiction to the dispositions of the new will, if the contrary intention of the testator cannot be established, shall remain in force.

#### *Section 651.*

(1) A holographic will shall become inoperative if it is destroyed either by the testator, having testamentary capacity, or by another person with his consent, or if the testator reconciles himself to destruction beyond his control.

(2) A private will deposited with a notary public shall become inoperative if it is recovered by the testator, unless the deposited document is otherwise in conformity with the requisites of a holographic will.

(3) A nuncupative will shall become inoperative if the testator had the opportunity to draft a will in another form without any difficulty during a period of three consecutive months following the cessation of the situation that provided the conditions for making the nuncupative will.

### *Partially Invalid or Inoperative Wills*

#### *Section 652.*

If any disposition from among the several dispositions of a will is invalid or inoperative, it shall not affect the validity or effect of the other dispositions, unless otherwise provided by the testator.

## *Litigation of a Will*

### *Section 653.*

Allegation of a will being invalid or inoperative can only be made by a person who himself would inherit or be relieved of a burden if the will is declared invalid or inoperative.

### *Section 654.*

Beneficiaries shall be entitled to enforce their claims to have a will declared invalid or inoperative at any time.

## **Chapter LVI**

### **Contracts of Inheritance**

#### *General Regulations Governing Contracts of Inheritance*

### *Section 655.*

(1) Under a contract of inheritance the testator shall be obliged to assume the obligation to name the contracting party as his heir in exchange for support or a life-annuity.

(2) The testator shall be entitled to make any testamentary disposition in a contract of inheritance. Such contractual disposition in the contract of inheritance by the other party contracting with the testator shall be invalid.

### *Section 656.*

The provisions on holographic wills shall be applied regarding the validity of contracts of inheritance with the exception that the consent of the legal representative and the approval of the guardian shall be required for the validity of a contract of inheritance made by a person of limited capacity and, furthermore, that the formal requirements of wills written by other persons shall apply to contracts of inheritance even if they are drafted in the handwriting of one of the parties. The validity of a contract of inheritance can be tied to official approval.

### *Section 657.*

(1) The testator shall not dispose of any of his property bound by a contract of inheritance either inter vivos or mortis causa. Prohibition of any alienation of and encumbrance on the real property bound by the contract of inheritance shall be recorded in the real estate register in favor of the party contracting with the testator.

(2) This provision shall not affect any right of a third person that has been acquired in good faith and for consideration.

### *Section 658.*

(1) In respect of the amendment and termination of a contract of inheritance, the provisions on support (life-annuity) contracts shall be applied.

(2) The regulations governing the creation of contracts of inheritance shall be applied to the formal requirements for termination or amendment. However, if a contract has been terminated without the compulsory formal requisites and the actual state of affairs corresponding thereto has been effected by the consent of the parties, termination of the contract shall be valid even without the otherwise compulsory formal requirements.

## *Testamentary Gifts*

### *Section 659.*

(1) If a gift has been given under the condition that the donee outlives the donor, the regulations governing gifts shall be applied to the contract with the exception that the formal requirements to be applied shall be the same as those for contracts of inheritance.

(2) A testamentary gift shall be deemed valid only for a bequest that would qualify as a legacy in a will.

## *Disposal of Anticipated Inheritance*

### *Section 660.*

(1) Descendants of a testator shall be entitled to conclude a contract among themselves regarding their anticipated inheritance even during the lifetime of the testator.

(2) Contract shall only be valid in writing.

## **Title IV**

### **FORCED SHARE OF INHERITANCE**

#### **Chapter LVII**

#### **Forced Share of Inheritance and Its Satisfaction**

##### *Forced Heirs*

### *Section 661.*

The descendants, spouse, and parents of a testator shall be entitled to a forced share of inheritance if such person is a legal heir of the testator or would be one in the absence of a testamentary disposition at the time of descent and distribution.

##### *Disinheritance*

### *Section 662.*

A person validly disinherited by a testator in his testamentary disposition shall be deprived of a forced share of inheritance. Disinheritance shall be valid only if the testamentary disposition expressly indicates the reason therefor.

