

## **Code of Civil Procedure**

Full citation: Code of Civil Procedure as promulgated on 5 December 2005 (Bundesgesetzblatt (BGBl., Federal Law Gazette) I page 3202; 2006 I page 431; 2007 I page 1781), last amended by Article 1 of the Act dated 10 October 2013 (Federal Law Gazette I page 3786)

### **Footnote**

Source cited valid from 1 January 1980; some of the measures based on the Treaty between the Federal Republic of Germany and the German Democratic Republic on the Establishment of German Unity (Unification Treaty) are no longer to be applied, cf. Annex "EV" to the Code of Civil Procedure.

Version of the Code of Civil Procedure dated 30 January 1877, promulgated in Reichsgesetzblatt (RGBl., Law Gazette of the Reich) page 83, amended by Article 9 of the Act dated 12 September 1950 (Federal Law Gazette I page 455).

Pursuant to the ruling handed down by the Federal Constitutional Court of 7 October 2003, published in Entscheidungen des Bundesverfassungsgerichts (BVerfGE, Rulings of the Federal Constitutional Court) 2004 I 124 – 1 BvR 10/99 – the Code of Civil Procedure as valid until 31 December 2001 was unconstitutional as it was not compatible with the principle of a state governed by the rule of law, nor with Article 103 (1) of the German Constitution (Grundgesetz, GG) insofar as it did not provide for a means of obtaining legal protection against violations of the entitlement to be given an effective and fair legal hearing by appellate judgments handed down by higher regional courts (Oberlandesgerichte, OLG) outside of the appeal on points of law that was dependent on the value of the matter in dispute.

### **Code of Civil Procedure**

In its wording, the Code of Civil Procedure has the following status: the version as promulgated on 5 December 2005 (Federal Law Gazette I 2005, page 3202), (2006, page 431) as amended by Article 50 of the Act dated 19 April 2006 (Federal Law Gazette I page 866) (Act on Regulatory Reform of Federal Law in the Area of Responsibility of the Federal Ministry of Justice (Gesetz über die Bereinigung von Bundesrecht im Zuständigkeitsbereich des Bundesministeriums der Justiz, BMJBerG 1)) with effect per 25 April 2006.

### **Notes on the translation:**

Words denoting any gender (masculine, feminine and neuter) shall include both the other genders.

Words denoting the singular shall include the plural and vice versa.

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## **Section 1**

### **Substantive jurisdiction**

The substantive jurisdiction of the courts is determined by the Courts Constitution Act (Gesetz über die Gerichtsverfassung, GVG).

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## **Section 2**

### **Significance of the value**

Should, pursuant to the stipulations of the present Code or of the Courts Constitution Act (Gesetz über die Gerichtsverfassung, GVG), the value of the subject matter being litigated, of the subject matter of the appeal, of the gravamen, or of the sentence govern, the following provisions shall apply.

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## **Section 3**

### **Assessment of the value at the sole discretion of the court**

The value shall be assessed by the court at its sole discretion; upon a corresponding application having been made, it may direct that evidence be taken, and it may direct ex officio that visual evidence be taken on site and that experts report on the value.

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## **Section 4**

### **Computation of the value; ancillary claims**

(1) In computing the value, the point in time at which the action is brought is decisive; where the matter has been appealed, it is the point in time at which the appeal has been filed; where a sentence is concerned, it is the point in time at which that hearing is closed subsequent to which the judgment is handed down; fruits, usufruct, interest, and costs shall not be considered where they are asserted as ancillary claims.

(2) Where claims are brought based on bills of exchange in the sense as defined by the Law for Bills of Exchange and Promissory Notes (Wechselgesetz), interest, costs, and commissions that are being sought outside of the amount of the bill are to be regarded as ancillary claims.

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A plurality of claims asserted in a single complaint will be considered in the aggregate; this shall not apply to the subject matter of the action or of any countercharges.

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## **Section 6**

### **Possession; freezing of property; security right**

The value is determined as follows: by the value of an object if its possession is relevant, and by the amount of the claim if its being frozen or a security right is relevant. Should the object governed by the security right have a lower value, this shall govern.

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## **Section 7 Easement**

The value of an easement is determined by the value it has for the dominant tenement; where the amount by which the value of the servient tenement is reduced is higher, the value of the easement shall be determined by that amount.

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## **Section 8 Lease or tenancy relationship**

Where the existence or the term of a lease or tenancy relationship is at issue, the amount of the rent accruing for the total period of time at issue shall be relevant and, where the amount of the payment for one year multiplied by a factor of 25 is lower, that amount shall govern for the computation of the value.

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## **Section 9 Recurrent usufruct or performance**

The value of the right to recurrent usufruct or performance is calculated based on the receipts for one year multiplied by a factor of 3.5. Should the term of the right to such receipts have been determined, the total amount of the future receipts shall govern where it is the lower amount.

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## **Section 10 (repealed)**

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## **Section 11 Binding decision as to the lack of jurisdiction**

Where, based on the rules concerning the substantive jurisdiction of the courts, the lack of jurisdiction of a court has been pronounced in a final and binding judgment, such decision shall be binding upon the court with which the matter will become pending at a later time.

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## **Title 2 Venue**

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## **Section 12 General venue; term**

The court within the jurisdiction of which a person has his general venue is competent for all actions that may be brought against that person, unless an exclusive venue has been established for court actions.

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### **Section 13** **General venue of the place of residence**

The general venue of a person is determined by his place of residence.

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### **Section 14** **(repealed)**

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### **Section 15** **General venue of extraterritorial German citizens**

(1) German citizens entitled to the privilege of extritoriality as well as German civil servants working abroad will retain the venue of their last place of residence in Germany. Should they not have had such a place of residence, their venue shall be the local court (Amtsgericht, AG) of Schöneberg in Berlin.

(2) The present rule shall not apply to honorary consuls.

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### **Section 16** **General venue of persons without a place of residence**

The general venue of a person who has no place of residence shall be determined by that person's place of abode in Germany and, where no such place of abode is known, by that person's last place of residence.

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### **Section 17** **General venue of legal persons**

(1) The general venue of the municipalities, corporate bodies, and of those companies, co-operatives or other associations as well as of those foundations, institutions, and available assets that may be sued as such is defined by their registered seat. Unless anything to the contrary is stipulated elsewhere, a legal person's registered seat shall be deemed to be the place at which it has its administrative centre.

(2) Mining companies have their general venue with the court having jurisdiction over the location of the mine; public authorities – provided they can be sued as such – have their general venue with the court of their official seat.

(3) It is admissible to determine a venue, in derogation from what is determined by the stipulations of the present subsection, by statute or by other special provision.

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### **Section 18** **General venue of the government treasury**

The general venue of the treasury of the government is determined by the official seat of the public authority authorised to represent the government treasury in the legal dispute.

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## **Section 19**

### **Several judicial districts at the official seat of the public authority**

Where the location at which a public authority has its official seat is divided up into several judicial districts, the district that is to be deemed the official seat of the authority as defined by sections 17 and 18 shall be determined, for federal authorities, by the Federal Minister of Justice, while the Land department of justice (Landesjustizverwaltung) shall determine said district for all other agencies; in either case, this will be effected by a general order.

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## **Section 19a**

### **General venue of the insolvency administrator**

The general venue of an insolvency administrator for actions concerning the insolvency estate is determined by the seat of the insolvency court.

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## **Section 20**

### **Specific jurisdiction of the place of abode**

Where persons have their place of abode at a location under circumstances that, by their nature, indicate that their abode will be of a longer term, in particular because such persons are household help, workers, assistants in commercial enterprises, university students, pupils, or apprentices, the court of their place of abode shall have jurisdiction for all actions that may be brought against these persons for claims under property law.

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## **Section 21**

### **Specific jurisdiction of a place of business**

(1) Should someone have a place of business serving the operation of a factory, a trade enterprise, or any other commercial establishment, and from which transactions are directly concluded, all actions that relate to the operation of the place of business may be brought against that person at the court of the location at which the place of business is situate.

(2) The jurisdiction of the place of business also applies to actions brought against persons acting as owners, beneficiaries, or lessees in managing a property, on which residential and service buildings have been constructed, to the extent such complaints concern the legal relationships relating to the property's management.

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## **Section 22**

### **Specific jurisdiction of a membership**

The court with which municipalities, corporate bodies, societies, co-operatives, or other associations have their general venue shall have jurisdiction for those actions that are brought by them or by the insolvency administrator against the members as such, or that are brought by the members against one other in their capacity as such.

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### **Section 23**

#### **Specific jurisdiction of assets and of an object**

For complaints under property law brought against a person who has no place of residence in Germany, that court shall be competent in the jurisdiction of which assets belonging to that person are located, or in the jurisdiction of which the object being laid claim to under the action is located. Where claims are concerned, the debtor's place of residence and, in cases in which an object is liable for the claims as collateral, the place at which the object is located shall be deemed to be the location at which the assets are located.

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### **Section 23a**

#### **(repealed)**

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### **Section 24**

#### **Exclusive jurisdiction as to the subject matter (forum rei sitae)**

(1) For complaints by which ownership, an encumbrance "in rem", or the freedom from such an encumbrance is being asserted, and for complaints concerning the settlement of boundary disputes, or the partition or possession of immovable property, that court shall have exclusive competence in the jurisdiction of which the object or property is situate.

(2) For complaints concerning an easement, a realty charge, or a right of pre-emption, the location of the servient tenement or encumbered property shall be relevant.

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### **Section 25**

#### **Jurisdiction as to the subject matter (forum rei sitae) in light of the matter's connection with the various facts and their overall context**

Should the jurisdiction of a court be governed by the subject matter of the dispute, the creditor's complaint for performance (Schuldklage) may be brought together with any complaint concerning a mortgage, charge on land, or annuity charge on land; the complaint for exemption from personal liability may be brought together with the complaint for transfer or cancellation of a mortgage, charge on land, or annuity charge on land; the complaint for overdue performance may be brought together with the complaint for recognition of a realty charge; in all cases, such consolidated actions must be brought against one and the same defendant.

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### **Section 26**

#### **Jurisdiction as to the subject matter (forum rei sitae) for complaints brought against a person**

Where the jurisdiction of a court is governed by the subject matter of the dispute, complaints brought against a person may be filed against the owner or possessor of an immovable property, as may be complaints for damages caused to real estate, or actions brought concerning compensation for the expropriation of a plot of real estate.

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## **Section 27**

### **Specific jurisdiction of an inheritance**

(1) Complaints brought in order to have the court determine succession, or to assert claims of the heir against a possessor of an inheritance, claims under testamentary gifts or under other testamentary trusts, claims to the compulsory portion of the inheritance, or complaints brought regarding the distribution of the inheritance may be brought with the court at which the testator had his general venue at the time of his death.

(2) If the testator is a German citizen who had no general venue in Germany at the time of his death, the complaints designated in subsection (1) may be brought with the court in the jurisdiction of which the testator had his last place of residence in Germany; where he did not have such a place of residence, the rule of section 15 (1), second sentence, shall apply mutatis mutandis.

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## **Section 28**

### **Extended jurisdiction of an inheritance**

In the jurisdiction where an inheritance is situate, complaints may also be filed for other liabilities of the estate, provided that the estate is still situate, either as a whole or in part, in the court's jurisdiction, or provided that the existing plurality of heirs is liable as joint and several debtors.

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## **Section 29**

### **Specific jurisdiction of the place of performance**

(1) For any disputes arising from a contractual relationship and disputes regarding its existence, the court of that location shall have jurisdiction at which the obligation is to be performed that is at issue.

(2) An agreement as to the place of performance shall establish a court as the forum only insofar as the parties to the agreement are merchants, legal persons under public law, or special assets (Sondervermögen) under public law.

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## **Section 29a**

### **Exclusive jurisdiction of spaces governed by a tenancy or lease agreement**

(1) For disputes concerning claims under tenancy or lease relationships regarding spaces, or disputes regarding the existence of such relationships, the court in the jurisdiction of which the spaces are situate shall have exclusive competence.

(2) Subsection (1) shall not apply to residential spaces of the type provided for by section 549 (2) numbers 1 to 3 of the Civil Code (Bürgerliches Gesetzbuch, BGB).

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## **Section 29b**

### **(repealed)**

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## **Section 29c**

### **Specific jurisdiction for doorstep sales**

(1) For complaints regarding off-premises contracts (section 312b of the Civil Code (Bürgerliches Gesetzbuch, BGB)), that court in the jurisdiction of which the consumer has his place of residence at the time he is bringing proceedings shall be competent; where the consumer has no such place of residence, his habitual place of abode shall be relevant. For complaints brought against the consumer, the above court shall have exclusive jurisdiction.

(2) Section 33 (2) shall not apply to any countercharges brought by the respective other party to the agreement.

(3) An agreement will be deemed admissibly made, in derogation from subsection (1), in those cases in which, following the conclusion of the contract, the consumer relocates his place of residence or habitual place of abode to a location outside the territorial scope of this Act, or in which the consumer's place of residence or habitual place of abode is not known at the time proceedings are brought in the courts.

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### **Section 30 Jurisdiction for Carriage**

(1) For legal disputes arising from the carriage of goods, also that court shall be competent in the jurisdiction of which the place is situate at which the goods were received for carriage, or at which the goods are intended to be delivered. Any complaint directed against the transport operator performing the carriage or the carrier performing the carriage may also be filed at the venue of the transport operator or carrier. Any complaint directed against the transport operator or the carrier may also be filed at the venue of the transport operator performing the carriage or of the carrier performing the carriage.

(2) For legal disputes arising from the carriage of passengers and their luggage on ships, also that court in the jurisdiction of which the location is situate that is designated in the contract of carriage as the location at which passengers leave the ship or as the destination shall be competent. Any agreement in derogation from the first sentence shall be invalid if it is made prior to the event that has caused the death or bodily injury of the passenger, or the loss, damage, or delayed re-delivery of the luggage.

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### **Section 30a Jurisdiction for claims arising from search and rescue operations**

For complaints filed regarding claims arising from search and rescue operations for ships or other assets in a body of water against a person who has no venue in Germany, that court shall be competent with whom the plaintiff has his general venue in Germany.

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### **Section 31 Specific jurisdiction for asset management**

For complaints brought under an asset management relationship by the principal against the administrator, or by the administrator against the principal, the court in the jurisdiction of which the assets are managed shall have jurisdiction.

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### **Section 32 Specific jurisdiction for tort**

For complaints arising from tort, the court in the jurisdiction of which the tortious act was committed shall have jurisdiction.

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### **Section 32a**

#### **Exclusive jurisdiction for effects on the environment**

For complaints brought against the operator of a facility listed in Annex 1 of the Act on Liability for Environmental Damage (Umwelthaftungsgesetz), by which a claim to compensation is asserted for damages caused by effects on the environment, the court in the jurisdiction of which the facility's effects on the environment originated shall have exclusive competence. This shall not apply where the facility is situate abroad.

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### **Section 32b**

#### **Exclusive jurisdiction for false or misleading public capital market disclosures, and exclusive jurisdiction in the event that such disclosures have not been made**

(1) For complaints in which:

1. The compensation of damages caused by false or misleading public capital market disclosures, or caused by the failure to make such disclosure, or
2. The compensation of damages caused by the use of false or misleading public capital market disclosures, or caused by the failure to inform the public that such public capital market disclosures are false or misleading, or
3. A claim to performance under a contract based on an offer pursuant to the Securities Purchase and Takeover Act (Wertpapiererwerbs- und Übernahmegesetz)

is being asserted, that court shall have exclusive jurisdiction that is located at the registered seat of the issuer concerned, of the offeror concerned of other capital investments, or of the targeted company, where said registered seat is situate within Germany and the complaint is directed, at least also among others, against the issuer, the offeror, or the targeted company.

(2) The Land governments are authorised to assign by statutory instrument the complaints set out in subsection (1) to a regional court (Landgericht, LG) for the jurisdictions of several regional courts, provided this is expedient for promoting the proceedings *ratione materiae* or for accelerating the termination of the proceedings. The Land governments may confer this authorisation upon the Land departments of justice.

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### **Section 33**

#### **Specific jurisdiction for countercharges**

(1) Countercharges may be brought with the court with which the complaint has been filed if there is a connection between the counterclaim and the claim being asserted in the action, or between the counterclaim and the means of defence raised against the claim.

(2) This shall not apply if, due to a counterclaim having been brought, it is not admissible to agree on the jurisdiction of the court for a complaint pursuant to section 40 (2).

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**Section 34**  
**Specific jurisdiction of the main proceedings**

The court of the main proceedings shall have jurisdiction for complaints brought for fees and expenditures by attorneys of record, persons providing assistance, authorised recipients, and court-appointed enforcement officers.

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**Section 35**  
**Selection from among several jurisdictions**

The plaintiff shall be allowed to select among several jurisdictions.

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**Section 35a**  
**(repealed)**

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**Section 36**  
**Determination of jurisdiction by a court**

(1) The competent court will initially be determined by the court of the next higher level of jurisdiction:

1. Where the court actually competent is prevented by legal or factual reasons, in an individual case, from exercising a judicial function;
2. Where it is uncertain, in light of the boundaries of different judicial districts, which court is competent for the legal dispute;
3. Where several persons having their general venue with different courts are to be sued as joined parties at the general venue, and where no specific jurisdiction common to all parties has been established for the legal dispute;
4. Where the complaint is to be filed in the jurisdiction as to the subject matter (*forum rei sitae*) and the object concerned is situate in jurisdictions of various courts;
5. Where different courts have declared in a legal dispute that they are competent and that their judgments are final and binding;
6. Where different courts, of which one is competent for the legal dispute, have declared in a final and binding judgment that they are not competent.

(2) In the event the next higher court common to all parties is the Federal Court of Justice (Bundesgerichtshof, BGH), the competent court will be determined by that higher regional court (Oberlandesgericht, OLG) in the jurisdiction of which the court initially dealing with the matter is situate.

(3) If, in determining the competent court, the higher regional court (Oberlandesgericht, OLG) wishes to deviate from the decision handed down by another higher regional court or by the Federal Court of Justice (Bundesgerichtshof, BGH) concerning a question of law, it is to submit the matter to the Federal Court of Justice, stating the reasons on which its interpretation of the law is based. In such event, the Federal Court of Justice shall rule on the matter.

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### **Section 37**

#### **Procedure by which a court determines the venue**

- (1) The petition for determination of the competent court shall be set out in an order delivered by the court.
- (2) The decision determining the competent court is not contestable.

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### **Title 3**

#### **Agreement as to the jurisdiction of the courts**

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### **Section 38**

#### **Admissible agreement as to the choice of venue**

- (1) A court of first instance that as such is not competent will become the forum by express or tacit agreement of the parties should the parties to the agreement be merchants, legal persons under public law, or special assets (Sondervermögen) under public law.
- (2) The competence of a court of first instance may be agreed, furthermore, wherever at least one of the parties to the agreement has no general venue in Germany. Such agreement must be concluded in writing or, should it have been concluded orally, must be confirmed in writing. If one of the parties has its general venue in Germany, a court may be selected in Germany only if that party has its general venue in that court's jurisdiction, or if a specific jurisdiction is given.
- (3) In all other regards, a choice-of-court agreement shall be admissible only where it was concluded, expressly and in writing:

1. After the dispute has arisen, or
2. For the event that, following the conclusion of the agreement, the party to whom claim is to be laid relocated his place of residence or habitual place of abode to a location outside the territorial scope of this Code, or for the event that the party's place of residence or habitual place of abode is not known at the time the proceedings are brought in the courts.

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### **Section 39**

#### **Competence of a court as a result of a party having participated in court proceedings without objecting to the court's lack of jurisdiction (rügeöse Verhandlung)**

Furthermore, the competence of a court of first instance is established by the fact that the defendant makes an appearance in oral argument on the merits of the case and fails to object to the court's lack of jurisdiction. This shall not apply where the notification stipulated by section 504 was not given.

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### **Section 40**

#### **Invalid and inadmissible choice of court agreement**

(1) The choice-of-court agreement shall have no legal effect if it does not refer to a certain legal relationship and to the legal disputes arising therefrom.

(2) A choice-of-court agreement shall be inadmissible where:

1. The legal dispute concerns non-pecuniary claims that are assigned to the local courts (Amtsgerichte, AG) without consideration of the value of the subject matter being litigated, or
2. An exclusive jurisdiction has been established for the complaint.

In these cases, the competence of a court will not be established by a party making an appearance in oral argument on the merits of the case without asserting the court's lack of jurisdiction.

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## **Title 4**

### **Disqualification and recusal of court personnel**

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## **Section 41**

### **Disqualification from the exercise of judicial office**

A judge is disqualified by law from exercising judicial office:

1. In all matters in which he himself is a party, or in which his relationship to one of the parties in the proceedings is that of a co-obligee, co-obligor, or a party liable to recourse;
2. In all matters concerning his spouse or former spouse;
- 2a. In all matters concerning his partner or former partner under a civil union;
3. In all matters concerning persons who are or were directly related to him, either by blood or by marriage, or who are or were related as third-degree relatives in the collateral line, or who are or were second-degree relatives by marriage in the collateral line;
4. In all matters in which he was appointed as attorney of record or as a person providing assistance to a party, or in which he is or was authorised to make an appearance as a legal representative of a party;
5. In all matters in which he is examined as a witness or expert;
6. In all matters in which he assisted, at a prior level of jurisdiction or in arbitration proceedings, in entering the contested decision, unless this concerns activities of a judge correspondingly delegated or requested.
7. In all matters concerning court procedures of excessive duration, if he assisted in the impugned proceedings at the level of jurisdiction, the duration of which is the basis for the claim to compensation.
8. In all matters in which he assisted in mediation proceedings or in any other alternative conflict resolution procedures.

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## **Section 42**

### **Recusal of a judge from a case**

(1) A judge may be recused from a case both in those cases in which he is disqualified by law from exercising a judicial office, and in those cases in which there is a fear of bias.

(2) A judge will be recused for fear of bias if sound reasons justify a lack of confidence in his impartiality.

(3) In all cases, both parties shall have the right to recuse a judge.

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## **Section 43**

### **Loss of the right to recuse a judge**

A party may no longer recuse a judge for fear of bias if that party has made an appearance before said judge at a hearing, or filed petitions, without asserting the reasons for recusal of which it is aware.

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## **Section 44**

### **Motion to recuse a judge**

(1) The motion to recuse a judge is to be filed with the court of which the judge concerned is a member; it may be recorded with the registry for the files of the court.

(2) The grounds for such recusal are to be demonstrated to the satisfaction of the court; the party may not be permitted to make a statutory declaration in lieu of an oath. By way of demonstrating the grounds for recusal, the testimony of the judge being recused may be referred to.

(3) The judge regarding whom a motion for recusal has been filed shall make his statements regarding the grounds therefor in his judicial capacity.

(4) If a judge is recused for fear of bias before whom a party has made an appearance at a hearing, or with whom a party has filed petitions, it shall be demonstrated to the satisfaction of the court that the grounds for filing a motion for recusal arose only at a later date, or became known to the party at a later date.

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## **Section 45**

### **Decision on a motion to recuse a judge**

(1) That court of which the judge is a member shall rule on a motion to recuse him, without that judge being involved in the decision.

(2) If a judge at a local court (Amtsgericht, AG) is to be recused, a different judge of the local court shall rule on the motion. No decision need be handed down where the judge regarding whom a motion for recusal has been filed believes this motion to be justified.

(3) Should the court competent to take the decision become unable to enter a judgment as a result of its member having been recused, the court of the next higher level of jurisdiction shall rule on the matter.

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## **Section 46**

### **Decision and appellate remedies**

- (1) The decision on a motion to recuse a judge shall be issued by a court order.
- (2) No appellate remedies may be lodged against the court order declaring the motion to be justified, while a complaint subject to a time limit may be filed against any order declaring the motion to be without justification.

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## **Section 47**

### **Official acts that cannot be delayed**

- (1) Prior to the motion to recuse him having been dealt with, a judge regarding whom such a motion for recusal has been filed may take only such measures that cannot be delayed.
- (2) Should a motion for recusal be filed regarding a judge during a hearing, and should the decision regarding the recusal require the hearing to be postponed, the hearing may be continued with the involvement of the judge regarding whom a motion for recusal has been filed. If the motion for recusal is declared justified, the part of the hearing that took place after the motion was filed is to be repeated.

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## **Section 48**

### **Self-recusal; recusal ex officio**

The court competent for conclusively dealing with the motion to recuse a judge is to decide on the matter also in those cases in which such a motion is not appropriate, but in which the judge notifies the court that a relationship exists that might justify his recusal, or in which other reasons give rise to concerns that the judge might be disqualified by law.

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## **Section 49**

### **Records clerks**

The stipulations of the present Title shall apply mutatis mutandis also to the records clerk of the court registry; the decision shall be handed down by the court at which that records clerk is employed.

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## **Chapter 2**

### **Parties**

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## **Title 1**

### **Capacity to be a party to court proceedings; capacity to sue and be sued**

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## **Section 50**

### **Capacity to be a party to court proceedings**

(1) Any person having legal capacity shall also have the capacity of being a party to court proceedings.

(2) An association having no legal capacity may sue and be sued; in a legal dispute, the association shall have the same position as an association having legal capacity.

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## **Section 51**

### **Capacity to sue and be sued; legal representation; pursuit of court proceedings**

(1) Unless stipulated otherwise by the subsections hereinbelow, the ability of a party to appear before a court, the representation of parties having no capacity to sue or be sued by other persons (legal representatives), and the need for a special authorisation for the pursuit of court proceedings are determined pursuant to the stipulations of civil law.

(2) Any fault of a legal representative shall be equivalent to the fault of the party.

(3) If a party having no capacity to sue or be sued, who is an individual of full legal age, has validly authorised another individual, in writing, to represent him before the court, the person so authorised shall be equivalent to a legal representative wherever the authorisation is suited to cancel the need for custodianship in accordance with section 1896 (2), second sentence, of the Civil Code (Bürgerliches Gesetzbuch, BGB).

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## **Section 52**

### **Scope of the capacity to sue and be sued**

(1) A person shall have the capacity to sue and be sued insofar as he can be obligated by agreements.

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## **Section 53**

### **Legal disability in case of custodianship or curatorship**

Where a person having the capacity to sue or be sued is represented by a custodian or curator, that person shall have the equivalent position in the legal dispute as a person who is under legal disability.

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## **Section 53a**

### **(repealed)**

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## **Section 54**

### **Special authorisation to take actions in the proceedings**

Individual actions to be taken in the proceedings, for which special authorisation is required under the stipulations of civil law, shall be valid also without such authorisation if the authorisation was granted for the pursuit of the proceedings in general, or if the pursuit of such proceedings is an available remedy also without such general authorisation.

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## **Section 55**

### **Foreigners' capacity to sue and be sued**

A foreigner who, according to the laws of his country, lacks the capacity to sue and be sued, shall be deemed to have such capacity if, pursuant to the laws to which the court hearing the case is subject, he is entitled to such capacity to sue and be sued.

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## **Section 56**

### **Review ex officio**

(1) The court is to take account ex officio of any lack in terms of the capacity to be a party to court proceedings, of the capacity to sue and be sued, of the legitimisation of a legal representative, and of the required authorisation to pursue legal proceedings.

(2) If any delay would entail imminent danger for a party, that party or its legal representative may be admitted to pursue legal proceedings, with the proviso that the lack identified must be remedied. The final judgment may be delivered only after the period determined for the remediation of the lack has expired.

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## **Section 57**

### **Curator ad litem**

(1) If any delay would entail imminent danger where a party under legal disability is to be sued who has no legal representative, the presiding judge of the court hearing the case is to appoint a special representative for that party, upon a corresponding petition being filed, until the legal representative enters the proceedings.

(2) The presiding judge may appoint such a representative also if, in the cases set out under section 20 hereinabove, a person having no capacity to conduct proceedings is to be sued at the court of his place of abode.

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## **Section 58**

### **Curator ad litem for ownerless real estate or unclaimed ships**

(1) Should a right to a plot of real estate that has been given up by its previous owner pursuant to section 928 of the Civil Code (Bürgerliches Gesetzbuch, BGB), and that has not yet been acquired by the party entitled to appropriate it, be asserted by filing a corresponding court action, the presiding judge of the court hearing the case is to appoint a representative, upon a corresponding petition being filed, who shall be responsible for exercising the rights and fulfilling the obligations in the legal dispute that result from the ownership of the plot of real estate until a new owner has been entered in the land register.

(2) Subsection (1) shall apply mutatis mutandis wherever, by filing a corresponding court action, a right is to be asserted to a registered ship or a ship under construction that was given up by its previous owner pursuant to section 7 of the Act Governing Rights in Registered Ships and Ships under Construction (Gesetz über Rechte an eingetragenen Schiffen und Schiffsbauwerken) dated 15 November 1940 (Law Gazette of the Reich (Reichsgesetzblatt, RGBl.) I page 1499), and that has not yet been acquired by the party entitled to appropriate it.

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## **Title 2 Joinder of parties**

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### **Section 59 Joinder of parties in communities of interest with regard to the disputed right, or where the cause is identical**

A plurality of persons may jointly sue or be sued as joined parties if they form a community of interest with regard to the disputed right, or if they are entitled or obligated for the same factual and legal cause.

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### **Section 60 Joinder of parties in the event of similar claims**

A plurality of persons may also jointly sue or be sued as joined parties if similar claims or obligations form the subject matter in dispute and such claims are based on an essentially similar factual and legal cause.

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### **Section 61 Effect of a joinder of parties**

Unless stipulated otherwise by civil law or the present Code, joined parties shall deal with their opponent as individuals in such a form that the actions of one of the joined parties will neither benefit the other joined party nor place it at a disadvantage.

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### **Section 62 Necessary joinder of parties**

(1) Where the legal relationship at issue can be established vis-à-vis all joined parties only uniformly, or where the joinder of parties is a necessity for other reasons, those of the joined parties who have failed to comply with procedural rules shall be deemed to have been represented by those who did not so fail.

(2) The joined parties who have failed to comply with procedural rules shall continue to be involved also in the later proceedings.

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### **Section 63 Pursuit of the proceedings; summonses**

Each of the joined parties is entitled to the right to pursue the proceedings; the entirety of all joined parties is to be summoned to the hearings.

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### **Title 3 Involvement of third parties in the legal dispute**

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#### **Section 64 Third-party intervention through an action against the two parties to a pending lawsuit**

Anyone asserting a claim to the object or the right regarding which a legal dispute is pending between other persons, either as a whole or in part, shall be entitled, until a final and binding judgment has been handed down on that dispute, to assert his claim by filing a complaint against both of the parties with the court before which the legal dispute became pending in the proceedings in the first instance.

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#### **Section 65 Suspension of the main proceedings**

Upon corresponding application being made by a party, the main proceedings may be suspended until a final and binding judgment has been handed down regarding the third-party intervention through an action brought against the two parties to a pending lawsuit.

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#### **Section 66 Third-party intervention in support of a party to the dispute**

(1) Anyone who has a legitimate interest in one party prevailing over the other in a legal dispute pending between other parties may intervene in the proceedings in support of that party.

(2) The third-party intervention in support of a party to the dispute may be made at any stage of the legal dispute until a final and binding judgment is handed down, and may also be effected in conjunction with an appellate remedy.

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#### **Section 67 Legal position of the third party intervening in support of a party to the dispute**

The third party intervening in support of a party to the dispute must enter into the legal dispute in whatever situation the dispute may be in at the time the third party is acceding to it; the third party is entitled to assert means of challenge or defence and to effectively take all actions in the proceedings such that they are valid, provided that its declarations and actions are not in opposition to the declarations made and actions taken by the primary party.

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#### **Section 68 Effect of the third-party intervention in support of a party to the dispute**

The third party intervening in support of a party to the dispute will not be heard, in its relationship to the primary party, where it alleges that the legal dispute as brought before the judge has been ruled on incorrectly; an allegation by the third party intervening in support of a party to the dispute, to the effect that the primary party had pursued the proceedings inadequately, will be heard only insofar as

the status of the legal dispute as given at the time of the third party's accession, or declarations made and actions taken by the primary party, prevented it from lodging means of challenge or defence, or insofar as means of challenge or defence of which the intervening third party was unaware were not lodged by the primary party, either intentionally or through its grossly negligent fault.

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### **Section 69**

#### **Third-party intervention in support of a party to the dispute as a joinder of parties**

Insofar as, pursuant to the stipulations of civil law, the legal validity of the decision delivered in the main proceedings has an effect on the legal relationship existing between the third party intervening in support of a party to the dispute and the opponent, the intervening third party shall be deemed to be the joined party of the primary party in the sense as defined by section 61.

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### **Section 70**

#### **Accession by the third party intervening in support of a party to the dispute**

(1) Should a third party intervene in support of a party to the dispute, it shall accede to the proceedings by submitting a written pleading with the court hearing the case and, where this pleading is joined to the lodgment of an appellate remedy, by submitting a written pleading to the court of appeal. The written pleading is to be served on both parties and must include:

1. The designation of the parties and of the legal dispute;
2. Exact information regarding the interest of the third party in intervening in support of a party to the dispute;
3. The declaration of accession.

(2) Moreover, the general regulations concerning preparatory written pleadings apply.

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### **Section 71**

#### **Interlocutory proceedings regarding the third-party intervention in support of a party to the dispute**

(1) The decision regarding the petition filed with the court to deny leave to a third party to intervene in support of a party to the dispute shall be handed down following a hearing at which oral argument of the parties and the intervening third party has been heard. The intervening third party shall be admitted to accede to the proceedings provided it has demonstrated its interest in so doing to the satisfaction of the court.

(2) A complaint subject to a time limit may be brought against the interlocutory judgment.

(3) For as long as the intervention has not been ruled inadmissible in a final and binding judgment, the intervening party will be involved in the main proceedings.

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## **Section 72**

### **Admissibility of third-party notice**

(1) Any party believing that it will be able to assert a warranty claim or a claim to indemnification against a third party should the legal dispute's outcome not be in its favour, or any party concerned that such a claim may be brought against it by a third party, may file third-party notice to that third party with the court until a final and binding judgment has been handed down in the legal dispute.

(2) The court and any court-appointed expert shall not be third parties in the sense of the present rule. Section 73 second sentence shall not be applied.

(3) The third party is entitled to in turn file third-party notice.

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## **Section 73**

### **Form of filing third-party notice**

In order to file third-party notice, the party so filing it is to submit a written pleading in which the reasons for filing such third-party notice and the status of the legal dispute are to be set out. The written pleading is to be served on the third party, and a copy of same is to be communicated to the opponent of the party filing the third-party notice. The third-party notice shall become valid only upon its having been served on the third party.

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## **Section 74**

### **Effects of the third-party notice**

(1) Where the third party accedes to the party filing third-party notice, its relationship to the parties shall be determined in accordance with the principles applying to the third-party intervention in support of a party to the dispute.

(2) If the third party refuses to accede to the proceedings, or if it fails to react in substance, the legal dispute will be continued without its interests being taken into consideration.

(3) In all cases provided for by this section, the stipulations of section 68 are to be applied against the third party, with the rule being departed from insofar as, instead of the time at which the third party accedes to the proceedings, that point in time is relevant at which the accession was made possible by the third-party notice.

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## **Section 75**

### **Interpleader sought by the defendant**

Where a debtor who has been sued serves third-party notice upon a third party, asserting that he is entitled to the claim brought, and where the third party accedes to the dispute, the defendant is to be released from the legal dispute, upon his filing the corresponding petition, provided that he has lodged the amount of the claim to the benefit of the creditors who are in dispute, and has waived the right to take this amount back; the defendant is to be sentenced to pay the costs arising as a consequence of any unfounded objection, and litigation as to entitlement to the claim is to be continued among the disputing creditors alone. The prevailing creditor shall be awarded the amount lodged, and the creditor who has not been able to enforce his claim in the dispute shall be sentenced to reimbursing the original defendant for the costs that were not caused by his unfounded objection, including the lodgment costs of the amount in dispute.

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## **Section 76**

### **Laudatio auctoris in cases involving possession**

(1) Anyone who has been sued as the possessor of an object that he alleges to possess based on a legal relationship of the kind designated in section 868 of the Civil Code (Bürgerliches Gesetzbuch, BGB) may petition that the constructive possessor be summoned to allow him to react in substance; he must do so prior to the hearing on the merits of the case by submitting a written pleading naming the constructive possessor, and by submitting a third-party notice. Until such reaction in substance, or until the closure of the hearing at which the identified party is to so react in substance, the defendant may refuse to allow the matter to be heard on its merits.

(2) Should the party so identified dispute the allegation made by the defendant, or should it fail to react in substance, the defendant shall be entitled to comply with the demand for relief as brought.

(3) Where the identified party acknowledges that the allegation made by the defendant is correct, the identified party shall be entitled to assume the proceedings in the stead of the defendant and with the defendant's consent. Any consent by the plaintiff shall be required only insofar as he is bringing claims independently of the fact that the defendant is a possessor based on a legal relationship of the kind designated in subsection (1).

(4) Should the party identified have assumed the proceedings, the defendant is to be released from the complaint upon his filing the corresponding petition. The decision handed down by the court is also valid and enforceable against the defendant where the subject matter as such is concerned.

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## **Section 77**

### **Laudatio auctoris in cases involving impaired ownership**

If the owner of an object has filed suit due to an impairment of his ownership, or if the party entitled to a right in such an object has filed suit due to an impairment of its right, and has made the demand that the impairment cease or that further impairments be desisted from, the stipulations of section 76 shall apply mutatis mutandis where the defendant alleges that he has caused the impairment by way of exercising the right of a third party.

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## **Title 4**

### **Attorneys of record and counsel**

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## **Section 78**

### **Proceedings in which the parties must be represented by counsel**

(1) The parties to disputes before the regional courts (Landgerichte, LG) and the higher regional courts (Oberlandesgerichte, OLG) must be represented by an attorney. Where, based on section 8 of the Introductory Law of the Courts Constitution Act (Einführungsgesetz zum Gerichtsverfassungsgesetz), a Land has established a supreme court for its territory, the parties to a dispute must likewise be represented by an attorney before this court as well. In proceedings before the Federal Court of Justice (Bundesgerichtshof, BGH), the parties to the dispute must be represented by an attorney admitted to practice before said court.

(2) Public authorities and legal persons under public law, including the co-operation groupings they may form by way of fulfilling their tasks as governed by public law, may have themselves represented

by their own employees who are qualified to hold judicial office, or by employees who are qualified to hold judicial office and who are working with other public authorities or legal persons under public law, including the co-operation groupings they may form by way of fulfilling their tasks as governed by public law.

(3) These rules are not to be applied to proceedings before a judge correspondingly delegated or requested, nor are they to be applied to actions in the proceedings that may be taken before the records clerk of the court registry.

(4) Any attorney authorised to represent parties before the courts in accordance with the stipulations of subsections (1) and (2) may represent himself.

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### **Section 78a (repealed)**

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### **Section 78b Attorney appointed by the court in keeping with statutory requirements**

(1) Insofar as representation by an attorney is mandated and a party is unable to find an attorney prepared to represent it, the court hearing the case of the party may, by order, assign an attorney as counsel to that party, upon its having filed the corresponding petition, who is admitted to practice before the court of that level of jurisdiction, and who is to exercise that party's rights, provided that the action brought by the party or the defence against an action brought by others does not seem frivolous or without any prospects of success.

(2) A complaint subject to a time limit may be lodged against the order by which the assignment of an attorney is refused.

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### **Section 78c Selection of the attorney**

(1) The attorney to be assigned as counsel pursuant to section 78b will be selected by the presiding judge of the court from among the attorneys established in the judicial district of the court hearing the case.

(2) The attorney assigned as counsel may make his acceptance dependent on the party paying an advance, the amount of which is to be computed in accordance with the Act on the Remuneration of Attorneys (Rechtsanwaltsvergütungsgesetz, RVG).

(3) A complaint subject to a time limit may be filed by the party, and likewise by the attorney, against a ruling handed down pursuant to subsection (1). The attorney shall also be entitled to file a complaint subject to a time limit if the presiding judge of the court refuses to comply with the petition that the attorney's assignment as counsel to the party be cancelled (section 48 (2) of the Bundesrechtsanwaltsordnung (BRAO, Federal Act on the Profession of Attorneys)).

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### **Section 79 Proceedings the parties may pursue without being represented by counsel**

(1) To the extent representation by attorneys is not mandated, the parties to the dispute may pursue the legal dispute themselves. Parties asserting a third-party monetary claim, or a monetary claim assigned to them for the purpose of collecting the claim on another's account, must be represented by counsel as attorneys-in-fact unless they are authorised, pursuant to the stipulations of subsection (2), to represent the creditor, or unless they are collecting a claim of which they were the original creditor.

(2) The parties may have themselves represented by counsel as attorneys-in-fact. Above and beyond this, the following are authorised to represent parties as attorneys-in-fact:

1. Employees of the party or of a company affiliated with it (section 15 of the Stock Corporation Act (Aktiengesetz, AktG)); public authorities and legal persons under public law, including the co-operation groupings they may form by way of fulfilling their tasks as governed by public law, may also have themselves represented by employees of other public authorities or legal persons under public law, including the co-operation groupings they may form by way of fulfilling their tasks as governed by public law;
2. Family members of full legal age (section 15 of the Fiscal Code (Abgabenordnung, AO), section 11 of the Act on Civil Unions (Lebenspartnerschaftsgesetz, LPartG)), persons who are qualified to hold judicial office and joined parties, provided that the representation is not connected to any activities performed against payment;
3. Consumer centres and other publicly subsidised consumer associations, where they are collecting claims of consumers in the context of their scope of responsibilities;
4. Persons providing collection services (registered persons pursuant to section 10 (1), first sentence, number 1 of the Legal Services Act (Rechtsdienstleistungsgesetz, RDG)) in summary proceedings for a payment order until the matter is transferred to the court hearing the dispute, in the case of petitions for a declaration of enforceability in compulsory enforcement proceedings against movable property for monetary claims, including proceedings for the administration of a statutory declaration in lieu of an oath and for an application for the issuance of an arrest warrant, in each case to the exception of procedural actions that initiate legal proceedings determining whether or not a claim is justified, or actions that are to be taken within such legal proceedings.

Attorneys-in-fact who are not individuals will act through their governing bodies and the representatives charged with representing them in the proceedings.

(3) The court will refuse to accept attorneys-in-fact who do not have the power of representation as stipulated by subsection (2); the corresponding order is incontestable. Actions taken in the proceedings by an attorney-in-fact who does not have the power of representation, as well as the service of documents on this attorney-in-fact, or notice given to him, will be valid until the date on which the court refuses to accept him. The court may prohibit the attorneys-in-fact designated in subsection (2), second sentence, numbers 1 to 3, by incontestable order, from continuing to represent the party should they be unable to appropriately depict the circumstances and facts as well as the relationship of the parties to the dispute.

(4) Judges may not appear as attorneys-in-fact before a court of which they are a member. Honorary lay judges may not appear before a formation of the court of which they are a member, to the exception of the cases provided for by subsection (2), second sentence, number 1. Subsection (3) sentences 1 and 2 shall apply mutatis mutandis.

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## **Section 80**

### **Power of attorney for proceedings**

The power of attorney is to be submitted in writing for the files of the court. It may be submitted retroactively; the court may determine a time limit in this regard.

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## **Section 81**

### **Scope of the power of attorney for proceedings**

The power of attorney for proceedings authorises the bearer to take all actions concerning the legal dispute in the proceedings, including those that are occasioned by countercharges being brought, by proceedings being reopened, by an objection being lodged pursuant to section 321a, and by compulsory enforcement; it further authorises the bearer to appoint a representative as well as an attorney-in-fact for the courts of higher instance; to bring the legal dispute to a close by settlement, to waive the subject matter of the litigation, or to recognise the claim being enforced by the opponent; to take possession of the cost reimbursement made by the opponent or the Treasury.

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## **Section 82**

### **Power of attorney valid for collateral proceedings outside of the actual litigation**

The power of attorney for the main proceedings comprises the power of attorney for proceedings in which a third-party intervention is pursued by bringing an action against the two parties to a pending lawsuit, as well as for proceedings concerning a seizure or an injunction.

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## **Section 83**

### **Limitation of the power of attorney for proceedings**

(1) Any limitation of the statutory scope of the power of attorney will have legal effect vis-à-vis the opponent only insofar as this limitation concerns the termination of the legal dispute by settlement, a waiver of the subject matter of the litigation, or the opponent's recognition of the claim being enforced.

(2) To the extent representation by attorneys is not mandated, a power of attorney may be issued for individual actions to be taken in the proceedings.

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## **Section 84**

### **Plurality of attorneys of record**

Where several attorneys of record have been authorised, they shall have the right to represent the party both jointly and individually. Any stipulation in the power of attorney in derogation herefrom will not have any legal effect vis-à-vis the opponent.

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## **Section 85**

### **Effect of the power of attorney for proceedings**

(1) The procedural actions taken by the party's attorney of record shall bind the party in the same manner as if the party itself had taken these actions. This applies to admissions and any other declarations as to fact insofar as they are not immediately recanted or corrected by the party appearing at the hearing along with his representatives.

(2) Any fault of the attorney of record shall be equivalent to a fault of the party.

**Footnote**

Section 85 (2): Depending on the operative part of the judgment, this complies with the German Constitution (Grundgesetz, GG), pursuant to the ruling of 20 April 1982 I 1169 – 2 BvL 26/81 – handed down by the Federal Constitutional Court and published in Entscheidungen des Bundesverfassungsgerichts (BVerfGE).

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### **Section 86**

#### **Continuation in force of the power of attorney for proceedings**

The power of attorney will be cancelled neither by the death of the grantor of the power of attorney, nor by any change in his capacity to sue and be sued or in his legal representation; however, the attorney-in-fact is to submit to the court the power of attorney granted to him by the successor should he appear in the legal dispute on the successor's behalf after the suspension of the legal dispute has ceased.

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### **Section 87**

#### **Expiry of the power of attorney**

(1) The termination of an agreement governing a power of attorney will take legal effect vis-à-vis the opponent only upon notification being made that the power of attorney has expired; in proceedings in which the parties must be represented by counsel, it will so take effect only upon notification as to another attorney having been appointed.

(2) A termination by the attorney-in-fact himself will not prevent him from acting on behalf of the grantor of the power of attorney until the latter has otherwise ensured the protection of its interests under law.

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### **Section 88**

#### **Lack of power of attorney**

(1) Where a power of attorney is lacking, the opponent may file an objection, regardless of the status of the legal dispute.

(2) The court is to take account of the lack of power of attorney ex officio, unless an attorney is acting as the attorney-in-fact.