### *Section 663.*

(1) Disinheritance can take place if a person entitled to a forced share of inheritance

- a) is undeserving of inheritance from the testator;
- b) has committed a serious crime to the injury of the testator;

- 
- c) has attempted to take the life of the testator's spouse or his next of kin or has committed another serious crime to their injury;
  - d) has seriously violated his legal obligation to support the testator;
  - e) lives by immoral standards;
  - f) has been sentenced to five years of imprisonment or longer by final verdict.
- (2) A testator can also disinherit his spouse because of a conduct seriously violating matrimonial duties.

#### *Section 664.*

(1) Disinheritance shall be invalid if the reason for it has been condoned by the testator before making his testamentary disposition, and it shall become inoperative by subsequent pardon even if the testamentary disposition is not revoked.

(2) If disinheritance is invalid, an heir shall be entitled to a forced share of inheritance. In cases in which disinheritance is nullified by a subsequent pardon, an heir shall inherit in accordance with the general regulations.

### *Extent and Basis of Forced Shares of Inheritance*

#### *Section 665.*

(1) Under the title of forced share of inheritance, descendants and parents shall be entitled to half of what is due to a legal heir as calculated on the basis of the forced share of inheritance.

(2) If a spouse is entitled to beneficial interest as a legal heir, his forced share of inheritance shall be the limited degree of beneficial interest that provides for his needs, in consideration of the property he has inherited, his own property, and the earnings from his labor. Otherwise, a spouse shall be entitled to half of his legal share of inheritance as a forced share of inheritance.

#### *Section 666.*

(1) The basis of a forced share of inheritance is the net value of an estate, and the net value, at the time of donation, of the donations granted by the testator inter vivos.

(2) If the calculation of a donation at its net value at the time it is made is seriously unjust to any person concerned, the court shall determine the value of the donation in light of all of the circumstances.

(3) When calculating the net value of an estate, legacies and enjoinders shall not be considered as encumbrances.

#### *Section 667.*

(1) The following shall not pertain to the basis of a forced share of inheritance:

- a) the values of donations granted by the testator to anybody more than fifteen years prior to his death;
- b) the values of donations granted by the testator before the creation of a relationship conveying entitlement to a forced share of inheritance;
- c) the values of gifts not exceeding the common value;
- d) the value of support given to a spouse and descendants who are in need of support;
- e) the value of support provided without consideration to other persons in need up to the extent necessary for subsistence.

(2) Marriage or, otherwise, the conception of the child shall constitute a relationship conveying entitlement to a forced share of inheritance to children born in wedlock or adopted by the spouses. If a testator was married more than twice, the first marriage shall be the relationship conveying entitlement to a forced share of inheritance.

(3) Only property items included in the estate shall serve as a basis for the forced share of inheritance due a spouse in the form of beneficial interest.

(4) Donations the inclusion of which have been canceled by the testator shall not be added to the basis of a beneficiary's own forced share of inheritance.

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## *Value Serving for Satisfaction of a Forced Share of Inheritance. Inclusion*

### *Section 668.*

(1) Everything received by a beneficiary from an estate under any title as well as any gratuitous donations he has received from the testator shall be applied to satisfy the forced share of inheritance, on condition that it shall be added to the basis of the forced share of inheritance (inclusion).

(2) If a person entitled to a forced share of inheritance has been disqualified from inheritance, the value of all of the donations received by that person or his descendants shall be included in his descendant's forced share of inheritance. Two or more descendants shall include donations in proportion to their shares in the estate.

(3) A testator shall be entitled to cancel inclusion with an express statement. Cancellation of inclusion shall not be effected if it would injure the forced share of inheritance of another eligible person.

## *Responsibility for Satisfaction of a Forced Share of Inheritance*

### *Section 669.*

(1) Dispensation, or completion, of forced shares of inheritance can be demanded in the following order:

a) responsibility for satisfaction of a forced share of inheritance primarily falls on persons having a share of the estate;

b) the donees receiving donations from a testator within fifteen years prior to his death shall be responsible for that part of the forced share of inheritance that cannot be satisfied from the estate, irrespective of the temporal order in which the donations were received.

(2) The share of responsibility of several persons shall be determined by the applicable value of their grants (Section 670).

(3) A person who has lost a grant through no fault of his own shall not be liable for a forced share of inheritance.

### *Section 670.*

(1) A person who has received a grant shall be responsible for satisfying a forced share of inheritance up to the total value of his grant. However, a forced heir shall be responsible only up to the value of the grant that is in excess of his legitimate hereditary share.

(2) The spouses and descendants of persons entitled to a forced share of inheritance as well as the descendants' spouses shall be exempt from responsibility if the total value of their grants, even if combined with the value of the grant of the forced heir, do not exceed the legitimate hereditary share of the forced heir. This provision cannot be applied if the forced heir asserts his claim against his spouse, his descendant, or his descendant's spouse.

(3) In the aforementioned cases, the legal hereditary share shall be taken into account in accordance with the basis of the forced share of inheritance.

## *Dispensation of Forced Shares of Inheritance*

### *Section 671.*

(1) Forced shares of inheritance shall be dispensed without any encumbrance or limitation. If, however, a forced share of inheritance is dispensed and the remaining property is insufficient to ensure the spouse's limited right of survivorship, the part of the forced share of inheritance ensuring limited enjoyment can only be dispensed after enjoyment is terminated.

(2) If a testator has left property with any limitation or encumbrance to a forced heir, the limitation shall only apply to what is above and beyond the forced share of inheritance. However, a testator shall be entitled to provide that the beneficiary shall only receive the forced share of inheritance if he does not accept the limitation or encumbrance in respect of the forced share of inheritance.

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*Section 672.*

- (1) A forced heir shall be entitled to demand that his share be dispensed in money.
- (2) A forced share of inheritance is due in kind if it was the testator's intention declared inter vivos or by a testamentary disposition.
- (3) If dispensation of a forced share of inheritance in money is injurious either to the beneficiary or to the obligor, the court shall, in light of all of the circumstances, be entitled to order the forced share of inheritance to be dispensed wholly or partly in kind.

## Title V

### LEGAL EFFECTS OF INHERITANCE

#### Chapter LVIII

#### Acquisition of Inheritance

#### Descent and Distribution

*Section 673.*

- (1) Descent and distribution shall occur upon the death of the testator.
- (2) Upon descent and distribution, heirs shall acquire an estate, their legitimate shares in an estate, or certain objects from an estate (inheritance) without acceptance or other legal act.

#### *Disclaiming Inheritance*

*Section 674.*

- (1) An heir shall be entitled to disclaim an inheritance after descent and distribution. The state, as a legal heir, shall not be entitled to disclaim an inheritance.
- (2) An heir shall be entitled to disclaim particularly
  - a)
  - b) inheritance of a farmland and/or its equipment, accessories, livestock, and tools and implements, if he is not engaged in agricultural production by profession.
- (3) Any disclaimer rendered contingent on a condition or time or made with a restriction, as well as any illicit partial disclaimer shall be invalid.

*Section 675.*

- (1) An heir who explicitly or implicitly waives the right to disclaim his inheritance after descent and distribution shall no longer be entitled to disclaim the inheritance.
- (2) Abjuration of the right to disclaim an inheritance shall be effected by a statement filed with the notary public competent for the probate proceeding.
- (3) Taking possession of the inheritance or any other act relating to the estate that demonstrates the heir's unambiguous intention to accept the inheritance shall also be construed as abjuration of the right to disclaim an inheritance. An heir's failure to file a disclaimer of the inheritance within the period set by a notary public at the request of any person concerned shall also be construed as a disclaimer.

## *Special Provisions for Legacies and Enjoinders*

### *Section 676.*

The provisions on the acquisition of inheritance shall also be duly applied with regard to legacies and enjoinders.

## **Chapter LIX**

### **Legal Status of Heirs**

#### *Estate Debts*

##### *Section 677.*

(1) The following shall be construed as estate debts:

- a) costs of a proper burial for the testator;
- b) applicable costs of acquiring, securing, and handling an estate (estate costs), as well as the costs of probate proceedings;
- c) the testator's debts;
- d) obligations based on the forced share of inheritance;
- e) liabilities based on legacies and enjoinders.

(2) The nature and existence of an estate debt shall not be affected by the fact that it was incurred in favor of the heir as a creditor either before or after descent and distribution.