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### **Section 89**

#### **Representative without a power of attorney**

(1) Where a person acts on behalf of a party as a negotiorum gestor (person acting on behalf of another without having been granted express authority to do so), or as an attorney-in-fact, without submitting a power of attorney to the court, he may be admitted to the litigation on a preliminary basis against or without provision of security for costs and damages. The final judgment may be delivered only after the period for submitting the approval has expired. Should the approval not have been submitted by the time the final judgment is delivered, the person admitted to the litigation on a preliminary basis is to be sentenced to compensating the opponent for the costs he has had to incur as a result of the former's admission to the litigation; moreover, he is to compensate the opponent for the damages the latter has suffered as a result of such admission.

(2) The party must allow the case against it to be conducted in this manner if it has granted the power of attorney only orally, or if it has expressly or tacitly approved the litigation.

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## **Section 90 Advisers**

(1) The parties to the dispute may appear at the hearing in the company of advisers. Anyone may be an adviser who is authorised to represent a party as an attorney-in-fact in a hearing in proceedings in which the party may pursue the legal dispute itself. The court may admit other persons as advisers provided this serves the purpose intended, and provided the circumstances of the individual case indicate that a corresponding need exists. Section 79 (3) sentences 1 and 3 and (4) shall apply mutatis mutandis.

(2) The statements made by advisers shall be deemed to be submissions by the party unless the latter immediately recants or corrects such statements.

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## **Title 5 Costs of the proceedings**

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### **Section 91 Principle of the obligation to bear costs; scope of this obligation**

(1) The party that has not prevailed in the dispute is to bear the costs of the legal dispute, in particular any costs incurred by the opponent, to the extent these costs were required in order to bring an appropriate action or to appropriately defend against an action brought by others. The compensation of costs also comprises compensation of the opponent for any necessary travel or for time the opponent has lost by having been required to make an appearance at hearings; the rules governing the compensation of witnesses shall apply mutatis mutandis.

(2) In all proceedings, the statutory fees and expenditures of the attorney of the prevailing party are to be compensated. However, the travel expenses of an attorney who has not established himself in the judicial district of the court hearing the case, and who does not reside at the location of the court hearing the case, shall be compensated only insofar as it was necessary to involve him in order to bring an appropriate action, or to appropriately defend against an action brought by others. The costs of retaining several attorneys shall be compensated only insofar as they do not exceed the costs of a single attorney, or insofar as personal reasons required an attorney to be replaced by another. Where an attorney represents himself, he shall be reimbursed for those fees and expenditures that he could demand as fees and expenditures had he been granted power of attorney to represent another party.

(3) The costs of the legal dispute in the sense as defined by subsections (1) and (2) also include the fees arising as a result of conciliation proceedings before a dispute-resolution entity established or recognised by a Land department of justice (Landesjustizverwaltung); this shall not apply if a period longer than one year has lapsed between the date on which the conciliation proceedings ended and the date on which proceedings were brought in the courts.

(4) The costs of the legal dispute in the sense of subsection (1) also include costs that the prevailing party has paid to the party that has not prevailed in the course of the legal dispute.

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**Section 91a**  
**Costs where the main action has been dealt with and terminated**

(1) Where the parties to the dispute declare the matter terminated in the hearing, or make such declaration in a written pleading, or by recording it with the registry for the files of the court, the court shall issue, at its equitably exercised discretion, an order on the costs, taking account of the circumstances and facts as well as the status of the dispute thus far. The same shall apply if the defendant fails to oppose, within a statutory period of two (2) weeks from service of the written pleading, the plaintiff's declaration as to the matter having been dealt with and terminated, provided that this consequence was indicated to the defendant previously.

(2) A complaint subject to a time limit may be lodged against the decision. This shall not apply where the value of the claim in the main action is equal to or lower than the amount specified in section 511. The court is to hear the opponent prior to handing down its decision on the complaint.

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**Section 92**  
**Costs in the event a party prevails in part**

(1) Where each of the parties has prevailed for a part of its claim, but has not been able to enforce another part of its claim in the dispute, the costs are to be cancelled against each other, or they are to be shared proportionately. If the costs have been cancelled against each other, the parties shall bear the court costs at one half each.

(2) The court may impose the entire costs of the proceedings on one of the parties if:

1. The amount the other party claimed in excess was relatively small, or has resulted in only slightly higher costs, or
2. The amount of the claim brought by the other party depended on the judges determining it at their discretion, on the assessment by experts, or on the parties settling their reciprocal claims.

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**Section 93**  
**Costs in the event an immediate acknowledgment is made**

Where the defendant has not given cause for an action to be brought, the plaintiff shall bear the costs of the proceedings should the defendant immediately acknowledge the claim.

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**Section 93a**  
**(repealed)**

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**Section 93b**  
**Costs of actions brought for the vacation of premises**

(1) Where a court finds for the party filing a complaint for the vacation of residential premises, taking account of the fact that due to the legitimate interests of the plaintiff, the defendant's demand to continue the tenancy relationship is not justified in light of the stipulations of sections 574 to 574b of the Civil Code (Bürgerliches Gesetzbuch, BGB), the court may impose on the plaintiff the costs in their entirety or in part should the defendant have demanded the continuation of the tenancy relationship and provided reasons for doing so, and where the plaintiff prevails for reasons that have

arisen only subsequently (section 574 (3) of the Civil Code (BGB)). This shall apply mutatis mutandis to any legal dispute for continuation of the tenancy relationship where the complaint is dismissed.

(2) If a complaint brought for the vacation of residential premises is dismissed and the ruling determines that, in keeping with the defendant's demand, the tenancy relationship is to continue in light of the stipulations of sections 574 to 574b of the Civil Code (Bürgerliches Gesetzbuch, BGB), the court may impose on the defendant the costs in their entirety or in part should the defendant have failed to immediately comply with the plaintiff's demand to provide the reasons for his opposition. This shall apply mutatis mutandis to any legal dispute for continuation of the tenancy relationship where the court finds for the party filing the complaint.

(3) In the event the defendant immediately acknowledges the claim to vacation of the residential premises, but a period is granted within which he may so vacate them, the court may impose on the plaintiff the costs in their entirety or in part if the defendant had already requested of the plaintiff, prior to the complaint being brought, that the tenancy relationship continue, or that a period for clearing the premises that is reasonable under the circumstances be granted, without this request having met with success.

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### **Section 93c (repealed)**

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### **Section 93d (repealed)**

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### **Section 94 Costs where claims have devolved upon others**

In cases in which the plaintiff asserts and files a claim that has devolved upon him, without having informed the defendant of such devolution prior to bringing the proceedings in the courts, he shall bear the costs of the proceedings insofar as they have arisen because the defendant had cause to dispute the claim as the plaintiff had failed to so give notice of the devolution, or to prove it by supporting documents.

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### **Section 95 Costs in the event of failure to comply with procedural rules or of fault**

The party that fails to attend a hearing or to meet a deadline shall bear the costs arising therefrom; this shall also apply if the party, through its fault, has caused a hearing to be deferred or a hearing for oral argument to be postponed, or if it has caused a hearing to be arranged at which the hearing for oral argument is to be continued, or a period to be extended.

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### **Section 96 Costs of means of challenge or defence that have not met with success**

Where the means of challenge or defence brought have not met with success, their costs may be imposed on the party that has availed itself of such means, even in those cases in which it has prevailed on the merits of the case.

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## **Section 97**

### **Costs of appellate remedies**

- (1) The costs of appellate remedies that have been sought without success shall be borne by the party that has lodged the remedy.
- (2) The costs of the appellate proceedings shall be imposed on the prevailing party in their entirety or in part if it has prevailed by reason of a new submission that it would have been able to assert and file at a prior level of jurisdiction.
- (3) (repealed)

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## **Section 98**

### **Costs of settling a matter**

The costs of any settlement shall be deemed to have been cancelled against each other unless otherwise agreed by the parties to the dispute. The same shall apply regarding the costs of the legal dispute that has been dealt with and terminated by settlement, unless a final and binding decision has been delivered in their regard.

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## **Section 99**

### **Contestation of rulings on the payment of costs**

- (1) A ruling on the payment of costs may not be admissibly contested unless an appeal is filed against the decision taken on the merits of the case.
- (2) If the main action has been dealt with and terminated by a sentence that is based on an acknowledgment, a complaint subject to a time limit may be lodged against the ruling on the payment of costs. This shall not apply where the value of the claim in the main action is not higher than the amount specified in section 511. The opponent is to be heard prior to the decision being taken on the complaint.

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## **Section 100**

### **Costs as borne by joined parties**

- (1) Should the party that has not prevailed before the court consist of a plurality of persons, they shall be liable for the compensation of costs on a per capita basis.
- (2) If the joined parties' participation in the legal dispute differs significantly, the court may decide at its discretion to base its ruling on such participation.
- (3) Where a joined party has availed itself of a special means of challenge or defence, the remaining joined parties shall not be liable for the costs engendered thereby.
- (4) In the event that several defendants are sentenced as joint and several debtors, they shall also be liable for the compensation of costs as joint and several debtors, notwithstanding the rule set out in subsection (3). The stipulations under civil law, according to which this liability extends to the costs designated in subsection (3), shall remain unaffected hereby.

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### **Section 101**

#### **Costs of a third-party intervention in support of a party to the dispute**

(1) The costs entailed by a third-party intervention in support of a party to the dispute are to be imposed on the opponent of the primary party to the extent he is to bear the costs of the legal dispute in accordance with the stipulations of sections 91 to 98; insofar as this is not the case, they are to be imposed on the third party intervening in support of a party to the dispute.

(2) Where the third party intervening in support of a party to the dispute is deemed to be a joined party of the primary party (section 69), the stipulations of section 100 shall govern.

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### **Section 102 (repealed)**

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### **Section 103**

#### **Basis for the assessment of costs; petition for the assessment of costs**

(1) A claim to reimbursement of the costs of the proceedings may be asserted only based on a legal document (title) suited for compulsory enforcement.

(2) The petition for assessment of the amount to be reimbursed is to be filed with the court of first instance. The computation of the costs, the copy intended for forwarding to the opponent, and the proof serving to justify the individual cost items are to be attached to the petition.

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### **Section 104**

#### **Procedure for the assessment of costs**

(1) The court of first instance is to rule on the petition regarding the assessment of costs. Upon this petition being filed, the court is to rule that, from the date on which the petition regarding the assessment of costs is received, and, in the case provided for by section 105 (3), from the date on which the judgment is pronounced, the costs assessed are to bear interest at five percentage points above the base rate of interest in accordance with section 247 of the Civil Code (Bürgerliches Gesetzbuch, BGB). Where the petition is complied with fully or in part, the decision is to be served ex officio on the opponent of the petitioner, with a copy of the computation of the costs being enclosed. The decision is to be served ex officio on the petitioner only in those cases in which the petition is dismissed as a whole or in part; in all other instances, the decision shall be communicated by simple letter.

(2) In order for a cost item to be considered, it shall suffice for it to have been substantiated. As regards the expenditures an attorney has incurred for postage and telecommunications services, his assurance that such expenditures have been incurred shall be sufficient substantiation. In order for turnover tax amounts to be considered, the petitioner's declaration that he is unable to deduct such amounts as input taxes shall be sufficient substantiation.

(3) A complaint subject to a time limit may be lodged against the decision. The court with which the complaint is lodged may suspend the proceedings until the decision on which the petition for assessment of costs is based has become final and binding.

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## **Section 105**

### **Simplified cost-assessment order**

(1) The court order assessing the costs may be included in the judgment and the execution copies, provided that no execution of the ruling has yet been issued at the time the petition is filed, and provided that this does not entail any delay for the execution. Should the court order assessing the costs be issued in the form stipulated by section 130b, it is to be recorded in a separate electronic document. The document is to be joined to the judgment such that it cannot be separated.

(2) No separate execution and service of the court order assessing the costs shall be made in the cases provided for by subsection (1). The amount assessed shall be communicated to the parties, with a copy of the computation of costs being attached to the communication made to the petitioner's opponent. The court order assessing the costs shall not be joined to the judgment where the petition regarding the assessment of costs is not complied with, and also where it is not complied with only in part.

(3) No petition regarding the assessment of costs need be filed if the party has submitted the computation of its costs prior to the judgment being pronounced; in such event, the copy of the computation of the costs to be communicated to the opponent is to be prepared ex officio.

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## **Section 106**

### **Cost allocation according to quotas**

(1) In cases in which the costs of the proceedings are allocated, in their entirety or in part, according to quotas, the court is to demand of the opponent, upon receipt of the petition regarding the assessment of costs, that it submit the computation of its costs to the court within one (1) week. The stipulations of section 105 are not to be applied.

(2) Once the one-week period has expired without success, the decision shall be given without consideration of the opponent's costs, notwithstanding the latter's right to retroactively file a claim to reimbursement. The opponent shall be liable for the additional costs arising as a result of the proceedings for retroactive reimbursement.

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## **Section 107**

### **Change based on an assessment of the value of the claim**

(1) Should, following the assessment of the costs, a decision be given by the court assessing the value of the subject matter being litigated, the cost assessment is to be changed accordingly insofar as the court's decision deviates from the computation of the value on which the assessment of the costs is based, upon corresponding application being made. The court of first instance shall decide on said application.

(2) The application is to be filed with the court registry within the one-month period. The period shall commence upon service of the order assessing the value of the subject matter being litigated and, where no such service is required, upon its pronouncement.

(3) The stipulations of section 104 (3) are to be applied.

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## **Title 6**

### **Provision of security**

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## **Section 108**

### **Nature and amount of the security**

(1) In those cases in which security is to be provided in the proceedings, the court may at its sole discretion determine the nature of such security and the amount in which it is to be provided. Unless the court has made provisions in this regard, and unless the parties to the dispute have not agreed otherwise, the security is to be provided in the form of an irrevocable and unconditional guaranty of unlimited term, issued in writing, by a financial institution authorised to pursue its business in Germany, or by lodging cash or such securities that are suited to serve as security pursuant to section 234 (1) and 3 of the Civil Code (Bürgerliches Gesetzbuch, BGB).

(2) The stipulations of section 234 (2) and of section 235 of the Civil Code (Bürgerliches Gesetzbuch, BGB) shall apply mutatis mutandis.

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## **Section 109**

### **Return of the security**

(1) Where the cause for providing security has ceased to exist, the court that has directed that security be provided, or permitted such provision of security, shall determine a period, upon corresponding application being made, within which the party to whose benefit the security was provided is to declare its consent to returning the security, or within which such party is to provide supporting documentary proof that it has brought proceedings in the courts for its claims.

(2) Upon this period expiring, and upon corresponding application being made, the court shall order that the security be returned, unless it is proven in the meantime that the proceedings have been brought in the courts; if the security has been provided as a bond, the court shall order the bond to expire. The order shall become effective only once it has become final and binding.

(3) The applications for the return of the security, and the consent thereto, may be recorded with the registry for the files of the court. The decisions are issued by a court order.

(4) The applicant may file a complaint subject to a time limit against the order by which the application provided for in subsection (1) is rejected, while both parties may file a complaint subject to a time limit against the decision designated in subsection (2).

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## **Section 110**

### **Security deposit for the costs of the proceedings**

(1) Plaintiffs who do not have their habitual place of abode in a Member State of the European Union or in a signatory state of the Agreement on the European Economic Area shall provide security for the costs of the proceedings should the defendant so demand.

(2) This obligation shall not be given:

1. Where, due to international treaties, no such security deposit may be demanded;
2. Where the decision as to the defendant's reimbursement of the costs it has incurred in the proceedings would be enforced based on international treaties;
3. Where the plaintiff possesses real estate assets, or claims secured in rem, in Germany that suffice to cover the costs of the proceedings;

4. Where countercharges are brought;
5. Where proceedings have been brought in the courts based on public notice given by a court.

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### **Section 111**

#### **Retroactive demand for a security deposit for the costs of the proceedings**

The defendant may demand a security deposit to be made for the costs of the proceedings if the prerequisites for such an obligation to provide security arise only in the course of the legal dispute, unless a part of the claim brought before the courts is undisputed among the parties and would suffice to cover such costs.

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### **Section 112**

#### **Amount of the security deposit for the costs of the proceedings**

- (1) The amount of the security to be provided shall be assessed by the court at its sole discretion.
- (2) In so assessing the amount of the security, the costs of the proceedings are to be based on that amount that the defendant will likely have to pay. The costs that will accrue to the defendant if it brings countercharges shall not be taken into account in this context.
- (3) Should it become apparent in the course of the legal dispute that the security provided will not suffice, the defendant may demand further security, provided that no part of the claim brought before the courts that would suffice to cover such costs is undisputed among the parties.

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### **Section 113**

#### **Determination of the deadline by which the security deposits for the costs of the proceedings are to be provided**

In issuing the order that the plaintiff is to provide security, the court is to determine a period within which the security is to be provided. Upon the period expiring, and upon a corresponding application being made by the defendant, the action is to be declared as having been withdrawn if the security has not been provided by the date of the decision by the court; in the event oral argument is to be heard regarding appellate remedies sought by the plaintiff, these remedies are to be overruled.

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## **Title 7**

### **Assistance with court costs; advance on the costs of litigation**

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### **Section 114**

#### **Prerequisites**

- (1) Any parties who, due to their personal and economic circumstances, are unable to pay the costs of litigation, or are able to so pay them only in part or only as instalments, will be granted assistance with the court costs upon filing a corresponding application, provided that the action they intend to bring or their defence against an action that has been brought against them has sufficient prospects

of success and does not seem frivolous. Wherever the present title is silent, sections 1076 through 1078 shall apply to assistance with court costs in cross-border disputes within the European Union.

(2) The action being brought or the defence against an action is frivolous where a party that has not taken recourse to assistance with the court costs would desist, upon having judiciously assessed all circumstances, from bringing an action or defending against an action in spite of sufficient prospects of succeeding.

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## **Section 115**

### **Use of income and assets**

(1) The parties are to use their income. The term “income” comprises all earnings in money or in money’s worth. The following are to be deducted in determining the parties’ income:

1.

a) The amounts designated in section 82 (2) of Book XII of the Social Code (Sozialgesetzbuch Teil XII, SGB XII);

b) For parties earning an income from economic activities, an amount of 50 percent of the maximum standard rate initially assessed or later updated for the single, or single-parent, beneficiary of benefits granted under stage 1 standard support needs pursuant to the annex to section 28 of Book XII of the Social Code (SGB XII);

2.

a) For the party and the party’s spouse or partner under a civil union, the amount of the maximum standard rate initially assessed or later updated for the single, or single-parent, beneficiary of benefits granted under stage 1 standard support needs pursuant to the annex to section 28 of Book XII of the Social Code (SGB XII), increased in each case by 10 percent;

b) In the event of further maintenance payments being made based on a statutory obligation to pay such maintenance, for each person entitled to maintenance, in each case the amount of the maximum standard rate initially assessed or later updated for the person of the corresponding age entitled to benefits granted under standard support needs of stages 3 to 6 pursuant to the annex to section 28 of Book XII of the Social Code (SGB XII), increased in each case by 10 percent;

3. The costs of residential accommodation and heating costs, insofar as they are not obviously disproportionate to the general life circumstances of the party concerned;

4. Extra allowances for additional needs pursuant to section 21 of Book II of the Social Code (SGB II) and pursuant to section 30 of Book XII of the Social Code (SGB XII);

5. With a view to special obligations to which the party is subject, further amounts as appropriate; section 1610a of the Civil Code (Bürgerliches Gesetzbuch, BGB) shall apply mutatis mutandis.

The amounts in force at the time at which assistance with court costs is approved shall govern. The Federal Ministry of Justice publishes, in the Federal Law Gazette (Bundesgesetzblatt, BGBl.), the amounts initially assessed or later updated in accordance with the third sentence hereinabove at number 1 lit. b and with number 2. Where these amounts are not full amounts in euros, they are to be rounded down where they are equal to 0.49 euros and less, and shall be rounded up where they are equal to 0.50 euros and higher. The maintenance allowance amounts stipulated by the third sentence hereinabove at number 2 shall be reduced by the income earned by the person entitled to

maintenance. Should an annuity be paid, it is to be deducted instead of the allowance amount wherever reasonable.

(2) Out of that part of the monthly income remaining after deductions ("income to be used"), monthly instalments are to be assessed in the amount of half of the income to be used; such monthly instalments are to be rounded down to a full amount in euros. Where the amount of a monthly instalment is lower than 10 euros, the assessment of monthly instalments is to be desisted from. Where the income to be used is greater than 600 euros, the monthly instalment shall amount to 300 euros plus that part of the income to be used that is in excess of 600 euros. As a maximum, and regardless of the number of court instances in which the proceedings are pursued, a maximum of 48 monthly instalments are to be paid.

(3) The party is to use its assets to the extent this can reasonably be expected of it. Section 90 of Book XII of the Social Code (SGB XII) shall apply mutatis mutandis.

(4) Assistance with court costs will not be approved if it can be foreseen that the party's costs of litigation will not be higher than four (4) monthly rates and will not exceed the partial amounts to be contributed from the party's assets.

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### **Section 116**

#### **Party by virtue of an office; legal person; organisations having the capacity to be a party**

Upon corresponding application being made, assistance with court costs shall be approved for parties:

1. Who are a party by virtue of their office, if the costs cannot be funded from the available assets administered by that party and it cannot reasonably be expected of the parties economically involved in the subject matter in dispute to contribute to the payment of these costs;
2. Who are a legal person or an organisation that has the capacity to be a party and that was established in Germany, in another Member State of the European Union, or in any other signatory state of the Agreement on the European Economic Area, and which have their registered seat there, if the costs cannot be funded by that party nor by the parties economically involved in the subject matter in dispute, and if any failure to bring an action or to defend against an action that has been brought would contradict the public interest.

Section 114 subsection (1), first sentence, last clause of the sentence, and subsection (2) are to be applied. Should the costs be funded only in part or in partial amounts, the corresponding amounts are to be paid.

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### **Section 117 Application**

(1) The application for approval of assistance with court costs is to be submitted to the court hearing the case; it may be recorded with the registry for the files of the court. The application is to summarise the case and is to cite the evidence. The application for approval of assistance with court costs in the event of compulsory enforcement is to be filed with the court having jurisdiction for compulsory enforcement.

(2) With the application, the party is to include a declaration describing his personal and economic circumstances (family circumstances, profession, assets, income and financial obligations), and is to attach the corresponding proof to same. The declaration and the proof may be made accessible to the opponent in the proceedings only upon the party having consented to this being done, unless the

opponent is entitled, vis-à-vis the applicant, to be informed of the applicant's earnings and assets pursuant to the stipulations of civil law. Prior to his declaration being forwarded to the opponent, the applicant is to be given the opportunity to state his position. The applicant is to be informed of the fact that the declaration has been forwarded.

(3) In the interests of simplifying and streamlining the procedure, the Federal Ministry of Justice is authorised to introduce forms for the declaration, such forms being subject to approval by the Bundesrat and being made by statutory instrument. Such forms also contain the instructions required pursuant to section 120a (2), fourth sentence.

(4) Insofar as such forms have been introduced for the declaration, the party must use them.

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### **Section 118**

#### **Approval procedure**

(1) The opponent is to be given the opportunity to state his position as to whether or not he believes the pre-requisites for approving assistance with court costs have been met, unless this is deemed inappropriate for special reasons. This position statement may be recorded with the registry for the files of the court. If it is to be expected that the parties will settle, the court may summon the parties to the dispute for a discussion of the matter in person; the court is to record any settlement reached. Any costs incurred by the opponent will not be reimbursed. The expenditures incurred in the course of examining witnesses and experts pursuant to subsection (2), third sentence, shall be borne as court costs by the party on whom the costs of the legal dispute have been imposed.

(2) The court may demand that the applicant substantiate the information he has provided on the facts and circumstances of the case, and specifically may demand that a statutory declaration in lieu of an oath be made. It may order information to be procured from the authorities, and it may in particular order the submission of records and procure information. No witnesses or experts shall be examined, unless it cannot be established by any other means whether or not the action brought by a party, or the defence against an action brought by others against it, holds out sufficient prospects of success and does not seem frivolous; none of the parties shall be placed under oath. Should, within a period set by the court, the applicant fail to substantiate information he has provided regarding his personal and economic circumstances, or should he fail to answer certain questions, or not answer them to the satisfaction of the court, the court shall refuse to approve assistance with court costs in this regard.

(3) The measures set out in subsections (1) and (2) shall be taken by the presiding judge or by a member of the court accordingly delegated by the presiding judge.

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### **Section 119**

#### **Approval**

(1) Assistance with court costs shall be approved separately at each level of jurisdiction. Wherever the opponent has filed an appeal, it shall not be reviewed at any higher level of jurisdiction whether the action brought by a party, or the defence against an action brought by others, holds out sufficient prospects of success or seems frivolous.

(2) An approval of assistance with court costs granted for compulsory enforcement against movable property shall comprise all enforcement measures in the judicial district of the court responsible for the enforcement, including the procedure for statutory declarations in lieu of an oath.

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## **Section 120**

### **Assessment of payments**

(1) In approving assistance with court costs, the court shall assess the monthly instalments and amounts to be paid out of the assets. Should, in light of special obligations being given, the court deduct amounts from the income in accordance with section 115 (1), third sentence, number 5, and should it be reasonable to assume that upon the expiry of four (4) years, these obligations will have ceased either entirely or in part, the court shall concurrently assess the payments also in the amount resulting if the obligations are not taken into account, or only in a reduced scope; moreover, the court shall also determine from which time onwards these latter payments are to be made.

(2) The payments are to be made to the Land cash office (Landeskasse), in proceedings before the Federal Court of Justice (Bundesgerichtshof, BGH), they are to be made to the Federal cash office (Bundeskasse) unless assistance with court costs has been approved at a prior level of jurisdiction.

(3) The court shall order the payments to be provisionally stayed:

1. If the payments made by the party will cover the costs foreseeably arising;
2. If the party, counsel assigned to it or the Federal cash office or the Land cash office are able to assert the costs against another party involved in the proceedings.

(4) (repealed)

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## **Section 120a**

### **Modification of approval**

(1) The court is to modify its decision as to the payments to be made if the personal or economic circumstances, based on which assistance with court costs was granted, have undergone a significant change. A change of the authoritative amounts pursuant to section 115 (1), third sentence, number 1 lit. b and number 2 shall be taken into account only upon an application having been filed and only in those cases in which such change results in no monthly instalment needing to be paid. Should the court so demand, the party must disclose at any time whether or not its circumstances have changed. Such change shall not take any effect to the detriment of the party if four (4) years have lapsed since the decision of the court has entered into force or the proceedings have been terminated by other means.

(2) Where the economic circumstances of the party have significantly improved prior to the point in time set out in subsection 1, fourth sentence, or where that party's address changes, it must inform the court of this fact without undue delay. Where the party earns a monthly income on a regular basis, the improvement of the income shall be deemed to be significant only if the difference to the gross income thus far serving as the basis is higher than 100 euro, and that on any other than a non-recurrent basis. The second sentence shall apply mutatis mutandis inasmuch as deductible obligations have ceased to exist. When the party files its application, it is to be instructed regarding the above stipulations and regarding the consequences of a violation using the form introduced pursuant to section 117 (3).

(3) A party's economic circumstances may significantly improve in particular as a result of the party obtaining something by the action brought or the defence against an action brought against it. The court is to review, after the ruling has become res judicata or after the proceedings have been otherwise terminated, whether or not a modification of the ruling regarding the payments to be made is required in light of what has been obtained by the action brought or defended against. A modification of the decision is ruled out when the party would have been granted assistance with court costs without having to make payments in instalments, had whatever the party obtained by the action brought or by the defence against an action brought against it been paid or provided in due time.

(4) For its declaration regarding the change of its personal or economic circumstances pursuant to subsection (1), third sentence, the party must use the form introduced pursuant to section 117 (3). Section 118 (2) shall apply mutatis mutandis to any review of the personal or economic circumstances.

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## **Section 121**

### **Assignment of counsel**

(1) Should the due process of law require parties to be represented by attorneys, the party shall be assigned an attorney as counsel who is willing to so represent the party and whom the party has selected.

(2) Should the due process of law not require parties to be represented by attorneys, the party shall be assigned an attorney as counsel who is willing to represent the party and whom the party has selected should such representation by an attorney be deemed necessary in the event the opponent has retained an attorney.

(3) An attorney not practising in the judicial district of the court hearing the case may be assigned to the party only if this does not result in further costs.

(4) If special circumstances so require, the party may be assigned, upon its having filed a corresponding application, an attorney as counsel who is willing to represent the party and whom the party has selected, in order to make an appearance at a hearing serving the taking of evidence before the requested judge or in order to enable communications with the attorney of record representing the party in the proceedings.

(5) Should the party not find an attorney willing to represent it, the presiding judge shall assign an attorney as counsel upon the party having filed the corresponding application.

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## **Section 122**

### **Effect of assistance with court costs**

(1) Where assistance with court costs is approved, this will have the effect of:

1. The Federal or Land cash office being able to assert against the party, exclusively in accordance with the provisions made by the court,

a) The court costs and the costs of involving the court-appointed enforcement officer, be they in arrears or accruing in the future,

b) The claims to which the attorneys assigned as counsel are entitled against the party, and which have devolved upon the cash office;

2. Releasing the party from the obligation to provide a security deposit for the costs of the proceedings;

3. Prohibiting the attorneys assigned as counsel from asserting claims to remuneration against the party.

(2) Should assistance with court costs have been approved for the plaintiff, the plaintiff in the appeal, or the appellant, and should it not have been determined that payments are to be made to the Federal or Land cash office, this will result in the opponent being provisionally exempted from the costs designated in subsection (1) number 1 lit. a.

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### **Section 123 Reimbursement of costs**

The approval of assistance with court costs does not affect the obligation to reimburse the opponent for the costs it has incurred.

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### **Section 124 Repeal of the approval**

(1) The court is to repeal its approval of assistance with court costs if:

1. The party has misrepresented the prerequisites, based on which an approval of assistance with court costs is granted, by falsely summarising the case;
2. The party has intentionally or grossly negligently made false statements as to its personal or economic circumstances, or has failed to make the disclosure set out in section 120a (1), third sentence, or has not done so to the satisfaction of the court;
3. The party's personal or economic circumstances did not meet the prerequisites for assistance with court costs; in this case, repealing the approval shall be ruled out if four (4) years have lapsed since the decision of the court has entered into force or the proceedings have been terminated by other means;
4. The party has intentionally or grossly negligently failed to inform the court, contrary to the stipulations of Section 120a (2), first through third sentences, of any significant improvements of its income, assets and financial circumstances, or of a change of address, or has provided incorrect information in this regard;
5. The party has been in arrears for longer than three (3) months with the payment of a monthly instalment or with the payment of any other amount.

(2) The court may reverse its approval of assistance with court costs should the taking of evidence applied for by the party not hold out sufficient prospects of success in light of circumstances which were impossible to take into account at the time the assistance with court costs was approved, or if the offer to submit evidence seems frivolous.

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### **Section 125 Collection of costs**

(1) The court costs and the costs of involving the court-appointed enforcement officer may be collected from the opponent only once the decision by which the costs of the proceedings have been imposed on the said opponent has entered into force.

(2) The court costs, from the payment of which the opponent is provisionally exempt, are to be collected from the opponent once the decision, by which the costs of the proceedings have been imposed on the opponent, has entered into force or once the legal dispute has been terminated without any ruling having been handed down as to the costs.

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## **Section 126**

### **Recovery of attorneys' fees**

(1) The attorneys assigned to the party are entitled to recover, in their own name, their fees and expenditures from the opponent on whom the costs of the proceedings have been imposed by a corresponding ruling.

(2) An objection based on the person of the party is not admissible. The opponent may set off, from any amounts it is to pay, the costs that are to be reimbursed by the party according to the decision as to the costs that is handed down in the same legal dispute.

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## **Section 127**

### **Decisions**

(1) Decisions in the proceedings as to assistance with court costs shall be given without a hearing. The court of first instance is the competent court in this regard; should the proceedings be pending at a higher level of jurisdiction, the court of that instance is the competent court. Insofar as the reasons for the decision include statements as to the party's personal and economic circumstances, they may be made accessible to the opponent only with the consent of the party.

(2) The approval of assistance with court costs may be contested solely subject to the provisions made in subsection (3). In all other regards, a complaint subject to a time limit may be filed; this shall not apply wherever the value of the claim in the main action is not in excess of the amount set out in section 511, unless the court has negated exclusively the personal or economic prerequisites for assistance with court costs. The statutory period shall be one (1) month.

(3) The Treasury (Staatskasse) may file a complaint subject to a time limit by way of contesting the approval of assistance with court costs should neither any monthly instalments nor any amounts to be paid from the party's assets have been assessed. Such contestation may only be based on the fact that the party is to make payments based on its personal and economic circumstances. The statutory period shall be one (1) month and shall begin running upon the court order having been issued. Following the expiry of three (3) months from the pronouncement of the decision, such appeal will no longer be an available remedy. Should the decision not be pronounced, the time at which the signed decision is submitted to the court registry shall take the stead of the pronouncement. The Treasury will not be informed ex officio of the decision.

(4) The costs of the complaint procedure will not be reimbursed.

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## **Section 127a**

### **(repealed)**

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## **Chapter 3**

### **Proceedings**

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## **Title 1**

### **Hearing for oral argument**

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**Section 128**  
**Principle of oral argument; proceedings conducted in writing**

- (1) The parties shall submit their arguments regarding the legal dispute to the court of decision orally.
- (2) The court may give a decision without hearing oral argument provided that the parties have consented thereto; such consent may be revoked only in the event of a material change to the litigation circumstances. The court shall determine, at its earliest convenience, the deadline for written pleadings to be submitted, and shall determine the date of the hearing on which the decision is to be pronounced. A decision given without a hearing for oral argument is inadmissible should more than three (3) months have lapsed since the parties granted their consent.
- (3) Should nothing but the costs remain to be ruled on, the decision may be given without a hearing for oral argument being held.
- (4) Unless determined otherwise, decisions of the court that are not judgments may be given without a hearing for oral argument being held.

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**Section 128a**  
**Hearing for oral argument using image and sound transmission**

- (1) The court may permit the parties, their attorneys-in-fact, and advisers, upon their filing a corresponding application or ex officio, to stay at another location in the course of a hearing for oral argument, and to take actions in the proceedings from there. In this event, the images and sound of the hearing shall be broadcast in real time to this location and to the courtroom.
- (2) The court may permit a witness, an expert, or a party to the dispute, upon a corresponding application having been filed, to stay at another location in the course of an examination. The images and sound of the examination shall be broadcast in real time to this location and to the courtroom. Should permission have been granted, pursuant to subsection (1), first sentence, for parties, attorneys-in-fact and advisers to stay at a different location, the images and sound of the examination shall be broadcast also to that location.
- (3) The broadcast images and sound will not be recorded. Decisions given pursuant to subsection (1), first sentence, and subsection (2), first sentence, are incontestable.

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**Section 129**  
**Preparatory written pleadings**

- (1) In proceedings in which the parties must be represented by counsel, the hearing for oral argument will be prepared by written pleadings.
- (2) In other proceedings, an order given by a judge may direct the parties to prepare the hearing for oral argument by written pleadings, or to record their corresponding declarations with the registry for the files of the court.

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**Section 129a**  
**Petitions and declarations filed for the record**

(1) Petitions and declarations that may permissibly be filed or made before the records clerk of the court registry may be so filed or made for the record with the court registry of any local court (Amtsgericht).

(2) The court registry is to transmit the record without undue delay to the court that is the addressee of the petition or declaration. A procedural action shall become effective at the earliest when the record is received by that court. Provided that the person so filing the petition or making the declaration for the record has consented, he may be charged with transmitting the record to the court.

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### **Section 130**

#### **Content of the written pleadings**

The preparatory written pleadings should provide:

1. The designation of the parties and their legal representatives by name, status or business, place of residence and position as a party; the designation of the court and of the subject matter of the litigation; the number of annexes;
2. The petitions that the party intends to file with the court at the session;
3. Information on the factual circumstances serving as grounds for the petitions;
4. The declarations regarding the facts alleged by the opponent;
5. The designation of the evidence that the party intends to submit as proof of any facts alleged, or by way of rebutting allegations, as well as a declaration regarding the evidence designated by the opponent;
6. The signature of the person responsible for the written pleading; if it is transmitted by telefax (telecopier), the signature shall be shown in the copy.

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### **Section 130a**

#### **Electronic document**

(1) Where the written form is required for preparatory written pleadings and their annexes, for petitions of and declarations by the parties as well as for information, testimonies, reports, and declarations by third parties, recording them as electronic documents shall comply with this requirement provided that this is suited for processing by the court. The person responsible for the written pleading is to furnish the document with a qualified electronic signature pursuant to the Electronic Signature Act (Signaturgesetz). If an electronic document transmitted is not suited for processing by the court, this shall be communicated to its sender without undue delay, specifying the applicable technical framework conditions.

(2) The Federal Government and the Land governments shall determine by statutory instrument, for their respective sphere of responsibility, the point in time from which electronic documents may be submitted to the courts, and shall likewise determine by statutory instrument the form they must have in order to be suited for processing. The Land governments may confer, by statutory instrument, the authorisation upon the Land departments of justice. The admissibility of the electronic form may also be restricted to individual courts or proceedings.

(3) An electronic document shall be deemed submitted as soon as the court office designated as the recipient has recorded it.

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### **Section 130b**

#### **Judicial electronic documents**

To the extent the present Code stipulates that judges, senior judicial officers, records clerks of the court registry, or court-appointed enforcement officers are to sign documents by hand, the recording of documents as electronic documents shall comply with this requirement wherever the persons responsible for such documents add their names and furnish the documents with a qualified electronic signature.

#### **§ 130c Forms; authorisation to issue statutory instruments**

The Federal Ministry of Justice may introduce electronic forms, doing so by statutory instrument; this shall be subject to approval by the Bundesrat. The statutory instrument may determine that the information provided in the forms is to be transmitted, either in its entirety or in part, in structured, machine-readable format. The forms are to be made available for use on a communications platform on the internet determined in the statutory instrument. The statutory instrument may determine that, in derogation from the stipulations of section 130a (3), the identification of the party using the form may also be effected by using the electronic identification document pursuant to section 18 of the Act on Identity Cards (Personalausweisgesetz, PAuswG) or section 78 (5) of the Residence Act (Aufenthaltsgesetz, AufenthG).

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### **Section 131**

#### **Attachment of records or documents**

- (1) The records or documents at hand to the party that are referred to in the preparatory written pleading are to be attached to same as copies.
- (2) Where only individual parts of a record or document are relevant, attaching excerpts shall meet the above requirement; said excerpts shall set out the introduction, the parts addressing the matter in dispute, the closing of the document, as well as its date and signature.
- (3) Should the records or documents be known to the opponent already, or should they be very extensive, it shall suffice to exactly specify them and to offer the opportunity to inspect them.

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### **Section 132**

#### **Deadlines for written pleadings**

- (1) Any preparatory written pleading setting out new facts or new, other submissions is to be filed in such due time that it may be served at least one (1) week prior to the hearing scheduled for oral argument. This shall apply to any written pleading that concerns interlocutory proceedings.
- (2) Any preparatory written pleading submitted in response to new submissions is to be filed in such due time that it may be served at least three (3) days prior to the hearing scheduled for oral argument. This shall not apply to any written response made in interlocutory proceedings.

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### **Section 133**

#### **Copies**

(1) The parties are to attach to the written pleadings they are submitting to the court the number of copies of the written pleadings and their annexes that is required for service of same. This shall not apply to any documents transmitted electronically, nor shall it apply to annexes that are available to the opponent in their original versions or as copies.

(2) In the event of documents being served from one attorney on another (section 195), the parties to the dispute are to submit to the court hearing the case, immediately following such service, a copy of their preparatory written pleadings and the annexes.

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#### **Section 134**

##### **Inspection of records or documents**

(1) Wherever a party is asked to do so in due time, it is under obligation to deposit with the court registry any records of documents that it has at hand and that it has referred to in a preparatory written pleading; it shall be obligated to do so prior to the hearing for oral argument, and to inform the opponent that it has so deposited them.

(2) The opponent may inspect the records or documents within a period of three (3) days. Upon corresponding application being made, the presiding judge may extend or shorten this period.

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#### **Section 135**

##### **Communication of records or documents amongst attorneys**

(1) The attorneys are free to physically communicate records or documents personally ("von Hand zu Hand", literally: from one hand to the other) against an acknowledgment of receipt.

(2) Where an attorney fails to return a record or document so communicated to him within the period determined, he is to be sentenced, upon corresponding application being made and following a hearing for oral argument, to return such record or document without undue delay.

(3) A complaint subject to a time limit may be filed against the interlocutory judgment.

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#### **Section 136**

##### **Power of the presiding judge to direct the course of the proceedings**

(1) The presiding judge shall open the hearings and shall direct their course.

(2) He shall grant the right to speak and may deny leave to speak to persons who are not complying with his orders. Should a member of the court so request, he shall allow that member to ask questions.

(3) He shall ensure that the matter is discussed exhaustively and that the hearing is continued without interruption until its close; if necessary, he is to immediately determine the session of the court at which the hearing is to be continued.

(4) The presiding judge shall close the hearing if, in the opinion of the court, the matter has been comprehensively deliberated, and shall pronounce the rulings and orders of the court.

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**Section 137**  
**Course of the hearing for oral argument**

- (1) The hearing is initiated by the parties to the dispute filing their petitions with the court.
- (2) The parties are to make their submissions ex tempore; they are to summarise the case as regards its facts and circumstances and as regards its legal ramifications.
- (3) The parties may refer to documents, provided that none of the parties object to this and provided that the court believes such reference is reasonable. Documents will be read out only insofar as their exact wording is relevant.
- (4) In proceedings in which the parties must be represented by counsel, the attorney and, upon corresponding application being made, the party itself are to be granted leave to speak.

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**Section 138**  
**Obligation to make declarations as to facts; obligation to tell the truth**

- (1) The parties are to make their declarations as to the facts and circumstances fully and completely and are obligated to tell the truth.
- (2) Each party is to react in substance to the facts alleged by the opponent.
- (3) Facts that are not expressly disputed are to be deemed as having been acknowledged unless the intention to dispute them is evident from the other declarations made by the party.
- (4) A party may declare its lack of knowledge only where this concerns facts that were neither actions taken by the party itself, nor within its ken.

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**Section 139**  
**Direction in substance of the course of proceedings**

- (1) To the extent required, the court is to discuss with the parties the circumstances and facts as well as the relationship of the parties to the dispute, both in terms of the factual aspects of the matter and of its legal ramifications, and it is to ask questions. The court is to work towards ensuring that the parties to the dispute make declarations in due time and completely, regarding all significant facts, and in particular is to ensure that the parties amend by further information those facts that they have asserted only incompletely, that they designate the evidence, and that they file the relevant petitions.
- (2) The court may base its decision on an aspect that a party has recognisably overlooked or has deemed to be insignificant, provided that this does not merely concern an ancillary claim, only if it has given corresponding notice of this fact and has allowed the opportunity to address the matter. The same shall apply for any aspect that the court assesses differently than both parties do.
- (3) The court is to draw the parties' attention to its concerns regarding any items it is to take into account ex officio.
- (4) Notice by the court as provided for by this rule is to be given at the earliest possible time, and a written record is to be prepared. The fact of such notice having been given may be proven only by the content of the files. The content of the files may be challenged exclusively by submitting proof that they have been forged.

(5) If it is not possible for a party to immediately make a declaration regarding a notice from the court, then the court is to determine a period, upon the party having filed a corresponding application, within which this party may supplement its declaration in a written pleading.

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## **Section 140**

### **Objections raised against the direction of the course of proceedings, or against questions**

Where a person involved in the hearing objects to an order issued by the presiding judge concerning his power to control the subject matter of the litigation, by stating that such order is inadmissible, or where a question asked by the presiding judge or by a member of the court is so objected to as being inadmissible, the court shall decide on such objection.

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## **Section 141**

### **Order that a party appear in person**

(1) The court is to direct that both parties appear in person where this is deemed to be mandated in order to clear up the facts and circumstances of the case. If, in light of the great distance a party would have to travel, or for other grave cause, it cannot be reasonably expected of a party to appear in person at the hearing, the court is to refrain from ordering such party to appear in person.

(2) Where a party is ordered to appear in person, it is to be summoned ex officio. The summons shall be communicated to the party itself also in those cases in which it has retained an attorney of record; the summons need not be served on the party.

(3) Should the party fail to make an appearance at a hearing, a coercive fine may be levied against it corresponding to the fine levied against a witness who fails to appear at the hearing determined for his examination. This shall not apply if the party has sent a representative to the hearing who is able to clear up the elements of the case and is authorised to make the declarations mandated, in particular to conclude a settlement. The summons is to set out the consequences that may arise for the party should it fail to appear at the hearing.

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## **Section 142**

### **Order to produce records or documents**

(1) The court may direct one of the parties or a third party to produce records or documents, as well as any other material, that are in its possession and to which one of the parties has made reference. The court may set a deadline in this regard and may direct that the material so produced remain with the court registry for a period to be determined by the court.

(2) Third parties shall not be under obligation to produce such material unless this can be reasonably expected of them, or to the extent they are entitled to refuse to testify pursuant to sections 383 to 385. Sections 386 to 390 shall apply mutatis mutandis.

(3) The court may direct that records or documents prepared in a foreign language be translated by a translator who has been authorised or publicly appointed by the authorities of a Land, under the stipulations of Land law, for the preparation of translations of the nature required, or who is deemed to have equivalent qualifications. The translation shall be deemed to be true and complete where this is confirmed by the translator. The confirmation is to be set out on the translation, as are the place and date of the translation and the translator's authorisation/appointment/equivalency, and the translated document is to be signed by the translator. It is admissible to prove that the translation is incorrect or incomplete. The order provided for in the first sentence hereof may not be issued to the third party.

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### **Section 143**

#### **Order to transmit files**

The court may direct the parties to the dispute to produce the files in their possession to the extent they consist of documents concerning the hearing on the matter and the decision by the court.

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### **Section 144**

#### **Visual evidence taken on site; experts**

(1) The court may direct that visual evidence is to be taken on site, and may also direct that experts are to prepare a report. For this purpose, it may direct that a party to the proceedings or a third party produce an object in its possession, and may set a corresponding deadline therefor. The court may also direct that a party is to tolerate a measure taken under the first sentence hereof, unless this measure concerns a residence.

(2) Third parties are not under obligation to so produce objects or to tolerate a measure unless this can be reasonably expected of them, or to the extent they are entitled to refuse to testify pursuant to sections 383 to 385. Sections 386 to 390 shall apply mutatis mutandis.

(3) The proceedings shall be governed by the rules applying to visual evidence taken on site as ordered upon corresponding application having been made, or by those applying to the preparation of reports by experts as ordered by the court upon corresponding application having been made.

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### **Section 145**

#### **Separation of proceedings**

(1) The court may direct that several claims brought in one complaint be heard in separate proceedings, if this is justified by factual reasons. The decision shall be issued by a court order and shall cite the reasons on which it is based.

(2) The same shall apply if the defendant has brought countercharges and the counterclaim has no legal ties to the claim being enforced by the complaint.

(3) Where the defendant is raising a counterclaim for set-off that has no legal ties to the claim being enforced by the action, the court may direct that the complaint and the set-off be heard separately; the stipulations of section 302 are to be applied.

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### **Section 146**

#### **Limitation to individual means of challenge or defence**

Insofar as several independent means of challenge or defence refer to one and the same claim (causes of action, defence pleas, counterpleas, etc.), the court may direct that the hearing be limited initially to addressing one or several of the said means of challenge or defence.

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### **Section 147**

#### **Consolidation of proceedings**

Wherever the claims forming the subject matter of several proceedings pending with a court, whether involving the same or different parties, have legal ties amongst each other, or wherever they could have been asserted in one single complaint, the court may direct that such proceedings be consolidated in order to be heard and decided on at the same time.

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#### **Section 148**

##### **Suspension if a decision in another matter is anticipated**

Where the decision on a legal dispute depends either wholly or in part on the question of whether a legal relationship does or does not exist, and this relationship forms the subject matter of another legal dispute that is pending, or that is to be determined by an administrative agency, the court may direct that the hearing be suspended until the other legal dispute has been dealt with and terminated, or until the administrative agency has issued its decision.

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#### **Section 149**

##### **Suspension in the event a criminal offence is suspected**

(1) If the suspicion arises in the course of a legal dispute that a criminal offence has been committed, the investigation of which will influence the court's decision, the court may direct that the hearing be suspended until the criminal proceedings have been dealt with and terminated.

(2) Upon corresponding application being made by a party, the court is to continue the hearing if a year has lapsed since the proceedings were suspended. This shall not apply if important reasons indicate that the suspension should be upheld.

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#### **Section 150**

##### **Repeal of the separation, consolidation, or suspension of proceedings**

The court may repeal the orders it has delivered regarding the separation, consolidation, or suspension of proceedings. Section 149 (2) shall remain unaffected hereby.

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#### **Section 151**

##### **(repealed)**

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#### **Section 152**

##### **Suspension in the event of a petition for annulment of a marriage**

Where the decision on a legal dispute depends on whether or not a marriage can be annulled, and where such annulment has been petitioned, the court is to suspend the proceedings upon corresponding application having been made. Where the annulment proceedings have been dealt with and terminated, the suspended proceedings shall be resumed.

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#### **Section 153**

##### **Suspension in the event of an action challenging paternity having been brought**

Where the decision on a legal dispute depends on whether or not a man whose paternity has been contested by a challenging action is the father of a child, the stipulations of section 152 shall apply mutatis mutandis.

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#### **Section 154**

##### **Suspension in the event of action having been brought in a matrimonial matter, or in a matter of parental responsibility for children**

(1) If, in the course of a legal dispute, the issue is raised of whether or not a marriage or a civil union exists between the parties, and if the decision on the legal dispute depends on the decision handed down on that matter, the court is to suspend the proceedings, upon corresponding application having been made, until the dispute as to the existence or non-existence of the marriage or civil union has been dealt with and terminated in the corresponding action for acknowledgment.

(2) This rule shall apply mutatis mutandis if, in the course of a legal dispute, the issue is raised of whether or not a parent-child relationship exists between the parties, or whether or not one party is entitled to exercise parental responsibility for the other, and if the decision on the legal dispute depends on the decision handed down on these matters.

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#### **Section 155**

##### **Repeal of the suspension in the event of delays**

In the situations set out in sections 152 and 153, the court may repeal, upon corresponding application being made, the order by which the proceedings were suspended if the pursuit of the legal dispute giving rise to the suspension is delayed.

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#### **Section 156**

##### **Resumption of the hearing**

(1) The court may direct a hearing that had been closed to be resumed.

(2) In particular, the court is to order such resumption where:

1. The court has determined a procedural irregularity that is relevant to its decision and liable to objections being filed (section 295), specifically a violation of the obligation to give notice to the parties and to clear up the circumstances of the matter (section 139), or a violation of the right to be given an effective and fair legal hearing;
2. Facts serving as grounds for the resumption of the proceedings are retroactively submitted and demonstrated to the court in a satisfactory way (sections 579 and 580); or
3. A judge has left the court in the period lapsing between the closure of the hearing for oral argument and the closure of the deliberations and coordination (sections 192 to 197 of the Courts Constitution Act (Gerichtsverfassungsgesetz, GVG)).

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#### **Section 157**

##### **Delegation of authority for the hearing**

In proceedings which the parties to the legal dispute may pursue themselves, the attorney of record acting for a party may delegate his authority to a post-graduate legal trainee (Referendar) who has been assigned to work for him in his preparatory service.

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### **Section 158**

#### **Removal from the hearing as the result of a court order issued as part of the court's direction of the course of proceedings**

Where a person involved in the hearing has been removed from the location at which the hearing is held in order to maintain order in the court, this person may be proceeded against, upon a corresponding petition being filed, in the same manner as if he had voluntarily left the hearing.

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### **Section 159**

#### **Recording the hearing**

(1) A record is to be prepared of the hearing and of all evidence taken. A records clerk of the court registry may be involved in order to keep the record if this is required due to the expected scope of the record, in light of the particular complexity of the matter, or for any other grave cause.

(2) Subsection (1) shall apply mutatis mutandis to hearings taking place outside of the session of the court before judges of a local court (Amtsgericht, AG) or before judges correspondingly delegated or requested. Records of conciliation hearings or of further attempts made at resolving the dispute before a conciliation judge (Güterichter) pursuant to section 278 (5) will be prepared solely based on a petition of the parties in congruent declarations.

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### **Section 160**

#### **Content of the hearing record**

(1) The record of the hearing shall set out:

1. The place and date of the hearing;
2. The names of the judges, of the records clerk of the court registry, and of any interpreter who may have been involved;
3. The designation of the legal dispute;
4. The names of the parties appearing, of third parties intervening in support of a party to the dispute, of representatives, attorneys-in-fact, advisers, witnesses and experts, and, in the case provided for by section 128a, the place at which they are attending the hearing;
5. The information that the hearing was held in open court or in camera.

(2) The record is to set out the essential course of the hearing and actions taken therein.

(3) The record of the hearing is to set out:

1. Any acknowledgments, abandonments of claims, and settlements;
2. The petitions;

3. Any admission and declaration as to a petition for the examination of a party, as well as any other declarations the determination of which is required;
4. The testimony by witnesses, experts and parties examined; in the event of a repeated examination, the testimony need be included in the record of the hearing only insofar as it deviates from the testimony previously given;
5. The results of taking visual evidence on site;
6. The decisions (judgments, orders, and rulings) of the court;
7. The pronouncement of the decisions;
8. The withdrawal of legal action or of appellate remedies;
9. The waiver of appellate remedies;
10. The results of a conciliation hearing.

(4) The parties involved may apply to have specific actions and events, or statements, included in the record of the hearing. The court may refrain from so including them if the determination of the actions and events or of the statements is not relevant. Such order shall not be contestable and is to be included in the record of the hearing.

(5) Inclusion into the record of the hearing shall be equivalent to inclusion in a writing that is attached to the record of the hearing as an appendix, and that is designated as such in the record.

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### **Section 160a** **Preparing a preliminary record of the hearing**

(1) The content of the record of the hearing may be noted in a usual form of shorthand, by using comprehensible abbreviations, or by recording oral statements on a sound or data carrier.

(2) In such event, the record of the hearing is to be prepared without undue delay following the session of the court. To the extent that determinations pursuant to section 160 (3) numbers 4 and 5 have been recorded on a preliminary basis using a sound recorder, this is all that needs to be noted in the record of the hearing. The record of the hearing is to be amended by these determinations should a party petition that this be done prior to the proceedings having been concluded as res judicata, or where the court of appeal requires such amendment to be made. If determinations pursuant to section 160 (3) number 4 have been directly included in the record, and if, concurrently, the essential result of the testimony given has been noted on a preliminary basis, it may only be demanded that the record of the hearing be amended by the essential result obtained by the testimony.

(3) The preliminary notes are to be included in the court records of the dispute or, should they not be suited for this purpose, they are to be stored in the court registry together with the court records of the dispute. Recordings made on sound or data carriers may be deleted:

1. To the extent the record of the hearing has been created following the session of the court or is amended by the determinations noted on a preliminary basis, provided that the parties to the dispute have not lodged any objections within one (1) month of the copy having been communicated to them;
2. Following the conclusion of the proceedings by a final and binding judgment.

Insofar as the court has available a central data storage facility, the preliminary notes may be stored in such central data storage facility instead of being stored as set out in the first sentence hereof.

(4) It is possible to create a final record by recording it on data carriers in the form provided for by section 130b.

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### **Section 161**

#### **Dispensable determinations**

(1) Determinations pursuant to section 160 (3) number 4 and 5 need not be included in the record of the hearing:

1. Where the court hearing the case performs the examination or takes visual evidence on site, and where the final judgment is not subject to appeal or to an appeal on points of law;
2. To the extent the complaint is retracted, the claim being enforced is acknowledged or waived, and appellate remedies are waived or the legal dispute is terminated by settlement.

(2) The record of the hearing is to note that the examination was performed or that visual evidence was taken on site. Section 160a (3) shall apply mutatis mutandis.

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### **Section 162**

#### **Approval of the record of the hearing**

(1) Insofar as the record of the hearing sets out determinations pursuant to section 160 (3) numbers 1, 3, 4, 5, 8, 9, or petitions recorded with the registry for the files of the court, it is to be read out loud to the parties involved or is to be submitted to them for their review. Should the content of the record have been noted only on a preliminary basis, reading the notes or replaying the sound recording shall be deemed compliant with the present rule. The record of the hearing is to note that this has been done and that the record has been approved, or it shall note the objections that have been raised.

(2) Determinations made pursuant to section 160 (3) number 4 need not be replayed if they were recorded directly in the presence of the parties involved; the party involved whose testimony was recorded may demand that it be replayed. To the extent any determinations pursuant to section 160 (3) numbers 4 and 5 were dictated in the presence of the parties involved, the court may forgo replaying the recording, reading the record out loud, or submitting it for the parties to review if the parties involved waive having this done following the recording; the record of the hearing is to set out this waiver.

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### **Section 163**

#### **Signature of the record of the hearing**

(1) The record of the hearing is to be signed by the presiding judge and by the records clerk of the court registry. Should the content of the record of the hearing, as a whole or in part, have been recorded on a preliminary basis using a sound recorder, the records clerk of the court registry is to check that the content has been correctly word-processed and is to confirm that this has been done; this shall also apply if the records clerk of the court registry was not present at the session of the court.

(2) Where the presiding judge is prevented from signing the record, the most senior among the associated judges shall sign on his behalf; where only one judge was involved and he is prevented from signing the record, the signature of the records clerk of the court registry who was involved in the proceedings in order to keep the record shall be compliant with the present rule. The reasons preventing a judge from signing the record shall be noted in the record of the hearing.

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## **Section 164**

### **Corrections of the hearing record**

(1) Inaccuracies of the hearing record may be corrected at any time.

(2) Prior to the correction, the parties to the dispute are to be heard and, to the extent the correction concerns the determinations set out hereinabove in section 160 (3) number 4, the other parties involved are likewise to be heard.

(3) The correction is to be noted on the record of the hearing; in this context, reference may be made to an annex to be attached to the record of the hearing. The note is to be signed by the judge signing the record of the hearing, or by the judge sitting alone, even if he was prevented from signing the record, and by the records clerk of the court registry to the extent he was involved in the proceedings as the keeper of the record.

(4) In cases in which the correction is noted in the form as provided for by section 130b, it is to be recorded in a separate electronic document. The document is to be joined to the record of the hearing such that it cannot be separated.

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## **Section 165**

### **Evidentiary value of the hearing record**

Compliance with the formal requirements stipulated for the hearing can be proven only by the record of the hearing. The exclusive means of admissibly challenging the content of the record concerning these formal requirements is the submission of proof that it has been forged.

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## **Title 2**

### **Procedure for the Service of Records or Documents**

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### **Subtitle 1**

#### **Service ex officio**

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## **Section 166**

### **Service**

(1) The term “service” designates the issuance of a document to a person in the form stipulated in the present Title.

(2) Documents, service of which is required by rules or has been ordered by the court, are to be served ex officio unless otherwise provided for.

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### **Section 167**

#### **Retroactive effect of the service**

If service is made in order to comply with a deadline, or to have the period of limitations begin anew, or to have it extended pursuant to section 204 of the Civil Code (Bürgerliches Gesetzbuch, BGB), the receipt of the corresponding application or declaration by the court shall already have this effect provided service is made in the near future.

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### **Section 168**

#### **Responsibilities of the court registry**

(1) The court registry shall perform service of documents pursuant to sections 173 to 175. It may contract a private enterprise charged with the performance of state duties pursuant to section 33 (1) of the Postal Law (Postgesetz) (this being the postal service), or it may charge an employee of the judiciary with performing service. The court registry shall award the contract to the postal service on the form intended for this purpose.

(2) The presiding judge of the court hearing the case, or a member of the court accordingly delegated by the presiding judge, may charge a court-appointed enforcement officer or another authority with service of the documents, should service in accordance with subsection (1) not hold out any prospect of success.

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### **Section 169**

#### **Confirmation of the time of service; certification**

(1) Upon corresponding application being made, the court registry shall confirm the time of service.

(2) The court registry shall certify the documents to be served. This shall also apply unless an attorney has already certified the documents submitted to the court.

(3) A copy to be served in paper format may also be certified by machine processing. Instead of being signed by hand, the copy is to be furnished with the court seal. The same shall apply if a copy is served by telefax.

(4) A document may be served as a certified electronic copy. The copy is to be furnished with the qualified digital signature of the records clerk of the court registry.

(5) A judicial electronic document executed in accordance with section 130b may be served as an original; it need not be certified.

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### **Section 170**

#### **Service on representatives**

(1) In the event a person does not have the capacity to conduct proceedings, service is to be made on his legal representative. Any service made on the person incapable of conducting proceedings shall not be valid.

(2) Should the party on whom documents are to be served not be an individual, service on the entity's head shall suffice.

(3) In the event of an entity having more than one legal representative or head, it shall suffice to serve the documents on one of them.

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### **Section 171**

#### **Service on authorised recipients**

Service on the representative appointed by legal transaction shall have the same effect as service on the party so represented. The representative is to produce a written power of attorney.

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### **Section 172**

#### **Service on attorneys of record**

(1) Wherever proceedings are pending, service is to be made on the attorney of record appointed for the respective level of jurisdiction. This shall apply also to procedural actions affecting the proceedings before the court of that level of jurisdiction as a result of: protest having been entered, the judgment handed down by that court having been reversed, the proceedings having been reopened, an objection having been filed pursuant to section 321a, or new statements having been submitted to the court in compulsory enforcement proceedings. Proceedings before the court responsible for enforcement are proceedings at the first level of jurisdiction.

(2) A written pleading by which an appeal is filed is to be served on the attorney of record admitted to that level of jurisdiction the decision of which is being contested. If an attorney of record has already been appointed for the higher level of jurisdiction, the written pleading is to be served on that attorney. Service shall be made on the party itself if the party has not appointed an attorney of record.

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### **Section 173**

#### **Service by physical delivery at the sub-office**

A document may be served on its addressee, or the representative appointed by legal transaction, by physically delivering it to the sub-office. By way of proving such service, it is to be noted on the document and in the files that the document was physically delivered for the purpose of serving it on the addressee, while also adding the date of such service; in the event of the document having been physically delivered to the representative, this is to be noted together with the name of the person to whom physical delivery was made; moreover, the note is to confirm that the power of attorney was produced pursuant to section 171, second sentence. The note is to be signed by the employee physically delivering the documents.

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### **Section 174**

#### **Service against return confirmation of receipt**

(1) A document may be served, against return confirmation of receipt, on an attorney, a notary, a court-appointed enforcement officer, a tax consultant or any other person of whom it can be assumed, based on that person's profession, that he is highly reliable, a public authority, a corporation, or a corporation under public law.

(2) The document may also be served by telefax on the parties set out in subsection (1). In its heading, the transmission is to bear the note, "Service against return confirmation of receipt" and is to set out the sender, the name and address of the party on whom documents are to be served, as well as the name of the employee of the judiciary effecting the transmission of the document.

(3) A document may also be served on the parties set out in subsection (1) as an electronic document. The same shall apply to other parties involved in the proceedings, provided they have expressly consented to the documents being transmitted as electronic documents. The document is to be signed digitally for the transmission and is to be protected against its becoming known to unauthorised third parties. Such transmission may also be effected using De-Mail services in the sense as defined by section 1 of the Law on De-Mail Services in Electronic Communications (Gesetz zur Regelung von De-Mail-Diensten, De-Mail-G).

(4) Service shall be deemed sufficiently proven by the return confirmation of receipt being returned to the court, such confirmation setting out the date and signature of the addressee. The return confirmation of receipt may be returned by letter, by telefax, or as an electronic document (section 130a). Should it be sent as an electronic document, it is to be signed by a qualified digital signature pursuant to the Electronic Signature Act (Signaturgesetz).

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### **Section 175**

#### **Service by registered mail, return receipt requested**

A document may be served by registered mail, return receipt requested. Service shall be deemed sufficiently proven by the return receipt.

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### **Section 176**

#### **Instructions to serve records or documents**

(1) Should the postal service, an employee of the judiciary or a court-appointed enforcement officer be charged with serving documents, or should another authority be requested to so perform service, the court registry shall physically submit the document to be so served in a closed envelope along with a record of service that has already been completed for the service.

(2) Service shall be made in accordance with the provisions of sections 177 through 181.

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### **Section 177**

#### **Place of service**

The document may be physically submitted to the person on whom it is to be served at any location at which the person is found.

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### **Section 178**

#### **Substituted service at the residence, at business premises, and at institutions**

(1) Should the person on whom documents are to be served not be located at his residence, business premises, or in an institution in which he is a resident, the document may be served:

1. At the residence: on an adult family member, a person employed by the family or an adult resident permanently sharing the accommodations,

2. At business premises: on a person employed there,
3. In institutions: on the head of the institution or a correspondingly authorised attorney-in-fact.

(2) Service on one of the persons designated in subsection (1) shall be invalid wherever this person is involved in the legal dispute as an opponent of the person on whom documents are to be served.

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### **Section 179**

#### **Service in the event acceptance is refused**

Should acceptance of the document to be served be refused without justification, the document is to be left at the residence or at the business premises. Should the party on whom documents are to be served not have a residence, or should no business premises exist, the document to be served is to be returned. Upon such refusal of acceptance, the document shall be deemed served.

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### **Section 180**

#### **Substituted service by placement in the letterbox**

Should it not be possible to serve the document pursuant to section 178 (1) number 1 or 2, the document may be placed in a letterbox appurtenant to the residence or the business premises, or into a similar receptacle that the addressee has put up for the purpose of receiving mail, and which according to general practice is suited to securely store mail. By this placement, the document shall be deemed served. The person so serving it shall note the date of service on the envelope of the document to be served.

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### **Section 181**

#### **Substituted service by deposit of the records or documents**

(1) Should it not be possible to serve the document pursuant to section 178 (1) number 3 or section 180, the document to be served may be deposited with the court registry of the local court (Amtsgericht) having jurisdiction for the place of service. Should the postal service have been contracted with serving the documents, the document to be served is to be deposited at the place of service or at the location of the local court at a point designated for this purpose by the postal service. A written notice of such deposit is to be submitted at the address of the person on whom documents are to be served, using the corresponding form in the manner usual for the delivery of regular letters, or, should this not be possible, the written notice is to be affixed to the door of the residence, the business premises, or the institution. Upon such written notification having been submitted, the document shall be deemed served. The person so serving it shall note the date of service on the envelope of the document to be served.

(2) The deposited document is to be kept available for collection for three (3) months. Following the expiry of this period, documents that have not been collected are to be returned to the sender.

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### **Section 182**

#### **Record of service**

(1) By way of providing proof of service pursuant to section 171 and sections 177 to 181, a record is to be prepared using the corresponding form. Section 418 shall apply to this record of service.

(2) The record of service must include:

1. The designation of the person on whom service is to be made,
2. The designation of the person to whom the letter or the document was physically submitted,
3. In the case provided for by section 171, the statement that the power of attorney was produced,
4. In the case provided for by section 178 and section 180, the reason justifying this form of service and, if the procedure set out in section 181 was followed, the note on how the written notification was submitted,
5. In the case provided for by section 179, a note as to who refused acceptance and that the letter was left at the place of service or was returned to the sender,
6. The note that the day of service was noted on the envelope containing the document to be served,
7. The place, the date and, should the court registry so have instructed, also the time of service,
8. The surname, given name, and signature of the person serving the documents as well as the name of the enterprise contracted for service, or the public authority charged with this task.

(3) The record of service is to be returned to the court registry, without undue delay, as an original or as an electronic document.

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### **Section 183 Service abroad**

(1) Documents are to be served abroad in accordance with the agreements made in international instruments. Wherever documents may be sent directly by the postal service based on such agreements in international instruments, they shall be served by registered mail, return receipt requested; in all other cases, service shall be made, at the request of the presiding judge of the court hearing the case, directly by the public authorities of the other state.

(2) Should it not be possible to serve the documents in accordance with subsection (1), the responsible diplomatic or consular mission of the Federal Republic or any other public authority responsible shall serve the documents. The procedure set out in the first sentence hereof is to be followed in particular if no agreements have been made in international instruments, if the competent bodies of the state concerned are not willing to provide legal assistance, or if special grounds justify such form of service.

(3) Documents to be served on Germans enjoying immunity as a member of a consular or diplomatic mission of the Federal Republic of Germany abroad shall be served, on the request of the presiding judge of the court hearing the case, by the consular or diplomatic mission responsible.

(4) The return receipt shall suffice as proof of service having been effected pursuant to subsection (1), second sentence, first clause of the sentence. Proof of service pursuant to subsection (1), second sentence, second clause of the sentence, and subsections (2) and (3) is provided by the documentary evidence submitted by the public authority correspondingly charged with the service of documents.

(5) The stipulations of Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters and on the repeal of Council Regulation (EC) No 1348/2000 (Official

Journal L 324 page 79) shall remain unaffected hereby. Section 1068 (1) and section 1069 (1) shall apply to the implementation.

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#### **Section 184**

##### **Authorised recipients; service by mailing the records or documents**

(1) For service pursuant to section 183, the court may order the party to name, within a reasonable period of time, an authorised recipient who is a resident of Germany or who has business premises in Germany, unless the party has appointed an attorney of record. Should no authorised recipient be named and until such recipient is named retroactively, documents may be served subsequently by being mailed to the address of the party.

(2) Two (2) weeks after it has been mailed, the document shall be deemed served. The court may set a longer period. In the order issued pursuant to subsection (1), attention is to be drawn to these legal consequences. By way of recording proof of the documents having been served, it is to be noted in the files at which time and to which address the document was mailed.

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#### **Section 185**

##### **Service by publication**

The documents may be served by publishing a notice (service by publication) wherever:

1. The abode of a person is unknown and it is not possible to serve the documents upon a representative or authorised recipient,
2. It is not possible to serve documents upon legal persons obligated to register a domestic business address with the Commercial Register, neither at the address entered therein nor at the address entered in the Commercial Register of a person authorised to receive service of documents, or at any other domestic address obtained without any investigations,
3. It is not possible to serve documents abroad, or if such services does not hold out any prospect of success, or
4. The documents cannot be served because the place of service is the residence of a person who, pursuant to sections 18 to 20 of the Courts Constitution Act (Gerichtsverfassungsgesetz, GVG), is not subject to jurisdiction.

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#### **Section 186**

##### **Approval of and implementation of service by publication**

(1) The court hearing the case shall decide on whether or not to approve service by publication. The decision may be given without a hearing being held.

(2) Service by publication shall be implemented by hanging a notification on the court's bulletin board or by publishing the notification in an electronic information system that is publicly accessible in the court. Additionally, the notification may be published in an electronic information and communications system established by the court for such notifications. The notification must set out:

1. The person on whose behalf the documents are to be served,

2. The name of the party to whom documents are to be served and the address last known,
3. The date, the reference number of the document, and the designation of the subject matter of the proceedings, as well as
4. The office at which the document may be inspected.

The notification must include the note that a document is being served by publication, that this service may trigger periods, and that once they have lapsed, the party to whom the documents are being served in this way may have forfeited rights. In serving summonses in this way, the notification must indicate that the document sets out a summons to a hearing and that should the party fail to comply with it, such failure may act to the party's detriment in legal terms.

(3) It is to be recorded in the files when the notification was displayed on the bulletin board and when it was removed.

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### **Section 187**

#### **Publication of the notification**

The court hearing the case additionally may order the notification to be published once, or several times, in the Official Gazette (Bundesanzeiger) or in other publications.

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### **Section 188**

#### **Time at which service by publication has been effected**

The document shall be deemed served should one (1) month have lapsed since the notification has been displayed on the bulletin board. The court hearing the case may set a longer period.

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### **Section 189**

#### **Remediation of defects in the service of records or documents**

Should it not be possible to prove that a document has been served in due form, or should the document have been received in violation of mandatory regulations governing service of documents, it shall be deemed served at that point in time at which the document was factually received by the person to whom service of the document was addressed, or could be addressed.

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### **Section 190**

#### **Standard forms for the service of records or documents**

The Federal Ministry of Justice hereby is authorised to introduce forms serving the simplification and streamlining of the service of documents, such forms being subject to approval by the Bundesrat and being made by statutory instrument.

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### **Subtitle 2**

#### **Service of records or documents at the instigation of the parties**

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## **Section 191**

### **Service of records or documents**

Insofar as it is admissible or required to serve documents at the instigation of the parties, the rules regarding ex officio service shall be applied mutatis mutandis unless otherwise provided for by the rules set out hereinbelow.

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## **Section 192**

### **Service of records or documents by a court-appointed enforcement officer**

(1) The service of documents to be performed at the instigation of the parties shall be performed by the court-appointed enforcement officer subject to the stipulations set out in sections 193 and 194.

(2) The party shall physically submit to the court-appointed enforcement officer the document to be served, along with the required copies. The court-appointed enforcement officer shall certify the copies; he may prepare any lacking copies himself.

(3) In proceedings before the local court (Amtsgericht, AG), the party may charge, with the assistance of the registry of the court hearing the case, the court-appointed enforcement officer with serving the documents. In this context, the court registry is to charge the court-appointed enforcement officer with the service.

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## **Section 193**

### **Implementation of service**

(1) On the original copy of the document to be served, or on the form provided for this purpose that is to be attached to the original copy of the document, the court-appointed enforcement officer shall attest that the document has been served pursuant to section 182 (2), and he shall note in said attestation the name of the person on behalf of whom he has performed such service. Where service is effected by mailing the document, the date and the address at which the document was mailed are to be noted.

(2) The court-appointed enforcement officer shall note, on the document to be physically submitted, the date on which it was served, unless he physically submits a certified copy of the record of service.

(3) The record of service is to be transmitted to the party on behalf of whom the documents were served.

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## **Section 194**

### **Instructions to serve records or documents**

(1) If the court-appointed enforcement officer charges the postal service with serving the documents, he shall note on the document to be served the person or entity on whose behalf he is submitting said documents to the postal service. He shall attest on the original of the document to be served, or on a handover form to be attached to the original document, that the postal item has been submitted to the postal service, and that it bears: the address of the party to whom the document is to be served, the designation of the court-appointed enforcement officer so serving it, and a reference number.

(2) The postal service shall return the record of service to the court-appointed enforcement officer without undue delay.

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## **Section 195**

### **Service of records or documents from one attorney on another attorney**

(1) If the parties to a dispute are represented by counsel, a document may also be served such that the attorney serving a document transmits it to the other attorney (service of documents from one attorney on another attorney). This also applies to written pleadings that, pursuant to the stipulations of the present Code, are to be served ex officio: they may instead be served from one attorney on the other, unless a court order is to be communicated concurrently to the opponent. The written pleading is to set out the declaration that service on the other attorney will be effected by the attorney. To the extent required for the decision to be taken, supporting documentary proof is to be provided to the court that the documents have so been served. Section 174 (2), first sentence, and subsection (3) first and third sentences shall apply mutatis mutandis to the service of documents on an attorney.

(2) Service shall be deemed sufficiently proven by the return confirmation of receipt bearing the date and the signature of the attorney on whom the documents were served. Section 174 (2) second and third sentences shall apply mutatis mutandis. The attorney effecting service of documents is to provide to the other attorney, at the latter's request, confirmation of service having been effected.

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## **Sections 195a to 213a**

### **(repealed)**

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## **Title 3**

### **Summonses, hearings, and periods**

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## **Section 214**

### **Summons to a hearing**

The summons to a hearing is initiated ex officio.

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## **Section 215**

### **Required content of a summons to a hearing for oral argument**

(1) The summons to a hearing for oral argument is to instruct the recipient as to the consequences of his failure to make an appearance at the hearing (sections 330 to 331a). The instruction is to include the legal consequences set out in section 91 and section 708 number 2.

(2) In proceedings in which the parties must be represented by counsel, the summons to a hearing for oral argument must call upon the party to appoint an attorney, unless such summons has been served on the party's counsel.

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**Section 216**  
**Hearing dates determined by the court**

(1) The dates of hearings are determined ex officio wherever petitions or declarations are submitted to the court that can be ruled on only after having heard oral argument, or regarding which the court has instructed that oral argument be heard.

(2) The presiding judge is to determine the hearings without undue delay.

(3) Hearings shall be arranged for Sundays, general holidays, or Saturdays only in emergencies.

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**Section 217**  
**Summons period**

The period that is to lapse, in a matter that is pending, between the date on which the summons was served and the date of the hearing (summons period) shall amount to at least one (1) week in proceedings in which the parties must be represented by counsel, and at least three (3) days in other proceedings.

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**Section 218**  
**Cases in which a summons may be dispensed with**

Notwithstanding the stipulations of section 141 (2), it shall not be required to summon the parties to hearings determined in decisions pronounced by the court.

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**Section 219**  
**Venue of the hearing**

(1) The hearings shall be held at the location of the court unless it is necessary to take visual evidence on site, to hear a person who is prevented from appearing before the court, or to take any other action that cannot be taken at the court's location.

(2) The President of the Federal Republic of Germany is not under obligation to appear at the location of the court in person.

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**Section 220**  
**Case called up; failure of a party to make an appearance at the hearing**

(1) The hearing shall begin with the case being called up.

(2) A party shall be deemed to have failed to appear at the hearing if it fails to enter a pleading prior to that hearing being closed.

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**Section 221**  
**Commencement of periods**

(1) Unless otherwise arranged when periods are determined, any periods determined by a judge shall commence upon service of the documents in which said period is determined; where no such service is required, the period shall commence upon being pronounced by the court.

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## **Section 222**

### **Calculation of the period**

(1) The provisions made by the Civil Code (Bürgerliches Gesetzbuch, BGB) shall apply to the calculation of the period.

(2) If the end of a period falls on a Sunday, a general holiday, or a Saturday, the period shall end at midnight of the subsequent business day.

(3) In calculating a period determined by hours, any Sundays, general holidays, and Saturdays shall not be included in the calculation.

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## **Section 223**

### **(repealed)**

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## **Section 224**

### **Reduction of a period; extension of a period**

(1) The parties may agree to shorten periods; this shall not include statutory periods. Statutory periods shall be only those periods that have been designated as such in the present Code.

(2) Upon corresponding application being made, periods set by judges as well as periods prescribed by law may be shortened or extended if substantial grounds for doing so have been demonstrated to the court in a satisfactory way; however, periods prescribed by law may be so shortened or extended only in the cases specifically determined.

(3) Unless otherwise determined in the individual case, the new period determined in extending a period shall be calculated from the date on which the previous period has expired.

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## **Section 225**

### **Procedure for modifying a period**

(1) The court may decide on a request for the reduction or extension of a period without arranging a hearing for oral argument.

(2) The court is to approve any reduction or repeated extension only after having heard the opponent.

(3) The court order dismissing the request for extension of a period is incontestable.

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## **Section 226**

### **Reduction of interim periods**

(1) Times determined for entering an appearance, periods indicated in the summons as the period lapsing between service of same and the date of the hearing (summons periods), as well as those periods that are determined for service of preparatory written pleadings may be shortened upon corresponding application being made.

(2) A reduction of the times for entering an appearance and of periods indicated in the summons as periods lapsing between service of same and the date of the hearing (summons periods) will not be ruled out by the fact that, as a result of such times or periods being shortened, the hearing cannot be prepared by written pleadings.

(3) In determining the hearing, the presiding judge may order the reduction of the period without hearing the opponent or the party involved otherwise in the proceedings; a copy of the corresponding order shall be communicated to the party involved in the proceedings.

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### **Section 227** **Changes of date for scheduled hearings**

(1) Should substantial grounds so require, a hearing may be cancelled or deferred, or a hearing for oral argument may be postponed. The following are not substantial grounds:

1. The failure of a party to appear, or its announcement that it will not appear, unless the court is of the opinion that the party was prevented from appearing through no fault of its own;
2. A party's insufficient preparation, unless the party provides sufficient excuse therefor;
3. An agreement reached by the parties alone.

(2) Substantial grounds are to be demonstrated to the satisfaction of the presiding judge should he so demand, while substantial grounds for postponing a hearing are to be demonstrated to the satisfaction of the court should it so demand.

(3) Any hearing determined for the period from 1 July until 31 August, to the exception of a hearing set for the pronouncement of a decision, is to be postponed, upon corresponding application being made, within one (1) week following receipt of the summons or following the date on which the hearing is determined by the court. This shall not apply to:

1. Matters involving the seizure of assets, or matters concerning an injunction or interim order,
2. Disputes concerning the permission to use spaces, the use or surrender of such spaces, or the eviction from same, or disputes regarding the continuation of lease relationships for residential spaces based on sections 574 to 574b of the Civil Code (Bürgerliches Gesetzbuch, BGB),
3. (repealed)
4. Proceedings on claims arising from a bill of exchange or on claims asserted concerning the payment of a cheque,
5. Matters of construction law where the dispute concerns the continuation of a construction project that has been commenced,
6. Disputes concerning the permission to use an object, or the surrender of such object, to a person with whom the object is not subject to attachment by the court authorities,
7. Compulsory enforcement proceedings, or

8. Proceedings for issuing a declaration of enforceability or for the judges to take action in arbitration proceedings;

in this context, it shall suffice if only one of several claims meets the prerequisites. Wherever the proceedings require special acceleration, the court shall not comply with an application for deferral.

(4) The presiding judge shall decide on the cancellation or deferral of a hearing without oral argument being heard; the court shall rule on the postponement of a hearing. The reasons for the decision are to be summarised in brief. It is incontestable.

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#### **Section 228 (repealed)**

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#### **Section 229 Judge correspondingly delegated or requested**

The authorities allocated to the court and the presiding judge in the present Title are likewise granted to the judge correspondingly delegated or requested as regards the hearings and periods that such judge is to determine.

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#### **Title 4 Consequences of failure to take action; instruction on available legal remedies; restoration of the status quo ante**

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#### **Section 230 General consequence of failing to take action**

The failure to take action in the proceedings will lead to the general consequence that the party will be disqualified from taking such action in the proceedings.

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#### **Section 231 No warning; procedural actions taken retroactively**

(1) No warning need be issued regarding the consequences under law of failing to take action; these consequences shall ensue automatically unless the present Code requires a petition to be filed in order for the legal detriment to take effect.

(2) In the latter case, the action that was not taken in the proceedings may be arranged retroactively as long as the petition has not been filed and as long as the oral argument on such petition has not been closed.

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#### **Section 232 Instruction on available legal remedies**

Any court decision that may be contested is to provide an instruction on the remedy available, the protest, the contradiction, or the reminder, as well as on the court with which the remedy is to be lodged, the seat of said court, and the requirements as to form and deadlines. This does not apply in proceedings in which the parties must be represented by an attorney, unless the instructions are to be given regarding a protest or contradiction, or the instruction is to be addressed to a witness or to an expert. No instruction need be given regarding the option to file an immediate appeal on law in lieu of an appeal on facts and law (leap-frog appeal).

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### **Section 233**

#### **Restoration of the status quo ante**

Where a party was prevented, through no fault of its own, from complying with a statutory period or the deadline set for submitting the particulars of its appeal, the grounds for filing the appeal on points of law, the complaint against denial of leave to appeal, or the complaint on points of law, or where a party was prevented from adhering to the period stipulated in section 234 (1), that party is to be granted the restoration of the status quo ante upon a corresponding petition being filed. It will be presumed that the party was not at fault if no instruction on available legal remedies was provided, or if it was deficient.

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### **Section 234**

#### **Period for the restoration of the status quo ante**

(1) The petition for such restoration of the status quo ante must be filed within a two-week period. The period shall amount to one (1) month if the party is prevented from complying with the deadline set for submitting the particulars of its appeal, the grounds for filing the appeal on points of law, the complaint against denial of leave to appeal, or the complaint on points of law.

(2) The period shall commence on the date on which the impediment has been removed.

(3) Following the expiry of one (1) year, counting from the end of the period that has not been met, filing a petition for the restoration of the status quo ante is no longer an available remedy.

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### **Section 235**

#### **(repealed)**

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### **Section 236**

#### **Petition for restoration of the status quo ante**

(1) The form of the petition for the restoration of the status quo ante shall be governed by the rules pertaining to the action that was not taken in the proceedings.

(2) The petition must set out the facts based on which the restoration of the status quo ante is justified; they must be demonstrated to the satisfaction of the court in the course of filing the petition or in the procedure regarding same. The action that was not taken in the proceedings is to be retroactively taken within the period set for the petition; if this has been done, the restoration of the status quo ante may be granted also without a petition having been filed.

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**Section 237**  
**Responsibility for restoration of the status quo ante**

That court shall decide on the petition for restoration of the status quo ante that is to decide on the action to be taken in the proceedings and the retroactive arrangement of same.

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**Section 238**  
**Procedure in the event of the status quo ante having been restored**

(1) The procedure regarding the petition for restoration of the status quo ante is to be tied to the procedure regarding the retroactive arrangement of the action to be taken in the proceedings. However, the court may initially limit the procedure to a hearing for oral argument on the petition and the decision on same.

(2) Those rules are to be applied to the decision as to the admissibility of the petition, and to any contestation of the decision, that apply in these relationships to the retroactive arrangement of the action to be taken in the proceedings. However, the party that has filed the petition shall not be entitled to enter a protest.

(3) The restoration of the status quo ante is incontestable.

(4) The party filing the petition shall be charged with the costs that the restoration of the status quo ante has entailed, unless such costs were engendered by an unfounded objection having been lodged by its opponent.

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**Title 5**  
**Interruption and suspension of the proceedings**

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**Section 239**  
**Interruption due to the death of a party**

(1) In the event of the death of a party, the proceedings shall be interrupted until they are resumed by the party's successors in title.

(2) Where the resumption is delayed, the successor in title is to be summoned, upon a corresponding petition being filed by the opponent, to resume the proceedings and to appear at the hearing in the main action.

(3) The summons, together with the written pleading setting out the petition, is to be served on the successors in title themselves. The period lapsing between service of the summons and the date of the hearing (summons periods) is to be determined by the presiding judge.

(4) Should the successors in title fail to appear at the hearing, the alleged succession in title is to be assumed, upon a corresponding petition being filed, as having been acknowledged, and oral argument is to be heard on the merits of the case.

(5) An heir is not under obligation to continue a legal dispute prior to his having accepted the inheritance.

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**Section 240**  
**Interruption due to insolvency proceedings**

In the event of insolvency proceedings being opened against a party, the proceedings shall be interrupted to the extent they concern the insolvent estate until they can be resumed in accordance with the rules applying to the insolvency proceedings, or until the insolvency proceedings are terminated. The same shall apply if the authority to manage the debtor's assets and the power to dispose over them devolves upon a preliminary insolvency administrator.

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**Section 241**  
**Interruption due to a person coming under legal disability**

(1) If a party loses its capacity to sue or be sued, or if the legal representative of a party dies, or if his power of representation ceases without the party having regained its capacity to sue or be sued, the proceedings shall be interrupted until the legal representative or the new legal representative notifies the court of his appointment, or until the opponent has notified the court of his intention to continue the proceedings and the court has served this notification ex officio.

(2) The notification of the legal representative is to be served on the opponent of the party he is representing; the notification of the opponent is to be served on the representative.

(3) These rules shall apply mutatis mutandis where a court orders the administration of the estate.

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**Section 242**  
**Interruption due to reversionary succession**

Should – in the course of a legal dispute ongoing between a provisional heir and a third party regarding a matter or object that is subject to reversionary succession – the reversionary succession in fact occur, the stipulations of section 239 shall apply mutatis mutandis regarding the interruption and the resumption of the proceedings, provided that the provisional heir was authorised to dispose over the matter or object without the consent of the reversionary heir.

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**Section 243**  
**Resumption of proceedings in the case of a curator or an executor having been appointed for an estate**

If a court has appointed a curator of the estate in cases in which proceedings have been interrupted by the death of a party, or if an executor exists who is entitled to pursue the legal dispute, the stipulations of section 241 are to be applied in resuming the proceedings and, if insolvency proceedings are opened regarding the estate, the stipulations of section 240 are to be applied in so resuming them.

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**Section 244**  
**Interruption due to the loss of an attorney**

(1) If, in proceedings in which the parties must be represented by counsel, the attorney representing a party dies, or becomes unable to continue representing the party, the proceedings shall be interrupted until the attorney newly appointed by the party notifies the court of his having been appointed and the court has served the notification ex officio upon the opponent.

(2) Where this notification is delayed, the party is to be summoned in person to the hearing in the main action, upon corresponding application being made by the opponent, or the party is to be instructed to appoint a new attorney within a period to be determined by the presiding judge. Should this instruction not be complied with, the proceedings are to be deemed as having been resumed. Until notice is given retroactively that a new attorney has been appointed, all documents shall be served on the party obligated to file such notification with the court.

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#### **Section 245**

##### **Interruption due to suspension of the administration of law**

Should, as the consequence of war or of any other event, the court cease its activities, the proceedings shall be interrupted for the duration of this situation.

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#### **Section 246**

##### **Suspension in the event a party is represented by an attorney of record**

(1) Where a party was represented by an attorney of record in the event of: the death of a party, the loss of its capacity to sue or be sued, the loss of a legal representative, the issuance of an order as to the administration of an estate, or the occurrence of reversionary succession (sections 239, 241, 242), the proceedings shall not be interrupted; however, upon corresponding application being made by the attorney-in-fact, the court hearing the case is to order the suspension of the proceedings, and in the event of death and of reversionary succession, it shall do so also upon corresponding application being made by the opponent.

(2) The term of the suspension and the resumption of the proceedings shall be governed by the stipulations of section 239 and sections 241 to 243; in the event of death and of reversionary succession, the summons is to be served, together with the written pleading in which the suspension is petitioned, also on the attorney-in-fact.

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#### **Section 247**

##### **Suspension in the event of interrupted communications**

Where a party is staying at a location that is cut off from communications with the court hearing the case and this is due to the established authorities having issued a corresponding order, to war or to other coincidences, the court may also direct, ex officio, that the proceedings be suspended until such impediment has been removed.

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#### **Section 248**

##### **Procedure in the event of suspension**

(1) The request for suspension of the proceedings is to be filed with the court hearing the case; it may be recorded with the registry for the files of the court.

(2) The decision may be given without a hearing being held.

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#### **Section 249**

##### **Effects of interruption and suspension**

(1) The interruption and suspension of the proceedings will have the effect of stopping any period that may be running, which will recommence in full after the interruption or suspension of the proceedings has ended.

(2) Any procedural actions taken by a party with a view to the main action while the proceedings are interrupted or suspended will have no legal effect vis-à-vis the other party.

(3) Any interruption occurring after a hearing has ended will not impede the pronouncement of the decision to be delivered on the basis of this hearing.

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## **Section 250**

### **Form of resuming proceedings and notification**

Any proceedings interrupted or suspended shall be resumed, and any notifications mentioned under this Title shall be made by serving a written pleading to be submitted to the court.

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## **Section 251**

### **Stay of proceedings**

The court is to order that proceedings be stayed if both parties have petitioned that this be done, and if it is to be assumed that such order is suitable for the purpose intended in light of the pendency of settlement negotiations or of other sound reasons. Such order will not have any influence on the running of the periods designated in section 233.

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## **Section 251a**

### **Failure of both parties to comply with procedural rules; decision on the basis of the record as it stands**

(1) Should neither party appear at a hearing, or should both parties fail to submit oral argument, the court may decide on the basis of the record as it stands.

(2) A judgment may be handed down on the basis of the record as it stands only if oral argument has been submitted in an earlier hearing. The judgment may be pronounced at the earliest after two (2) weeks. The court is to communicate, by simple letter, the details of the hearing for which the pronouncement of the ruling on the case is scheduled to the party that has failed to appear. The court shall determine a new hearing for oral argument should this party file a corresponding application with the court, at the latest on the seventh (7<sup>th</sup>) day prior to the hearing scheduled for the pronouncement of the ruling, provided that the party demonstrates to the satisfaction of the court that it has failed to appear through no fault of its own and that it was unable to apply in due time for a deferral of the hearing.

(3) Should the court not decide on the basis of the record as it stands, and should it not postpone the hearing pursuant to section 227, it shall order the proceedings stayed.

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## **Section 252**

### **Appellate remedies available in the event of proceedings being suspended**

A complaint subject to a time limit may be lodged against the decision by which the suspension of the proceedings is ordered or refused to be granted based on the stipulations of the present Title or based on other statutory provisions.

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## **Book 2**

### **Procedural rules for proceedings before the courts of first instance**

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## **Chapter 1**

### **Proceedings before the regional courts (Landgerichte)**

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## **Title 1**

### **Proceedings until a judgment is entered**

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## **Section 253**

### **Statement of claim**

(1) The complaint shall be brought by serving a written pleading (statement of claim).

(2) The statement of claim must include:

1. The designation of the parties and of the court;
2. Exact information on the subject matter and the grounds for filing the claim, as well as a precisely specified petition.