##### *Section 678.*

(1) Debts shall be satisfied in the sequence established for the different categories of estate debts.

(2) In respect of a debt category in which full satisfaction of all of the debts is no longer possible, satisfaction shall be made according to the proportion of claims.

#### *Responsibility for Estate Debts*

##### *Section 679.*

(1) Heirs shall be responsible to creditors for estate debts with the objects and proceeds of the estate. If the objects or proceeds of an estate are not in the heirs' possession at the time the claims are enforced, the heirs' other property shall also be appropriated up to the value of their inheritance to cover the claims.

(2) However, the items of property that have not come into the heir's possession, the claims and other rights that could not be enforced, as well as the non-existing proceeds of conveyed property shall be taken into account when determining the degree of the heir's responsibility only so far as the heir has lost these for reasons within his control.

(3) A spouse shall endure the satisfaction of creditors' claims, with the exception of legacies and enjoinders, from the property encumbered with his right of survivorship. Forced shares of inheritance must not injure the a spouse's limited right of survivorship.

#### *Satisfaction by an Heir*

##### *Section 680.*

(1) As long as there are grounds for an heir to assume that the estate debts are fully covered by the estate, if he disregards the obligations assumed by the testator inter vivos without consideration as well as the obligations based on legacies and enjoinders, he shall be allowed to satisfy debts without adhering to the order of satisfaction. Otherwise, he shall be entitled to provide satisfaction only in accordance with the order (Section 678).

(2) A creditor who holds a lien on some item of property that belongs to an estate or has another right ensuring special satisfaction, shall be entitled to seek full satisfaction up to the value of the collateral, irrespective of the order of satisfaction.

(3) If an heir fails to observe these provisions for reasons within his control, he shall, for this reason, be responsible to creditors who remain unsatisfied with his entire property.

## *Notification of Estate Creditors*

### *Section 681.*

(1) If there are reasonable grounds for assuming that there are unknown estate debts, heirs shall be entitled to request the notary public to notify the estate creditors to announce their claims.

(2) A creditor who does not announce his claim within the period specified in the notice of the notary public shall not be entitled to raise objections to satisfactions effected before his announcement with regard to the order of satisfaction and the proportion of the satisfaction of creditors within the same category. If an estate has already been distributed, the aforementioned creditor shall only be entitled to claim satisfaction from the co-heirs in proportion to their respective shares, unless, in both cases, the heirs have been aware of the claim even without the announcement.

## *Legal Status of Heirs*

### *Section 682.*

(1) Two or more heirs shall be jointly entitled to the property of an estate before the estate is distributed.

(2) The general provisions of co-ownership shall be applied to the community of co-heirs, whereby, before an estate is distributed, the estate's claims can only be demanded in the name of all of the heirs and in their favor, and debtors shall only be able to effect performance to all of the heirs.

(3) A community shall cease with the distribution of the estate. Testators shall be entitled to determine, by testamentary disposition, the manner in which their estates will be distributed.

### *Section 683.*

(1) Co-heirs shall be subject to joint and several liability for common estate debts both before and after the distribution of the estate.

(2) The heir to whom a testator has left a specific thing or right that is of no greater value than a gift of usual value shall be liable for the claims of estate creditors only if the claims cannot be recovered from the other co-heirs.

## *Responsibility of a Legatee for Estate Debts*

### *Section 684.*

(1) A legatee who has received satisfaction at the expense of another estate creditor shall, in accordance with the regulations governing unjust enrichment, be liable to that creditor if the creditor has not been able to obtain satisfaction from the heir.

(2) A legatee shall be responsible, as would an heir, with respect to the legacy or enjoinder burdening him.