(3) Furthermore, the statement of claim is to provide:

1. Information as to whether, prior to the complaint being brought, attempts were made at mediation or any other proceedings serving an alternative resolution of the conflict were pursued, and shall also state whether any reasons exist preventing such proceedings from being pursued;
2. Wherever the subject matter of the litigation does not consist of a specific amount of money, information on the value of the subject matter of the litigation insofar as this is relevant for determining whether or not the court has jurisdiction;
3. And it shall state whether any reasons would prevent the matter from being ruled on by a judge sitting alone.

(4) Moreover, the general regulations as to preparatory written pleadings are to be applied also to the statement of claim.

(5) The statement of claim as well as any other petitions and declarations by a party that are to be served are to be submitted to the court in writing, with the number of copies being enclosed that are required for serving or communicating such documents. Should the statement of claim be filed as a digital document, no copies need be enclosed.

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## **Section 254**

### **Action by stages**

Should an action for presentation of accounts, or for the production of a schedule of assets, or for a statutory declaration to be made in lieu of an oath, be consolidated with an action for the surrender of whatever the defendant owes under the legal relationship giving rise to the legal dispute, the exact information on the performance being claimed by the plaintiff may be reserved until the accounts have been presented, the schedule of assets has been produced, or the statutory declaration in lieu of an oath has been made.

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## **Section 255**

### **Determination of periods in the judgment**

(1) In the event that the defendant does not satisfy the claim brought against him prior to the expiry of a period that has been set, and the plaintiff thus has the right to demand compensation of damages for non-performance of contract, or to pursue the avoidance of a contract, the plaintiff may demand that the deadline therefor be determined in the judgment.

(2) The same shall apply where the plaintiff has the right to demand that an authority issue a directive in the event that the defendant does not provide the security within the deadline imposed on him, as well as in the case provided for by section 2193 (2) of the Civil Code (Bürgerliches Gesetzbuch, BGB) governing the stipulation of a deadline by which a condition is to be met.

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## **Section 256**

### **Action for acknowledgment**

(1) A complaint may be filed to establish the existence or non-existence of a legal relationship, to recognise a deed or to establish that it is false, if the plaintiff has a legitimate interest in having the legal relationship, or the authenticity or falsity of the deed, established by a judicial ruling at the court's earliest convenience.

(2) Until the closure of the hearing subsequent to which the judgment will be handed down, the plaintiff may petition, by extending the claim, and the defendant may petition, by bringing counterclaims, that a legal relationship that has become a matter of dispute in the course of the court proceedings be acknowledged by judicial ruling if the decision on the legal dispute depends, either wholly or in part, on such legal relationship existing or not existing.

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## **Section 257**

### **Action for future payment or for the clearing of premises**

Should the assertion of a monetary claim that does not depend on any counterperformance, or the assertion of a claim to a property being cleared or spaces being vacated that serve other than residential purposes, be tied to a calendar date, an action may be filed for future payment or clearing of the premises.

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## **Section 258**

### **Action for recurrent performance**

An action may be filed also for the future payment of any recurrent performance scheduled to become due only after the judgment has been entered.

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### **Section 259**

#### **Action brought due to concern that performance might not be made within the period set**

Besides the cases set out in section 257 and section 258, an action for future performance may be brought wherever the circumstances give rise to the justified concern that the debtor might avoid performing in due time by extracting himself from his obligations.

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### **Section 260**

#### **Consolidation of claims**

Several claims of the plaintiff against one and the same defendant may be consolidated in one action, even if they are based on different grounds, if the court hearing the case is competent for the entirety of the claims and if the claims may permissibly be dealt with in the same type of proceedings.

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### **Section 261**

#### **Pending suit**

(1) By the complaint being brought, the dispute shall become pending.

(2) A claim lodged only in the course of the proceedings shall become pending at that point in time at which the claim was lodged in the hearing or at which a written pleading in conformance with the requirements of section 253 (2) number 2 has been served.

(3) Once the dispute is pending, this will have the following effects:

1. For as long as the dispute is pending, none of the parties may bring the dispute before another court or tribunal;
2. The jurisdiction of the court hearing the case will not be affected by any change to the circumstances giving rise to its competence.

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### **Section 262**

#### **Other effects of the dispute being pending**

The stipulations of civil law as regards the other effects of a dispute having become pending shall remain unaffected hereby. These effects, as well as all effects tied by the stipulations of civil law to an action being conducted; notice of an action being given or its being registered with the court; to the summons of the defendant; or to his entering an appearance shall all arise without prejudice to the rule set out in section 167 once the complaint has been brought.

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### **Section 263**

#### **Modification of the suit filed**

Upon the dispute having become pending, the complaint may be modified if the defendant consents to this being done, or if the court believes such a modification to be expedient.

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#### **Section 264**

##### **No modification of the suit filed**

It is not to be regarded a modification of the suit filed if, without any change to the cause of action:

1. The statements made as to the facts and circumstances or the legal considerations are amended or corrected;
2. The demand for relief is extended or limited in terms of the main action or as regards ancillary claims;
3. As a result of later changes, a different object, or the interest in same, is claimed instead of the object originally claimed.

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#### **Section 265**

##### **Disposition or assignment of the object in dispute**

(1) The fact that the dispute has become pending does not rule out the right enjoyed by either of the parties to dispose over the object in dispute or to assign the claim being asserted.

(2) Such disposition or assignment shall not affect the proceedings. Without the opponent's consent, the successor in title shall not be entitled to assume the proceedings as the primary party instead of the predecessor in title, nor shall it be entitled to pursue a third-party intervention through an action against the two parties to a pending lawsuit. Should the successor in title act in support of a party to the dispute as an intervening third party, section 69 is not applicable.

(3) Should the plaintiff have disposed of or assigned his rights, the objection may be raised that he is no longer authorised to assert the claim wherever the judgment handed down against the successor in title pursuant to section 325 would not be valid.

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#### **Section 266**

##### **Disposition of a plot of real estate**

(1) Should a legal dispute be pending between the possessor and a third party as to whether a right being claimed for a property exists or does not exist, or as to whether an obligation encumbering a property exists or does not exist, then the successor in title to any property so disposed of shall be entitled and, upon a corresponding application having been filed by the opponent, shall be obligated to assume the legal dispute as the primary party, regardless of his circumstances. This shall apply mutatis mutandis to any legal dispute as to whether an obligation encumbering a registered ship or ship under construction exists or does not exist.

(2) This provision is not to be applied insofar as it is contravened by the stipulations of civil law benefiting those parties deriving rights from a person who is not a beneficiary in this regard. In such event, provided the plaintiff has disposed of the property, the rules set out in section 265 (3) shall apply.

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**Section 267**  
**Presumed consent to the modification of a suit filed**

It is to be assumed that the defendant has consented to the modification of a suit filed if he has made an appearance in a hearing regarding the modified action without objecting to such modification.

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**Section 268**  
**Decision is incontestable**

The decision that the action has not been modified or that the modification is to be admitted is incontestable.

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**Section 269**  
**Withdrawal of legal action**

(1) The action may be withdrawn without the consent of the defendant until the time at which the defendant is to be first heard on the merits of the case.

(2) A declaration is to be made to the court as to the action having been withdrawn and, insofar as this is required in order to ensure that the withdrawal is effective, the defendant is to declare his consent to such withdrawal. Unless declared at the hearing, the action shall be withdrawn by submitting a written pleading to the court. The written pleading is to be served on the defendant if his consent is required for the withdrawal of the action to be effective. Should the defendant fail to oppose the withdrawal of legal action within a statutory period of two (2) weeks from the date on which the written pleading was served, he shall be deemed to have consented to same, provided that this consequence was indicated to the defendant previously.

(3) Should the action be withdrawn, the legal dispute is to be considered as not having become pending; any judgment already given that has not yet become final and binding shall become ineffective without this requiring its express repeal. The plaintiff is under obligation to bear the costs of the legal dispute unless a final and binding decision has been given in their regard or unless they are to be imposed on the defendant for any reason. Should the occasion for bringing the action have ceased to exist prior to the dispute becoming pending and the complaint subsequently be withdrawn, the obligation to bear the costs of the proceedings shall be determined at the court's equitable discretion, taking account of the circumstances and facts as known at that time as well as the status of the dispute thus far; this shall also apply in the event the complaint has not been served.

(4) The court shall rule by court order, upon a corresponding application having been filed, as to the effects resulting pursuant to subsection (3). Where a defendant has been granted assistance with the court costs, the court is to decide on the costs ex officio.

(5) A complaint subject to a time limit may be filed against the court order if the value of the claim in the main action is greater than the amount set out in section 511. Such complaint shall be deemed inadmissible if there are no remaining admissible appellate remedies regarding the petition on the assessment of costs (section 104).

(6) Should the complaint be brought once again, the defendant may refuse to enter any appearance until the costs have been reimbursed.

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**Section 270**  
**Service; communication by simple letter**

To the exception of the statement of claim and such written pleadings that contain substantive petitions, written pleadings and other declarations by the parties are to be communicated by simple letter unless the court orders them to be served. When mailing such documents, the communication shall be deemed to have been made on the business day following the day on which they were mailed in those cases in which the residence of the recipient party is located in the local postal district, and on the second business day thereafter for any other locations, unless the party can demonstrate in a satisfactory way that it has not received the communication, or only at a later date.

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### **Section 271**

#### **Service of the statement of claim**

- (1) The statement of claim is to be served without undue delay.
- (2) In serving the documents, the defendant is to be instructed to appoint an attorney should he intend to defend against the claim.

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### **Section 272**

#### **Determination of the form of procedure**

- (1) As a general rule, the legal dispute is to be dealt with and terminated in a hearing for oral argument that has been comprehensively prepared for (main hearing).
- (2) The presiding judge shall either make arrangements for an advance first hearing at which oral argument is to be heard (section 275) or shall have preliminary proceedings conducted in writing (section 276).
- (3) The conciliation hearing and the hearing for oral argument should be arranged for as early a time as possible.
- (4) Matters entailing the vacation of premises are to have priority and shall be conducted on an expedited basis.

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### **Section 273**

#### **Preparations for the hearing**

- (1) The court is to initiate the necessary preparatory measures in due time.
- (2) By way of preparing for the hearing, the presiding judge or a member of the court hearing the case delegated by the presiding judge may in particular:

1. Direct the parties to amend their preparatory written pleadings or to provide further information, and may in particular set a deadline for explanations to be submitted regarding certain items in need of clarification;
2. Request that public authorities or public officials communicate records or provide official information;
3. Order parties to appear at the hearing in person;

4. Summon witnesses, to whom a party has referred, and experts to appear at the hearing, he may also issue an order pursuant to section 378;
5. Issue orders pursuant to section 142 and section 144.

(3) Orders pursuant to subsection (2) number 4 and, insofar as the orders are not to be issued to a party, orders pursuant to subsection (5) shall be issued only if the defendant has already opposed the claim being lodged by the action. For the orders pursuant to subsection (2) number 4, section 379 shall apply mutatis mutandis.

(4) The parties are to be notified of each order. Should the parties be ordered to appear in person, the stipulations of section 141 subsection (2) and subsection (3) shall apply.

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#### **Section 274** **Summons of the parties; time for entering an appearance**

(1) Once the date for the hearing for oral argument has been determined, the court registry is to be instructed to summon the parties.

(2) The summons is to be served on the defendant together with the statement of claim if the court has determined an advance first hearing.

(3) A period of at least two (2) weeks must lapse from the time at which the statement of claim is served and the date of the hearing (time for entering an appearance). Should the documents be served abroad, the presiding judge is to determine the time for entering an appearance in arranging the date of the hearing.

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#### **Section 275** **Advance first hearing**

(1) By way of preparing for the advance first hearing, the presiding judge or a member of the court hearing the case delegated by the presiding judge may set a deadline for the defendant by which he is to submit a written statement of defence. Alternatively, the defendant is to be instructed to have an attorney he is to appoint submit to the court, in a written pleading and without undue delay, any means of defence that are to be brought before the court; section 277 (1), second sentence, shall apply mutatis mutandis.

(2) Should the proceedings not be conclusively dealt with and terminated at the advance first hearing, the court shall issue all orders still required to prepare for the main hearing for oral argument.

(3) At the advance first hearing, the court shall set a deadline for submitting a written statement of defence should the defendant not yet have responded to the complaint at all, or not sufficiently, and wherever no deadline pursuant to subsection (1), first sentence, had been set.

(4) At the advance first hearing, or upon having received the statement of defence, the court may set a deadline for the plaintiff within which he is to state his position in writing as regards the statement of defence. The presiding judge may set such deadline also outside of the hearing.

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#### **Section 276** **Preliminary proceedings conducted in writing**

(1) Should the presiding judge not arrange a date for the advance first hearing for oral argument, he shall instruct the defendant, in serving the complaint upon him, that should the defendant wish to defend against the complaint, he should notify the court of this fact within a statutory period of two (2) weeks after the statement of claim has been served on him; the plaintiff is to be informed of these instructions having been issued. Concurrently, a deadline is to be set for the defendant within which he is to submit his written statement of defence, which period shall be at least a further two (2) weeks. For any service of the complaint to a recipient abroad, the presiding judge is to set the deadline in accordance with the first sentence.

(2) Concurrently with these instructions, the defendant is to be instructed of the consequences should he fail to meet the deadline imposed on him pursuant to subsection (1), first sentence, and also as regards the fact that he may only declare his intention to oppose the complaint via an attorney he is to appoint. The instructions given as to the option of a default judgment being entered pursuant to section 331 (3) shall also address the legal consequences set out in sections 91 and 708 number 2.

(3) The presiding judge may set a deadline for the plaintiff within which he is to state his position in writing as regards the statement of defence.

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### **Section 277**

#### **Statement of defence; counterplea**

(1) The defendant is to state the means by which he defends his case in the statement of defence, provided that based on the circumstances of the proceedings, this corresponds to a diligent pursuit of the court proceedings and serves to promote them. Furthermore, the statement of defence is to address any reasons that would prevent the matter from being ruled on by a judge sitting alone.

(2) The defendant is to be instructed that the statement of defence needs to be submitted to the court by an attorney he must appoint, and of the consequences should he fail to meet a deadline imposed on him.

(3) The period for submitting a written statement of defence pursuant to section 275 subsection (1), first sentence, and pursuant to subsection (3) shall be at least two (2) weeks.

(4) Subsection (1), first sentence, and subsections (2) and (3) apply mutatis mutandis to the written statement of position regarding the statement of defence.

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### **Section 278**

#### **Amicable resolution of the dispute; conciliation hearing; settlement**

(1) In all circumstances of the proceedings, the court is to act in the interests of arriving at an amicable resolution of the legal dispute or of the individual points at issue.

(2) For the purposes of arriving at an amicable resolution of the legal dispute, the hearing shall be preceded by a conciliation hearing unless efforts to come to an agreement have already been made before an alternative dispute-resolution entity, or unless the conciliation hearing obviously does not hold out any prospects of success. In the conciliation hearing, the court is to discuss with the parties the circumstances and facts as well as the status of the dispute thus far, assessing all circumstances without any restrictions and asking questions wherever required. The parties appearing are to be heard in person on these aspects.

(3) The parties shall be ordered to appear in person at the conciliation hearing as well as at any other conciliation efforts. Section 141 (1), second sentence, subsections (2) and (3) shall apply mutatis mutandis.

(4) Should neither of the parties appear at the conciliation hearing, the proceedings shall be ordered stayed.

(5) The court may refer the parties for the conciliation hearing, as well as for further attempts at resolving the dispute, to a judge delegated for this purpose, who is not authorised to take a decision (Güterichter, conciliation judge). The conciliation judge may avail himself of all methods of conflict resolution, including mediation.

(6) A settlement may also be made before the court by the parties to the dispute by submitting to the court a suggestion, in writing, on how to settle the matter, or by their accepting, in a corresponding brief sent to the court, the suggested settlement made by the court in writing. The court shall establish, by issuing a corresponding order, that the settlement concluded in accordance with the first sentence has been reached, recording the content of same in the order. Section 164 shall apply mutatis mutandis.

#### Section 278a

##### Mediation, alternative conflict resolution

(1) The court may suggest that the parties pursue mediation or other alternative conflict resolution procedures.

(2) Should the parties to the dispute decide to pursue mediation or other alternative conflict resolution procedures, the court shall order the proceedings stayed.

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### **Section 279 Hearing for oral argument**

(1) Should a party fail to appear at the conciliation hearing or should the conciliation hearing not meet with success, the hearing (advance first hearing or main hearing for oral argument) is to be held immediately thereafter. In all other cases, a hearing for oral argument is to be arranged without undue delay.

(2) In the main hearing for oral argument, the taking of evidence shall immediately follow the hearing in which the dispute as such is dealt with.

(3) Following the taking of evidence, the court is to once again discuss with the parties the circumstances and facts as well as the status of the dispute thus far and, to the extent possible at this stage, the results obtained in taking evidence.

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### **Section 280 Separate hearing on the admissibility of the action**

(1) The court may order the admissibility of the action to be assessed at a separate hearing.

(2) Should an interlocutory judgment be given, it is to be regarded as a final judgment where the appellate remedies are concerned. However, upon a corresponding application being made, the court may order oral argument on the merits of the case to be heard.

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### **Section 281 Referral in the event the court does not have jurisdiction**

(1) If, based on the regulations regarding the local or substantive competence of courts, the court's lack of jurisdiction is to be pronounced, and provided it is possible to determine the competent court, the court before which the action was initially brought is to declare, upon corresponding application being made by the plaintiff, that it is not competent and is to refer the legal dispute to the competent court. Should several courts have jurisdiction, the dispute shall be referred to the court selected by the plaintiff.

(2) Applications and declarations concerning the jurisdiction of the court may be filed with the records clerk of the court registry. The court order is incontestable. The legal dispute shall become pending with the court designated in the order upon the court having received the files. The order shall be binding upon this court.

(3) The costs accrued in the proceedings before the court with which the action was initially brought shall be treated as part of the costs accruing in the proceedings before the court designated in the order. The additional costs accruing are to be imposed on the plaintiff also in the event he prevailed in the main action.

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## **Section 282**

### **Submissions to the court made in due time**

(1) In the hearing, each party is to submit to the court its means of challenge or defence, specifically allegations, denials, objections, defence pleas, evidence and objections to evidence submitted, as promptly as, based on the circumstances of the proceedings, this corresponds to a diligent pursuit of the court proceedings and serves to promote them.

(2) Petitions and means of challenge or defence regarding which it is foreseeable that the opponent will be unable to react to them without previously making inquiries, are to be communicated prior to the hearing by a preparatory written pleading in such time as to enable the opponent to still make the necessary inquiries.

(3) Concurrently, the defendant is to file any objections concerning the admissibility of the complaint, and is to do so prior to being heard on the merits of the case. Should, prior to the hearing, a deadline have been set for him by which he is to submit his statement of defence, he is to raise his objections within this period.

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## **Section 283**

### **Time limit for written pleadings that react to an opponent's submissions**

Should a party not be able to make a statement regarding the opponent's submission to the court because this was not communicated to it in due time prior to the hearing, the court may determine, upon corresponding application being made by that party, a time limit within which the party may submit its statement in a written pleading to complete its earlier submissions; concurrently, a hearing shall be arranged at which the decision is to be pronounced. The court must take into account, in its decision, any declaration submitted within the time limit set and may take into account any statement submitted late.

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## **Section 283a**

### **Court order for securitisation**

(1) Where an action for the vacation of premises is joined to an action for payment under the same legal relationship, the court hearing the case shall order, upon the plaintiff having filed a

corresponding application, that the defendant is to provide security for the monetary claims that have fallen due after the matter became pending, provided that

1. The action concerning these claims holds out significant prospects of success, and
2. A balanced consideration of the interests of both parties determines that the order is justified in that it will avert particular disadvantages from the plaintiff. It suffices to demonstrate the interests to the satisfaction of the court for them to be considered.

Where the parties are in dispute as regards the plaintiff's right to increase the monetary claim, the court order for securitisation will not cover the amount by which the claim is increased. An immediate complaint may be lodged against a court order for securitisation.

(2) The defendant is to submit proof that he has provided the security within a period to be set by the court.

(3) Should the plaintiff prevail, the final judgment or any provision otherwise terminating the legal dispute is to state that the plaintiff is entitled to satisfy his claim from the security so provided.

(4) Inasmuch as, pursuant to the final judgment or provision otherwise terminating the legal dispute, the plaintiff is not entitled to a claim in the amount of the security provided, the plaintiff is to compensate the defendant for the damages the latter has suffered as a result of having had to provide the security. Section 717 (2), second sentence, shall apply mutatis mutandis.

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## **Section 284**

### **Taking of evidence**

The taking of evidence and the order for separate proceedings to take evidence, which is issued by a court order for evidence to be taken, are governed by the stipulations of Titles 5 through 11. The court may take evidence, provided it has obtained the consent of the parties to do so, in the manner it deems suitable. This consent may be limited to individual evidence taken. It may be revoked only in the event of a material change to the litigation circumstances; this must be done prior to the process of taking evidence commencing, to which the consent originally referred.

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## **Section 285**

### **Oral argument after evidence has been taken**

(1) The parties to the dispute are to be heard in oral argument on the results obtained in taking evidence and are to state their case.

(2) Should the evidence not have been taken before the court hearing the case, the parties to the dispute are to present their results based on the hearings on the evidence.

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## **Section 286**

### **Evaluation of evidence at the court's discretion and conviction**

(1) The court is to decide, at its discretion and conviction, and taking account of the entire content of the hearings and the results obtained by evidence being taken, if any, whether an allegation as to fact is to be deemed true or untrue. The judgment is to set out the reasons informing the conviction of the judges.

(2) The court shall be bound to statutory rules of evidence only in the cases designated in the present Code.

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### **Section 287**

#### **Investigation and determination of damages; amount of the claim**

(1) Should the issue of whether or not damages have occurred, and the amount of the damage or of the equivalent in money to be reimbursed, be in dispute among the parties, the court shall rule on this issue at its discretion and conviction, based on its evaluation of all circumstances. The court may decide at its discretion whether or not – and if so, in which scope – any taking of evidence should be ordered as applied for, or whether or not any experts should be involved to prepare a report. The court may examine the party tendering evidence on the damage or the equivalent in money thereof; the stipulations of section 452 (1), first sentence, subsections (2) to (4) shall apply mutatis mutandis.

(2) In the event of pecuniary disputes, the stipulations of subsection (1), sentences 1 and 2, shall apply mutatis mutandis also to other cases, insofar as the amount of a claim is in dispute among the parties and to the extent the full and complete clarification of all circumstances authoritative in this regard entails difficulties that are disproportionate to the significance of the disputed portion of the claim.

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### **Section 288**

#### **Admission before the court**

(1) The facts alleged by a party do not require any substantiation by evidence if, in the course of the legal dispute, they are admitted by the opponent in the course of a hearing, or are admitted by him for the record kept by the judge correspondingly delegated or requested.

(2) The admission before the court need not be accepted in order to be effective.

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### **Section 289**

#### **Additional statements made in an admission**

(1) The effectiveness of an admission made before the court is not impaired by the fact that an allegation is added to it that includes an independent means of challenge or defence.

(2) The extent to which a declaration made before the court that concedes certain matters is to be regarded as an admission, irrespective of other additional or restricting allegations, is to be determined based on the nature of the individual case.

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### **Section 290**

#### **Revocation of an admission**

The revocation of an admission made before the court shall impact its effectiveness only in those instances in which the revoking party proves that the admission was not truthful and was caused by an erroneous assumption. In this event, the admission ceases to be effective.

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## **Section 291**

### **Common knowledge**

Facts that are common knowledge with the court need not be substantiated by evidence.

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## **Section 292**

### **Legal presumptions**

Should the law make a presumption as to a certain fact being given, its opposite may admissibly be proven unless otherwise provided for by the law. This proof may also be established by petitioning the examination of a party pursuant to section 445.

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## **Section 292a**

### **(repealed)**

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## **Section 293**

### **Foreign law; customary law; statutes**

The laws applicable in another state, customary laws, and statutes must be proven only insofar as the court is not aware of them. In making inquiries as regards these rules of law, the court is not restricted to the proof produced by the parties in the form of supporting documents; it has the authority to use other sources of reference as well, and to issue the required orders for such use.

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## **Section 294**

### **Demonstration of allegations to the satisfaction of the court**

(1) Anyone who is to demonstrate an allegation as to fact to the satisfaction of the court may use all evidence and may also be permitted to make a statutory declaration in lieu of an oath.

(2) Evidence that cannot be taken immediately shall not be admitted.

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## **Section 295**

### **Objections to process**

(1) The infringement of a rule to which the proceedings are subject, and in particular of a rule governing the form of a procedural action, no longer may be objected to if the party has waived the rule's being applied, or if the party has failed to object to the irregularity at the next hearing taking place as a result of the corresponding proceedings or at the hearing in which reference was made to the rule, in spite of the fact that the party appeared at the hearing and that it was aware, or must have been aware, of the irregularity.

(2) The above provision shall not be applied if any rules have been infringed, the compliance with which no party may effectively waive.

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## **Section 296**

### **Refusal to accept submissions made late**

(1) Any means of challenge or defence submitted only after the deadline imposed in its regard (section 273 (2) number 1 and, insofar as this deadline has been set to a specific party, number 5, section 275 (1), first sentence, subsection (3) and subsection (4), section 276 (1), second sentence, subsection (3), section 277) are to be admitted at the court's discretion and conviction only if admitting them to the proceedings would not delay the process of dealing with and terminating the legal dispute, or if the party provides sufficient excuse for such delay.

(2) The court may refuse to admit any means of challenge or defence that, in contravention of the stipulations made in section 282 (1), are not submitted in due time or that, in contravention of the stipulations of section 282 (2), are not communicated in due time, if it finds at its discretion and conviction that admitting them to the proceedings would delay the process of dealing with and terminating the legal dispute, and that the delay is the result of gross negligence.

(3) Any objections made, at too late a time, concerning the admissibility of the complaint and that the defendant may elect to forgo, are to be admitted only if the defendant provides sufficient excuse for the delay.

(4) In the cases set out in subsections (1) and (3), the grounds precluding culpability are to be substantiated should the court so require.

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## **Section 296a**

### **Submissions made following close of the hearing**

Following close of the hearing, subsequent to which the judgment is handed down, no further means of challenge or defence may be submitted. Section 139 (5), section 156, and section 283 shall remain unaffected hereby.

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## **Section 297**

### **Form of filing petitions with the court**

(1) The petitions are to be read out loud from the preparatory written pleadings. Insofar as the pleadings do not contain any petitions, these must be read out loud from a writing to be attached to the record of the hearing as an appendix. The presiding judge may also permit the petitions to be recorded with the registry for the files of the court.

(2) The requirement of reading out loud the petitions cannot be substituted by the parties to the dispute referring to their written pleadings setting out such petitions.

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## **Section 298**

### **Hard copies for files**

(1) A printout may be prepared of an electronic document (section 130a and section 130b) for inclusion in the files.

(2) The hard copy must include a note:

1. As to the result of the integrity check performed for the document,

2. As to whom the signature verification has established as the owner of the signature,
3. As to which time was established by signature verification as the time when the signature was inserted in the document.

(3) The electronic document is to be stored at least until the proceedings have been concluded as res judicata.

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#### **Section 298a Electronic file**

(1) The court records of the dispute may be kept as electronic files. The Federal Government and the Land governments shall determine by statutory instrument for their sphere of responsibility the time onwards from which electronic files are to be kept, as well as the framework conditions in organisational and technical terms governing the creation, administration, and storage of the electronic files. The Land governments may confer, by statutory instrument, the corresponding authorisation upon the Land departments of justice. The admissibility of electronic files may be restricted to individual courts or proceedings.

(2) Any documents and other records submitted on paper are to be changed to electronic format by way of replacing the original. Should the documents and records still be needed in paper format, they are to be stored at least until the proceedings have been concluded as res judicata.

(3) The electronic document must include the note as to when and by whom the documents were changed to electronic format.

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#### **Section 299 Inspection of files; copies**

(1) The parties may inspect the court records of the dispute and may have the court registry issue to them execution copies, excerpts, and copies.

(2) The president of the court and his deputy may allow third parties to inspect the files without the consent of the parties if these third parties have demonstrated their legitimate interest to his satisfaction.

(3) Should the court records of the dispute be kept as electronic files, the court registry shall grant inspection of the files by providing a hard copy of the files, by calling them up on a computer screen, or by transmitting them as electronic documents. The presiding judge may decide, at his discretion, to permit attorneys-in-fact who are a member of a chamber of attorneys to electronically access the content of the files. In allowing such electronic access to the content of the files, it is to be ensured that solely the attorney-in-fact will so access the files. In transmitting the files, the entirety of the documents is to be furnished with a qualified electronic signature and is to be protected against becoming known to unauthorised parties.

(4) Drafts of judgments, orders, and rulings; the work supplied in preparing them; as well as the documents concerning the court's coordination with others will not be made available, nor will they be communicated as copies.

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#### **Section 299a Data carrier archive**

Once the court records of the dispute have been transferred, in accordance with the principles of due and proper procedure and by way of replacing the originals, to an image carrier or other data carrier, and once written proof exists that the copy is a true and complete copy of the original, then execution copies, excerpts, and copies of the image carrier or data carrier may be issued. In this event, any notes to be made on the original are to be affixed to the supporting documentary proof.

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## **Title 2 Judgment**

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### **Section 300 Final judgment**

- (1) Once the legal dispute is ready for the final decision to be taken, the court is to deliver this decision by a final judgment.
- (2) The same shall apply if only one of several proceedings, which were consolidated for the purpose of hearing concurrent oral argument and handing down the decision on all of them, is ready for the final decision to be taken.

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### **Section 301 Partial judgment**

- (1) Should only one of several claims asserted by an action be ready for the final decision to be taken, or should only a part of a claim be ready, or, in the event of counterclaims having been brought, should only the complaint or the counterclaims be ready, the court is to deliver such decision by final judgment (partial judgment). A partial judgment may rule on part of a single claim that is in dispute both on its merits and as regards its amount only if, concurrently, a judgment is delivered on the merits of the remainder of the claim.
- (2) Should the court, based on the circumstances of the matter, deem it unreasonable to enter a partial judgment, it may forgo doing so.

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### **Section 302 Judgment subject to a reservation of rights**

- (1) If the defendant has asserted that a counterclaim should be set off, and if only the proceedings regarding the claim as such are ready for decision, they may be ruled on with the decision as to the set-off being reserved.
- (2) Should the ruling not provide for any such reservation, a petition may be filed to amend the judgment in accordance with the provisions of section 321.
- (3) The judgment entered subject to the reserved decision on the set-off is to be regarded as a final judgment as regards the appellate remedies available and compulsory enforcement.
- (4) The legal dispute shall remain pending as regards the set-off for which the decision is reserved. Where it becomes apparent in the further course of the proceedings that the plaintiff's claim was unfounded, the earlier judgment shall be reversed, the plaintiff's claim shall be dismissed and the costs shall be ruled on otherwise. The plaintiff is under obligation to compensate the damage that the

defendant has suffered by the judgment being enforced, or by his having made payments or taken other actions to avert such enforcement. The defendant may assert the claim to compensation of damages in the pending legal dispute; should the claim be asserted, it shall be deemed to have become pending at the date of the payment or other performance.

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### **Section 303**

#### **Interlocutory judgment**

Where an interlocutory dispute is ready for decision, the decision may be entered by interlocutory judgment.

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### **Section 304**

#### **Interlocutory judgment as to the merits of a claim**

(1) Should a claim be in dispute both on its merits and as regards its amount, the court may take a preliminary decision on the merits.

(2) The ruling is to be deemed a final judgment for the appellate remedies available; however, the court may order, provided it has declared the claim to be justified and provided that a corresponding application has been made, that oral argument be heard on the claim's amount.

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### **Section 305**

#### **Judgment subject to the proviso of liability limited by inheritance law**

(1) The fact that the heirs to an estate may assert the defence pleas to which they are entitled under section 2014 and section 2015 of the Civil Code (Bürgerliches Gesetzbuch, BGB) does not rule out that the court will find against the heirs, subject to the proviso of liability limited by inheritance law.

(2) The same applies to the assertion of defence pleas to which the surviving spouse is entitled, in the event the marriage was subject to the continuing regime of common marital property pursuant to section 1489 (2) as well as section 2014 and 2015 of the Civil Code (Bürgerliches Gesetzbuch, BGB).

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### **Section 305a**

#### **Judgment subject to the proviso of liability limited by maritime law**

(1) If the claim being asserted in the action is subject to the limitation of liability pursuant to section 611 subsection (1) or (3), sections 612 to 616 of the Commercial Code (Handelsgesetzbuch, HGB), and if the defendant claims that:

1. Further claims, regarding which he is able to limit his liability, have arisen from the same event and
2. The total amount of the claims is in excess of the maximum liability amounts determined in Article 6 or Article 7 of the Civil Liability Convention (section 611 (1), first sentence, of the Commercial Code) or in sections 612, 613 or 615 of the Commercial Code,

the court may, at its discretion and conviction, disregard such right to limit liability in its decision should this right, because of the uncertainty regarding the merits of the further claims or their

amounts, impede its ability to deal with and terminate the legal dispute to a greater than negligible extent. The same shall apply wherever the claim to limitation of liability asserted in the complaint is subject to the stipulations of sections 4 to 5m of the Inland Waterways Act (Binnenschiffahrtsgesetz) and wherever the defendant asserts that further claims, regarding which he is able to limit liability, have arisen from the same event that in the aggregate exceed the maximum liability amounts determined for them in sections 5e to 5k of the Inland Waterways Act.

(2) Where the court disregards the right to limit liability, the judgment shall be entered:

1. In the case provided for by subsection (1), first sentence, subject to the proviso that the defendant may assert his right to limit his liability if a fund has been established pursuant to the Civil Liability Convention, or if it is so established upon the right to limit liability being asserted,
2. In the case provided for by subsection (1), second sentence, subject to the proviso that the defendant may assert his right to limit his liability if a fund has been established pursuant to section 5d of the Inland Waterways Act, or if it is so established upon the right to limit liability being asserted.

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### **Section 306 Waiver**

Should, at the hearing, the plaintiff waive the claim asserted, he shall be dismissed with his claim should the defendant apply for such dismissal.

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### **Section 307 Acknowledgment**

Where a party acknowledges a claim asserted against it, either as a whole or in part, it is to be sentenced in accordance with this acknowledgment. No hearing shall be required in this regard.

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### **Section 308 Binding effect of the parties' petitions**

(1) The court does not have authority to award anything to a party that has not been petitioned. This shall apply in particular to usufruct or fruits, interest, and other ancillary claims.

(2) The court is to rule on the obligation to bear the costs of the proceedings even without a corresponding petition having been filed.

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### **Section 308a Decisions handed down in disputes between lessor and lessee without a petition being required**

(1) Should the court hearing a dispute regarding the vacation of residential premises between a lessor and a lessee, or a lessee and a sublessee, hold that the claim for vacation is unfounded because, pursuant to sections 574 to 574b of the Civil Code (Bürgerliches Gesetzbuch, BGB), the lessee may demand that the lessor-lessee relationship be continued, it is to rule in its judgment, even without any petition having been filed, on the term for which the lease relationship is to continue and subject to

which changes to the conditions of contract are to be made. The parties to the dispute are to be heard prior to the judgment being pronounced.

(2) The pronouncement is separately and independently contestable.

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### **Section 309 Judges entering the judgment**

The judgment may be handed down only by those judges who have attended the hearing on which the judgment is based.

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### **Section 310 Hearing for pronouncement of the judgment**

(1) The judgment shall be pronounced at the hearing at which the court proceedings are declared terminated, or at a hearing to be arranged immediately. This will be set for a date later than three (3) weeks after the last hearing only for grave cause, this being particularly the scope or the complexity of the matter.

(2) Should the judgment not be pronounced at the hearing at which the court proceedings are declared terminated, it must be fully and completely worded at the time of its pronouncement.

(3) Service of the judgment shall replace the pronouncement of judgments based on the defendant's acknowledgment and default judgments, which are entered without a hearing pursuant to section 307 and section 331 (3). The same shall apply to any ruling overruling the protest entered against a default judgment (section 341 (2)).

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### **Section 311 Form of pronouncing the judgment**

(1) The judgment shall be entered in the name of the people.

(2) The judgment is pronounced by reading out loud its operative provisions. Such reading of the operative provisions of the judgment may be replaced by reference being made to same should none of the parties have appeared at the hearing at which the judgment is pronounced. Default judgments, judgments based on the defendant's acknowledgment, as well as judgments entered as a consequence of the legal action having been withdrawn or of the claim lodged by the action being waived, may be pronounced even if the operative provisions of the judgment have not yet been put into writing.

(3) Wherever this is deemed to be reasonable, the reasons on which a ruling is based will be pronounced by their being read out loud or by the essential content being communicated verbally.

(4) Should the ruling not be pronounced at the hearing at which the court proceedings are declared terminated, the presiding judge may pronounce it in the absence of the other members of the court hearing the case.

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## **Section 312**

### **Presence of the parties**

(1) The pronouncement of the judgment shall be effective regardless of whether or not the parties are present. The ruling shall be deemed to have been pronounced also to any party that has failed to appear at the hearing.

(2) The authority of a party to continue the proceedings based on a judgment that has been pronounced, or to make use of the judgment in any other way, shall not depend on its having been served on the opponent unless otherwise provided for by the present Code.

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## **Section 313**

### **Form and content of the judgment**

(1) The judgment shall set out:

1. The designation of the parties, their legal representatives, and the attorneys of record;
2. The designation of the court and the names of the judges contributing to the decision;
3. The date on which the court proceedings were declared terminated;
4. The operative provisions of a judgment;
5. The merits of the case;
6. The reasons on which a ruling is based.

(2) The section addressing the facts and the merits of the case is to summarise, in brief and based on the essential content, the claims asserted and the means of challenge or defence brought before the court, highlighting the petitions filed. The details of the circumstances and facts as well as the status of the dispute thus far are to be included by reference being made to the written pleadings, the records of the hearings, and other documents.

(3) The reasoning for the judgment shall contain a brief summary of the considerations of the facts and circumstances of the case and the legal aspects on which the decision is based.

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## **Section 313a**

### **Purposeful omission of merits of the case and reasons on which a ruling is based**

(1) If no appellate remedies are admissible against the ruling, and this is certain without a doubt, no section addressing the facts and the merits of the case need be included in the judgment. In such event, the reasons on which the ruling is based also do not need to be set out, provided the parties to the dispute have waived their being set out, or if their essential content has been included in the record of the hearing.

(2) Should the judgment be pronounced at the hearing at which the court proceedings are declared terminated, neither a section addressing the facts and the merits of the case need be included in the judgment, nor the reasons on which the ruling is based, if both parties waive appellate remedies against the judgment. Should the judgment be contestable only for one party, a declaration of waiver by that party shall suffice.

(3) The waiver pursuant to subsections (1) or (2) may be declared already prior to the judgment being pronounced and must have been declared to the court at the latest within one (1) week following close of the hearing.

(4) Subsections (1) to (3) are not to be applied in the event of a party being sentenced to recurrent performance that will become due in the future, or if it is to be expected that the judgment will be enforced abroad.

(5) Should it be intended to enforce abroad a ruling that neither addresses the facts and the merits of the case, nor provides the reasons on which it is based, the rules governing the completion of default judgments and judgments based on an acknowledgment by the defendant shall apply mutatis mutandis.

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### **Section 313b**

#### **Default judgment, judgment based on an acknowledgment by the defendant, and judgment based on a waiver having been declared**

(1) Default judgments, judgments based on an acknowledgment by the defendant, or judgments based on a waiver having been declared need not address the facts and the merits of the case, nor must they cite the reasons on which they are based. The respective ruling is to be designated as a default judgment, judgment based on an acknowledgment by the defendant, or judgment based on a waiver having been declared.

(2) In its abridged form as provided for by subsection (1), the judgment may be placed on the original or copy of the complaint included in the files, or on a separate sheet to be attached to it. The judgment need not set out the names of the judges. The judgment is to include the designation of the parties, their legal representatives, and their attorneys of record only to the extent that this information deviates from the information provided in the statement of claim. Should the plaintiff prevail, the operative provisions of the judgment may include the statement of claim by reference. Should the judgment be written on a sheet of paper that is attached to the statement of claim, the court seal is to be affixed to the place at which they are joined, or the documents are to be joined using tacking thread and a seal.

(3) Subsection (1) shall not be applied if it is to be expected that the default judgment or the judgment based on an acknowledgment by the defendant is intended to be enforced abroad.

(4) Subsection (2) shall not be applied if the court records of the dispute are kept as electronic documents.

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### **Section 314**

#### **Evidentiary value of the section addressing the facts and the merits of the case**

The section of the ruling that addresses the facts and the merits of the case shall establish evidence for the submissions made by the parties in oral argument. Such evidence can be invalidated only by the record of the hearing.

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### **Section 315**

#### **Signature by judges**

(1) The judgment is to be signed by the judges contributing to the decision. Should a judge be prevented from signing the ruling, this shall be noted, with the reasons being cited, at the bottom of

the ruling by the presiding judge, and should the presiding judge likewise be prevented from doing so, it shall be noted by the most senior among the associate judges.

(2) A ruling pronounced at the hearing at which the court proceedings are declared terminated shall be forwarded as a completely worded document to the court registry prior to the expiry of three (3) weeks, calculated from the date on which the ruling was pronounced. Should, as an exception, this not be possible, the judgment is to be forwarded to the court registry, signed by the judges, without the section addressing the facts and the merits of the case and without the reasons on which the ruling is based. In such event, the section addressing the facts and the merits of the case and the reasons on which the ruling is based shall be prepared shortly thereafter, shall be signed separately by the judges, and shall be forwarded to the court registry.

(3) The records clerk of the court registry is to note on the judgment the date on which it was pronounced or on which it was served pursuant to section 310 (3) and is to sign this note. Where the court records of the dispute are kept as electronic documents, the records clerk of the court registry is to record the note in a separate document. This document is to be joined to the judgment such that it cannot be separated.

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### **Section 316 (repealed)**

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### **Section 317 Service of the judgment and its execution**

(1) Judgments shall be served as a copy on the parties; default judgments that have been pronounced shall be served only on the party that has not prevailed in the dispute. Service of the judgment in accordance with the stipulations of section 310 (3) shall be deemed compliant with this rule. Where petitioned by the parties in congruent declarations, the presiding judge may defer service of judgments that have been pronounced until the expiry of five (5) months following pronouncement of the judgment.

(2) Execution copies will be issued only upon corresponding application being made, and solely in paper format. For as long as the judgment has not been pronounced and has not been signed, no execution copies, excerpts, or copies may be issued. Any execution of the judgment that a party may request shall be issued without the section addressing the facts and the merits of the case and the reasons on which a ruling is based; this shall not apply if the party requests to have a complete execution issued to it.

(3) A hard copy of a judgment, which exists as an electronic document (section 130b), as provided for by section 298, may be issued as an execution copy, in excerpts and as a copy.

(4) The execution copies and excerpts of judgments are to be signed by the records clerk of the court registry and the court seal is to be affixed to them.

(5) Any judgment prepared in the abridged format pursuant to section 313b (2) shall be executed in the same manner, using a certified copy of the statement of claim, or in such manner that the judgment is completed by the inclusion of the information designated in section 313 (1) numbers 1 to 4. The copy of the statement of claim may be certified by the records clerk of the court registry or by the plaintiff's attorney.

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### **Section 318**

#### **Court bound by its ruling**

The court is bound to the decision set out in its final and interlocutory judgments.

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### **Section 319**

#### **Correction of the judgment**

(1) Typographical errors, computational errors and similar, obvious inaccuracies in the judgment are to be corrected by the court at any time, also ex officio.

(2) The order mandating such a correction is to be noted on the judgment and on the execution copies of same. Should the order as to the correction be made in the form provided for by section 130b, it is to be recorded in a separate electronic document. This document is to be joined to the judgment such that it cannot be separated.

(3) There are no appellate remedies available against an order dismissing the petition for correction; complaints subject to a time limit may be filed against an order mandating a correction.

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### **Section 320**

#### **Correction of the judgment's section addressing the facts and the merits of the case**

(1) Should the section in a judgment addressing the facts and the merits of the case contain inaccuracies not governed by the stipulations of the preceding section, or omissions, obscure passages, or contradictions, their correction may be petitioned for within a period of two (2) weeks by submitting a written pleading to this effect.

(2) The period shall commence upon the fully worded ruling having been served. The petition may be filed already prior to the time at which the period has commenced running. Any correction of the section addressing the facts and merits of the case shall be ruled out unless a petition for it has been filed within three (3) months from pronouncement of the judgment.

(3) The petition shall be heard in oral argument should one of the parties have filed a corresponding petition.

(4) The court shall rule without taking evidence. Solely those judges shall contribute to the decision who contributed to the original judgment. Should a judge be prevented from so contributing, the presiding judge's vote shall be the casting vote in the event of any ties, and should the presiding judge be prevented from so contributing, the vote of the most senior judge shall be the casting vote. This court order is incontestable. The order mandating such a correction is to be noted on the judgment and on the execution copies of same. Should the order as to the correction be made in the form provided for by section 130b, it is to be recorded in a separate electronic document. This document is to be joined to the judgment such that it cannot be separated.

(5) Any correction of the section addressing the facts and the merits of the case shall not result in modifying the remainder of the judgment.

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### **Section 321**

#### **Amendment of the judgment**

(1) Should a principal claim or subsidiary claim asserted by a party have been overlooked as a whole or in part in the section addressing the facts and the merits of the case originally established or retroactively corrected, or should the final decision have overlooked the matter of the costs, as a whole or in part, the judgment is to be amended by a subsequent ruling upon corresponding petition having been filed.

(2) Within a period of two (2) weeks, which shall begin running upon the judgment having been served, the petition for a subsequent ruling must be filed by submitting a written pleading to this effect.

(3) Subsequent to the petition, a hearing for oral argument is to be arranged. The written pleading setting out the petition is to be served on the petitioner's opponent, together with the summons to this hearing.

(4) The hearing for oral argument shall address as its subject matter solely that part of the legal dispute that has not been dealt with and terminated.

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#### **Section 321a**

#### **Redress granted in the event a party's right to be given an effective and fair legal hearing has been violated**

(1) Upon an objection having been filed by the party adversely affected by the decision, the proceedings are to be continued if:

1. No appellate remedy or any other legal remedy is available against the decision, and
2. The court has violated the entitlement of this party to be given an effective and fair legal hearing and this has significantly affected the decision.