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## PART SIX

### CLOSING PROVISIONS

#### *Section 685.*

For the purposes of this Act

a) 'legal regulation' shall mean Acts of Parliament and government decrees; local government resolutions as authorized by and within the scope of law; in respect of Subsection (3) of Section 29, Subsection (2) of Section 200, Subsection (6) of Section 209/B, Subsection (1) of Section 305, Subsections (3) and (4) of Section 434, Subsection (2) of Section 523 and Subsection (3) of Section 528, all of which are legal regulations;

b) 'close relative' shall mean spouses, next of kin, adopted persons, stepchildren, foster children, adoptive parents, stepparents, foster parents, brothers, and sisters; relatives, furthermore, domestic partners, spouses of the next of kin, fiancées; next of kin, brothers, and sisters of a spouse; and spouses of bothers and sisters;

c) 'economic operator' shall mean state-owned companies, other state-owned economic agencies, cooperatives, housing cooperatives, business associations, European public limited-liability companies, professional associations, European Economic Interest Groupings, nonprofit companies, companies of certain legal entities, subsidiaries, water management organizations, forest management associations, court bailiffs' offices, and private entrepreneurs. The civil relations of the state, local self-governments, budgetary agencies, associations, public bodies and foundations relating to their business operations shall be governed by the provisions on economic operators unless this Act contains provisions otherwise concerning these legal persons;

d) 'consumer' shall mean any person who is a party to a contract concluded for reasons other than economic or professional activities;

e) 'consumer contract' shall mean any contract concluded by a consumer and a person acting within the scope of his economic or professional activities; in the application of the provisions of this Act pertaining to guarantee and warranty, a consumer contract shall be construed as any contract the object of which is a movable property (consumer goods) with the exception of electricity, water and gas sold in tanks or bottles or in any other measured quantity, articles sold under judicial execution or some other regulatory procedure, and used articles sold by auction in which the consumer is also allowed to participate.

#### *Section 685/A.*

Unless otherwise provided by legal regulation, domestic partners shall be construed as two unmarried persons living together in an emotional and financial community in the same household.

#### *Section 685/B.*

(1) 'Concentration of companies' means a relationship in which the party with direct or (through another, intermediary economic organization) indirect influence in an economic organization

a) holds over fifty per cent of the voting rights by way of his own right as a member (shareholder) or by way of agreement with another member (shareholder) of the economic organization, or

b) is entitled to select and recall the majority of executive employees or members of the supervisory board by way of his own right as a member (shareholder).

(2) The ratio of direct ownership shall be calculated by multiplying the voting right or ownership ratio of the party with controlling influence in the intermediary economic organization by the voting right or the ownership ratio held by the intermediary economic organization in the controlled economic organization, whichever is greater.

(3) The direct and indirect ownership shares and voting rights of relatives [Paragraph b) of Section 685] shall be applied concurrently.

(4) For the purposes of Subsection (2) the voting right or ownership share held in an intermediary economic organization shall not be taken into consideration if it is below twenty-five per cent. If the voting right or ownership share held in an intermediary economic organization is over fifty per cent, it shall be applied on the whole.

*Section 686.*

The provisions of this Act on buildings shall be duly applied to other building structures as well.

*Section 687.*

The enactment of this Act and the establishment of other necessary transitional provisions shall be governed in a separate Law-Decree.

*Section 688.*

Within the framework of Section 3 of Act I of 1994 promulgating the Europe Agreement establishing an association between the Republic of Hungary and the European Communities and their Member States, signed in Brussels on 16 December 1991, this Act contains regulations that may be approximated with the following legal regulations of the European Communities:

a) Section 377 with Council Directive 85/577/EEC on the protection of consumers in respect of contracts negotiated away from commercial establishments;

b) Subsections (3) and (5) of Section 205, Subsection (2) of Section 207, Sections 209-209/D, and Paragraph d) of Section 685 with Council Directive 93/13/EEC on unfair terms in consumer contracts;

c) Subsections (1)-(3) of Section 248, Subsections (1)-(3) of Section 277, Subsection (2) of Section 305, Section 305/A, Subsections (1), (2) and (5) of Section 306, Subsection (2) of Section 307, Subsection (4) of Section 308, Subsection (2) of Section 308/A, Subsection (1) of Section 309, Section 311, Subsection (2) of Section 372, and Paragraphs d) and e) of Section 685 with Directive 1999/44/EC of the European Parliament and of the Council on certain aspects of the sale of consumer goods and associated guarantees;

d) Section 301/A and Subsection (1) of Section 368 with Directive 2000/35/EC of the European Parliament and of the Council on combating late payment in commercial transactions.

e) Sections 270-271/A with Directive 2002/47/EC of the European Parliament and of the Council on financial collateral arrangements.