No objection may be filed against any decision preceding the final decision.

(2) The objection is to be filed within a statutory period of two (2) weeks upon the party having become aware of the violation of the right to be given an effective and fair legal hearing; the time at which it so becomes aware is to be substantiated. Following the expiry of one (1) year from the issuance of the decision challenged, an objection may no longer be filed.

Decisions communicated by simple letter shall be deemed to have been issued following the third (3<sup>rd</sup>) day on which they were sent by regular mail. The objection is to be lodged in writing with the court whose decision is being challenged. The objection must designate the specific decision being challenged and must demonstrate that the prerequisites set out in subsection (1), first sentence number 2 are fulfilled.

(3) To the extent required, the opponent is to be given the opportunity to state his position.

(4) The court is to review ex officio whether the objection as such is an available remedy, and whether it has been lodged in keeping with statutory requirements as to form and time. Should one of these requirements not have been met, the objection is to be overruled as inadmissible. Should the objection be without justification, the court shall dismiss it. The decision shall be handed down by an incontestable order. The grounds on which the order is based shall be briefly summarised.

(5) Wherever the objection is justified, the court shall grant the redress sought by continuing the proceedings to the extent mandated as a result of the objection. The status of the proceedings as given prior to the close of the hearing shall be reinstated. Section 343 shall apply mutatis mutandis. In

proceedings conducted in writing, the close of the hearing shall be replaced by the date by which the written pleadings may be submitted.

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## **Section 322**

### **Legal validity of the judgment in substance**

(1) Judgments are able to attain legal validity only insofar as the complaint or the claims asserted by counterclaims have been ruled on.

(2) Should the defendant have asserted the set-off of a counterclaim, the decision as to the counterclaim not existing shall be able to attain legal validity up to the amount for which the set-off has been asserted.

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## **Section 323**

### **Modification of judgments**

(1) Should a judgment stipulate an obligation to recurrent performance becoming due in the future, each part may petition for it to be modified. The complaint shall be admissible only if the facts and circumstances submitted by the plaintiff result in a material change to the factual or legal circumstances on which the decision is based.

(2) The complaint may only be based on grounds that have arisen after the hearing on the facts in the preceding proceedings was closed, and which it is or was not possible to assert by way of entering a protest.

(3) The modification is permissible for the time following the date on which the complaint has become pending.

(4) Should the factual or legal circumstances have undergone a material change, the decision is to be adjusted while upholding the foundations on which it is based.

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## **Section 323a**

### **Modification of settlement agreements and deeds**

(1) Should a settlement agreement pursuant to section 794 (1) number 1 or an enforceable deed set out an obligation to recurrent performance becoming due in the future, each party may file an action for modification of the legal title. The complaint shall be admissible only if the plaintiff presents facts justifying such modification.

(2) The further prerequisites and the scope of the modification shall be governed by the stipulations of civil law.

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## **Section 323b**

### **Aggravated liability**

In the event of section 818 (4) of the Civil Code (Bürgerliches Gesetzbuch, BGB) being applied, the pendency of a complaint for modification aiming at a reduction shall be tantamount to the pendency of a complaint for repayment of amounts paid.

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### **Section 324**

#### **Action asserting supplementary claims to a security**

If a sentence handed down pursuant to sections 843 to 845 or sections 1569 to 1586b of the Civil Code (Bürgerliches Gesetzbuch, BGB) regarding the payment of an annuity does not provide for any security having to be provided, the beneficiary may nonetheless demand that a security be provided if the obligor's assets and financial circumstances have deteriorated significantly; subject to the same prerequisite, the beneficiary may demand that the security to be provided as determined in the judgment be increased.

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### **Section 325**

#### **Subjective legal validity**

(1) A judgment that has entered into force shall take effect for and against the parties to the dispute and the persons who have become successors in title of the parties after the matter has become pending, or who have obtained possession of the disputed object such that one of the parties or its successor in title has become constructive possessor.

(2) The stipulations of civil law benefiting parties deriving rights from a person who is not a beneficiary in this regard shall apply mutatis mutandis.

(3) Should the judgment concern a claim arising from a realty charge, mortgage, charge on land, or annuity charge on land, it shall also be effective, with regard to the property, against the successor in title to any property so encumbered that has been disposed of, wherever the successor in title was not aware of any dispute pending before the court. The judgment shall be effective against the highest bidder obtaining title to real property by court order at an enforced auction only wherever the pending dispute was registered by no later than the date of the auction, prior to the call for bids having been made.

(4) If the judgment concerns a registered maritime mortgage, subsection (3), first sentence, shall apply mutatis mutandis.

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### **Section 325a**

#### **Legalisation effect of the decision taken in a model case for other cases of the same nature**

The stipulations of the Capital Markets Model Case Act (Kapitalanleger-Musterverfahrensgesetz) shall apply to the further-reaching effects of the decision taken in the model case.

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### **Section 326**

#### **Legal validity in the event of reversionary succession**

(1) A judgment handed down in a dispute between a provisional heir and a third party regarding a claim directed against the provisional heir as the heir, or concerning a matter subject to reversionary succession, shall take effect for the reversionary heir, provided it enters into force prior to the reversionary succession occurring.

(2) A judgment handed down in a dispute between a provisional heir and a third party concerning a matter subject to reversionary succession shall take effect also against the reversionary heir wherever

the provisional heir is authorised to dispose over the subject matter without the consent of the reversionary heir.

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### **Section 327**

#### **Legal validity in the event of a will being executed**

(1) A judgment handed down in a dispute between an executor of a will and a third party concerning a right that is subject to administration by the executor shall take effect for and against the heir.

(2) The same shall apply to any judgment handed down in a dispute between an executor of a will and a third party concerning a claim targeted against the estate, provided that the executor is authorised to pursue the legal dispute.

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### **Section 328**

#### **Recognition of foreign judgments**

(1) Recognition of a judgment handed down by a foreign court shall be ruled out if:

1. The courts of the state to which the foreign court belongs do not have jurisdiction according to German law;
2. The defendant, who has not entered an appearance in the proceedings and who takes recourse to this fact, has not duly been served the document by which the proceedings were initiated, or not in such time to allow him to defend himself;
3. The judgment is incompatible with a judgment delivered in Germany, or with an earlier judgment handed down abroad that is to be recognised, or if the proceedings on which such judgment is based are incompatible with proceedings that have become pending earlier in Germany;
4. The recognition of the judgment would lead to a result that is obviously incompatible with essential principles of German law, and in particular if the recognition is not compatible with fundamental rights;
5. Reciprocity has not been granted.

(2) The rule set out in number 5 does not contravene the judgment's being recognised if the judgment concerns a non-pecuniary claim and if, according to the laws of Germany, no place of jurisdiction was established in Germany.

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### **Section 329**

#### **Orders and rulings**

(1) Any orders of the court given on the basis of a hearing must be pronounced. The stipulations of section 309, section 310 (1) and of section 311 (4) shall apply mutatis mutandis to orders of the court, while the stipulations of section 312 and of section 317 (2), first and second sentences, and section 317, subsections (3) and (4) shall apply mutatis mutandis to orders of the court and to rulings handed down by the presiding judge or the judge correspondingly delegated or requested.

(2) Orders of the court that have not been pronounced, and rulings handed down by the presiding judge or the judge correspondingly delegated or requested that have not been pronounced, are to be communicated to the parties by simple letter. Wherever the decision sets out a date for a hearing as determined by the court or triggers a period, it is to be served on the parties.

(3) Decisions forming an enforceable legal document or that are subject to complaints subject to a time limit or to a reminder pursuant to section 573 (1) are to be served.

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### **Title 3**

#### **Default judgment**

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#### **Section 330**

##### **Default judgment against the plaintiff**

Should the plaintiff fail to appear at the hearing, a default judgment is to be delivered, upon a corresponding petition being filed, to the effect that the plaintiff's complaint is dismissed.

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#### **Section 331**

##### **Default judgment against the defendant**

(1) Should the plaintiff petition that a default judgment be delivered against the defendant because the latter has failed to appear at the hearing, it is to be presumed that the facts as submitted to the court by the plaintiff in oral argument have been acknowledged. This shall not apply to any submissions to the court regarding its jurisdiction pursuant to section 29 (2) and section 38.

(2) Insofar as the demand for relief is justified by the facts as submitted to the court by the plaintiff, the court is to decide in accordance with the petition filed; insofar as this is not the case, the complaint is to be dismissed.

(3) Should, in contravention of the stipulations made in section 276 (1), first sentence, and in subsection (2), the defendant have failed to notify the court of his intention to defend himself against the action, the court shall take its decision, upon a corresponding petition being filed by the plaintiff, without having held a hearing; this shall not apply if the defendant's declaration is still received before the judgment signed by the judges has been forwarded to the court registry. Such petition may already be filed in the statement of claim. Taking the decision without holding a hearing shall be admissible also insofar as the submission made to the court by the plaintiff does not justify the demand for relief in an ancillary claim, provided that the plaintiff has been made aware of this option prior to the decision being given.

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#### **Section 331a**

##### **Decision taken on the basis of the record as it stands**

Should a party fail to appear at the hearing scheduled for oral argument, the opponent may petition to have a decision given on the basis of the record as it stands instead of a default judgment; this petition is to be complied with if the facts and circumstances on which such a decision is based are deemed to have been sufficiently cleared up. Section 251a (2) shall apply mutatis mutandis.

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**Section 332**  
**Hearing scheduled for oral argument**

In the sense of the sections set out hereinabove, the term “hearing scheduled for oral argument” shall include also those hearings until which the hearing has been adjourned, or which are intended to continue prior or after an order has been issued for evidence to be taken.

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**Section 333**  
**Failure of the party appearing to submit oral argument**

A party shall be deemed to not have appeared if it does not submit any oral argument in spite of having appeared at the hearing.

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**Section 334**  
**Incomplete oral argument**

Should a party submit oral arguments at the hearing, but in being examined not make any declarations as to the facts and circumstances, records and documents, or petitions and applications, then the stipulations of the present Title are not applicable.

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**Section 335**  
**Inadmissibility of a default decision**

(1) The petition for a default judgment, or a decision on the basis of the record as it stands, is to be dismissed wherever:

1. The party appearing is unable to procure the proof or evidence demanded by the court on the grounds of circumstances that are to be taken into account ex officio;
2. The party that has failed to appear was not duly summoned, and in particular was not summoned in due time;
3. Facts as submitted to the court in oral argument, or a petition, have not been communicated by a written pleading to the party that has failed to appear;
4. In the case provided for by section 331 (3), the defendant was not informed of the deadline provided for by section 276 (1), first sentence, or he has not been instructed in accordance with section 276 (2);
5. In the cases provided for by section 79 (3), the refusal to accept a party as attorney-in-fact or the prohibition of continued representation are pronounced only at the hearing, or were not communicated in due time to the party not appearing.

(2) If a hearing has been adjourned, the party that has failed to appear is to be summoned to the new hearing.

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**Section 336**  
**Appellate remedies available against dismissal**

(1) A complaint subject to a time limit may be lodged against the decision dismissing a petition for a default judgment to be handed down. Where the decision is repealed, the party that has failed to appear is not to be summoned to the hearing subsequently arranged.

(2) The refusal by the court to comply with a petition for a decision to be handed down on the basis of the record as it stands is incontestable.

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### **Section 337**

#### **Adjournment ex officio**

The court shall adjourn the hearing on the petition for a default judgment, or for a decision on the basis of the record as it stands, if it is of the opinion that the time limit set by the presiding judge for entering an appearance, or the period he has indicated in the summons as the period lapsing between service of same and the date of the hearing, is too short, or if the court is of the opinion that the party is prevented from appearing at the hearing through no fault of its own. The party not appearing at the hearing shall be summoned to the hearing subsequently arranged.

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### **Section 338**

#### **Protest**

The party against which a default judgment has been delivered is entitled to enter a protest against the judgment.

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### **Section 339**

#### **Period within which a protest may be entered**

(1) The period within which protest may be entered shall amount to two (2) weeks; it is a statutory period and shall begin upon the default judgment having been served.

(2) Should documents need to be served abroad or by publication of a notice, the court is to determine, in the default judgment or retroactively by issuing a separate order, the period within which protest may be entered.

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### **Section 340**

#### **Notice of protest**

(1) A protest is entered by submitting the notice of protest to the court hearing the case.

(2) The notice of protest must include:

1. The reference number and designation of the judgment against which the protest is directed;
2. The declaration as to protest being entered against this judgment.

Should the judgment be contested only in part, the scope in which it is to be so contested is to be specified.

(3) The party is to set out its means of challenge or defence in the notice of protest provided that, based on the circumstances of the proceedings, this corresponds to a diligent pursuit of the court proceedings and serves to promote them, and the party is to also specify any objections it may have concerning the admissibility of the complaint. Upon a corresponding petition being filed, the presiding judge may extend the deadline by which the reasoning for the protest is to be submitted, if at his discretion and conviction the extension will not delay the legal dispute, or if the party demonstrates substantial grounds for doing so. Section 296 subsections (1), (3) and (4) shall apply mutatis mutandis. In serving the default judgment, attention is to be drawn to the consequence of any failure to meet the deadline.

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### **Section 340a**

#### **Service of the notice of protest**

The notice of protest is to be served on the opponent party. In this context, it is to be specified when the default judgment was served and when the protest has been entered. The party is to submit the required number of copies together with the notice of protest. This shall not apply if the notice of protest is transmitted as an electronic document.

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### **Section 341**

#### **Review of the protest**

(1) The court is to review ex officio whether the protest as such is an available remedy and whether it has been entered in keeping with statutory requirements as to form and time. Should one of these requirements not be met, the protest is to be overruled as inadmissible.

(2) The judgment may be handed down without a hearing having been held.

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### **Section 341a**

#### **Hearing for oral argument regarding the protest**

If a protest entered is not overruled as inadmissible, a hearing is to be scheduled for oral argument on the protest and on the merits of the case and the parties are to be informed of same.

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### **Section 342**

#### **Effects of admissible protest**

Should the protest be admissible, the status of the proceedings as given prior to the failure to comply with procedural requirements shall be reinstated in the extent covered by the protest.

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### **Section 343**

#### **Decision subsequent to a protest**

Insofar as the decision delivered as a result of the new hearing conforms to the decision of the default judgment, it is to be ruled that this decision be upheld. Should this prerequisite not be fulfilled, the default judgment shall be repealed by the new judgment.

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**Section 344**  
**Costs of the failure to comply with procedural requirements**

If the default judgment has been handed down as stipulated by law, the costs resulting from the failure to comply with procedural requirements are to be imposed on the defaulting party, unless they have been engendered by the opponent lodging an unfounded opposition, also in those cases in which a decision modifying the original judgment is delivered as a result of the objection.

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**Section 345**  
**Second default judgment**

Any party entering a protest, but failing to appear at the hearing scheduled for oral argument or failing to appear at the hearing until which oral argument has been adjourned, or failing to make itself heard on the merits of the case, shall not be entitled to enter further protest against the default judgment by which the protest is overruled.

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**Section 346**  
**Waiver and withdrawal of protest**

The rules governing the waiver of an appeal and its withdrawal shall apply mutatis mutandis to the waiver of protest and its withdrawal.

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**Section 347**  
**Procedure in bringing counterclaims and interlocutory proceedings**

(1) The stipulations of the present Title shall apply mutatis mutandis to any proceedings dealing with counterclaims that have been brought or that have as their subject matter the determination of the amount of a claim that has already been established on its merits.

(2) Where a hearing was intended to be held solely to hear oral argument on interlocutory proceedings, the default proceedings and the default judgment shall be restricted to dealing with and terminating these interlocutory proceedings. The stipulations of the present Title shall apply mutatis mutandis.

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**Title 4**  
**Procedure before a judge sitting alone**

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**Section 348**  
**Judge sitting alone as the court of decision**

(1) The civil division shall take its decisions by one of its members acting as a judge sitting alone. This shall not apply where:

1. The said member is a junior judge (Richter auf Probe) and, for a period of one (1) year, has not yet had adjudication tasks assigned to him under the court's allocation of responsibilities for legal disputes governed by civil law; or

2. The division is responsible, according to the court's allocation of responsibilities, because the legal dispute is classified in one of the following fields:

- a) Disputes regarding claims arising from publications in print media, on image and sound carriers of any kind, in particular in the press, radio, cinema and television;
- b) Disputes arising from banking and financial transactions;
- c) Disputes arising from construction and architectural contracts as well as from engineering agreements insofar as they are connected to construction work;
- d) Disputes arising from the professional activities of attorneys, patent attorneys, notaries, tax consultants, tax agents, auditors, and sworn accountants;
- e) Disputes regarding claims arising from therapeutic treatments;
- f) Disputes arising from commercial matters in the sense defined by section 95 of the Courts Constitution Act (Gerichtsverfassungsgesetz, GVG);
- g) Disputes regarding claims under freight, shipping, and storage transactions;
- h) Disputes arising from relationships governed by insurance contracts;
- i) Disputes in the fields of copyright and publishing law;
- j) Disputes arising in the fields of communications and information technology;
- k) Disputes allocated to the regional court (Landgericht, LG) regardless of the value of the matter in dispute.

(2) In the event of any doubts as to whether or not the prerequisites set out in subsection (1) have been met, the division shall decide by incontestable order.

(3) The judge sitting alone shall submit the legal dispute to the civil division for it to decide whether or not it intends to assume the proceedings if:

- 1. The matter is characterised by special factual or legal difficulties,
- 2. The legal matter is of fundamental significance, or
- 3. This is petitioned by the parties in congruent declarations.

The division shall assume the legal dispute wherever the prerequisites stipulated by the first sentence hereof in number 1 or 2 are fulfilled. It shall decide on this by handing down a corresponding court order. Any re-transfer to the judge sitting alone is ruled out.

(4) Appellate remedies may not be based on a submission having been made or not made, nor may they be based on an assumption of the case or the failure to so assume a case.

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### **Section 348a**

#### **Obligatory judge sitting alone**

(1) Where it is not established by section 348 (1) that a judge is responsible for sitting on a matter alone, the civil division shall, by handing down a corresponding order, charge one of its members to decide the case as a judge sitting alone, provided that:

1. The matter is not characterised by special factual or legal difficulties,
2. The legal matter is not of any fundamental significance, and
3. Oral argument has not already been heard on the merits of the case before the civil division at the main hearing, unless a judgment subject to a reservation of rights, partial judgment, or interlocutory judgment has been handed down in the meantime.

(2) The judge sitting alone shall submit the legal dispute of the civil division for it to decide whether or not it intends to assume the proceedings where:

1. A material change to the litigation circumstances engenders special factual or legal difficulties of the matter, or the fundamental significance of the legal matter, or
2. This is petitioned by the parties in congruent declarations.

The division shall assume the legal dispute in all cases in which the prerequisites stipulated by the first sentence hereof in number 1 are fulfilled. Upon having heard the parties, it shall rule on the matter by court order. Any re-transfer to the judge sitting alone is ruled out.

(3) Appellate remedies may not be based on a transfer or submission having been made or not made, nor may they be based on an assumption of the case or the failure to so assume a case.

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### **Section 349**

#### **Presiding judge of the division for commercial matters**

(1) The presiding judge of the division for commercial matters is to promote the matter such that it can be dealt with and terminated in a hearing before the division. He may take evidence only insofar as it is to be assumed that the special technical competence of the honorary lay judges will not be decisive for the taking of evidence, and that the division will be able to properly evaluate the results obtained in taking evidence even without having a direct impression of its course.

(2) The presiding judge shall decide:

1. On the referral of the legal dispute;
2. On objections concerning the admissibility of the complaint, insofar as oral argument is heard on it separately;
3. The suspension of the proceedings;
4. In the event of the legal action being withdrawn, of the claims asserted being waived or of the claim being acknowledged;
5. In the event of one party or of both the parties failing to comply with procedural rules;
6. On the costs of the legal dispute pursuant to section 91a;

7. In the proceedings on approval of assistance with court costs;
8. In proceedings on claims arising from a bill of exchange and on claims asserted concerning payment of a cheque;
9. On the type of security to be ordered;
10. On the temporary stay of compulsory enforcement;
11. On the value of the subject matter being litigated;
12. On costs, fees and expenditures.

(3) Should the parties agree to so proceed, the presiding judge may also take the decision instead of the division in all other cases as well.

(4) Sections 348 and 348a are not applicable.

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### **Section 350 Appellate remedies**

The same rules shall apply to any contestation of the decisions handed down by a judge sitting alone (section 348 and section 348a), and of the presiding judge of the division for commercial matters (section 349), as apply to the contestation of the corresponding decisions taken by the division.

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### **Sections 351 to 354 (repealed)**

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### **Title 5 General regulations on taking evidence**

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### **Section 355 Evidence to be taken directly**

(1) Evidence shall be taken before the court hearing the case. Only in the cases determined in the present Code shall the taking of evidence be transferred to a member of the court hearing the case or to another court.

(2) The court order instructing one or the other manner of taking evidence is not contestable.

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### **Section 356 Period within which evidence must be produced**

Should an impediment prevent evidence from being taken, and should it not be certain for how long this situation will continue, the court is to set a period by court order; once the deadline has expired

without success, the evidence may be used only if, at the court's discretion and conviction, this will not delay the proceedings.

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### **Section 357**

#### **Attendance of parties**

(1) The parties are permitted to attend the taking of evidence.

(2) Should the taking of evidence be transferred to a member of the court hearing the case or to another court, the date of the hearing as determined by the court shall be communicated to the parties by simple letter, unless the court orders that such notice be served. Where it is sent by regular mail, notice shall be deemed to have been effected on the following business day wherever the residence of the party is situate in the local postal district, and in all other cases shall be deemed to have been effected on the second business day following its mailing, unless the party demonstrates in a satisfactory manner that it has not received the notice, or that it has only received it at a later point in time.

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### **Section 357a**

#### **(repealed)**

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### **Section 358**

#### **Necessity of issuing an order for evidence to be taken**

Should the taking of evidence require separate proceedings, the court shall issue the corresponding instructions in an order for evidence to be taken.

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### **Section 358a**

#### **Order for evidence to be taken and taking of evidence prior to a hearing for oral argument**

The court may issue an order for evidence also prior to the hearing for oral argument. Provided that the order contains one of the following instructions, the order may be carried out prior to the hearing for oral argument:

1. Evidence is to be taken before the judge correspondingly delegated or requested;
2. Information is to be procured from government bodies;
3. The question regarding which evidence is to be taken is to be replied to in writing pursuant to section 377 (3);
4. Reports are to be prepared by experts;
5. Visual evidence is to be taken on site.

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### **Section 359**

#### **Content of the order for evidence to be taken**

The order for evidence to be taken shall:

1. Designate the facts at issue, regarding which evidence is to be taken;
2. Designate the evidence, naming the witnesses and experts to be examined or the party to be examined;
3. Designate the party that has taken recourse to the evidence.

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### **Section 360**

#### **Modification of the order for evidence to be taken**

No party may demand that, due to any earlier hearings, an order for evidence to be taken be modified prior to its being dealt with conclusively. However, the court may modify the order for evidence to be taken, doing so either upon corresponding application being made by a party or ex officio, insofar as the opponent agrees to this being done, or insofar as such modification concerns only the correction or amendment of the facts at issue set out in the order, or insofar as witnesses or experts other than those set out in the order are to be examined; the court may do so also without another hearing for oral argument being held. The judge correspondingly delegated or requested shall have the same authority. If at all possible, the parties are to be heard prior to such modification, and in all cases are to be notified of the modification without undue delay.

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### **Section 361**

#### **Evidence taken by a delegated judge charged with a task**

(1) Where a member of the court hearing the case is to take evidence, the presiding judge, in pronouncing the order for evidence to be taken, is to designate the judge so delegated and shall determine the hearing at which the evidence is to be taken.

(2) Should the court have failed to determine a date for a hearing, the delegated judge shall determine it; where the delegated judge is prevented from performing the task with which he has been charged, the presiding judge shall charge a different member of the court with said task.

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### **Section 362**

#### **Evidence taken by a requested judge**

(1) Where another court is charged with taking evidence, the letter of request is to be issued by the presiding judge.

(2) The requested judge shall send to the court registry of the court hearing the case an original copy of the records of the hearings concerning the taking of evidence; the court registry shall inform the parties to the dispute of its having received these records.

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### **Section 363**

#### **Evidence taken abroad**

(1) In cases in which evidence is to be taken abroad, the presiding judge is to file a request with the responsible public authority, asking it to so take the evidence.

(2) Where it is possible to have a Consul of the Federal Republic of Germany take the evidence, the request letter is to be sent to same.

(3) The stipulations set out in Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters (OJEC number L 174 page 1) shall remain unaffected hereby. Sections 1072 and 1073 shall apply to the implementation.

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#### **Section 364**

##### **Cooperation and assistance by parties where evidence is taken abroad**

(1) If a foreign public authority is requested to take evidence, the court may order the party tendering such evidence to prepare and send the request letter and to pursue the implementation of such request.

(2) The court may limit itself to ordering the party tendering evidence to produce a public record or document as to the evidence taken, which record or document must be in compliance with the laws of the foreign state.

(3) In both cases, the order for evidence to be taken is to determine a period within which the party tendering evidence is to deposit the said record or document with the court registry. Once this deadline has expired without success, the record or document may be used only if doing so will not delay the proceedings.

(4) If possible, the party tendering evidence is to inform the opponent in such due time of the location and time at which evidence is to be taken that this will enable the opponent to suitably protect his interests under law. Where such notice has not been given, the court is to exercise its discretion in deciding whether – and if so, to which extent – the party tendering evidence is entitled to use the record of the hearing on the evidence.

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#### **Section 365**

##### **Relinquishment of jurisdiction by the judge correspondingly delegated or requested**

Should, at a later time, grounds become apparent indicating that having a different court take the evidence would be appropriate to the matter at hand, the judge correspondingly delegated or requested is authorised to request that such court take the evidence. The parties are to be informed of the ruling correspondingly issued.

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#### **Section 366**

##### **Interlocutory proceedings**

(1) If a dispute ensues in the course of taking evidence before a judge correspondingly delegated or requested, the outcome of which is essential for the taking of evidence to continue, and regarding which the judge is not entitled to hand down the decision, this matter shall be dealt with by the court hearing the case.

(2) The hearing scheduled for oral argument regarding the interlocutory proceedings is to be determined ex officio and is to be made known to the parties.

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**Section 367**  
**Failure of a party to appear**

(1) Should a party fail to appear at the hearing at which evidence is to be taken, or should both parties so fail to appear, evidence nonetheless shall be taken insofar as circumstances allow.

(2) Upon corresponding application being made, the court shall issue instructions for any retroactive taking of evidence, or any completion of the evidence taken, and shall do so prior to that hearing being closed subsequent to which the judgment is handed down, provided that this does not delay the proceedings or provided that the party can demonstrate in a satisfactory manner that, through no fault of its own, it was unable to appear at the earlier hearing, and, in the case of a petition having been filed for the evidence taken to be completed, that said party's failure to appear has resulted in the taking of evidence being incomplete in significant aspects.

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**Section 368**  
**New hearing for evidence to be taken**

Should it be required to arrange for a new hearing to take evidence, or to continue such taking of evidence, such a hearing shall be determined ex officio even if the party tendering evidence, or both parties to the dispute, failed to appear at the earlier hearing.

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**Section 369**  
**Taking of evidence abroad**

Where the taking of evidence as performed by a foreign public authority is in line with the laws applicable to the court hearing the case, no grounds for objection may be derived from the fact that this was done inadequately under the foreign laws.

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**Section 370**  
**Continuation of the hearing for oral argument**

(1) Insofar as the evidence is taken before the court hearing the case, the hearing at which the evidence is taken shall concurrently be determined to be the continuation of the hearing for oral argument.

(2) The order instructing that evidence be taken by a judge correspondingly delegated or requested may concurrently determine the hearing at which oral argument is to continue before the court hearing the case. Where this has not been done, this hearing shall be determined ex officio once the taking of evidence has terminated, and the parties shall be informed of same.

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**Title 6**  
**Evidence taken by visual inspection**

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**Section 371**  
**Evidence taken by visual inspection**

(1) Evidence taken by visual inspection is offered by designating the object to be inspected visually and by citing the facts regarding which evidence is to be provided. If an electronic document is to serve as evidence, it shall be so offered as evidence by producing or transmitting the file.

(2) Where the party tendering evidence alleges that the object is not in its possession, additional evidence shall be offered by filing the application with the court to set a period within which the object must be procured, or to deliver an order pursuant to section 144. Sections 422 to 432 shall apply mutatis mutandis.

(3) Should a party frustrate the taking of visual evidence on site that it can reasonably be expected to tolerate, the court may deem the allegations made by the opponent regarding the nature of the object to have been proven.

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### **Section 371a**

#### **Evidentiary value of electronic documents**

(1) The rules concerning the evidentiary value of private records and documents shall be applied mutatis mutandis to private electronic documents bearing a qualified electronic signature. The appearance of authenticity of a declaration available in electronic form, as obtained from reviewing it pursuant to the Electronic Signature Act (Signaturgesetz), can be cast into doubt only by facts giving rise to serious doubts as to the declaration having been made by the holder of the signature key.

(2) Where an individual has registered securely for a "De-Mail" account that is assigned solely to that individual (section 4 (1), second sentence, of the Act on De-Mail (De-Mail Gesetz)), the appearance of authenticity attendant on an electronic message sent from this De-Mail account, as resulting from the verification of the sender authentication pursuant to section 5 (5) of the Act on De-Mail, will be called into question only by facts giving rise to serious doubts as to the message with that content having been sent by that person.

(3) The rules concerning the evidentiary value of public records and documents shall be applied mutatis mutandis to electronic documents created, in accordance with the requirements as to form (public electronic documents), by a public authority within the purview of its official responsibilities, or by a person or entity vested with public trust within the sphere of business assigned to him or it. Where the document bears a qualified electronic signature of the public authority that has created it, or of the person or entity vested with public trust, section 437 shall apply mutatis mutandis. The same shall apply if an accredited service provider furnishes the document, on behalf of the public authority that has created such document, or on behalf of the person or entity vested with public trust that has created such document, with his qualified electronic signature pursuant to section 5 (5) of the Act on De-Mail and the sender authentication identifies the public authority that has created such document, or the person or entity vested with public trust, as the user of the De-Mail account, or the person or entity vested with public trust.

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### **Section 371b**

#### **Evidentiary value of scanned public records or documents**

The rules concerning the evidentiary value of public records and documents shall be applied mutatis mutandis to public records or documents that have been transformed, using state-of-the-art technology, into electronic documents by a public authority, or a person or entity vested with public trust, and where a confirmation is available that the electronic document is a true and correct copy of the original, both as an image and in terms of its substance. Where the document and the confirmation bear a qualified electronic signature, section 437 shall apply mutatis mutandis.

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## **Section 372**

### **Taking of evidence**

(1) The court hearing the case may instruct that, in taking visual evidence on site, one or several experts be involved.

(2) The court hearing the case may allocate to a member of the court hearing the case or to another court the task of taking visual evidence on site, and may likewise leave it to such member of the court hearing the case or to another court to appoint the experts to be involved.

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## **Section 372a**

### **Testing performed to establish parentage**

(1) To the extent required in order to establish parentage, each person is to tolerate testing, in particular to having blood tests taken, unless this cannot reasonably be expected of the person to be so tested.

(2) Sections 386 to 390 shall apply mutatis mutandis. Should a person refuse to have testing performed in repeated instances, without such refusal being justified, measures of direct coercion may be taken, in particular by ordering the forcible production of the person concerned for testing.

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## **Title 7**

### **Taking of evidence by hearing witnesses**

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## **Section 373**

### **Offer to provide evidence**

Evidence by hearing witnesses shall be offered by naming the witnesses and designating the facts regarding which the witnesses are to be examined.

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## **Section 374**

### **(repealed)**

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## **Section 375**

### **Taking of evidence by a judge correspondingly delegated or requested**

(1) The task of taking evidence by hearing witnesses may be allocated to a member of the court hearing the case or to another court only if, and to the extent, that it is to be assumed from the outset that the court hearing the case will be able to properly evaluate the results obtained in taking the evidence, without obtaining a direct impression of the course of the taking of evidence, and:

1. If it seems expedient, by way of assessing the truth, to examine the witness on site or if, according to the stipulations of the law, the witness is not to be examined at the seat of the court, but instead at a different location;

2. If the witness is prevented from appearing before the court hearing the case and the witness is not examined in the form governed by section 128a (2);

3. If, in light of the great distance the witness would have to travel, and taking account of the significance of his statement, it cannot be reasonably expected of the witness to appear before the court hearing the case, and the witness is not examined in the form governed by section 128a (2).

(1a) The task of taking evidence by hearing witnesses may be allocated to a member of the court hearing the case also in those cases in which this seems suitable for the purpose of simplifying the oral argument before the court hearing the case, and if, and to the extent, that it is to be assumed from the outset that the court hearing the case will be able to properly evaluate the results obtained in taking the evidence without obtaining a direct impression of the course of the taking of evidence.

(2) The President of the Federal Republic of Germany is to be examined in his residence.

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### **Section 376**

#### **Examination of persons subject to official secrecy obligations**

(1) The specific rules of civil service law shall apply when examining as witnesses: judges, civil servants, and other persons in the public service where the examination concerns circumstances falling within the scope of their official secrecy obligations; said rules shall likewise apply to the permission granted to such persons to make such a statement.

(2) The special rules governing their actions shall apply for members of the Bundestag, of a Land Parliament, of the Federal government, or of a Land government, as well as for the employees of a parliamentary group of the Bundestag or of a Land Parliament.

(3) In the cases set out in subsections (1) and (2), the court hearing the case shall procure the corresponding permission and shall make this known to the witness.

(4) The President of the Federal Republic of Germany may refuse to testify if such testimony would be detrimental to the welfare of the Federal Republic or of one of the German Länder.

(5) These rules shall continue to apply also if the above-referenced persons are no longer in the public service or employees of a parliamentary group, or if their electoral mandate has ended, to the extent that the facts and circumstances in question occurred during the time of their service, employment or electoral mandate, or to the extent they became aware of such facts and circumstances during such time.

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### **Section 377**

#### **Summons of a witness**

(1) The court registry is to execute the summons issued to a witness, with reference being made to the order for evidence to be taken, and is to give notice ex officio. Unless the court orders that such a summons be served, it is to be communicated by simple letter.

(2) The summons must include:

1. The designation of the parties;
2. The subject matter of the examination;

3. The instruction of the witness to appear at the hearing, at the time and place provided in the summons, for the purpose of testifying before the court, and must include the warning that failure to do so may be sanctioned by the means of administrative coercion provided for in the law.

(3) The court may instruct that the question regarding which evidence is to be taken may be answered in writing should it believe that, in light of the content of the question regarding which evidence is to be taken and taking into consideration the person of the witness, it suffices to proceed in this manner. The attention of the witness is to be drawn to the fact that he may be summoned to be examined as a witness. The court shall direct the witness to be summoned if it believes that this is necessary in order to further clear up the question regarding which evidence is to be taken.

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### **Section 378**

#### **Documents facilitating a witness's testimony**

(1) To the extent they enable him to better testify, the witness is to inspect records and other documents and is to bring them along to the hearing, provided he has been permitted to do so and provided this can reasonably be expected of him. Sections 142 and 429 shall remain unaffected hereby.

(2) Should, upon a specific order of the court having been issued, the witness fail to comply with the obligation pursuant to subsection (1), the court may take the measures designated in section 390; the witness's attention is to be drawn to this fact previously.

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### **Section 379**

#### **Advance payment to cover expenditures**

The court may make the summons of the witness dependent on an advance payment being made by the party tendering evidence; this advance must suffice to cover the expenditures that the Treasury will incur as a result of examining the witness. Should the advance not be paid within the period determined, the witness will not be summoned, unless such payment is made retroactively and in such due time that, in the opinion of the court, formed at its discretion and conviction, it enables the witness to be examined without causing a delay to the proceedings.

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### **Section 380**

#### **Consequences of a witness's failure to appear**

(1) The costs resulting from the fact that a duly summoned witness fails to appear shall be imposed on that witness without this requiring any application to be filed. Concurrently, a coercive fine shall be levied against that witness and, for the case that this cannot be recovered from same, he shall be sentenced to coercive detention.

(2) In the event of a witness failing to appear in several instances, the means of administrative coercion shall be levied or ordered once again; likewise, the forcible production of the witness may be ordered.

(3) A complaint subject to a time limit may be lodged against these orders.

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### **Section 381**

#### **Sufficient excuse for failing to appear**

(1) The costs shall not be imposed on the witness, nor shall any means of administrative coercion be ordered, where the witness provides timely and sufficient excuse for his failure to appear. Should the excuse pursuant to the first sentence hereof not be brought forward in due time, the imposition of costs or the order of means of administrative coercion shall be refrained from only if it is demonstrated to the satisfaction of the court that the witness is not responsible for the excuse having been submitted to the court late. Should the sufficient excuse or the demonstration to the court's satisfaction be performed retroactively, the instructions given shall be cancelled, provided the prerequisites set out in the second sentence hereof having been met.

(2) The notifications and requests by the witness may be made in writing, or may be recorded with the registry for the files of the court, or they may be made orally in the new hearing determined for the witness's examination.

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## **Section 382**

### **Examination of certain witnesses at specific locations**

(1) The members of the Federal Government or of a Land government are to be examined at their official residence or, if they are spending time outside of their official residence, they shall be examined at that place of abode.

(2) The members of the Bundestag, of the Bundesrat, of a Land parliament or of a second chamber are to be examined at the venue of that assembly while they have their abode there.

(3) For any deviation from the above rules, the following permits must be issued: for members of the Federal Government, a permit from the Federal Government; for members of a Land government, a permit from the Land government; for members of one of the assemblies set out in subsection (2), a permit from that assembly.

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## **Section 383**

### **Refusal to testify on personal grounds**

(1) The following persons are entitled to refuse to testify:

1. The fiancé of a party, or that person to whom the party has made a promise to establish a civil union;
2. The spouse or former spouse of a party;
  - 2a. The partner or former partner under a civil union with a party;
3. Those who are or were directly related to a party, either by blood or by marriage, or who are or were related as third-degree relatives in the collateral line, or who are or were second-degree relatives by marriage in the collateral line;
4. Clerics, with a view to what was entrusted to them in the exercise of their pastoral care and guidance;
5. Persons who collaborate or have collaborated, as professionals, in preparing, making or distributing printed periodicals or radio or television broadcasts, if their testimony would concern the person of the author or contributor of articles or broadcasts and documents, or the source thereof, as well as the information they have been given with regard to these persons' activities, provided that this concerns articles or broadcasts, documents and information published in the editorial part of the periodical or broadcast;

6. Persons to whom facts are entrusted, by virtue of their office, profession or status, the nature of which mandates their confidentiality, or the confidentiality of which is mandated by law, where their testimony would concern facts to which the confidentiality obligation refers.

(2) The persons designated under numbers 1 to 3 are to be instructed about their right to refuse to testify prior to being examined.

(3) Even if the persons designated under numbers 4 to 6 do not refuse to testify, their examination is not to be aimed at facts and circumstances regarding which it is apparent that no testimony can be made without breaching the confidentiality obligation.

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### **Section 384**

#### **Refusal to testify for factual reasons**

Witnesses may refuse to testify:

1. On questions, the answer to which would cause direct losses under property law to the witness, or to a person with whom the witness is in a relationship as designated hereinabove in section 383 numbers 1 to 3;
2. On questions, the answer to which would result in the witness, or a person with whom the witness is in a relationship as designated hereinabove in section 383 numbers 1 to 3, being dishonoured, or if this would entail the risk of their being prosecuted for a criminal offence or an administrative offence;
3. On questions that the witness would not be able to answer without disclosing a technical or trade secret.

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### **Section 385**

#### **Exceptions from the right to refuse testimony**

(1) In the cases provided for by section 383 number 1 to 3 and section 384 number 1, the witness may not refuse to testify:

1. Regarding the implementation of a legal transaction and its subject matter, for the implementation of which he was involved as a witness;
2. Regarding the births, marriages, or deaths of family members;
3. Regarding facts concerning property matters governed by the family relationship;
4. Regarding actions taken with a view to the legal relationship at issue, of which it is alleged that the witness took such action as the predecessor in title of a party or as its representative.

(2) The persons designated in section 383 numbers 4 and 6 may not refuse to testify wherever they have been released from their confidentiality obligations.

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### **Section 386**

#### **Declaration of refusal to testify**

(1) The witness refusing to testify is to submit to the court the facts on which he is basing such refusal, and is to substantiate them, prior to the hearing scheduled for his examination; this substantiation shall be made in writing, or by recording such facts for the files of the court registry, or by submitting them to the court at the hearing itself.

(2) In the cases provided for by section 383 number 4 and 6, the refusal shall be deemed to have been sufficiently substantiated if an assurance is given that an oath of office has been sworn.

(3) Where the witness has declared his refusal in writing, or has recorded it for the files of the court registry, he shall not be obligated to appear at the hearing determined for his examination.

(4) The court registry is to notify the parties to the dispute should it receive a declaration by the witness to this effect, or should such a declaration have been recorded for its files.

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### **Section 387**

#### **Interlocutory proceedings regarding the refusal to testify**

(1) Upon having heard the parties, the court hearing the case shall rule on whether or not the refusal is lawful.

(2) The witness is not under obligation to have an attorney represent him.

(3) A complaint subject to a time limit may be lodged against the interlocutory judgment.

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### **Section 388**

#### **Interlocutory proceedings regarding a written refusal to testify**

Where a witness declares his refusal in writing or has such refusal recorded with the registry for the files of the court, and where the witness has failed to appear at the hearing, a member of the court hearing the case is to report based on the witness's declarations.

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### **Section 389**

#### **Refusal to testify before a judge correspondingly delegated or requested**

(1) Should the witness bring such refusal before a judge correspondingly delegated or requested, the declarations of the witness shall be included in the record of the hearing in addition to the declarations made by the parties, unless the witness's declarations have been submitted to the court in writing or have been recorded with the registry for the files of the court.

(2) The witness and the parties to the dispute are summoned ex officio to the hearing before the court hearing the case.

(3) A member of the court hearing the case is to report on the basis of the declarations made by the witness and the parties. Following such submission by the reporting judge, the witness may make statements for the record; the parties to the dispute may do so in order to provide the reasoning for their petitions to the court; no new facts and circumstances and no new evidence may be asserted in this context.

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## **Section 390**

### **Consequences of the refusal to testify**

(1) If a witness refuses to testify or to be sworn in without providing any grounds for such refusal, or bases his refusal on grounds that have been declared insignificant in a final and binding judgment, the costs resulting from such refusal shall be imposed on the witness without this requiring any petition to be filed with the court. Concurrently, a coercive fine shall be levied against him and, should it not be possible to recover this fine, the witness shall be sentenced to coercive detention.

(2) In the event the witness repeatedly refuses to testify, the detention of the witness shall be ordered upon a corresponding application being made so as to exact a testimony from him; however, such detention shall not continue beyond the point in time at which the proceedings are terminated at that respective level of jurisdiction. The rules concerning detention in compulsory enforcement proceedings shall apply mutatis mutandis.

(3) A complaint subject to a time limit may be lodged against the orders.

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## **Section 391**

### **Placing a witness under oath**

Subject to the exemptions resulting from section 393, a witness is to be placed under oath if the court believes this is mandated in light of the significance of the testimony, or in order to procure a truthful statement, provided that the parties to the dispute do not waive having the witness placed under oath.

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## **Section 392**

### **Oath sworn subsequently; wording of the oath**

The witness shall be sworn in following his examination. A plurality of witnesses may be sworn in simultaneously. The oath shall be worded to the effect that the witness has said nothing but the truth to the best of his knowledge, and that he has not concealed anything.

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## **Section 393**

### **Examination of a witness who is not placed under oath**

Anyone who, at the time of their examination, is not yet 16 years of age, or who, due to a lack of intellectual maturity or due to an intellectual incapacity, has no sufficient understanding of the nature and significance of an oath, is to be examined without being placed under oath.

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## **Section 394**

### **Examination of each witness individually**

(1) Each witness is to be examined individually and without those witnesses being present who are to be examined at a later time.

(2) Witnesses whose statements contradict each other may be brought face to face.

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### **Section 395**

#### **Instruction of a witness to tell the truth; personal information of the witness**

(1) Prior to the examination, the witness shall be instructed to tell the truth; his attention shall be drawn to the fact that, in the cases provided for by law and under certain circumstances, he may have to swear an oath regarding his testimony.

(2) The examination shall begin by the witness providing to the court his given name and surname, his age, his profession or business, and his residence. Should this be required, he is to be asked questions concerning those circumstances that concern his credibility in the matter at hand, this being in particular his relationship to the parties to the dispute.

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### **Section 396**

#### **Examination regarding the dispute**

(1) The witness is to be induced to tell the court in context whatever facts are known to him regarding the subject matter of his examination.

(2) By way of ensuring the clarity and completeness of the testimony, while also investigating the basis on which the knowledge of the witness is based, the court is to ask further questions where necessary.

(3) The presiding judge is to grant to each member of the court making the corresponding request the opportunity to ask questions.

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### **Section 397**

#### **Right of the parties to ask questions**

(1) The parties are entitled to have those questions put to the witness that they believe expedient for clearing up the matter, or for establishing the circumstances of the witness.

(2) The presiding judge may permit the parties to directly address questions to the witness, and is to grant this permission to their counsel upon the latter's request.

(3) In case of doubt, the court shall rule on whether or not a question is admissible.

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### **Section 398**

#### **Repeated examinations; subsequent examinations**

(1) The court hearing the case may order, at its discretion, that a witness be examined several times.

(2) Where a delegated or a requested judge has refused to ask a question as suggested by a party in examining a witness, the court hearing the case may order that the witness be subsequently examined on this question.

(3) Should an examination be repeated, or should it be performed subsequently, the judge may refrain from placing the witness under oath once again and instead have him give an assurance that his testimony is correct while invoking the oath he swore previously.

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**Section 399**  
**Waiver of a witness's examination**

The party may waive having a witness examined by the court that it has itself named; however, the opponent may demand that the witness appearing be so examined and, where such examination has already begun, that it be continued.

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**Section 400**  
**Authorisation of the judge charged with taking evidence**

In the event the witness fails to appear or refuses to testify, the judge charged with taking evidence is authorised to issue the statutory directions and, provided this is at all admissible: to himself repeal them after he has completed the task with which he was charged, to take a preliminary decision regarding the admissibility of a question submitted to a witness, and to once again examine a witness.

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**Section 401**  
**Compensation of witnesses**

The witness shall be compensated pursuant to the Judicial Remuneration and Compensation Act (Justizvergütungs- und –entschädigungsgesetz, JVEG).

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**Title 8**  
**Evidence provided by experts**

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**Section 402**  
**Applicability of the rules for witnesses**

Unless otherwise provided for by the subsections hereinbelow, the rules in place for the evidence provided by witnesses shall apply mutatis mutandis to the evidence provided by experts.

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**Section 403**  
**Offer to provide evidence**

Evidence shall be offered by designating the items regarding which a report is to be prepared.

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**Section 404**  
**Selection of the expert**

(1) The court hearing the case shall select the experts to be involved and shall determine their number. It may limit itself to appointing a single expert. It may appoint other experts to take the stead of the expert first appointed.

(2) Should experts have been publicly appointed for certain types of reports, other persons shall be selected only if particular circumstances so require.

(3) The court may ask the parties to the dispute to designate persons who are suited to be examined as experts.

(4) Should the parties to the dispute agree on certain persons to be appointed as experts, the court is to comply with what they have agreed; however, the court may limit the selection made by the parties to a certain number.

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#### **Section 404a**

##### **Directions by the court as regards the expert's activities**

(1) The court is to direct the expert in terms of his activities and may issue instructions as concerns their nature and scope.

(2) Insofar as the special aspects of the case require, the court is to hear the expert prior to wording the question regarding which evidence is to be taken; it is to familiarise the expert with his tasks; and is to explain to the expert the task it has allocated to him should he so request.

(3) Where the facts of a case are at issue, the court shall determine the facts on which the expert is to base his report.

(4) To the extent required, the court shall determine the scope in which the expert shall be authorised to elucidate the question regarding which evidence is to be taken, and it shall also determine whether or not he may contact the parties, and at which point he is to permit them to participate in his investigations.

(5) Any instructions given to the expert shall be communicated to the parties. If a separate hearing is held at which the expert is familiarised with his tasks, the parties are to be allowed to attend.

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#### **Section 405**

##### **Selection of the judge charged with taking evidence**

The court hearing the case may authorise the judge charged with taking evidence to appoint the expert. In such event, the judge shall have the authorities and obligations of the court hearing the case pursuant to section 404 and section 404a.

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#### **Section 406**

##### **Rejection of an expert**

(1) An expert may be rejected for the same reasons for which a party is entitled to challenge a judge. However, the fact that the expert has been examined as a witness cannot be taken as grounds for rejecting him.

(2) The petition for rejection is to be filed with the court or judge by whom the expert has been appointed, prior to the expert being examined; at the latest, however, within two weeks following the pronouncement or service of the order concerning the expert's appointment. Any such rejection shall be admissible at a later date only if the petitioner demonstrates to the satisfaction of the court that he was prevented, through no fault of his own, from asserting and filing the reasons for rejecting the expert. The petition may be recorded with the registry for the files of the court.

(3) The reasons for rejecting the expert must be demonstrated to the court's satisfaction; the party may not be admitted to make a statutory declaration in lieu of an oath.

(4) The decision shall be issued by the court or judge designated in subsection (2) hereinabove by court order.

(5) There is no remedy available against a court order by which the rejection is declared as having been substantiated, whereas a complaint subject to a time limit may be lodged against the court order declaring the rejection to be unsubstantiated.

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#### **Section 407**

##### **Obligation to submit a report**

(1) The party appointed as expert is to comply with this appointment if he is a publicly appointed expert responsible for the submission of reports of the type required, or if he publicly pursues, as an economic activity, the science, art or commercial activities, knowledge of which is a pre-requisite for preparing the report, or if he has been publicly appointed or authorised for the exercise of such activities.

(2) Any person who has declared to the court that he is willing to submit such a report shall be under obligation to do so.

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#### **Section 407a**

##### **Other obligations of the expert**

(1) The expert is to review, without undue delay, whether the task allocated to him by the court in fact falls within his field and whether it can be completed without involving further experts. Should this not be the case, the expert is to notify the court of this fact without undue delay.

(2) The expert does not have authority to transfer the task allocated to him by the court to another party. To the extent the expert avails himself of the collaboration of another person, he is to provide that person's name and set out the scope in which that person contributed to his report, unless the work so done concerned ancillary services of minor significance.

(3) Should the expert be in doubt as to the content and scope of the task allocated to him by the court, he is to procure clarification from the court without undue delay. Should the expert foresee that the costs recognisably will be disproportionate to the value of the subject matter being litigated, or that they will be significantly higher than the advance on the costs of litigation required by the court, he is to draw the attention of the court to this circumstance in due time.

(4) Should the court so demand, the expert is to surrender or communicate the files and any other documents he has used to prepare his report, as well as any results of his investigations, doing so without undue delay. Should he fail to comply with this obligation, the court shall order that such files, documents, and results be surrendered.

(5) The court is to instruct the expert as concerns his obligations.

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#### **Section 408**

##### **Right to refuse to prepare a report**

(1) The same grounds entitling a witness to refuse to testify shall entitle an expert to refuse to prepare a report. The court may also release an expert from the obligation to prepare a report for other reasons.

(2) The specific stipulations of civil service law shall apply when examining judges, civil servants, and other persons in the public service as experts. The special rules governing the actions of members of the federal government or of a Land government shall apply for these persons.

(3) Anyone who has assisted with a judicial ruling may not be examined as an expert regarding questions that were the subject matter of the court's decision.

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#### **Section 409**

##### **Consequences of the failure to appear or of the refusal to submit a report**

(1) Should an expert fail to appear in court, or should he refuse to submit a report in spite of being under obligation to do so, or should an expert retain files or other documents, the costs entailed by this conduct shall be imposed upon him. Concurrently, a coercive fine shall be levied against him. In the event of repeated disobedience, the coercive fine may be levied once again.

(2) A complaint subject to a time limit may be lodged against the order.

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#### **Section 410**

##### **Placing the expert under oath**

(1) The expert shall be sworn in, either prior to his submitting the report to the court or after he has done so. The oath shall be worded to the effect that the expert will prepare, or has prepared, the report demanded of him in an impartial manner and to the best of his knowledge and belief.

(2) Where the expert is a generally sworn expert concerning the preparation of reports of the type entailed by the proceedings, it shall suffice for him to invoke the oath he has sworn; this may also be done in his written report.

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#### **Section 411**

##### **Written report**

(1) If it is ordered that the report be submitted in writing, the court shall set a period for the expert within which he is to transmit his signed report.

(2) Should an expert obligated to submit the report fail to meet the deadline imposed on him, a coercive fine may be levied against him. A warning that a coercive fine may be levied must have been previously issued, with a period of grace being set in the warning. Should the deadline be missed in repeated instances, the coercive fine may be levied once again in the same manner. Section 409 (2) shall apply mutatis mutandis.

(3) The court may order the expert to appear before it for the purpose of explaining the written report.

(4) Within a reasonable period of time, the parties are to communicate to the court their objections to the report, any petitions with regard to the preparation of the report, and supplementary questions to the written report. The court may set a deadline within which they are to do so; section 296 (1) and (4) shall apply mutatis mutandis.

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**Section 411a**  
**Use of expert reports prepared in other proceedings**

The preparation of a written report may be forgone if an expert report can be used that has been obtained by the court or the public prosecution office in other court proceedings.

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**Section 412**  
**New report**

(1) The court may order the same experts or other experts to prepare a new report if it finds that the report is not to its satisfaction.

(2) The court may order another expert to prepare a report if, following the submission of a report by an expert, the rejection of that expert has met with success.

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**Section 413**  
**Remuneration of the expert**

The expert shall be remunerated pursuant to the Judicial Remuneration and Compensation Act (Justizvergütungs- und –entschädigungsgesetz, JVEG).

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**Section 414**  
**Expert witnesses**

Insofar as knowledgeable persons are to be examined in order to obtain evidence regarding past facts and circumstances, or situations given in the past, which required special technical competence in order to be perceived, the rules governing the taking of evidence by hearing witnesses shall be applicable.

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**Title 9**  
**Evidence provided by records and documents**

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**Section 415**  
**Evidentiary value of public records and documents regarding declarations**

(1) Records and documents that have been prepared, in accordance with the requirements as to form, by a public authority within the scope of its official responsibilities, or by a person or entity vested with public trust within the sphere of business assigned to him or it (public records and documents), shall establish full proof, provided they have been executed regarding a declaration made before the public authority or the public official issuing the deed.

(2) Evidence proving that the transaction has been improperly recorded is admissible.

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**Section 416**  
**Evidentiary value of private records and documents**

To the extent that private records and documents are signed by the parties issuing them, or have been signed using a mark that has been certified by a notary, they shall establish full proof that the declarations they contain have been made by the parties who prepared such records and documents.

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**Section 416a**  
**Evidentiary value of the hard-copy printout of a public electronic document**

The certified hard-copy printout of an electronic document pursuant to section 371a (3) that a public authority has created, in accordance with the requirements as to form, within the scope of its official responsibilities, or a person or entity vested with public trust within the sphere of business assigned to him or it, as well as the hard-copy printout of an electronic document issued by a court bearing an endorsement by the competent court pursuant to section 298 (2) shall be equivalent to the certified copy of a public record or document.

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**Section 417**  
**Evidentiary value of public records and documents regarding a directive, ruling or decision issued by an authority**

The public records and documents containing a directive, ruling or decision issued by a public authority shall establish full proof of their content.

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**Section 418**  
**Evidentiary value of public records and documents with other content**

(1) Public records and documents setting out other content than that designated in sections 415 and 417 establish full proof of the facts set out therein.

(2) Evidence proving that the facts set out therein are wrong is admissible unless the laws of a federal Land rule out or limit such evidence.

(3) Should the certification not be based on the own perception of the public authority or the public official issuing the deed, the rule established in subsection (1) shall be applied only where it is apparent from the laws of a federal Land that the evidentiary value of the certification is independent of that own perception.

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**Section 419**  
**Evidentiary value of flawed records and documents**

The court shall decide at its discretion and conviction to which extent flaws such as text having been struck out, erasures, insertions, or other external defects will abrogate or reduce the evidentiary value of a record or document as a whole or in part.

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**Section 420**  
**Production by the party tendering evidence; offer to provide evidence**

Producing the record or document will constitute the offer of evidence.

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**Section 421**  
**Production by the opponent; offer to provide evidence**

Should the party tendering evidence allege that the record or document is in the hands of the opponent, evidence shall be offered by filing a petition that the court direct the opponent to produce said record or document.

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**Section 422**  
**Opponent's obligation under civil law to produce a record or document**

The opponent is under obligation to produce the record or document if, pursuant to the stipulations of civil law, the party tendering evidence may demand the surrender or production of the record or document.

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**Section 423**  
**Opponent's obligation to produce a record or document in the event of reference being made to same**

The opponent is also under obligation to produce a record or document to which he has referred in the proceedings by way of tendering evidence, even where he did so only in a preparatory written pleading.

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**Section 424**  
**Petition in the event the record or document is to be produced by the opponent**

The petition shall:

1. Designate the record or document;
2. Designate the facts the record or document is intended to prove;
3. Designate, as completely as possible, the contents of the record or document;
4. Cite the circumstances based on which it is being alleged that the opponent has possession of the record or document;
5. Designate the grounds based on which the obligation results to produce the record or document. These grounds must be demonstrated to the satisfaction of the court.

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**Section 425**  
**Order that the opponent produce the record or document**

Should the court deem the facts or circumstances to be significant that are to be proven by the record or document, and the petition to be justified, it shall order the opponent to produce the record or document if the opponent has acknowledged that the record or document is in his hands, or in the event that the opponent fails to react to the petition in substance.

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#### **Section 426**

##### **Examination of the opponent regarding the whereabouts of the record or document**

Should the opponent dispute that the record or document is in his possession, he is to be examined as to its whereabouts. In the summons to the hearing at which he is to be examined, he is to be directed to carefully research the whereabouts of the record or document. Furthermore, the stipulations of sections 449 to 454 shall apply mutatis mutandis. Should the court become convinced that the record or document is in the opponent's possession, it shall order it to be produced.

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#### **Section 427**

##### **Consequences of the opponent failing to produce the record or document**

Should the opponent fail to comply with the order to produce the record or document, or should the court become convinced, in the case provided for by section 426, that he has not carefully researched the whereabouts of the record or document, a copy of the record or document produced by the party tendering evidence may be deemed to be proper evidence. Where no copy of the record or document has been produced, the allegations made by the party tendering evidence regarding the nature and content of the record or document may be assumed to be proven.

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#### **Section 428**

##### **Production by third parties; offer to provide evidence**

In cases in which, according to the allegations made by the party tendering evidence, the record or document is in the possession of a third party, evidence shall be deemed offered where a petition has been filed with the court that it determine a period for the procurement of the record or document, or that it deliver an order pursuant to section 142.

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#### **Section 429**

##### **Obligation of third parties to produce a record or document**

For the same reasons as apply to the opponent of the party tendering evidence, the third party is under obligation to produce the record or document; the third party can be compelled to produce the record or document only by bringing an action. Section 142 shall remain unaffected hereby.

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#### **Section 430**

##### **Petition for the record or document to be produced by a third party**

In order to provide the reasoning for the petition to be filed pursuant to section 428, the party tendering evidence is to comply with the requirements set out in section 424 numbers 1 to 3 and number 5, and moreover is to demonstrate to the satisfaction of the court that the record or document is in fact in the hands of the third party.

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### **Section 431**

#### **Period set for the third party to produce the record or document**

(1) If the facts or circumstances that the record or document is to prove are significant, and if the petition corresponds to the stipulations of the preceding section, the court is to determine a period within which the record or document is to be produced.

(2) The opponent may petition that the proceedings be continued prior to the expiry of the deadline if the action brought against the third party has been dealt with and terminated, or if the party tendering evidence is tardy in filing the corresponding suit, protracts the litigation, or delays compulsory enforcement.

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### **Section 432**

#### **Production of records or documents by public authorities or civil servants; offer to provide evidence**

(1) Where, according to the allegation made by the party tendering evidence, the record or document is in the hands of a public authority or of a civil servant in the narrower sense of the term, evidence shall be offered by filing the petition with the court that the public authority or the civil servant be requested to provide the record or document.

(2) This rule is not to be applied to records or documents which, according to the stipulations of the law, the parties to the dispute are able to procure without requiring the involvement of the court.

(3) Should the public authority or the civil servant refuse to communicate the record or document in cases in which the obligation to produce same is based on section 422, the stipulations of sections 428 to 431 shall apply.

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### **Section 433 (repealed)**

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### **Section 434**

#### **Production of records or documents to judges correspondingly delegated or requested**

If a record or document cannot be produced at the hearing because this is prevented by significant impediments, or if there are concerns regarding its production in light of its importance and the concern that it might be lost or damaged, the court hearing the case may order that the record or document be produced to one of its members or to another court.

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### **Section 435**

#### **Production of public records and documents as originals or as certified copies**

A public record or document may be produced as an original or as a certified copy if it meets the requirements regarding a public record or documents where its certification is concerned; the court may order, however, that the party tendering evidence produce the original or that it state which facts and circumstances prevent it from so producing the original, demonstrating such facts and circumstances to the satisfaction of the court. Should this order not meet with success, the court shall

decide at its discretion and conviction on the evidentiary value it intends to accord to the certified copy.

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### **Section 436**

#### **Waiver following the production of a record or document**

Following the production of a record or document, the party tendering evidence may waive the evidence represented by said record or document only with the consent of the opponent.

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### **Section 437**

#### **Authenticity of German public records and documents**

(1) Records and documents which, by their form and content, appear to have been executed by a public authority or by a person or entity, shall be presumed to be authentic.

(2) Should the court have doubts as to the authenticity of a record or document, it may also demand ex officio of the public authority or the person alleged to have executed the record or document that they make a statement regarding its authenticity.

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### **Section 438**

#### **Authenticity of foreign public records and documents**

(1) The court is to exercise its discretion in deciding, based on the circumstances of the case, whether or not a record or document appearing to have been executed by a foreign public authority or by a foreign person or entity vested with public trust, may be deemed to be authentic without obtaining any further proof by supporting documents.

(2) Legalisation by a consul or a minister of the Federal Republic shall suffice as proof of the authenticity of such a record or document.

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### **Section 439**

#### **Declaration as to the authenticity of private records and documents**

(1) Pursuant to the stipulations of section 138, the opponent of the party tendering evidence is to react in substance as regards the authenticity of a private record or document.

(2) Insofar as the record or document is signed by a name, the said declaration is to address the authenticity of the signature.

(3) Where this declaration is not made, the record or document shall be deemed to have been acknowledged as authentic unless the other declarations made by the party indicate that it intends to dispute the record's or the document's authenticity.

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### **Section 440**

#### **Evidence of the authenticity of private records and documents**

(1) Evidence is to be provided of the authenticity of a private record or document that has not been acknowledged as authentic.

(2) If the signature by a name has been established to be authentic as a definite fact, or if the signature using a mark set underneath a record or document has been certified by a notary, the writing above the signature or the mark shall be presumed to be authentic.

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#### **Section 441**

##### **Handwriting comparison**

(1) The proof of the authenticity or falsity of a record or document may also be provided by a handwriting comparison.

(2) In such event, the party tendering evidence is to submit handwritings suitable for comparison, or is to petition that such handwritings be submitted pursuant to the stipulations of section 432 and, if necessary, is to offer evidence of their authenticity.

(3) If the handwriting suited for comparison is in the hands of the opponent, he is under obligation to produce such handwriting upon corresponding application being made by the party tendering evidence. The stipulations of sections 421 to 426 shall apply mutatis mutandis. Should the opponent fail to comply with the court order to produce the handwriting suited for comparison, or should, in the case provided for by section 426, the court have come to the conviction that the opponent has not carefully researched the whereabouts of the handwritings, the record or document may be deemed to be authentic.

(4) Should the party tendering evidence demonstrate to the satisfaction of the court that handwritings suited for comparison are in the hands of a third party, with the party tendering evidence being able to have such handwritings produced by bringing a corresponding court action, the stipulations of section 431 shall apply mutatis mutandis.

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#### **Section 442**

##### **Evaluation of the handwriting comparison**

The court is to decide at its discretion and conviction regarding the results obtained by comparing the handwriting, and upon having heard an expert wherever appropriate.

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#### **Section 443**

##### **Safekeeping of suspicious records or documents**

Records or documents, the authenticity of which is at issue, or the content of which is said to have been modified, shall remain in the safekeeping of the court registry until the legal dispute has been dealt with and terminated, unless they must be surrendered to another authority in the interests of public order.

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#### **Section 444**

##### **Consequences of the removal of a record or document**

Where a record or document has been removed or has been rendered unfit for use in the intention of preventing the opponent from using it, the allegations made by the opponent regarding the nature and the content of the record or document may be deemed to have been proven.

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## **Title 10**

### **Evidence provided by examination of a party**

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#### **Section 445**

##### **Examination of the opponent; offer to provide evidence**

(1) Any party that has not fully provided other evidence by way of complying with its obligation to provide evidence, or that has failed to so submit other evidence, may offer to provide evidence by filing the petition that the opponent be examined regarding the facts and circumstances to be proven.

(2) This petition is not to be complied with if it concerns facts and circumstances regarding which the court deems the contrary to have been proven.

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#### **Section 446**

##### **Refusal by the opponent to be examined**

Should the opponent refuse to have himself examined, or should he fail to make a statement in spite of having been asked to do so by the court, the court is to decide at its discretion and conviction, taking account of the overall factual situation and in particular the grounds cited in the refusal, whether or not it intends to deem proven the facts and circumstances alleged.

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#### **Section 447**

##### **Examination, upon corresponding application being made, of the party upon whom it is incumbent to provide evidence**

The court may also examine the party upon whom it is incumbent to provide evidence regarding the facts and circumstances at issue where one party petitions that this be done and the other consents.

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#### **Section 448**

##### **Ex officio examination**

Even if no petition has been filed by a party, and without consideration of the onus of proof, the court may direct that a party or both of the parties be examined regarding the facts and circumstances at issue, if the results of the hearings and of the taking of evidence, if any, do not suffice to establish to the satisfaction of the court the truth or untruth of a fact or circumstance that is to be proven.

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#### **Section 449**

##### **Examination of joined parties**

Where the party to be examined consists of several joined parties, the court shall determine, depending on the circumstances of the case, whether all of the joined parties or only some of them are to be examined.

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#### **Section 450**

##### **Court order for evidence to be taken**

(1) The court shall direct the examination of a party by issuing an order for evidence to be taken. If the party is not present in person when the order is pronounced, it is to be summoned ex officio to the examination, with the order for evidence being communicated to it. The summons shall be communicated to the party in person even if it has appointed an attorney of record; the summons need not be served.

(2) The implementation of the order may be suspended if, following its issuance, new evidence regarding the facts and circumstances to be proven is brought before the court. Once the new evidence has been taken, the court is to refrain from examining a party if the court regards the question to have been dealt with regarding which evidence is to be taken.

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#### **Section 451**

##### **Actual examination**

The stipulations of sections 375, 376, 395 (1), subsection (2), first sentence, and of sections 396, 397, 398 shall apply mutatis mutandis to the examination of a party.

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#### **Section 452**

##### **Placing a party under oath**

(1) Should the result obtained from the testimony of a party that has not been sworn in not suffice to convince the court of the truth or untruth of the fact or circumstance that is to be proven, the court may direct that the party is to be placed under oath regarding its testimony. Where both parties have been examined, the court may demand only of one party that it swear an oath regarding its statement on the same facts and circumstances.

(2) The oath shall be worded to the effect that the party has said nothing but the truth to the best of its knowledge, and that it has not concealed anything.

(3) The opponent may waive having the respectively other party sworn in.

(4) No party may admissibly be placed under oath if it has been convicted of perjury in a final and binding judgment.

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#### **Section 453**

##### **Evaluation of the evidence obtained in examining a party**

(1) The court is to evaluate, at its discretion and conviction, the testimony of the party pursuant to section 286.

(2) Should the party refuse to testify or to swear an oath, section 446 shall apply mutatis mutandis.

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#### **Section 454**

##### **Failure of the party to appear**

(1) Should the party fail to appear at the hearing determined for its examination, or for it to be placed under oath, the court shall decide at its sole discretion whether or not the testimony is to be deemed to have been refused, and shall do so in consideration of all circumstances, in particular of the reasons, if any, that the party has cited for its failure to appear.

(2) Where the hearing, at which the party failing to appear was to be examined or placed under oath, was arranged by the court hearing the case, then that hearing is to be used to hear oral argument on the merits of the case unless the court believes that arranging a new hearing for the examination is mandated.

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#### **Section 455**

##### **Persons under a legal disability**

(1) If a party is a person under a legal disability, their legal representative is to be examined, subject to the rule set out in subsection (2). Should the party have a plurality of legal representatives, section 449 shall apply mutatis mutandis.

(2) Minors who are 16 years of age or older may be examined regarding facts and circumstances consisting of their own actions, or facts and circumstances they have perceived, and may also be placed under oath pursuant to section 452 wherever the court deems this to be reasonable based on the circumstances of the case. The same shall apply for a person having the capacity to sue and to be sued who is represented in the legal dispute by a custodian or curator.

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#### **Sections 456 to 477**

##### **(repealed)**

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#### **Title 11**

##### **Administration of oaths and affirmations**

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#### **Section 478**

##### **Oath taken in person**

The oath must be sworn in person by the person under obligation to so swear it.

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#### **Section 479**

##### **Oath taken before the judge correspondingly delegated or requested**

(1) The court hearing the case may direct that the oath be taken before one of its members, or before another court if the person under obligation to swear an oath is prevented from appearing before the court hearing the case, or if he is located at a great distance from the seat of the court and the oath will not be taken in the form governed by section 128a (2).

(2) The President of the Federal Republic of Germany shall take the oath in his residence before a member of the court hearing the case, or before another court.

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#### **Section 480**

##### **Cautionary remarks regarding the oath to be sworn**

Prior to the oath being taken, the judge is to appropriately instruct the person under obligation to swear an oath as to the importance of swearing an oath, and is to likewise instruct him that he may swear the oath with or without a religious confirmation.

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#### **Section 481**

##### **Taking of the oath; wording of the oath**

(1) The oath with religious confirmation is sworn such that the judge speaks the oath's words, introducing it by the words

"You hereby swear, by God the almighty and all-knowing",

with the person under obligation to swear an oath thereupon speaking the words (wording of the oath)

"I swear it, so help me God."

(2) The oath without a religious confirmation is sworn such that the judge speaks the oath's words, introducing it by the words

"You hereby swear",

with the person under obligation to swear an oath thereupon speaking the words (wording of the oath)

"I swear it."

(3) Where the person under obligation to swear an oath states that, as a member of a specific religious community or of a faith-based group, he wishes to confirm his oath using words of that community, he may add such words to the oath.

(4) In taking the oath, the party so swearing it is to raise his right hand.

(5) In cases in which a plurality of witnesses is to be sworn in simultaneously, the oath's words shall be spoken by each person individually who is under obligation to swear an oath.

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#### **Section 482**

##### **(repealed)**

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#### **Section 483**

##### **Oaths taken by persons suffering from a speech disorder or a hearing impairment**

(1) A person suffering from a speech disorder or a hearing impairment shall, at his selection, take the oath by repeating the words of the oath, by copying them and signing them, or by being assisted by a

person enabling communication with such person, whereby such assistant is to be involved by the court. The court is to provide the technical aids suitable for this purpose. The court is to draw the attention of the person suffering from a speech disorder or from a hearing impairment to his right to choose in this regard.

(2) Where the person suffering from a speech disorder or a hearing impairment has not exercised his right to choose pursuant to subsection (1), the court may demand that he take the oath in writing, or it may direct that a person enabling communication with such person be involved; the court may also do so if it is not possible to take the oath in the form selected pursuant to subsection (1), or only by making efforts that are not justified by the intended purpose.

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#### **Section 484**

##### **Solemn affirmation deemed equivalent to an oath**

(1) If the person under obligation to swear an oath states that, for reasons of his faith or of his conscience, he does not wish to swear an oath, he is to make an affirmation. This affirmation shall be equivalent to an oath; the attention of the party so obligated is to be drawn to this fact.

(2) The affirmation shall be made such that the judge speaks the wording of the oath as the wording of the affirmation, introducing them by the words

“You affirm, being conscious of your responsibility before the court”,

with the person under obligation to make an affirmation thereupon speaking the words:

“Yes.”

(3) Section 481 subsections (3) and (5) and section 483 shall apply mutatis mutandis.

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#### **Title 12**

##### **Independent evidentiary proceedings**

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#### **Section 485**

##### **Admissibility**

(1) Upon the corresponding petition having been filed by a party, the court may direct in the course of litigation or outside of the proceedings that visual evidence be taken on site, that witnesses be examined, or that an expert prepare a report, provided that the opponent consents to doing so, or provided that there is the concern that evidence might be lost, or that it will become difficult to use it.

(2) Wherever a legal dispute is not yet pending, a party may petition that an expert prepare a written report if it has a legitimate interest in establishing:

1. The state of a person or the state or value of an object;
2. The cause of personal injury, property damage, or a material defect;
3. The effort required to remedy a personal injury, property damage or material defect.

Interests under law are assumed to be given if the establishment of the above facts may serve to avoid a legal dispute.

(3) To the extent the court has already directed that a report be prepared, a new report shall be prepared only if the prerequisites set out in section 412 have been met.

#### Section 486 Competent court

(1) Wherever a legal dispute is pending, the petition is to be filed with the court hearing the case.

(2) If a legal dispute is not yet pending, the petition is to be filed with that court that would be competent, according to the submission by the petitioner, to take the decision in the main action. In the subsequent litigation, the petitioner may not take recourse to the court having lacked jurisdiction.

(3) In cases of imminent danger, the petition may also be filed with the local court (Amtsgericht, AG) within the judicial district of which the person has his abode who is to be examined, or regarding whom a report is to be prepared, or within the judicial district of which the object is located that is to be visually inspected on site, or regarding which a report is to be prepared.

(4) The petition may be recorded with the registry for the files of the court.

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### **Section 487 Content of the petition**

The petition must:

1. Designate the opponent;
2. Designate the facts and circumstances regarding which evidence is to be taken;
3. Name the witnesses or designate the other evidence that may admissibly be taken pursuant to section 485;
4. Demonstrate to the satisfaction of the court the facts and circumstances the petitioner believes justify the independent evidentiary proceedings and the jurisdiction of the court.

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### **Sections 488 and 489 (repealed)**

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### **Section 490 Decision on the petition**

(1) The court shall decide on the petition by a court order.

(2) The order by which the court complies with the petition is to set out the facts and circumstances regarding which evidence is to be taken, as well as the evidence, naming the witnesses to be examined and the experts. The order is not contestable.

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**Section 491**  
**Summons of the opponent**

(1) The opponent is to be summoned to the hearing determined for the taking of evidence in such due time that he is able to protect his rights, provided that this can be achieved in light of the circumstances of the case; the order and a copy of the petition are to be served on him.

(2) Failure to comply with this rule shall not contravene the taking of evidence.

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**Section 492**  
**Taking of evidence**

(1) Evidence shall be taken in accordance with the rules applicable for the taking of evidence as such.

(2) The record of the taking of evidence is to remain in the safekeeping of the court that has directed the evidence to be taken.

(3) The court may summon the parties to the dispute to be heard in oral argument if it can be expected that the parties will settle; any such settlement is to be recorded by the court.

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**Section 493**  
**Use in proceedings**

(1) Should a party refer to facts or circumstances in proceedings regarding which independent evidentiary proceedings have been held, the independent evidentiary proceedings shall be equivalent to the taking of evidence before the court hearing the case.

(2) Where the opponent has failed to make an appearance at a hearing of the independent evidentiary proceedings, the result obtained therein may be used only if the opponent had been summoned in due time.

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**Section 494**  
**Unknown opponent**

(1) If the party tendering evidence does not designate an opponent, its petitions shall be admissible only if the party tendering evidence demonstrates to the satisfaction of the court that it is unable, through no fault of its own, to designate the opponent.

(2) Should the court comply with the petition, it may appoint a representative for the unknown opponent, who is to protect that opponent's rights in the course of the evidence being taken.

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**Section 494a**  
**Period for bringing proceedings in the courts**

(1) Absent a pending legal dispute, the court is to direct that the petitioner is to bring proceedings within a period to be determined, and shall do so following the close of the taking of evidence, and upon corresponding application being made, without a hearing for oral argument.

(2) Where the petitioner fails to comply with this order, and upon corresponding application being made, the court is to pronounce in a corresponding court order that the petitioner is to bear the costs incurred by the opponent. A complaint subject to a time limit may be lodged against the decision.

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## **Chapter 2**

### **Proceedings pursued before the local courts (Amtsgerichte)**

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#### **Section 495**

##### **Rules to be applied**

(1) The rules applying to proceedings before the regional courts (Landgerichte) shall apply to the proceedings before the local courts, unless deviations result from the general regulations set out in Book 1 hereof, the special provisions made hereinbelow, and the constitution of the local courts.

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#### **Section 495a**

##### **Proceedings performed at the court's equitably exercised discretion**

The court may decide at its equitably exercised discretion on how to implement its proceedings if the value of the claim does not exceed the amount of 600 euros. Upon corresponding application being made, the matter must be dealt with in oral argument.

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#### **Section 496**

##### **Submission of written pleadings; declarations made for the record**

The action, the statement of defence as well as any other petitions and declarations by a party that are to be served must be submitted to the court in writing, or must be recorded with the registry for the files of the court.

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#### **Section 497**

##### **Summonses**

(1) The summons of the plaintiff to the hearing determined for the action is to be communicated by simple letter unless the court orders that it be served. Section 270 second sentence shall apply mutatis mutandis.

(2) A party need not be sent a summons if it was informed of the hearing when it brought the action or the petition, or recorded same with the registry for the files of the court, based on which the date of the hearing is determined by the court. This communication is to be recorded in the files.

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#### **Section 498**

##### **Service of the record of the action**

Where an action has been recorded with the registry for the files of the court, the record of this filing shall be served instead of the statement of claim.

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## **Section 499 Instructions**

(1) In serving the statement of claim, or the record as to the action having been brought, to the defendant, he is to be instructed that the rules do not require him to be represented by counsel.

(2) Together with the instruction provided for by section 276, the defendant is to be instructed about the consequences of any written acknowledgment he may submit.

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## **Sections 499a to 503 (repealed)**

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## **Section 504 Notification in the event the local court lacks jurisdiction**

Should the local court (Amtsgericht) lack jurisdiction, this being local jurisdiction or competence *ratione materiae*, it shall indicate this fact to the defendant prior to holding the hearing on the merits of the case, and shall likewise draw the defendant's attention to the consequences of entering an appearance on the merits of the case without filing a corresponding objection.

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## **Section 505 (repealed)**

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## **Section 506 Subsequent lack of jurisdiction *ratione materiae***

(1) If, by countercharges being brought or by extending the demand for relief (section 264 numbers 2 and 3), a claim is raised for which the regional courts (Landgerichte) are competent, or if it is petitioned pursuant to section 256 subsection (2) that the court determine a legal relationship, for which the regional courts are competent, the local court is to declare by corresponding court order, provided a party has filed the corresponding petition, that it lacks jurisdiction, and shall do so prior to any further hearings being held on the merits of the case; the local court is to refer the legal dispute to the regional court.

(2) The stipulations of section 281 subsections (2) and (3), first sentence, shall apply *mutatis mutandis*.

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## **Sections 507 to 509 (repealed)**

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## **Section 510 Declarations made regarding records or documents**

A record or document is to be deemed as having been acknowledged as authentic if, in the event of a declaration not having been made, the party is asked by the court to make a declaration regarding its authenticity.

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### **Section 510a Content of the record**

Declarations by a party, other than admissions and declarations regarding the petition for examination of a party, are to be included in the record of the hearing to the extent the court believes this is required.

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### **Section 510b Judgment requiring a party to take specific action**

Should a party be sentenced to take specific action, the defendant may concurrently be sentenced, upon corresponding application being made by the plaintiff, to pay compensation for the case that the action is not taken within the period to be determined; the court is to assess such compensation at its sole discretion.

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### **Section 510c (repealed)**

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## **Book 3 Appellate remedies**

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### **Chapter 1 Appeal**

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### **Section 511 Appeal available as a remedy**

(1) Appeals are an available remedy against the final judgments delivered by the court of first instance.

(2) An appeal shall be admissible only if:

1. The value of the subject matter of the appeal is greater than 600 euros, or if
2. In its ruling, the court of first instance has granted leave to appeal.

(3) The plaintiff in the appeal is to demonstrate to the satisfaction of the court the value pursuant to subsection (2) number 1; the plaintiff in the appeal may not file a statutory declaration in lieu of an oath.

(4) The court of first instance shall admit an appeal in cases in which:

1. The legal matter is of fundamental significance or wherever the further development of the law or the interests in ensuring uniform adjudication require a decision to be handed down by the court of appeal, and wherever
2. The judgment does not adversely affect the party by an amount higher than 600 euros.

The court of appeal is bound to the admission.

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## **Section 512**

### **Prior decisions handed down by the court of first instance**

Those decisions taken prior to the final judgments shall also be subject to the assessment by the court of appeal unless they are incontestable pursuant to the stipulations of the present Code, or unless they are contestable by way of filing a complaint subject to a time limit.

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## **Section 513**

### **Grounds for appeal**

(1) An appeal may only be based on the decision handed down having been based on a violation of the law (section 546), or on the facts and circumstances that should have been used as a basis pursuant to section 529 justifying a different decision.

(2) The appeal may not be based on the fact that the court of first instance erred in assuming it had jurisdiction.

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## **Section 514**

### **Default judgments**

(1) A default judgment may not be contested by the party against which it has been delivered by filing an appeal or a cross appeal.

(2) A default judgment against which protest as such is not an available remedy shall be liable to appeal or cross appeal nonetheless insofar as such an appeal or cross appeal is based on the fact that there was no negligent or intentional failure to comply with procedural requirements. Section 511 (2) shall not be applied.

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## **Section 515**

### **Waiver of the right to appellate remedy**

The waiver of the right to file an appeal shall be valid regardless of whether or not the opponent has accepted the declaration of waiver.

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## **Section 516**

### **Withdrawal of an appeal**

(1) The plaintiff in the appeal may withdraw the appeal until the appellate judgment is pronounced.

(2) The withdrawal shall be declared to the court. Unless the withdrawal is declared at the hearing, it shall be declared by submitting a written pleading.

(3) The withdrawal shall result in the loss of the appeal filed and in the obligation to bear the costs arising as a consequence of the appeal having been filed. These effects are to be pronounced in a corresponding court order.

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### **Section 517**

#### **Time limit for filing an appeal**

The time limit for filing an appeal shall amount to one (1) month; this is a statutory period and shall begin upon the fully worded ruling having been served, at the latest, however, upon the expiry of five (5) months following pronouncement of the judgment.

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### **Section 518**

#### **Time limit for filing an appeal in the event the judgment is amended**

Should, within the time limit set for filing an appeal, a judgment be amended by a subsequent ruling (section 321), the period set for filing an appeal shall recommence upon the subsequent ruling having been served, also for the appeal against the ruling first promulgated. Should the same party lodge an appeal against both judgments, the two appeals are to be consolidated into a single appeals procedure.

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### **Section 519**

#### **Notice of appeal**

(1) The appeal is lodged by way of submitting a notice of appeal with the court of appeal.

(2) The notice of appeal must set out:

1. The reference number and designation of the judgment against which the appeal is being lodged;

2. The declaration as to an appeal being filed against the said judgment.

(3) An execution or certified copy of the judgment being challenged shall be submitted together with the notice of appeal.

(4) The general regulations as to preparatory written pleadings shall apply also to the notice of appeal.

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### **Section 520**

#### **Particulars of the appeal**

(1) The plaintiff in the appeal must provide particulars of the appeal.

(2) The period for submitting the particulars of the appeal shall amount to two (2) months and shall begin upon the fully worded ruling having been served, at the latest, however, with the expiry of five (5) months following pronouncement of the judgment. Upon a corresponding petition having been filed, the presiding judge may extend the period provided the opponent has consented. Without such consent, and if the presiding judge is satisfied that an extension will not delay the legal dispute, or if the plaintiff in the appeal has submitted substantial grounds to the court, then the presiding judge may exercise his discretion in extending the period by up to one (1) month.

(3) Unless already included in the notice of the appeal, the particulars of the appeal must be submitted to the court of appeal as a written pleading. The particulars of the appeal must:

1. Declare the extent to which the judgment is being contested, and must set out the specific petition as to how the judgment is to be modified (petitions in the appeal proceedings);
2. Designate the circumstances indicating a violation of the law and the significance they have for the ruling being contested;
3. Name the specific indications giving rise to doubts as to the court having correctly or completely established the facts in the ruling being contested, and therefore mandating a new fact-finding process;
4. Designate the new means by which the plaintiff in the appeal intends to challenge the opponent or defend his case, listing the facts and circumstances based on which these new means of challenge or defence are to be admitted pursuant to section 531 (2).

(4) The particulars of the appeal furthermore shall include:

1. Information on the value of the subject matter of the appeal if this does not consist of a specific amount of money, provided that the admissibility of the appeal depends on it;
2. A statement as to whether any reasons would prevent the matter from being ruled on by a judge sitting alone.

(5) The general regulations governing preparatory written pleadings apply also to the particulars of the appeal.

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## **Section 521**

### **Service of the notice of appeal and its particulars**

(1) The notice of appeal and the particulars of the appeal are to be served on the opponent party.

(2) The presiding judge or the court of appeal may set a deadline by which the opponent party is to submit a written statement of defence in appeal proceedings and by which the plaintiff in the appeal is to submit its reply to the statement of defence in appeal proceedings. Section 277 shall apply mutatis mutandis.

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## **Section 522**

### **Review of the appeal's admissibility; court order denying leave to appeal**

(1) The court of appeal is to review, ex officio, whether the appeal as such is admissible, whether it has been lodged in the form required by law and within the period set and whether particulars have been provided. Should one of these requirements not have been met, the appeal is to be overruled as

inadmissible. The decision may be given as a court order. The court order may be challenged by way of filing a complaint on points of law.

(2) The court of appeal is to immediately deny leave to appeal in a decision if all of its members are unanimously satisfied that:

1. The appeal manifestly has no chance of success,
2. The legal matter is not of any fundamental significance,
3. The further development of the law or the interests in ensuring uniform adjudication do not require a decision to be handed down by the court of appeal, and that
4. No hearing for oral argument is mandated.

Prior to handing down such a ruling, the court of appeal or the presiding judge is to indicate to the parties to the dispute its intention to deny leave to appeal and the reasons therefor, and is to provide the plaintiff in the appeal with the opportunity to submit its position within a period of time to be set. Insofar as the reasons for denying leave to appeal are not already provided in the notice stipulated by the second sentence hereof, the court order provided for in the first sentence is to set out these reasons. Moreover, a court order, which is contestable, is to refer to the facts as established by the court of prior instance in the ruling being contested, and is to summarise any modifications or amendments that may have been made.

(3) The plaintiff in the appeal is entitled to lodge such appellate remedy against the court order pursuant to subsection (2), first sentence, that would have been admissible had the court handed down its decision by a ruling.

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### **Section 523**

#### **Notice scheduling a hearing**

(1) Should leave to appeal not be denied or should the appeal not be overruled by a court order pursuant to section 522, the court of appeal shall decide on whether or not to transfer the legal dispute to the judge sitting alone. Thereupon, a hearing is to be scheduled without undue delay.

(2) Section 274 (3) shall apply mutatis mutandis to the period that must lapse between the time at which notice of the hearing scheduled is given and the hearing itself.

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### **Section 524**

#### **Cross appeal**

(1) The respondent in the appeal may join the appeal. This shall be effected by filing the notice of cross appeal with the court of appeal.

(2) A cross appeal is an available remedy also if the respondent in the appeal has waived an appeal or if the time limit for filing an appeal has lapsed. A cross appeal may admissibly be filed until the deadline has expired by which the respondent in the appeal is to submit its statement of defence in appeal proceedings. This deadline shall not apply should the cross appeal have as its subject matter a sentence for recurrent performance becoming due in the future (section 323).

(3) The reasons for the cross appeal must be set out in the notice of cross appeal. The stipulations of section 519 subsections (2) and (4), of section 520 (3) and of section 521 shall apply mutatis mutandis.

(4) The cross appeal shall cease to be effective should the appeal be withdrawn, should leave to appeal have been denied, or should it have been overruled by a court order.

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## **Section 525**

### **General procedural rules**

Unless otherwise provided for in the present Chapter, the rules applying to the proceedings before the regional courts (Landgerichte) as courts of first instance are to be applied mutatis mutandis to the further proceedings. No conciliation hearing need be held.

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## **Section 526**

### **Judge taking the decision**

(1) The court of appeal may transfer, by a court order, the legal dispute to one of its members as a judge sitting alone, for him to take the decision where:

1. The contested decision was delivered by a judge sitting alone,
2. The matter does not entail any factual or legal difficulties,
3. The legal matter is not of any fundamental significance, and
4. Oral argument on the merits of the case has not already been heard at the main hearing, unless a judgment subject to a reservation of rights, partial judgment, or interlocutory judgment has been handed down in the meantime.

(2) The judge sitting alone shall submit the legal dispute to the court of appeal for it to decide on whether it intends to assume the proceedings or not if:

1. A material change to the litigation circumstances engenders special factual or legal difficulties of the matter or the fundamental significance of the legal matter, or if
2. This is petitioned by the parties in congruent declarations.

The court of appeal shall assume the legal dispute if the prerequisites stipulated by number 1 first sentence are met. Upon having heard the parties, it shall rule on the matter by court order. Once again transferring the matter to the judge sitting alone is ruled out.

(3) An appellate remedy may not be based on the fact that a transfer, referral or assumption has been made or has been failed to be made.

(4) Solely the presiding judge of the division for commercial matters may act as judge sitting alone on matters in that division's purview.

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## **Section 527**

### **Judge sitting alone in preparatory proceedings**

(1) Should the legal dispute not be transferred to a judge sitting alone pursuant to section 526, the court of appeal may assign the matter to one of its members as a judge sitting alone by way of

preparing the decision. The presiding judge of the division for commercial matters shall act as judge sitting alone; outside of a hearing no such assignment need be made.

(2) The judge sitting alone is to promote the matter such that it can be dealt with and terminated in a hearing before the court of appeal. For this purpose, he may take individual evidence to the extent this is desirable in the interests of simplifying the hearing before the court of appeal and insofar as it is to be assumed, from the outset, that the court of appeal will be able to properly evaluate the results obtained in taking evidence also without having a direct impression of its course.

(3) The judge sitting alone shall decide:

1. On the referral pursuant to section 100 in conjunction with sections 97 to 99 of the Courts Constitution Act (Gerichtsverfassungsgesetz, GVG);
2. Wherever the action or the appeal is withdrawn, the claim lodged is waived or acknowledged;
3. In the event of one of the parties or both parties failing to comply with procedural rules;
4. On the obligation to bear the costs of the proceedings unless the court of appeal will rule on this together with the merits of the case;
5. On the value of the subject matter being litigated;
6. On costs, fees and expenditures.

(4) Should the parties agree to so proceeding, the judge sitting alone may also decide on other matters.

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### **Section 528**

#### **Binding effect of petitions filed in appeal proceedings**

Solely the petitions filed in the appeal proceedings shall be subject to review and decision by the court of appeal. The judgment handed down by the court of first instance may be modified only to the extent its modification has been petitioned.

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### **Section 529**

#### **Scope of the review by the court of appeal**

(1) The court of appeal is to base its hearing and decision on:

1. The facts established by the court of first instance, unless specific indications give rise to doubts as to the court having correctly or completely established the facts relevant for its decision, and therefore mandate a new fact-finding process;
2. New facts and circumstances insofar as these may permissibly be considered.

(2) The judgment contested will only be reviewed for a defect in the proceedings that is not to be taken into account ex officio if such defect has been asserted pursuant to section 520 (3). In all other regards, the court of appeal shall not be bound to the grounds for appeal asserted.

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**Section 530**  
**Delays in submitting means of challenge or of defence**

Should, in contravention of the stipulations made in section 520 and section 521 (2), means of challenge or defence not be submitted in due time, section 296 subsections (1) and (4) shall apply mutatis mutandis.

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**Section 531**  
**Means of challenge or defence that have been dismissed; new means of challenge or defence**

(1) Any means of challenge or defence that were rightly dismissed in the proceedings before the court of first instance shall be ruled out.

(2) New means of challenge or defence are to be admitted only if they:

1. Concern an aspect that the court of first instance has recognisably failed to see or has held to be insignificant,
2. Were not asserted in the proceedings before the court of first instance due to a defect in the proceedings or
3. Were not asserted in the proceedings before the court of first instance, without this being due to the negligence of the party.

The court of appeal may demand that those facts be demonstrated to its satisfaction based on which the new means of challenge or defence may permissibly be brought before the court.

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**Section 532**  
**Objections as to a complaint being inadmissible**

Non-essential objections concerning the admissibility of the complaint that, in contravention of the stipulations made in sections 520 and 521 (2), were not lodged in due time are to be admitted only if the party provides sufficient excuse for such delay. The same shall apply to any non-essential new objections concerning the admissibility of the complaint if the party would have been able to submit them in the proceedings before the court of first instance. Should the court so demand, the grounds precluding culpability are to be substantiated.

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**Section 533**  
**Modification of the suit filed; declaration as to claims being offset; counterclaims**

The suit filed may admissibly be modified, claims may admissibly be declared to be offset and counterclaims may admissibly be brought only if:

1. The opponent consents to this being done or the court believes this to be expedient, and
2. These actions can be based on facts and circumstances on which, pursuant to section 529, the court of appeal is to base its hearing and decision regarding the appeal in any case.

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**Section 534**  
**Loss of the right to file objections**

Should a rule concerning the proceedings before the court of first instance have been violated, this can no longer be objected to before the appellate instance on fact and law wherever the party has already lost its right to file objections in the proceedings before the court of first instance pursuant to the stipulations of section 295.

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**Section 535**  
**Admission of guilt before the court**

Any admission of guilt made before the court of first instance shall remain effective also before the appellate instance on fact and law.

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**Section 536**  
**Examination of a party**

(1) The court of appeal may only order a party to be examined or to be sworn in, which has declined to be examined in the proceedings before the court of first instance or which has refused to make a statement or to be sworn in, if the court is satisfied that the party had sufficient reason to so decline to be examined or refuse to be sworn in and that these grounds have in the meantime ceased to exist.

(2) If a party was examined in the proceedings before the court of first instance and was sworn in as regards the statements made, the court of appeal may order the opponent to be examined under oath only if the examination or placement under oath in the proceedings before the court of first instance was inadmissible.

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**Section 537**  
**Provisionally enforceable judgments**

(1) A judgment handed down by the court of first instance that is not, or not unconditionally, declared provisionally enforceable is to be declared provisionally enforceable by the court of appeal by delivering a corresponding court order upon accordingly having been petitioned to do so, unless the petitions in the appeal proceedings have contested the judgment. The decision may permissibly be taken only following expiry of the deadline set for submitting particulars of the appeal.

(2) The court order is incontestable.

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**Section 538**  
**Referral to a court of lower instance**

(1) The court of appeal is to take the evidence required and is to decide on the matter as such.

(2) The court of appeal may refer the matter to a court of lower instance, insofar as further hearings are required, while repealing the judgment and the proceedings, only:

1. Insofar as the proceedings before the court of first instance are subject to a material irregularity and, due to this irregularity, it will be necessary to take evidence in a comprehensive scope or under considerable expenditure of time and effort;
2. If a protest entered has been overruled as inadmissible by the judgment contested;
3. If the judgment contested has only ruled on the admissibility of the action;
4. If, in the case of a claim that is in dispute both on its merits and as regards its amount, a preliminary decision has been taken by the judgment contested as regards the merits of the claim, or if the action has been dismissed, unless, however, the dispute regarding the amount of the claim is ready for decision;
5. If the judgment contested was delivered, subject to a reservation of rights, in proceedings on claims arising from a deed, in which solely documentary evidence is submitted, or proceedings on claims arising from a bill of exchange;
6. If the judgment contested is a default judgment; or
7. If the judgment contested is a partial judgment delivered contrary to the pre-requisites set out in section 301;

and if one party petitions that the matter be referred to a court of lower instance. In the case set out under number 3 hereinabove, the court of appeal is to conclusively deal with all objections. In the case set out under number 7, no petition need be filed.

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### **Section 539**

#### **Default proceedings**

- (1) Should the plaintiff in the appeal fail to appear at the hearing scheduled, his appeal shall be dismissed by a default judgment at the petition of a party.
- (2) Should the respondent in the appeal fail to appear at the hearing scheduled, and should the plaintiff in the appeal petition for a default judgment to be delivered against the respondent in the appeal, the submissions admissibly made by the plaintiff in the appeal as regards the facts and circumstances of the matter shall be deemed to have been acknowledged by the respondent. Insofar as these statements justify the petition filed in the appeal, the court is to decide in accordance with the petition filed; to the extent this is not the case, leave to file the appeal shall be denied.
- (3) In all other regards, the rules governing default proceedings before the court of first instance shall apply mutatis mutandis.

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### **Section 540**

#### **Content of the appellate judgment**

- (1) Instead of the facts of the case and the reasons on which the ruling is based, the appellate judgment shall set out:

1. A reference to the findings of fact as made in the ruling being contested, depicting any changes or amendments,

2. A brief summary of the reasons for the modification, repeal or confirmation of the decision contested.

Should the judgment be pronounced at the hearing at which the court proceedings have been declared terminated, the presentation of the case as stipulated by the first sentence hereof may also be included in the record of the hearing.

(2) Section 313a and section 313b shall apply mutatis mutandis.

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### **Section 541**

#### **Court records of the dispute**

(1) Immediately upon the notice of appeal having been submitted, the registry of the court of appeal is to procure the records of the dispute from the registry of the court of first instance. The records are to be sent to the court of appeal without undue delay.

(2) Upon the appeal having been conclusively dealt with and terminated, the registry of the court of first instance is to return the records, together with a certified copy of the decision handed down by the appellate instance on fact and law.

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### **Chapter 2**

#### **Appeal on points of law**

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### **Section 542**

#### **Appeal on points of law as an available remedy**

(1) Subject to the following provisions, an appeal on points of law may be filed against the final judgments delivered by the appellate instance on fact and law.

(2) No appeal on points of law may be filed against rulings by which a decision was taken on the issuance, modification, or repeal of a seizure or an injunction. The same shall apply to any judgments regarding instances in which a party has been put into possession early in expropriation proceedings or procedures for the reallocation of land.

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### **Section 543**

#### **Admission to appeal**

(1) An appeal on points of law may be lodged only if:

1. The court of appeal has admitted its being lodged in the judgment, or
2. The court hearing the appeal on points of law has admitted its being lodged based on a complaint against the refusal to grant leave to appeal on points of law.

(2) An appeal on points of law is to be admitted if:

1. The legal matter is of fundamental significance, or

2. The further development of the law or the interests in ensuring uniform adjudication require a decision to be handed down by the court hearing the appeal on points of law.

The court hearing the appeal on points of law is bound to the admission of the appeal by the court of appeal.

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#### **Section 544**

##### **Complaint against denial of leave to appeal**

(1) Any denial of leave to appeal on points of law by the court of appeal is subject to the right to file a complaint against it (complaint against denial of leave to appeal). Such complaint is to be lodged with the court hearing the appeal on points of law within a statutory period of one (1) month following service of the fully worded ruling, at the latest, however, by the expiry of six (6) months after the judgment has been pronounced. An execution or certified copy of the ruling against which an appeal on points of law is to be lodged shall be submitted to the court along with the brief on appeal.

(2) A reasoning for the complaint is to be filed within two (2) months following service of the fully worded ruling, at the latest, however, by the expiry of seven (7) months after the judgment has been pronounced. Section 551 (2) fifth and sixth sentences shall apply mutatis mutandis. The reasoning must set out the grounds on which leave to file an appeal should be granted (section 543 (2)).

(3) The court hearing the appeal on points of law shall give the claimant's opponent in the appeal the opportunity to state his position.

(4) The court hearing the appeal on points of law shall rule on the complaint in a corresponding court order. The reasons on which the order is based shall be summarised briefly; such reasoning may be forgone where it would not contribute to clearing up the prerequisites based on which leave for filing an appeal on points of law is to be granted, or where the court finds for the party filing the complaint. The decision regarding the complaint is to be served upon the parties.

(5) If a complaint is lodged, this shall suspend the legal validity of the judgment. Section 719 subsections (2) and (3) shall apply mutatis mutandis. Once the court hearing the appeal on points of law refuses to comply with the appeal, the judgment will become final and binding.

(6) Insofar as the court finds for the party filing a complaint against the refusal to grant leave to appeal on points of law, the complaint procedure shall be continued as appellate proceedings on points of law. In such event, the complaint filed in proper form and in due time against denial of leave to appeal shall count as the filing of the appeal on points of law. Upon the decision being served on the parties, the period for submitting the reasoning for the appeal on points of law shall commence.

(7) Should the court of appeal have violated the claimant's right to be given an effective and fair legal hearing in a manner relevant to the decision, the court hearing the appeal on points of law may repeal the judgment contested, in derogation from subsection (6), in its order complying with the appeal, and may refer the legal dispute back to the court of appeal, for it to once again hear the case and to rule on it.

Footnote: Section 544: Regarding the application of this stipulation until December 31<sup>st</sup>, 2011 cf. Section 26 number 8 first sentence of the Introductory Law for the Code of Civil Procedure (Gesetz, betreffend die Einführung der Zivilprozessordnung, ZPOEG).

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#### **Section 545**

##### **Grounds for an appeal on points of law**

(1) An appeal on points of law may only be based on the reason that the contested decision is based on a violation of the law.

(2) An appeal on points of law may not be based on the fact that the court of first instance was wrong in assuming that it had or did not have jurisdiction.

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#### **Section 546** **Definition of the term “violation of the law”**

The law is violated where a legal norm has not been applied, or has not been applied properly.

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#### **Section 547** **Absolute grounds for an appeal on points of law**

A decision shall always be regarded to have been based on a violation of the law where:

1. The composition of the court of decision was not compliant with the relevant provisions;
2. A judge was involved in the decision who, by law, was prohibited from holding judicial office, unless this impediment has been asserted by a motion to recuse a judge without meeting with success;
3. A judge was involved in the decision although he had been recused for fear of bias and the motion to so recuse him had been declared justified;
4. A party to the proceedings had not been represented in accordance with the stipulations of the law, unless it had expressly or tacitly approved the litigation;
5. The decision has been given based on a hearing for oral argument in which the rules regarding the admission of the public to the proceedings were violated;
6. Contrary to the provisions of the present Code, the decision does not set out the reasons for the judgment.

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#### **Section 548** **Time limit for filing an appeal on points of law**

The period for submitting an appeal on points of law shall amount to one (1) month; this is a statutory period and shall begin upon the fully worded appellate judgment having been served, at the latest, however, upon the expiry of five (5) months of the judgment having been pronounced.

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#### **Section 549** **Filing an appeal on points of law**

(1) The appeal on points of law is filed by submitting the notice on appeal on points of law to the court hearing the appeal on points of law. The notice on appeal on points of law must include:

1. The reference number and designation of the judgment against which the appeal on points of law is being filed;
2. The declaration that an appeal on points of law is being filed against the said judgment.

Section 544 (6), second sentence, shall remain unaffected hereby.

(2) The general regulations regarding preparatory written pleadings are applicable also to notices on appeal on points of law.

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#### **Section 550** **Service of the notice on appeal on points of law**

(1) An execution or certified copy of the judgment being contested is to be enclosed with the notice on appeal on points of law, unless this has already been done pursuant to section 544 (1), third sentence.

(2) The notice on appeal on points of law is to be served on the opponent party.

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#### **Section 551** **Reasoning provided for the appeal on points of law**

(1) The appellant must provide reasoning for filing the appeal on points of law.

(2) Unless already set out in the brief on appeal on points of law, the reasoning for the appeal on points of law is to be submitted to the court hearing the appeal on points of law in a written pleading. The period for submitting the reasoning for the appeal on points of law shall amount to two (2) months. It shall commence upon the fully worded ruling having been served, at the latest, however, with the expiry of five (5) months upon the judgment having been pronounced. Section 544 (6), third sentence, shall remain unaffected hereby. Upon a corresponding petition having been filed, the presiding judge may extend the period, subject to this being consented to by the opponent. Should the opponent not grant his consent, the period may be extended by up to two (2) months provided that the presiding judge is satisfied, at his discretion and conviction, that this extension will not delay the legal dispute, or if the appellant demonstrates substantial grounds; if, within this period, it is not possible to grant the appellant the opportunity to inspect the court records of the dispute for a reasonable period of time, the presiding judge may extend the period, upon corresponding application being made, by up to two (2) months following the court records of the dispute having been sent.

(3) The reasoning for the appeal on points of law must include:

1. The declaration to which extent the judgment is being contested and a petition is being made for its repeal (petitions made in the appeal on points of law);
2. The grounds for the appeal on points of law, these being:
  - a) The specific designation of the circumstances from which the violation of the law is apparent;
  - b) Insofar as the appeal on points of law is based on the allegation that the law has been violated with regard to the proceedings: the designation of the facts that reflect this irregularity.

If the appeal on points of law has been admitted on the basis of a complaint against denial of leave to appeal, reference may be made, in providing the reasoning for the appeal on points of law, to the reasons cited in the complaint against denial of leave to appeal.

(4) Section 549 (2) and section 550 (2) shall apply mutatis mutandis to the reasoning for the appeal on points of law.

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## **Section 552**

### **Review of admissibility**

(1) The court hearing the appeal on points of law is to review ex officio whether the appeal on points of law as such is an available remedy, whether or not it has been filed in keeping with statutory requirements as to form and time, and whether or not the grounds for it have been provided. Should one of these requirements not have been met, the appeal on points of law is to be overruled as inadmissible.

(2) The decision may be given as a court order.

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## **Section 552a**

### **Court order denying leave to appeal**

The court hearing the appeal on points of law shall dismiss by unanimous decision the appeal on points of law admitted by the court of appeal if the court hearing the appeal on points of law is convinced that the prerequisites for admitting the appeal on points of law have not been met and that the appeal on points of law has no chance of success. Section 522 (2) second and third sentences hereof shall apply mutatis mutandis.

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## **Section 553**

### **Hearing date as determined by the court; time for entering an appearance**

(1) Where the appeal on points of law is not overruled as inadmissible by a court order and where it is not dismissed pursuant to section 552a, a hearing is to be scheduled for oral argument and this date is to be made known to the parties.

(2) Section 274 (3) shall apply mutatis mutandis to the period that must lapse between the time at which the hearing date is made known and the hearing itself.

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## **Section 554**

### **Cross appeal on points of law**

(1) The respondent in the appeal on points of law may join the appeal on points of law. This shall be effected by filing a notice of cross appeal on points of law with the court hearing the appeal on points of law.

(2) A cross appeal on points of law is an available remedy also if the respondent in the appeal on points of law has waived an appeal on points of law, if the time limit for filing an appeal on points of law has lapsed, or if the appeal on points of law has been dismissed. A cross appeal on points of law is to be declared prior to the expiry of one (1) month following service of the reasoning for the appeal on points of law.

(3) The grounds for the cross appeal on points of law must be set out in the notice of cross appeal. Section 549 (1), second sentence, and subsection (2) and sections 550 and 551 (3) shall apply mutatis mutandis.

(4) The cross appeal on points of law shall cease to be effective should the appeal on points of law be withdrawn, should it have been overruled or dismissed by a court order.

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### **Section 555**

#### **General procedural rules**

(1) Unless otherwise provided for in the present Chapter, the rules applying to the proceedings before the regional courts (Landgerichte) as courts of first instance are to be applied mutatis mutandis to the further proceedings. No conciliation hearing need be held.

(2) The stipulations of sections 348 to 350 are not to be applied.

(3) A judgment based on the defendant's acknowledgment shall be handed down only where the plaintiff has filed a separate petition to this effect.

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### **Section 556**

#### **Loss of the right to file objections**

Should a rule concerning the proceedings before the appellate instance on fact and law have been violated, this can no longer be objected to before the court hearing the appeal on points of law wherever, pursuant to the stipulations of section 295, the party has already lost its right to file objections in the proceedings before the appellate instance on fact and law.

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### **Section 557**

#### **Scope of the review performed upon an appeal having been filed on points of law**

(1) Solely the petitions filed by the parties shall be subject to review by the court hearing the appeal on points of law.

(2) Those decisions shall also be subject to assessment by the court hearing the appeal on points of law that preceded the final judgment, unless they are incontestable pursuant to the stipulations of the present Code.

(3) The court hearing the appeal on points of law is not bound to the grounds being asserted in the appeal on points of law. The judgment contested may only be reviewed for irregularities in the proceedings that are not to be taken into account ex officio if such irregularities have been objected to pursuant to sections 551 and 554 (3).

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### **Section 558**

#### **Provisionally enforceable judgments**

A judgment handed down by the court of appeal that is not, or not unconditionally, declared provisionally enforceable is to be declared provisionally enforceable by the court hearing the appeal on points of law delivering a corresponding court order upon having been petitioned to do so, unless

the judgment has been contested by the petitions submitted in the proceedings of the appeal on points of law. The decision may permissibly be taken only following expiry of the period set for submitting the reasoning for the appeal on points of law.

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### **Section 559**

#### **Limited review of the facts as established by the courts of prior instance**

(1) Only those submissions by the parties in the proceedings shall be subject to assessment by the court hearing the appeal on points of law that are apparent from the appellate judgment or the record of the session of the court. Moreover, solely those facts may be taken into account that have been set out in section 551 (3) number 2 lit. b.

(2) If the court of appeal has established that an allegation as to fact is true or untrue, this determination shall be binding upon the court hearing the appeal on points of law, unless it has been challenged by an admissible and justified petition that the court hearing the appeal on points of law review such determination.

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### **Section 560**

#### **Acts not open to review**

The decision of the court of appeal regarding the existence and the content of acts, on the violation of which the appeal on points of law pursuant to section 545 cannot be based, shall govern for the decision to be delivered in the appeal on points of law.

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### **Section 561**

#### **Denial of leave to appeal on points of law**

If the reasoning provided for the appellate judgment does indicate that the law has been violated, but the decision itself appears to be correct based on other grounds, leave to appeal on points of law is to be denied.

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### **Section 562**

#### **Reversal of the contested judgment**

(1) To the extent the appeal on points of law is deemed justified, the contested judgment is to be reversed.

(2) Where the judgment is reversed due to irregularities in the proceedings, the proceedings are to be reversed concurrently to the extent they are affected by such irregularities.

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### **Section 563**

#### **Referral to a court of lower instance; decision on the merits of the case by the court hearing the appeal on points of law**

(1) In the event the judgment is reversed, the matter is to be referred to the court of appeal, which is to hear it once again and is to decide on it. The matter may also be referred to another formation of the court of appeal.

(2) The court of appeal is to base its decision on the legal assessment on which the reversal of the judgment was based.

(3) However, the court hearing the appeal on points of law is to decide on the matter as such if the judgment is reversed only due to a violation of the law, in application of the law to the situation of fact as established, and if in light of said situation the matter is ready for the final decision to be taken.

(4) If it is conceivable, in the case set out hereinabove in subsection (3) for the decision to be delivered on the matter as such, that acts might be applied on the violation of which the appeal on points of law pursuant to section 545 cannot be based, the matter may be referred to the court of appeal, which is to hear it once again and is to decide on it.

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#### **Section 564**

##### **No reasoning for the decision in the case of objections due to irregularities in the proceedings**

No reasoning need be provided for the decision insofar as the court hearing the appeal on points of law is of the opinion that the objections as to irregularities in the proceedings are inconsequential. This shall not apply to objections pursuant to section 547.

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#### **Section 565**

##### **Rules of the appeal proceedings to be applied in appeals on points of law**

The rules applicable to the appeal regarding the contestability of default judgments, regarding the declaration of waiver of appellate remedies and their withdrawal, regarding the objections as to a complaint being inadmissible and regarding the demand for, transmission and return of the court records of the dispute, shall apply mutatis mutandis to the appeal on points of law. An appeal on points of law may be withdrawn without the consent of the respondent in the appeal on points of law only prior to the time at which the respondent in the appeal on points of law commences oral argument on the merits of the case.

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#### **Section 566**

##### **Immediate appeal on points of law in lieu of an appeal on facts and law**

(1) Upon corresponding application being made, an appeal on points of law may be filed directly with the competent court against final judgments delivered in proceedings before the court of first instance where an appeal against such judgments is admissible, thus passing over the appellate instance on fact and law (leap-frog appeal), if:

1. The opponent consents to passing over the appellate instance on fact and law; and
2. The court hearing the appeal on points of law allows the leap-frog appeal.

The petition for leave to file a leap-frog appeal as well as the declaration of consent shall be deemed to be a waiver of the appellate remedies provided by the appeal.

(2) Leave to appeal is to be petitioned by submitting a written pleading (brief for leave to appeal) to the court hearing the appeal on points of law. Sections 548 to 550 shall apply mutatis mutandis. The

petition must set out the prerequisites for granting leave to file a leap-frog appeal (subsection (4)). The written declaration of consent by the respondent is to be attached to the petition for leave to appeal; it may also be submitted by the attorney of record in the proceedings of first instance or, if the legal dispute in the proceedings before the court of first instance was none in which the parties had to be represented by counsel, it may be recorded with the registry for the files of the court.

(3) The petition for leave to file a leap-frog appeal shall suspend the legal validity of the judgment. Section 719 subsections (2) and (3) shall apply mutatis mutandis. The court registry of the court hearing the appeal on points of law is to demand, and shall do so without undue delay once the petition has been submitted, that the registry of the court of first instance provide it with the court records of the dispute.

(4) Leave to file a leap-frog appeal shall be granted only if:

1. The legal matter is of fundamental significance; or
2. The further development of the law or the interests in ensuring uniform adjudication require a decision by the court hearing the appeal on points of law.

The leap-frog appeal may not be based on irregularities in the proceedings.

(5) The court hearing the appeal on points of law shall decide on the petition for leave to file a leap-frog appeal by delivering a corresponding order. The order is to be served on the parties.

(6) Should the court refuse to comply with the petition for leave to appeal on points of law, the judgment shall become final and binding.

(7) Where leave is granted to file an appeal on points of law, the proceedings shall be continued as appellate proceedings on points of law. In this case, the petition for leave to appeal on points of law, submitted in proper form and in due time, shall be deemed to be the filing of the appeal on points of law. Upon the decision being served, the period for submission of the reasoning for the appeal on points of law shall commence.

(8) The further procedure is determined by the provisions applying to the appeal on points of law. Section 563 is to be applied subject to the proviso that the matter is referred to the court of first instance. If an appeal is filed against the subsequent decision of the court of first instance, the court of appeal is to base its decision on the legal assessment that serves as the basis for the reversal of the judgment by the court hearing the appeal on points of law.

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## **Chapter 3 Complaints**

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### **Title 1 Complaints subject to a time limit**

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#### **Section 567 Complaints subject to a time limit; cross appeal under a complaint**

(1) A complaint subject to a time limit may be filed against the decisions delivered by the local courts (Amtsgerichte) and regional courts (Landgerichte) in proceedings before them as courts of first instance if

1. This has been expressly determined by law; or
2. The decisions so being challenged did not require a hearing for oral argument and dismissed a petition concerning the proceedings.

(2) A complaint may be filed against decisions as to costs only if the subject matter of the appeal is in excess of 200 euros.

(3) The respondent in the complaint may join the complaint even in those cases in which he has waived filing a complaint, or the period within which such a complaint must be filed has lapsed. This joinder shall cease to be effective should the complaint be retracted or overruled as inadmissible.

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### **Section 568**

#### **Judge sitting alone as the court of decision**

The court hearing the complaint shall rule by one of its members acting as a judge sitting alone in cases in which the contested decision was delivered by a judge sitting alone or a senior judicial officer. The judge sitting alone shall transfer the proceedings to the court hearing the complaint for it to decide in the composition required by the stipulations of the Courts Constitution Act (Gerichtsverfassungsgesetz, GVG) if:

1. The matter is characterised by particular difficulties in fact or in law; or
2. The legal matter is of fundamental significance.

Appellate remedies may not be based on a transfer that has been made or has been failed to have been made.

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### **Section 569**

#### **Time limit and formal requirements**

(1) Unless any other period has been determined, the complaint subject to a time limit is to be filed within a statutory period of two (2) weeks with the court the decision of which is being contested, or with the court hearing the complaint. Unless determined otherwise, the statutory period shall commence running upon service of the decision, and at the latest upon expiry of five (5) months of the judgment having been pronounced. Should the requirements be met for an action for annulment or for an action for retrial of the case, the complaint may also be filed following expiry of the statutory period within the statutory periods applying for these actions.

(2) The complaint is filed by submitting a notice regarding the complaint on points of law. The brief regarding the complaint on points of law must designate the contested decision as well as the declaration that a complaint is being filed against this decision.

(3) The complaint may also be declared by recording it with the registry for the files of the court if:

1. The legal dispute in the proceedings before the court of first instance is not, or was not, to be pursued as proceedings in which the parties must be represented by counsel;
2. The complaint concerns assistance with court costs; or
3. The complaint is brought by a witness, an expert or a third party in the sense as defined by sections 142 and 144.

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**Section 570**  
**Suspensive effect; interim orders**

- (1) The complaint shall have suspensive effect only where it concerns an order of means of administrative coercion or other coercive measures.
- (2) The court or the presiding judge whose decision is being contested may suspend the enforcement of the decision.
- (3) The court hearing the complaint may issue an interim order prior to delivering its decision; in particular, it may suspend the enforcement of the contested decision.

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**Section 571**  
**Reasoning; extinction of the exercise of a right (preclusion); exceptions from the statutory requirement to be represented by an attorney**

- (1) The grounds for filing the complaint are to be provided.
- (2) The complaint may be based on new means of challenge or defence. It may not be based on the fact that the court of first instance was wrong in assuming that it had jurisdiction.
- (3) The presiding judge or the court hearing the complaint may set a period within which the means of challenge or defence are to be submitted to the court. If the means of challenge or defence are not submitted within this period, they are to be admitted only if the court holds, in its discretion and conviction, that admitting them would not delay the proceedings being dealt with and terminated, or if the party provides sufficient excuse for such delay. Should the court so require, the grounds ruling out culpability are to be demonstrated to the satisfaction of the court.
- (4) Should the court order that a written declaration be made, this may be recorded with the registry for the files of the court in all instances in which the complaint may be recorded with the registry for the files of the court (section 569 (3)).

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**Section 572**  
**Course of the complaint procedure**

- (1) Should the court or the presiding judge whose decision is being contested hold that the complaint is justified, they are to grant redress; in all other cases, the complaint is to be presented to the court hearing the complaint without undue delay. Section 318 shall remain unaffected hereby.
- (2) The court hearing the complaint is to review ex officio whether the complaint as such is an available remedy and whether or not it has been filed in keeping with statutory requirements as to form and time. Should one of these requirements not have been met, the complaint is to be overruled as inadmissible.
- (3) Should the court hearing the complaint hold that the complaint is justified, it may transfer the required order to the court or presiding judge who had delivered the decision giving rise to the complaint.
- (4) The decision as to the complaint shall be delivered by court order.

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### **Section 573** **Reminder as a legal remedy**

(1) A petition may be filed for a decision to be issued by the court against the decisions taken by the judge correspondingly delegated or requested, or against those taken by the records clerk of the court registry, within a statutory period of two (2) weeks (reminder). The reminder is to be filed in writing or is to be recorded with the registry for the files of the court. Section 569 (1) first and second sentences, subsection (2) and sections 570 and 572 shall apply mutatis mutandis.

(2) A complaint subject to a time limit may be lodged against the decision of the court delivered on the reminder in the proceedings before the court of first instance.

(3) The rule set out in subsection (1) shall also apply to the higher regional courts (Oberlandesgerichte, OLG) and the Federal Court of Justice (Bundesgerichtshof, BGH).

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### **Title 2** **Complaint on points of law**

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### **Section 574** **Complaint on points of law; cross appeal under a complaint on points of law**

(1) A complaint on points of law is an available remedy against a court order if:

1. This has been expressly determined in the law; or
2. The court hearing the complaint, the court of appeal, or the higher regional court (Oberlandesgericht, OLG) has granted leave to do so in its order in the proceedings before the court of first instance.

Section 542 (2) shall apply mutatis mutandis.

(2) In the cases provided for by subsection (1) number 1, the complaint on points of law shall be admissible only if:

1. The legal matter is of fundamental significance; or
2. The further development of the law or the interests in ensuring uniform adjudication requires a decision to be taken by the court hearing the complaint on points of law.

(3) In the cases provided for by subsection (1) number 2, leave to file a complaint on points of law shall be granted where the prerequisites of subsection (2) have been met. The court hearing the complaint on points of law shall be bound by such leave granted.

(4) The respondent of the complaint on points of law may join the complaint on points of law within a statutory period of one (1) month following service of the brief setting out the reasoning for the complaint on points of law by submitting the notice of cross appeal under a complaint on points of law with the court hearing the complaint on points of law, and may do so also in those cases in which it has waived a complaint on points of law, in which the period within which such a complaint on points of law must be filed has lapsed or in which no leave has been granted to file a complaint on points of law. The reasoning for filing a cross appeal under a complaint is to be provided in the notice of cross

appeal. The joinder shall cease to be effective where the complaint on points of law is retracted or overruled as inadmissible.

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### **Section 575**

#### **Time limit, formal requirements, and reasoning of the complaint on points of law**

(1) The complaint on points of law is to be filed within a statutory period of one (1) month following service of the order by submitting a notice on appeal under a complaint with the court hearing the complaint on points of law. The notice or brief regarding the complaint on points of law must include:

1. The designation of the decision against which the complaint on points of law is directed, and
2. The declaration that a complaint on points of law was filed against this decision.

An execution or certified copy of the contested decision is to be enclosed with the notice or brief regarding the complaint on points of law.

(2) Unless the notice regarding the complaint on points of law sets out its reasons, the grounds for filing the complaint on points of law are to be provided within a period of one (1) month. The period shall begin running upon service of the contested decision. Section 551 (2) fifth and sixth sentences hereof shall apply mutatis mutandis.

(3) The reasoning of the complaint on points of law must include:

1. The declaration as to the extent to which the decision of the court hearing the complaint or of the court of appeal is contested and its reversal is petitioned (petitions under the complaint on points of law);
2. In the cases provided for by section 574 (1) number 1, a presentation of the prerequisites for leave to be granted as set out in section 574 (2);
3. The grounds for the complaint on points of law, these being:
  - a) The specific designation of the circumstances from which the violation of the law is apparent;
  - b) Insofar as the complaint on points of law is based on the allegation that the law was violated with reference to the proceedings: the designation of the facts that reflect this irregularity.

(4) The general regulations governing preparatory written pleadings are to be applied also to the notice regarding the complaint on points of law and the brief setting out the reasoning for the complaint. The notice regarding the complaint on points of law and the brief setting out the reasoning for the complaint are to be served on the opponent party.

(5) Sections 541 and 570 subsections (1) and (3) shall apply mutatis mutandis.

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### **Section 576**

#### **Grounds for filing the complaint on points of law**

(1) The complaint on points of law may only be based on the fact that the decision is based on a violation of federal law or of a rule the territorial scope of which extends beyond the judicial district of a higher regional court (Oberlandesgericht, OLG).

(2) The complaint on points of law may not be based on the fact that the court of first instance was wrong in assuming that it had or did not have jurisdiction.

(3) Sections 546, 547, 556 and 560 shall apply mutatis mutandis.

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### **Section 577**

#### **Review of the complaint on points of law and decision**

(1) The court hearing the complaint on points of law is to review ex officio whether the complaint on points of law as such is an available remedy and whether or not it has been filed in keeping with statutory requirements as to form and time and whether reasoning was provided. Should one of these requirements not have been met, the complaint on points of law is to be overruled as inadmissible.

(2) Solely the petitions filed by the parties shall be subject to review by the court hearing the complaint on points of law. The court hearing the complaint on points of law is not bound to the grounds being asserted in the complaint on points of law. The decision contested in the proceedings may only be reviewed for irregularities in the proceedings that are not to be taken into account ex officio wherever such irregularities have been objected to pursuant to section 575 (3) and section 574 (4), second sentence, hereof. Section 559 shall apply mutatis mutandis.

(3) In cases in which the reasoning provided for the contested decision does indicate that the law has been violated, but the decision itself appears to be correct based on other grounds, leave to file a complaint on points of law is to be denied.

(4) Where the complaint on points of law is deemed justified, the contested decision is to be reversed and the matter is to be referred back for a new decision to be taken. Section 562 (2) shall apply mutatis mutandis. The matter may be referred to another formation of the court that has delivered the contested decision. The court to which the matter is referred is to base its decision on the legal assessment on which the reversal of the judgment is based.

(5) The court hearing the complaint on points of law is to decide on the matter as such if the decision is reversed only for a violation of the law, in application of the law to the situation of fact as established, and if in light of said situation the matter is ready for the final decision to be taken. Section 563 (4) shall apply mutatis mutandis.

(6) The decision as to the complaint on points of law shall be delivered by court order. Section 564 shall apply mutatis mutandis. The requirement to provide reasoning may be forgone in all other regards if this would not be suited to contribute to clearing up fundamental legal issues, to the further development of the law, or to ensuring uniform adjudication.

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### **Book 4**

#### **Reopening of proceedings**

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### **Section 578**

#### **Types of reopening proceedings**

(1) Proceedings terminated by a final judgment that has become res judicata may be reopened by an action for annulment and by an action for retrial of the case.

(2) Where both actions are brought by one and the same party, or by different parties, the hearing and decision as to the action for retrial of the case is to be suspended until the decision on the action for annulment has become final and binding.

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### **Section 579**

#### **Action for annulment**

(1) An action for annulment may be brought:

1. Where the composition of the court of decision was not compliant with the relevant provisions;
2. Where a judge was involved in the decision who, by law, was prohibited from holding judicial office, unless this impediment had been asserted by a motion to recuse a judge or by filing appellate remedies without meeting with success;
3. Where a judge was involved in the decision although he had been recused for fear of bias and the motion to so recuse him had been declared justified;
4. Where a party to the proceedings had not been represented in accordance with the stipulations of the law, unless it had expressly or tacitly approved the litigation.

(2) No complaint may be filed in the cases set out under numbers 1 and 3 if it was possible to enforce such annulment by appellate remedies.

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### **Section 580**

#### **Action for retrial of the case**

An action for retrial of the case may be brought:

1. Where the opponent, by swearing an oath regarding his testimony, on which latter the judgment had been based, has intentionally or negligently committed perjury;
2. Where a record or document on which the judgment was based had been prepared based on misrepresentations of fact or had been falsified;
3. Where, in a testimony or report on which the judgment was based, the witness or experts violated their obligation to tell the truth, such violation being liable to prosecution;
4. Where the judgment was obtained by the representative of the party or its opponent or the opponent's representative by a criminal offence committed in connection with the legal dispute;
5. Where a judge contributed to the judgment who, in connection with the legal dispute, violated his official duties vis-à-vis the party, such violation being liable to prosecution;
6. Where judgment by a court of general jurisdiction, by a former special court, or by an administrative court, on which the judgment had been based, is reversed by another judgment that has entered into force;
7. Where the party

a) Finds, or is put in the position to avail itself of, a judgment that was handed down in the same matter and that has become final and binding earlier, or where it

b) Finds, or is put in the position to avail itself of, another record or document that would have resulted in a decision more favourable to that party's interests;

8. Where the European Court of Human Rights has established that the European Convention for the Protection of Human Rights and Fundamental Freedoms or its protocols have been violated, and where the judgment is based on this violation.

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### **Section 581**

#### **Special prerequisites to be met by an action for retrial of the case**

(1) In the cases set out in the above section in numbers 1 to 5, an action for retrial of the case may be brought only if a final and binding conviction has been issued as a result of the criminal offence, or if it is not possible to initiate or implement criminal proceedings for other reasons than the lack of evidence.

(2) Evidence of the facts justifying the action for retrial of the case cannot be provided by examination of a party.

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### **Section 582**

#### **Auxiliary nature of an action for retrial of the case**

An action for retrial of the case may admissibly be brought only if the party, through no fault of its own, was unable to assert the cause for retrial of the case in the earlier proceedings, in particular by filing a protest or an appeal, or by joining an appeal.

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### **Section 583**

#### **Prior decisions**

The actions for annulment or retrial may assert causes for rescission that affect a decision delivered by the court of the same or lower instance prior to the judgment being contested, provided that the contested judgment is based on this decision.

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### **Section 584**

#### **Exclusive jurisdiction for actions for annulment and actions for retrial of the case**

(1) For these actions, exclusive jurisdiction shall lie with: the court entering the judgment in the proceedings before the court of first instance; the court of appeal if the judgment contested, or even only one of several judgments contested, was delivered by the court of appeal, or if a judgment delivered by a court hearing the appeal on points of law is contested based on the stipulations of section 580 numbers 1 to 3, 6, and 7; the court hearing the appeal on points of law if a judgment delivered by a court hearing the appeal on points of law is contested based on the stipulations of sections 579, 580 numbers 4 and 5.

(2) Where the actions are directed against a writ of execution, they shall be brought exclusively with the court that would have been the forum for the litigation as such.

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## **Section 585**

### **General procedural rules**

Unless otherwise provided for by the present Code, the general regulations shall apply mutatis mutandis to bringing proceedings in the court and to the further proceedings.

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## **Section 586**

### **Period for filing an action**

- (1) The actions are to be filed prior to expiry of the statutory period of one (1) month.
- (2) The period shall commence running on that day on which the party has become aware of the cause for rescission, but not prior to the judgment having become final and binding. Once five (5) years have lapsed, counting from the date on which the judgment has become res judicata, actions shall no longer be an available remedy.
- (3) The stipulations of the above subsection are not to be applied to an action for annulment due to lack of representation; the period for bringing an action shall commence on the day on which the judgment has been served on the party and, where the party lacks the capacity to sue and be sued, on which it has been served on its legal representative.
- (4) The rule set out in subsection (2), second sentence, is not to be applied to any actions for retrial of a case as provided for by section 580 number 8.

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## **Section 587**

### **Statement of claim**

The complaint must set out the reference number and designation of the judgment against which the action for annulment or action for retrial of the case is directed, as well as the declaration as to which of these actions are being brought.

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## **Section 588**

### **Content of the statement of claim**

- (1) As a preparatory written pleading, the complaint is to set out:
  1. The designation of the cause for rescission;
  2. The evidence for the facts forming the cause and showing that the statutory period has been adhered to;
  3. The declaration as to the extent to which the remediation of the contested judgment is being sought, and which other decision in the main action is being petitioned.
- (2) The original versions or copies of the records or documents on which an action for retrial of the case is based are to be enclosed with the written pleading by which the action is brought. Should the records or documents not be at hand to the plaintiff, he is to declare which petition he intends to file for the procurement of such records or documents.

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### **Section 589**

#### **Review of admissibility**

(1) The court is to review ex officio whether the complaint is admissible as such and whether it has been brought in keeping with statutory requirements as to form and time. Should one of these requirements not have been met, the complaint shall be overruled as inadmissible.

(2) The facts showing that the complaint is being brought prior to the statutory period having lapsed are to be demonstrated to the satisfaction of the court.

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### **Section 590**

#### **New hearing**

(1) Insofar as it is affected by the cause for rescission, the main action shall be heard once again.

(2) The court may direct that the cause for reopening the proceedings, and the admissibility of so reopening them, be heard and decided on prior to the hearing regarding the main action. In such event, the hearing regarding the main action is to be deemed a continuation of the hearing regarding the cause for the reopening of the proceedings and the admissibility of so reopening them.

(3) The court hearing the appeal on points of law that is responsible for the actions filed is to deal with and conclude the hearing at which the cause for reopening the proceedings and the admissibility of so reopening them are addressed, and shall do so also in those cases in which such conclusion of the hearing depends on the determination and legal appraisal of disputed facts.

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### **Section 591**

#### **Appellate remedies**

Appellate remedies are admissible insofar as they may at all be filed against the decisions delivered by the courts dealing with the actions.

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### **Book 5**

#### **Proceedings on claims arising from a deed, in which solely documentary evidence is submitted, and proceedings on claims arising from a bill of exchange**

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### **Section 592**

#### **Admissibility**

A claim that is brought regarding the payment of a specific amount of money, or the performance of a determined amount of other fungible things that in business dealings are customarily specified by number, measure or weight, or the performance of securities, may be asserted in proceedings in which plaintiffs rely entirely on documentary evidence, provided that the entirety of all facts required to justify the claim can be proven by records or documents. A claim arising from a mortgage, a charge on land, an annuity charge on land, or a maritime mortgage shall be deemed to be a claim that is brought regarding the payment of an amount of money.

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**Section 593**  
**Content of the statement of claim; records and documents**

- (1) The statement of claim must declare that the action is being brought in proceedings in which plaintiffs rely entirely on documentary evidence.
- (2) Copies of the records or documents are to be enclosed with the statement of claim or a preparatory written pleading. In the latter case, the period lapsing between the service of the written pleading and the hearing scheduled for oral argument must be equal to the time for entering an appearance.

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**Section 594**  
**(repealed)**

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**Section 595**  
**No countercharges; evidence**

- (1) No countercharges may admissibly be brought.
- (2) Solely records or documents and the petition for examination of a party shall be admissible as evidence regarding the authenticity or falsity of a record or document, as well as other facts besides those mentioned in section 592.
- (3) Documentary evidence may be provided only by producing the records or documents.

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**Section 596**  
**Desisting from proceedings in which plaintiffs rely entirely on documentary evidence**

Without this requiring the defendant's consent, the plaintiff may desist, until the close of the hearing for oral argument, from pursuing proceedings in which plaintiffs rely entirely on documentary evidence, doing so such that the legal dispute continues to be pending before the courts of general jurisdiction.

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**Section 597**  
**Dismissal of the action**

- (1) Insofar as the claim being asserted in the action appears to be without justification, either in and of itself or as the result of an objection lodged by the defendant, the plaintiff's claim is to be dismissed.
- (2) Wherever proceedings in which plaintiffs rely entirely on documentary evidence are not an available remedy, and in particular where evidence has not been provided in line with the plaintiff's obligation to submit the evidence admissible in proceedings in which plaintiffs rely entirely on documentary evidence, or where such documentary evidence has not been provided completely, the action shall be dismissed as not being an available remedy in the type of proceedings selected, even if the defendant has failed to make an appearance in the hearing for oral argument or even if the defendant has opposed the complaint based merely on objections that are without justification in legal

terms or that are not an available remedy in proceedings in which plaintiffs rely entirely on documentary evidence.

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### **Section 598** **Refusal to admit objections**

Objections lodged by the defendant are to be dismissed as not being an available remedy in proceedings in which plaintiffs rely entirely on documentary evidence should the defendant have failed to provide the evidence in keeping with its obligations, by submitting the evidence admissible in proceedings in which plaintiffs rely entirely on documentary evidence, or where such documentary evidence has not been provided completely.

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### **Section 599** **Judgment subject to a reservation of rights**

(1) The defendant opposing the claim being brought is to be granted the right to exercise his rights in all cases in which sentence is passed upon him.

(2) If the judgment does not set out a reservation of rights, an amendment of the judgment pursuant to the stipulations of section 321 may be applied for.

(3) The judgment delivered subject to a reservation of rights is to be regarded as a final judgment for the purposes of appellate remedies and compulsory enforcement.

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### **Section 600** **Subsequent proceedings**

(1) Where the defendant is granted the right to exercise his rights, the legal dispute shall remain pending before the courts of general jurisdiction.

(2) To the extent the plaintiff's claim proves to have been unfounded in these proceedings, the stipulations of section 302 (4) second to fourth sentences hereof shall apply.

(3) Should a party fail to make an appearance in these proceedings, the rules regarding default judgments shall apply mutatis mutandis.

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### **Section 601** **(repealed)**

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### **Section 602** **Proceedings on claims arising from a bill of exchange**

If claims are asserted, in proceedings in which plaintiffs rely entirely on documentary evidence, that are based on bills of exchange in the sense as defined by the Act on Bills of Exchange and Promissory Notes (Wechselgesetz) (proceedings on claims arising from a bill of exchange), the special rules set out hereinbelow are to be applied.

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### **Section 603 Venue**

(1) An action arising from a bill of exchange may be filed both with the court of the place of payment and with the court in the jurisdiction of which the defendant has his general venue.

(2) Should several parties liable on a bill of exchange be jointly sued, any court shall have jurisdiction, besides the court of the place of payment, in the jurisdiction of which one of the defendants has his general venue.

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### **Section 604 Content of the statement of claim; summons period**

(1) The statement of claim must set out the declaration that the complaint is being filed in proceedings on claims arising from a bill of exchange.

(2) The period indicated in the summons as the period lapsing between service of same and the date of the hearing (summons periods) shall amount to at least twenty-four (24) hours where the summons is served at the location at which the court hearing the case has its seat. In proceedings in which the parties must be represented by counsel, the summons period shall amount to at least three (3) days if the summons is served at a different location situate in the judicial district of the court hearing the case, or of which a part is located in the court's judicial district.

(3) Before the courts of higher instance, the summons period shall amount to at least twenty-four (24) hours if the notice or brief on appeal, or the notice or brief on appeal on points of law, or the summons is served at the location at which the court of higher instance has its seat. Where service is effected at another location that is situate, as a whole or in part, in the district of the regional court (Landgericht) in which the court of higher instance has its seat, the summons period shall amount to at least three (3) days; it shall amount to at least one (1) week if service is effected elsewhere in Germany.

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### **Section 605 Regulations governing the submission of evidence**

(1) Unless protest must be lodged in due time in order to preserve the claim under the bill of exchange, the petition for examination of a party is admissible as evidence regarding the production of a bill of exchange.

(2) For an ancillary claim to be considered, it suffices for it to have been demonstrated to the satisfaction of the court.

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### **Section 605a Proceedings on claims asserted concerning the payment of a cheque**

Where, in proceedings in which plaintiffs rely entirely on documentary evidence, claims are asserted that are based on cheques in the sense as defined by the Law on Cheques (Scheckgesetz) (proceedings on claims asserted concerning the payment of a cheque), sections 602 to 605 shall apply mutatis mutandis.

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**Sections 606 to 687  
(repealed)**

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**Book 7  
Summary proceedings for a payment order**

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**Section 688  
Admissibility**

(1) Upon corresponding application being made by the claimant regarding a claim concerning the payment of a specific amount of money in Euros, a payment order is to be issued.

(2) No summary proceedings for a payment order may be brought:

1. For claims that an entrepreneur has under an agreement pursuant to sections 491 to 509 of the Civil Code (Bürgerliches Gesetzbuch, BGB), if the effective annual rate of interest to be provided for in accordance with section 492 (2) of the Civil Code is in excess, by more than twelve (12) percentage points, of the base rate of interest, pursuant to section 247 of the Civil Code, applicable at the time the agreement is concluded;
2. Where the assertion of the claim is dependent on consideration, performance of which is as yet outstanding;
3. Where the payment order would have to be served by publication of a notice.

(3) Should the payment order have to be served abroad, the summary proceedings for a payment order may be brought only to the extent provided for by the Act on the Recognition and Execution of Judgments by Way of Enforcement (Anerkennungs- und Vollstreckungsausführungsgesetz, AVAG) of 19 February 2001 (published in Federal Law Gazette (Bundesgesetzblatt, BGBl) I page 288).

(4) The stipulations of Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure (Official Journal L 399 page 1) shall remain unaffected hereby. Sections 1087 to 1096 shall apply regarding its implementation.

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**Section 689  
Jurisdiction; automatic processing**

(1) The summary proceedings for a payment order are implemented by the local courts (Amtsgerichte). They may admissibly be implemented using automatic processing systems. Where this processing method is used, petitions received are to have been dealt with at the latest on the working day following the day of their receipt. The records may be kept as electronic files (section 298a).

(2) That local court (Amtsgericht, AG) shall have exclusive jurisdiction with which the claimant has his general venue. Should claimants have no general venue in Germany, the local court of Wedding in Berlin shall have exclusive jurisdiction. The first and second sentences hereof shall also apply if other rules determine another exclusive place of jurisdiction.

(3) Should this serve the prompter and more effective processing of such orders, the Land governments are authorised to assign summary proceedings for a payment order to a local court acting for the districts of several local courts, doing so by statutory instrument. The assignment may be limited to those summary proceedings for a payment order that are processed automatically. The Land governments may confer the authorisation by statutory instrument upon the Land departments of justice. Several Länder may agree on the jurisdiction of a local court across the boundaries of their respective territories.

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### **Section 690**

#### **Petition for a payment order**

(1) The petition must be for the issuance of a payment order and must set out:

1. The designation of the parties, their legal representatives, and their attorneys of record;
2. The designation of the court with which the petition was filed;
3. The designation of the claim, with the performance demanded being specified exactly; the principal claims and ancillary claims are to be designated separately and individually, claims under agreements pursuant to sections 491 to 509 of the Civil Code (Bürgerliches Gesetzbuch, BGB) are to be designated also by citing the date on which they were concluded and the effective annual rate of interest to be provided for in accordance with section 492 (2) of the Civil Code;
4. The declaration that the claim is not dependent on consideration, or that such consideration has been provided;
5. The designation of the court having jurisdiction for legal proceedings determining whether or not a claim is justified.

(2) The petition must be signed by hand.

(3) The petition may be transmitted in a format that is merely machine-readable if the court deems this format to be suited for its automatic processing systems. Where the petition is filed by an attorney or a person registered pursuant to section 10 (1), first sentence, number 1 of the Legal Services Act (Rechtsdienstleistungsgesetz, RDG), exclusively this form of filing a petition shall be admissible. The petition need not be signed by hand if it is otherwise warranted that the petition is not being transmitted without this having been intended by the claimant.

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### **Section 691**

#### **Dismissal of the petition for a payment order**

(1) The petition for a payment order shall be dismissed:

1. If it does not comply with the stipulations of sections 688, 689, 690, 703c (2);
2. If the payment order cannot be issued for reasons given in only a part of the claim.

Prior to such dismissal, the claimant is to be heard.

(2) If service of the payment order is to be made in order to comply with a deadline, or to have the period of limitations begin anew, or to have it extended pursuant to section 204 of the Civil Code (Bürgerliches Gesetzbuch, BGB), the receipt or the filing of the corresponding petition for issuance of

the payment order shall have this effect provided an action is brought within one (1) month of the day on which the dismissal of the petition has been served and this is served in the near future.

(3) A complaint subject to a time limit may be lodged against the dismissal if the petition was transmitted in a form that is merely machine-readable and was dismissed, with the court citing as its reason for the dismissal that it did not deem this format to be suited for its automatic processing systems. In all other regards, decisions delivered pursuant to subsection (1) are incontestable.

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## **Section 692**

### **Payment order**

(1) The payment order shall set out:

1. The requirements of the petition as designated in section 690 (1) numbers 1 to 5;
2. The notice as to the court not having reviewed whether or not the claimant is entitled to the claim being enforced;
3. The demand to settle the account for the debt claimed, along with the interest demanded thereon and the amount of the costs designated, and to do so within two (2) weeks of the payment order having been served, insofar as the claim being asserted is deemed justified, or to communicate to the court whether the claim being asserted is opposed and in which scope this is being done;
4. The notice that a writ of execution may be issued that corresponds to the payment order, based on which the claimant may pursue compulsory enforcement of his claim should the respondent under the claim not have lodged an opposition prior to the time limit having lapsed;
5. In the event that forms have been introduced: the notice that any opposition shall be lodged using a form of the type enclosed, which is available from any local court (Amtsgericht, AG) and can be completed there;
6. In the event of an opposition being lodged: advance notice specifying the court that is assigned to the matter, with the note that this court reserves the right to review whether or not it has jurisdiction.

(2) A corresponding stamp placed on the document or an electronic signature shall be deemed compliant with this rule instead of a signature by hand.

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## **Section 693**

### **Service of the payment order**

(1) The payment order is served on the respondent under the claim.

(2) The court registry shall inform the claimant of the fact that the payment order has been served.

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## **Section 694**

### **Lodging an opposition against the payment order**

(1) The respondent under the claim may lodge an opposition in writing against a claim, or a part thereof, with the court that has delivered the payment order for as long as no writ of execution has been ordered.

(2) An opposition lodged late shall be treated as a protest. This shall be communicated to the respondent under the claim who has lodged the opposition.

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### **Section 695**

#### **Notice of opposition; copies**

The court is to inform the claimant of the opposition and of the point in time at which it was lodged. Where the summary proceedings for a payment order are not processed automatically, the respondent under the claim shall submit the required number of copies along with the opposition.

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### **Section 696**

#### **Proceedings upon an opposition having been lodged**

(1) If an opposition is lodged in due time, and if a party applies for legal proceedings to be implemented that are to determine whether or not a claim is justified, the court that delivered the payment order will assign the legal dispute ex officio to the court that has been designated in the payment order pursuant to section 692 (1) number 1, provided that the parties to the dispute concur in requesting that the matter be so assigned to a different court. The petition may be included in the petition for issuance of the payment order. The assignment of the matter to a different court shall be communicated to the parties; it is not contestable. Upon the court files being received by the court to which the legal dispute has been assigned, the legal dispute shall be deemed to be pending with that court. Section 281 (3), first sentence, hereof shall apply mutatis mutandis.

(2) Should the summary proceedings for a payment order have been processed automatically, a hard-copy printout of the files prepared automatically shall take the stead of the files unless the files are transmitted electronically. The rules regarding the evidentiary value of public records and documents shall apply mutatis mutandis to this printout. Section 298 shall not apply.

(3) The dispute shall be deemed to have become pending upon the payment order having been served, provided that the dispute was assigned to another court in due time after the opposition was lodged.

(4) The petition for the implementation of the legal proceedings determining whether or not a claim is justified may be withdrawn until the time at which the respondent is to be first heard on the merits of the case. Such withdrawal may be recorded with the registry for the files of the court. Upon the petition so being withdrawn, the dispute is to be regarded as not being pending.

(5) The court to which the legal dispute has been assigned is not bound thereby in terms of its jurisdiction.

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### **Section 697**

#### **Initiation of litigation**

(1) The court registry of the court to which the dispute was transferred is to direct without undue delay that the claimant provide the reasons on which he is basing his claim within two (2) weeks in a form corresponding to the statement of claim. Section 270 second sentence shall apply mutatis mutandis.

(2) Upon receipt of the brief substantiating the claim, the ensuing procedure shall correspond to that pursued upon receipt of an action. A time limit may also be set for the submission of a written statement of defence in the preliminary proceedings conducted in writing pursuant to section 276, such period commencing on the date on which the brief substantiating the claim is served.

(3) Where the brief substantiating the claim is not received by the court in due time, and until it is received by the court, a hearing for oral argument shall be scheduled only upon a corresponding application being made by the respondent under the claim. In determining the date of a hearing by the court, the presiding judge shall set a time limit within which the claimant is to substantiate his claim; section 296 subsections (1) and (4) shall apply mutatis mutandis.

(4) The respondent under the claim may retract his opposition until the time at which the respondent is to be first heard on the merits of the case, but may not do so after a default judgment has been delivered against him. The fact that the opposition has been retracted may be recorded with the registry for the files of the court.

(5) In creating a judgment in the abridged form pursuant to section 313b (2), section 317 (5), the payment order may take the stead of the statement of claim. If the summary proceedings for a payment order have been processed automatically, the statement of claim shall be replaced by the hard-copy printout of the file.

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### **Section 698**

#### **Transfer of the proceedings within the same court**

The rules governing the transfer of proceedings shall apply mutatis mutandis in the event that the summary proceedings for a payment order and the legal proceedings determining whether or not a claim is justified are being pursued within one and the same court.

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### **Section 699**

#### **Writ of execution**

(1) Upon a corresponding petition being filed, the court shall deliver a writ of execution based on the payment order unless the respondent under the claim has lodged an opposition in due time. The petition may not be filed prior to expiry of the period for lodging an opposition; it is to set out the declaration as to whether or not any payments have been made as a result of the payment order and if so, which these were; section 690 (3) first and third sentences shall apply mutatis mutandis. Should the legal dispute have already been transferred to another court, this court shall deliver the writ of execution.

(2) Insofar as the summary proceedings for a payment order are not processed automatically, the writ of execution may be set out on the payment order.

(3) The writ of execution shall include the costs of the proceedings incurred thus far. The claimant needs to compute the costs only if the summary proceedings for a payment order are not processed automatically; in all other cases the information required for automatic processing shall suffice.

(4) The writ of execution shall be served ex officio on the respondent under the claim unless the claimant has applied that it be transmitted to him for service on the respondent in keeping with the principle of party initiative in proceedings. In these cases, the writ of execution is transmitted to the claimant for him to perform service, and the court registry shall not effect such service. Should the court responsible for the summary proceedings for a payment order permit service to be effected by publication, the notification pursuant to section 186 (2) second and third sentences shall be hung on the court's bulletin board or published in the electronic information system of the court designated in the payment order pursuant to section 692 (1) number 1.

(5) The instruction pursuant to section 232 shall be communicated to the respondent in writing together with the writ of execution when the same is served on the respondent.

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## **Section 700**

### **Protest against the writ of execution**

(1) The writ of execution is equivalent to a default judgment declared provisionally enforceable.

(2) The dispute is deemed to have become pending upon service of the payment order.

(3) Should a protest be filed, the court delivering the writ of execution shall transfer the legal dispute ex officio to that court that has been designated in the payment order pursuant to section 692 (1) number 1, and where the parties to the dispute concur in requesting the transfer to another court, it shall transfer the legal dispute to that court. Section 696 (1) third to fifth sentences, subsections (2) and (5), section 697 subsections (1) and (4), section 698 shall apply mutatis mutandis. Section 340 (3) shall not be applied.

(4) Upon receipt of the brief substantiating the claim, the ensuing procedure shall correspond to that pursued upon receipt of an action. Once the brief substantiating the claim is received, the ensuing procedure shall be as in the case of a statement of claim being received, unless the protest is overruled as being inadmissible. Section 276 (1) first and third sentences and subsection (2) shall not be applied.

(5) Should the brief substantiating the claim not be received within the period set by the court registry, and should the protest not be overruled as being inadmissible, the presiding judge shall schedule a hearing without undue delay; section 697 (3), second sentence, shall apply mutatis mutandis.

(6) Pursuant to section 345, the protest may be overruled only if the prerequisites for a default judgment to be handed down as set out in section 331 subsections (1) and (2) first clause of the sentence have been met; insofar as these prerequisites have not been met, the writ of execution shall be repealed.

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## **Section 701**

### **Payment order ceases to have effect**

Where no opposition has been lodged, and where the claimant has not petitioned a writ of execution to be issued within a period of six (6) months beginning on the day the payment order is served, the payment order shall cease to be effective. The same shall apply to the case in which a petition for the writ of execution has been filed in due time, but the petition has been dismissed.

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## **Section 702**

### **Form of petitions and declarations**

(1) In summary proceedings for a payment order, the petitions and declarations may be filed with the records clerk of the court registry. Insofar as forms have been introduced, they shall be completed; the records clerk will note that he has recorded the petition or the declaration, providing the name of the court and the date on which he did so. If forms have not been introduced, it is not necessary to prepare a record of a petition for the issuance of a payment order or of a writ of execution with the court responsible for the summary proceedings for a payment order.

(2) The petition for issuance of a payment order or of a writ of execution is not communicated to the respondent under the claim.

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### **Section 703**

#### **No proof of the power of attorney**

It is not necessary to provide proof of a power of attorney having been granted in summary proceedings for a payment order. Anyone filing a petition or a legal remedy as an attorney-in-fact is to assure the court that he has been duly authorised.

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### **Section 703a**

#### **Summary proceedings for a payment order under a deed, a bill of exchange, or a cheque**

(1) Should the petition by the claimant seek to obtain the issuance of a court order to pay debts under a deed, a bill of exchange, or a cheque, the payment order is designated as a court order to pay debts under a deed, a bill of exchange, or a cheque.

(2) The following special rules shall apply to summary proceedings for a payment order under a deed, a bill of exchange, or a cheque:

1. The designation as court order to pay debts under a deed, a bill of exchange or a cheque shall have the effect of the dispute becoming pending, if an opposition is lodged in due time, in the proceedings on claims arising from a deed, from a bill of exchange, or on claims asserted concerning the payment of a cheque;
2. The records or documents shall be designated in the petition for issuance of the payment order and in the payment order; where the matter is to be transferred to the court hearing the dispute, the original versions or copies of the records or documents must be enclosed with the brief substantiating the claim;
3. In summary proceedings for a payment order, the question of whether or not the type of proceedings is an available remedy is not to be reviewed;
4. If the opposition is limited to the petition that the defendant be granted the right to exercise his rights, the writ of execution is to be delivered subject to this reservation. The rule set out in section 600 shall apply mutatis mutandis to the further procedure.

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### **Section 703b**

#### **Special regulations for automatic processing**

(1) In the event of automatic processing systems being used, orders, rulings, execution copies, and court certificates of enforceability will be furnished with the court seal; no signature is required.

(2) The Federal Minister of Justice is authorised to provide for the course of proceedings such provision being subject to approval by the Bundesrat and being made by statutory instrument, insofar as this is required to ensure uniform automatic processing of the summary proceedings for a payment order (progress schedule for the proceedings).

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### **Section 703c**

#### **Forms; introduction of automatic processing**

(1) The Federal Minister of Justice is authorised to introduce forms in the interests of simplifying the summary proceedings for a payment order and in order to protect the party being laid claim to, such forms being subject to approval by the Bundesrat and being made by statutory instrument. Different forms may be introduced for:

1. Summary proceedings for a payment order performed by courts using automatic processing systems;
2. Summary proceedings for a payment order performed by courts that do not use automatic processing systems;
3. Summary proceedings for a payment order in which the payment order is to be served abroad;
4. Summary proceedings for a payment order in which the payment order is to be served in accordance with Article 32 of the Supplementary Agreement amending the NATO Status of Forces Agreement of 3 August 1959 (published in the Federal Law Gazette (Bundesgesetzblatt, BGBl.) 1961 II page 1183, citation on page 1218).

(2) Insofar as forms have been introduced pursuant to subsection (1) for petitions and declarations filed by the parties, the parties to the dispute must use them.

(3) The Land governments shall determine the point in time, by statutory instrument, at which the automatic processing system for the summary proceedings for a payment order is to be introduced at any given local court (Amtsgericht, AG); they may confer the authorisation upon the Land departments of justice by statutory instrument.

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### **Section 703d**

#### **Rules where respondents have no general venue in Germany**

(1) If the respondent has no general venue in Germany, the special rules set out hereinbelow shall apply.

(2) That local court (Amtsgericht, AG) shall have jurisdiction for the summary proceedings for a payment order that would be the forum for the legal proceedings determining whether or not a claim is justified if the local courts had unlimited competence *ratione materiae* in the proceedings before the court of first instance. Section 689 (3) shall apply *mutatis mutandis*.

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### **Book 8**

#### **Compulsory enforcement**

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### **Chapter 1**

#### **General regulations**

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### **Section 704**

#### **Enforceable final judgments**

Compulsory enforcement may be pursued based on final judgments that have become final and binding, or that have been declared provisionally enforceable.

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### **Section 705**

#### **Formal legal validity**

Judgments shall not attain legal validity prior to expiry of the period determined for the lodgment of the admissible legal remedy or of the admissible protest. The legal validity shall be suspended in all cases in which the legal remedy or the protest is lodged in due time.

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### **Section 706**

#### **Certificate as to a judgment having attained legal force and certificate as to the statutory period**

(1) Certifications that judgments have become unappealable are to be issued by the registry of the court of first instance based on the court records of the dispute and, for as long as the legal dispute is pending at a higher level of jurisdiction, they are to be issued by the registry of the court of that instance.

(2) To the extent the issuance of the certification depends on no legal remedy having been lodged against the judgment, the registry of the court of first instance shall procure, from the registry of the court having jurisdiction for the legal remedy, a notice in text form (a readable statement that is permanently valid without a signature having been applied) that until the expiry of the statutory period, no notice or brief regarding a legal remedy had been lodged. The registry of the court hearing the appeal on points of law need not communicate that no petition for leave to be granted to file an appeal on points of law pursuant to section 566 has been filed.

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### **Section 707**

#### **Temporary stay of compulsory enforcement**

(1) If a petition is filed for the restoration of the status quo ante or for proceedings to be reopened, or if an objection as provided for by section 321a is lodged, or if the legal dispute is continued following the pronouncement of a judgment subject to a reservation of rights, the court may direct, upon corresponding application being made, that compulsory enforcement be temporarily stayed, against or without provision of security, or that it be pursued only against the provision of security, and that the enforcement measures are to be revoked against provision of security. Compulsory enforcement may be discontinued without any security being provided only if it is demonstrated to the satisfaction of the court that the debtor is unable to provide security and that the enforcement would entail a disadvantage that it is impossible to compensate or remedy.

(2) The decision is delivered by a court order. The court order is incontestable.

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### **Section 708**

#### **Provisionally enforceable judgments delivered without security being provided**

The following are to be declared provisionally enforceable without any provision of security:

1. Judgments delivered based on an acknowledgment or a waiver;

2. Default judgments and judgments handed down on the basis of the record as it stands against the party failing to appear at the hearing pursuant to section 331a;
3. Judgments by which the protest was overruled as inadmissible pursuant to section 341;
4. Judgments delivered in proceedings on claims arising from a deed, or from a bill of exchange, or in proceedings on claims asserted concerning the payment of a cheque;
5. Judgments declaring that a judgment subject to a reservation of rights delivered in proceedings on claims arising from a deed, from a bill of exchange or on claims asserted concerning the payment of a cheque is upheld by way of cancelling the reservation;
6. Judgments refusing to issue seizures or injunctions, or judgments repealing them;
7. Judgments delivered in disputes between the lessor and the lessee or sublessee of residential or other spaces, or between the lessee and the sublessee of such spaces regarding permission to use the spaces, the use or vacation of same, the continuation of the lease relationship for residential spaces based on sections 574 to 574b of the Civil Code (Bürgerliches Gesetzbuch, BGB) as well as regarding the retention of objects introduced into the leased spaces by the lessee or sublessee;
8. Judgments meting out an obligation to pay maintenance, annuities for the deprivation of a maintenance claim or annuities for injuries to limb or health, insofar as the obligation refers to the period following the time at which an action was brought in the courts and the last quarter preceding that time;
9. Judgments pursuant to sections 861 and 862 of the Civil Code (Bürgerliches Gesetzbuch, BGB) for the restoration of possession or for the removal or cessation of an interference with possession;
10. Appellate judgments in disputes under property law. Where leave to appeal is denied by a judgment or court order pursuant to section 522 (2), this is to mandate that the judgment is provisionally enforceable without any provision of security;
11. Other judgments in disputes under property law if the matter on which the sentence is handed down is not in excess of 1,250 euros, or if only the decision as to costs is enforceable and enables enforcement in the amount of not more than 1,500 euros.

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### **Section 709** **Provisionally enforceable judgments delivered against security**

Other judgments are to be declared provisionally enforceable against provision of security, the amount of which is to be determined. Insofar as a monetary claim is to be enforced, it shall be deemed compliant with the present rule if the amount of the security is specified in a determined ratio to the amount to be enforced in the particular case. Where a judgment upholding a default judgment is concerned, it is to stipulate that enforcement efforts under the default judgment may be continued only against provision of security.

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### **Section 710** **Exceptions from the provision of security by the creditor**

Should the creditor be unable to provide the security pursuant to section 709, or only with great difficulty, the judgment is to be declared provisionally enforceable, upon corresponding application

being made, also without any security being provided in those cases in which the suspension of enforcement would entail a disadvantage for the creditor that it is difficult to compensate or to assess, or in which it would entail a disadvantage that would be inequitable for the creditor for any other reason, in particular because he urgently needs the provision of the security for his subsistence or his economic activities.

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### **Section 711**

#### **Authorisation to avert enforcement**

In the cases provided for by section 708 numbers 4 to 11, the court is to determine that the debtor may avert the enforcement by providing security or by lodgment, unless the creditor provides security prior to enforcement. Section 709 second sentence shall apply mutatis mutandis, but shall apply for the debtor subject to the proviso that the security shall be provided in a certain proportion to the amount to be enforced under the ruling. Section 710 shall apply to the creditor mutatis mutandis.

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### **Section 712**

#### **Petition for protection filed by the debtor**

(1) Insofar as the enforcement would entail a disadvantage for the debtor that it is impossible to compensate or remedy, the court is to allow him, upon a corresponding petition being filed, to avert enforcement by providing security or by lodgment, without taking account of any security that the creditor may have provided; section 709 second sentence shall apply mutatis mutandis to the cases set out in section 709 first sentence. Where the debtor is not able to do so, the judgment shall not be declared provisionally enforceable, or its enforcement is to be limited to the measures designated in section 720a subsections (1) and (2).

(2) The petition filed by the debtor shall not be complied with if an overriding interest of the creditor contravenes this. In the cases provided for by section 708, the court may direct that the judgment shall be provisionally enforceable only against provision of security.

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### **Section 713**

#### **Non-issuance of orders serving the protection of debtors**

The orders admissible under sections 711 and 712 in favour of the debtor shall not be issued if there is no doubt that the prerequisites under which a legal remedy might be lodged against judgment are not met.

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### **Section 714**

#### **Petitions regarding the preliminary enforceability of the judgment**

(1) Petitions pursuant to sections 710, 711 third sentence, and section 712 are to be filed prior to the close of the hearing subsequent to which the judgment is delivered.

(2) The factual prerequisites are to be demonstrated to the satisfaction of the court.

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### **Section 715**

#### **Return of the security**

(1) The court that has directed the creditor to provide security, or permitted the provision of security, shall direct the return of such security, upon a corresponding petition being filed, if a certification as to the legal validity of the judgment declared provisionally enforceable is presented. Where the security has been provided in the form of a bond, the court shall order the bond to expire.

(2) Section 109 (3) shall apply mutatis mutandis.

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### **Section 716**

#### **Amendment of the ruling**

Should no decision have been delivered regarding a judgment's provisional enforceability, the stipulations of section 321 are to be applied to any amendment of the judgment.

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### **Section 717**

#### **Effects of a judgment reversing or modifying the original judgment**

(1) Upon a judgment being pronounced that reverses or modifies the decision in the main action, or the declaration of enforceability, the judgment shall cease to be provisionally enforceable to the extent to which it is reversed or modified.

(2) If a judgment declared provisionally enforceable is reversed or modified, the plaintiff shall be obligated to compensate the defendant for the damages he has suffered by the judgment being enforced, or by the payments he had to make, or any other actions he had to take in order to avert enforcement. The defendant may assert the claim to compensation of damages in the pending legal dispute; once this claim is asserted and filed, it is to be deemed as having become pending at the time at which the payment was made or other action was taken.

(3) The stipulations of subsection (2) are not to be applied to the appellate judgments designated in section 708 number 10, to the exception of default judgments. Insofar as such a judgment is reversed or modified, the plaintiff is to be sentenced, upon a corresponding petition having been filed by the defendant, to reimburse the latter for the payments made or other actions taken on the basis of that prior judgment. The obligation of the plaintiff to so reimburse the defendant is determined by the rules as to the surrender of the result of any unjust enrichment. Once the petition has been filed, the claim to reimbursement is to be deemed as having become pending at the time at which the payment was made or other action was taken; even where the petition is not filed, the effects tied to the pendency of the matter pursuant to the stipulations under civil law shall occur with the payment being made or other action being taken.

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### **Section 718**

#### **Preliminary decision as to provisional enforceability**

(1) Upon corresponding application being made, preliminary oral argument is to be submitted in the appellate instance on fact and law regarding the provisional enforceability, and a decision is to be delivered.

(2) The decision delivered as to the provisional enforceability by the appellate instance on fact and law is incontestable.

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## **Section 719**

### **Provisional termination in the case of appellate remedies and protests having been filed**

(1) Insofar as a judgment declared provisionally enforceable is protested against or appealed, the stipulations of section 707 shall apply mutatis mutandis. Compulsory enforcement under a default judgment may be terminated only against provision of security unless the default judgment was handed down in a manner not in keeping with the law, or the party failing to comply with procedural rules demonstrates to the satisfaction of the court that it failed to comply with procedural rules through no fault of its own.

(2) If an appeal on points of law is lodged against a judgment declared provisionally enforceable, the court hearing the appeal on points of law shall direct, upon corresponding application being made, that compulsory enforcement is to be temporarily stayed should the enforcement entail a disadvantage that it is impossible to compensate or remedy, unless overriding interests of the creditor should contravene this decision. The parties are to demonstrate to the satisfaction of the court that the factual prerequisites are given.

(3) The decision is delivered by court order.

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## **Section 720**

### **Lodgment in the event enforcement is averted**

Where a debtor may avert enforcement by the provision of security or by lodgment pursuant to section 711 first sentence, section 712 (1), first sentence, the lodgment shall comprise attached cash or the proceeds from attached objects.

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## **Section 720a**

### **Precautionary attachment**

(1) The creditor may pursue compulsory enforcement under a judgment that is provisionally enforceable against security having been provided and by which the debtor was sentenced to pay cash, without providing security insofar as:

- a) Movable property is attached;
- b) A debt-securing mortgage or maritime mortgage is entered regarding the immovable property by way of compulsory enforcement.

The creditor may satisfy its claim from the asset so encumbered only upon having provided the security.

(2) Section 930 subsections (2) and (3) shall apply mutatis mutandis to compulsory enforcement against the movable property.

(3) The debtor has the authority to avert compulsory enforcement pursuant to subsection (1) by providing security in the amount of the principal claim for which the creditor may enforce his claim, unless the creditor has previously provided the security demanded of him.

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## **Section 721**

### **Time limit for the vacation of premises**

(1) If a decision is delivered as to residential premises having to be vacated, the court may grant a period to the debtor for so clearing them, ex officio or upon a corresponding petition being filed, that is reasonable under the circumstances. The petition is to be filed prior to the close of the hearing upon which the judgment is handed down. Should the petition have been overlooked in the decision, section 321 shall apply; until the decision is delivered, the court may temporarily stay compulsory enforcement for the claim to vacation of premises upon corresponding application being made.

(2) Where a decision is delivered as to premises having to be vacated in future and no time limit for such vacation has yet been stipulated, the debtor may be granted a period for clearing the premises that is reasonable under the circumstances, provided that he files the corresponding petition at least two (2) weeks prior to the date on which, according to the judgment, the premises are to be vacated. Sections 233 to 238 shall apply mutatis mutandis.

(3) Upon corresponding application being made, the time limit for vacating the premises may be extended or shortened. The petition for an extension of the period is to be filed at the latest two (2) weeks prior to the expiry of the time limit set for the vacation of the premises. Sections 233 to 238 shall apply mutatis mutandis.

(4) The court of first instance shall rule on petitions filed pursuant to subsections (2) or (3); as long as the matter is pending before the appellate instance on fact and law, the court of appeal is to so rule. The decision is delivered by a court order. Prior to the decision being taken, the opponent is to be heard. The court is authorised to deliver the orders designated in section 732 (2).

(5) The period set for the vacation of premises may not amount to longer than one (1) year in total. This period of one (1) year shall be calculated from the date on which the judgment attains legal validity or, in cases in which the premises are to be vacated at a later date pursuant to a judgment for future vacation, from that date onwards.

(6) A complaint subject to a time limit may be filed:

1. Against judgments deciding on the vacation of residential premises where the appellate remedies are directed solely against the refusal to grant a period for so vacating them, against the granting of such period, or against the determination of its extent;
2. Against orders on petitions filed under subsections (2) or (3).

(7) Subsections (1) to (6) shall not apply to tenancy relationships for residential premises in the sense as defined by section 549 (2) number 3, nor shall they apply to the cases provided for by section 575 of the Civil Code (Bürgerliches Gesetzbuch, BGB). If a tenancy relationship in the sense as defined by section 575 of the Civil Code is terminated without prior notice, the period for vacating the premises may be granted at the longest until the time contractually agreed as the end of the tenancy relationship.

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## **Section 722**

### **Enforceability of foreign judgments**

(1) Compulsory enforcement may be pursued under the judgment of a foreign court if such compulsory enforcement is ruled admissible by a judgment for enforcement.

(2) That local court (Amtsgericht, AG) or regional court (Landgericht, LG) shall be competent for entering the judgment on the complaint filed for such judgment with which the debtor has his general venue, and in all other cases, that local court or regional court shall be competent with which a complaint may be filed against the debtor pursuant to section 23.

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### **Section 723**

#### **Judgment for enforcement**

(1) The judgment for enforcement is to be delivered without a review being performed of the decision's legality.

(2) The judgment for enforcement is to be delivered only once the judgment handed down by the foreign court has attained legal validity pursuant to the laws applicable to that court. The judgment for enforcement is not to be delivered if the recognition of the judgment is ruled out pursuant to section 328.

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### **Section 724**

#### **Enforceable execution copy**

(1) Compulsory enforcement will be pursued based on an execution copy of the judgment furnished with the court certificate of enforceability (enforceable execution copy).

(2) The enforceable execution copy is issued by the records clerk of the registry of the court of first instance and, should the legal dispute be pending with a court of higher instance, by the records clerk of that court's registry.

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### **Section 725**

#### **Court certificate of enforceability**

The court certificate of enforceability:

“The above execution copy is issued to (designation of the party) for the purposes of compulsory enforcement “

is to be added to the execution copy of the judgment at its end, it is to be signed by the records clerk of the court registry, and is to be furnished with the court seal.

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### **Section 726**

#### **Enforceable execution copies where payments or other actions are subject to conditions**

(1) In cases in which the enforcement of judgments depends, by their content, on the occurrence of other facts than the provision of security as incumbent on the creditor, which facts are to be proven by the creditor, an enforceable execution copy may be issued only if such proof is established by public records or documents, or records or documents that have been publicly certified.

(2) Insofar as the enforcement of judgments depends on payments to be concurrently made to the debtor by the creditor, or on other actions to be taken by same, proof of the debtor having been satisfied, or of his defaulting on his acceptance of performance, shall be required only if the performance incumbent on the debtor consists of his making a declaration of intent.

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### **Section 727**

#### **Enforceable execution copies for and against successors in title**

(1) An enforceable execution copy may be issued to the successor in title of the creditor designated in the judgment as well as against that successor in title of the debtor designated in the judgment, and against that possessor of the object that is the subject matter of the legal dispute, against whom the judgment has taken effect pursuant to section 325, provided that the legal succession or the circumstances of possession are known to the court or are proven by public records or documents, or records or documents that have been publicly certified.

(2) If the legal succession or the circumstances of possession are known to the court, this is to be mentioned in the court certificate of enforceability.

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### **Section 728**

#### **Enforceable execution copies for reversionary heirs or executors**

(1) Where a judgment has been delivered to the provisional heir that, pursuant to section 326, takes effect against the reversionary heir, the stipulations of section 727 shall apply mutatis mutandis to the issuance of an enforceable execution copy for and against the reversionary heir.

(2) If a judgment has been delivered to the executor that takes effect against the heir pursuant to section 327, the same shall apply to the issuance of an enforceable execution copy for and against the heir. An enforceable execution copy may be issued against the heir also in those cases in which the executor is still administering the estate.

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### **Section 729**

#### **Enforceable execution copies against parties taking over the property of another person and against parties acquiring firms**

(1) Where a person has taken over the property of another person by way of a contract with the latter, and after the culpability of that other party has been determined in a final and binding judgment, the stipulations of section 727 shall apply mutatis mutandis to the issuance of an enforceable execution copy of the judgment against the party so taking over property or acquiring a firm.

(2) The same shall apply to the issuance of an enforceable execution copy against that person who continues a commercial enterprise acquired while both parties are alive (inter vivos), operating it under the same name, with a view to the liabilities for which that person is liable pursuant to section 25 (1), first sentence, subsection (2) of the Commercial Code (Handelsgesetzbuch), provided such liabilities have been established in a final and binding judgment against the earlier proprietor prior to the acquisition of the business.

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### **Section 730**

#### **Hearing the debtor**

In the cases provided for by section 726 (1) and sections 727 to 729, the debtor may be heard prior to the issuance of the enforceable execution copy.

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### **Section 731**

#### **Action brought for issuance of the court certificate of enforceability**

Should it not be possible to provide proof in the manner required by section 726 (1) and sections 727 to 729 by public records or documents, or records or documents that have been publicly certified, the

creditor is to file an action based on the judgment stipulating the issuance of a court certificate of enforceability with the court of first instance hearing the case.

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### **Section 732**

#### **Reminder serving as a legal remedy against the issuance of the court certificate of enforceability**

(1) The court the registry of which has issued the certificate of enforceability shall decide on objections filed by the debtor concerning the admissibility of the court certificate of enforceability. The decision is delivered by a court order.

(2) Prior to delivering the decision, the court may issue an interim order; in particular, the court may direct that compulsory enforcement is to be temporarily stayed, against provision of security or without provision of security, or that it is to be continued only against the provision of security.

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### **Section 733**

#### **Additional enforceable execution copies**

(1) Prior to an additional enforceable execution copy being issued, the debtor may be heard unless the execution copy first issued is returned.

(2) The court registry is to notify the opponent of the fact that an additional execution copy has been issued.

(3) The additional execution copy is to be expressly designated as such.

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### **Section 734**

#### **Note recorded on the original of the judgment regarding the issuance of an execution copy**

Prior to physical delivery of an enforceable execution copy, it is to be noted on the original of the judgment for which party the execution copy was issued, and at what time this was done. Where the court records of the dispute are kept as electronic documents, this note is to be recorded in a separate electronic document. The document is to be joined to the judgment such that it cannot be separated.

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### **Section 735**

#### **Compulsory enforcement against an association having no legal capacity**

In order to pursue compulsory enforcement against the assets of an association having no legal capacity, the delivery of a judgment against this association shall be deemed compliant with this rule.

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### **Section 736**

#### **Compulsory enforcement against a partnership under the Civil Code**

The delivery of a judgment against all partners of a partnership established pursuant to section 705 of the Civil Code (Bürgerliches Gesetzbuch, BGB) is required in order to pursue compulsory enforcement against the assets of such partnership.

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### **Section 737**

#### **Compulsory enforcement in the cases of usufruct rights concerning assets or inheritance**

(1) If assets are subject to usufruct rights, compulsory enforcement against the objects that are subject to the usufruct rights for liabilities incurred prior to the usufruct's establishment by the party having established the usufruct shall be admissible if the party establishing the usufruct right has been sentenced to perform under compulsory enforcement and if the beneficiary of the usufruct has been sentenced to tolerate it.

(2) The same shall apply, in cases in which usufruct has been established for an inheritance, to the liabilities of the estate.

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### **Section 738**

#### **Enforceable execution copy issued against the beneficiaries of usufruct**

(1) Where the usufruct of assets was established following the final and binding determination of the debts of the party establishing such usufruct, the stipulations of sections 727, 730 to 732 shall apply mutatis mutandis to the issuance of an enforceable execution copy of the judgment against the beneficiary of the usufruct that has been delivered with a view to the objects subject to the usufruct right.

(2) The same shall apply, if usufruct has been established for an inheritance, to the issuance of an enforceable execution copy of the judgment promulgated against the testator.

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### **Section 739**

#### **Presumption of custody and control in the case of compulsory enforcement against spouses and partners in a civil union**

(1) Insofar as it is presumed, to the benefit of the creditor of the spouse in a marriage pursuant to section 1362 of the Civil Code (Bürgerliches Gesetzbuch, BGB), that the debtor is the owner of movable objects, then solely the debtor shall be deemed to be, in the context of implementing the compulsory enforcement, the person having custody and control of those objects and their possessor, notwithstanding any rights of third parties.

(2) Subsection (1) shall apply mutatis mutandis to the presumption provided for by section 8 (1) of the Act on Civil Unions (Lebenspartnerschaftsgesetz, LPartG) to the benefit of the creditor of one of the partners in a civil union.

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### **Section 740**

#### **Compulsory enforcement with respect to the common marital property of both spouses**

(1) If a marriage is subject to the regime of common marital property and one of the spouses manages the common marital property alone, a judgment delivered against that spouse shall be required, and deemed compliant with the present rule, for pursuing compulsory enforcement against the common marital property of both spouses.

(2) If the spouses are jointly managing their common marital property, compulsory enforcement against the common marital property of both spouses shall be admissible only if both spouses have been sentenced to make payments or to take other actions.

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#### **Section 741**

### **Compulsory enforcement against the common marital property of both spouses where there is a business**

If a marriage is subject to the regime of common marital property and one of the spouses who is not managing the common marital property, or not managing it alone, is doing business as a sole trader, a judgment delivered against that spouse shall be deemed compliant with the present rule for pursuing compulsory enforcement against the common marital property of both spouses, unless, at the time at which the matter became pending, the protest filed by the other spouse against the operation of the business, or a revocation of the spouse's consent to the business, had been entered in the Matrimonial Property Register (Güterrechtsregister).

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#### **Section 742**

### **Enforceable execution copy in the case of marriages becoming subject to the regime of common marital property only in the course of the legal dispute**

If the marriage has become subject to the regime of common marital property only after a legal dispute has become pending that is being pursued by one of the spouses, or against one of the spouses, and where that spouse does not manage the common marital property, or does not manage it alone, the stipulations of sections 727, 730 to 732 shall apply mutatis mutandis to the issuance of an execution copy of the judgment that is enforceable with a view to the common marital property for or against the other spouse.

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#### **Section 743**

### **Terminated regime of common marital property**

Once the regime of common marital property has been terminated, compulsory enforcement against the common marital property of both spouses shall be admissible prior to the distribution of the property if both spouses have been sentenced to making the payment or taking any other action, or if one spouse has been so sentenced and the other spouse has been sentenced to tolerate compulsory enforcement.

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#### **Section 744**

### **Enforceable execution copy where the regime of common marital property has been terminated**

If the regime of common marital property has been terminated following the termination of a legal dispute involving the spouse who is managing the common marital property alone, the stipulations of sections 727, 730 to 732 shall apply mutatis mutandis to the issuance of an execution copy of the judgment that is enforceable against the other spouse with a view to the common marital property.

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#### **Section 744a**

### **Compulsory enforcement in the case of a community of property and assets**

If a marriage is subject to the regime of a community of property and assets, pursuant to Article 234 section 4 (2) of the Introductory Law for the Civil Code (Einführungsgesetz zum Bürgerlichen Gesetzbuch, EGBGB), then sections 740 to 744, 774 and 860 shall apply mutatis mutandis to compulsory enforcement against the objects forming part of the community of property and assets.

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#### **Section 745**

##### **Compulsory enforcement in the case of the regime of common marital property continuing in force**

(1) Where there is a continuing regime of common marital property, a judgment delivered against the surviving spouse shall be required, and deemed compliant with the present rule, in order to pursue compulsory enforcement against the common marital property of both spouses.

(2) Following the end of the continuing regime of common marital property, the stipulations of sections 743 and 744 shall apply subject to the proviso that the stead of the spouse managing the common marital property alone shall be taken by the surviving spouse, and that the stead of the other spouse shall be taken by the descendants entitled to a share of the marital property.

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#### **Section 746 (repealed)**

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#### **Section 747**

##### **Compulsory enforcement against an estate that has not been partitioned**

In cases in which several parties are heirs of an estate, compulsory enforcement against an estate will require a judgment to be delivered against all heirs until the estate is partitioned.

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#### **Section 748**

##### **Compulsory enforcement where an executor has been appointed**

(1) Insofar as an estate is subject to administration by an executor, a judgment delivered against the executor shall be required, and deemed compliant with the present rule, in order to pursue compulsory enforcement against the estate.

(2) Should the executor be only entitled to administer individual items constituting the estate, compulsory enforcement against these items shall be admissible only where the heir is sentenced to make payment or to take other action and where the executor is sentenced to tolerate compulsory enforcement.

(3) In the case provided for by subsection (1) as well as in the case provided for by subsection (2), a judgment delivered both against the heir and against the executor is required in order to pursue compulsory enforcement against a claim on a compulsory portion of the inheritance.

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#### **Section 749**

##### **Enforceable execution copies for and against executors**

The stipulations of sections 727, 730 to 732 shall apply mutatis mutandis to the issuance of an enforceable execution copy for or against the executor of a judgment delivered for or against the testator. Based on such an execution copy, compulsory enforcement shall be admissible only with regard to the items constituting the estate subject to administration by the executor.

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### **Section 750**

#### **Prerequisites for compulsory enforcement**

(1) Compulsory enforcement may be commenced only if the persons for and against whom it is to be performed have been designated by name in the judgment or in the court certificate of enforceability attached to it, and if the judgment has already been served or is served concurrently. Service by the creditor shall be deemed compliant with the present rule; in such event, the execution copy of the judgment need not set out the facts and circumstances on which the ruling is based, nor need it set out its reasons.

(2) Where the enforcement concerns a judgment the enforceable execution copy of which was issued pursuant to section 726 (1), or where a judgment that is legally effective for or against one of the persons designated therein in accordance with sections 727 to 729, 738, 742, 744, section 745 (2) and section 749 is to be enforced for or against one of these persons, the court certificate of enforceability must also have been served along with the judgment to be enforced prior to the commencement of compulsory enforcement, or must be served concurrently with the commencement of compulsory enforcement, and where the court certificate of enforceability has been issued based on public records or documents, or based on records or documents that have been publicly certified, a copy of such records or documents is likewise to be served.

(3) A compulsory enforcement pursuant to section 720a may be commenced only if the judgment and the court certificate of enforceability have been served at least two (2) weeks earlier.

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### **Section 751**

#### **Conditions for the commencement of enforcement**

(1) Should the assertion of the claim be dependent on the occurrence of a calendar date, compulsory enforcement may not be commenced prior to midnight of that day of the calendar.

(2) Should the enforcement depend on the provision of security incumbent on the creditor, compulsory enforcement may only be commenced or continued if the provision of security has been proven by a public record or document, or a record or document that has been publicly certified, and if a copy of such record or document has already been served or is served concurrently.

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### **Section 752**

#### **Provision of security in the event of partial enforcement**

Where the creditor pursues compulsory enforcement in the cases as described in section 751 (2) only for a partial amount, the amount of the security to be provided shall be in proportion to the ratio between the partial amount and the total amount. If the debtor may avert the enforcement, in the cases provided for by section 709, pursuant to section 712 subsection (1), first sentence, the first sentence shall apply to him mutatis mutandis.

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### **Section 753**

#### **Enforcement by court-appointed enforcement officers**

(1) Unless the compulsory enforcement is assigned to the courts, it will be implemented by court-appointed enforcement officers who are to effect it on behalf of the creditor.

(2) The creditor may avail himself of the assistance of the court registry in charging an officer with the task of compulsory enforcement. The court-appointed enforcement officer charged with the task by the court registry shall be deemed to have been charged by the creditor.

(3) The Federal Ministry of Justice is authorised to introduce forms, use of which shall be mandatory, for charging the court-appointed enforcement officer with his task as provided for by subsection (2), such forms being subject to approval by the Bundesrat and being made by statutory instrument. Special forms may be provided for instances in which instructions are submitted electronically.

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### **Section 754**

#### **Enforcement instructions and enforceable execution copy**

(1) The court-appointed enforcement officer is authorised by the enforcement instructions, and by the enforceable execution copy being physically handed over to him, to accept performance by the debtor, to issue receipts in this regard, and to enter into payment agreements with effect for the creditor, subject to the stipulations set out in Section 802b.

(2) The court-appointed enforcement officer is authorised, by his possession of the enforceable execution copy, to effect compulsory enforcement and to take the actions designated in subsection (1) vis-à-vis the debtor and third parties. Where the instructions to the enforcement officer were deficient or where they were issued with restrictions, this fact may not be asserted by the creditor vis-à-vis such persons.

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### **Section 755**

#### **Determining the debtor's place of abode**

(1) Where the debtor's place of residence or his usual place of abode is not known, the court-appointed enforcement officer is permitted to determine the debtor's place of abode, based on the enforcement instructions and due to his having been physically handed over the enforceable execution copy, by obtaining the current addresses along with information on the debtor's main residence and secondary residence from the registration authority.

(2) Should it not be possible to determine the debtor's place of abode pursuant to subsection (1), the court-appointed enforcement officer is permitted to take the following actions:

1. To initially obtain from the Central Register of Foreigners information on the foreigners authority keeping the files on the debtor, along with information on the debtor's having moved to or from a location, and subsequently to obtain the debtor's place of abode from the foreigners authority keeping the files on the debtor identified by the inquiry made with the Central Register of Foreigners,
2. To obtain from the statutory pension insurance funds the address of the debtor as currently filed there, as well as his current or future place of abode,
3. To obtain from the Federal Motor Transport Authority (Kraftfahrt-Bundesamt) the vehicle keeper information pursuant to section 33 (1), first sentence, no. 2 of the Road Traffic Act (Strassenverkehrsgesetz, StVG).

Where the debtor is a citizen of the Union, the court-appointed enforcement officer may collect the data pursuant to number 1 of the first sentence only if he has at hand factual indications giving rise to the assumption that it will be determined that the debtor has no rights under the principle of freedom of movement, or has lost such rights. The transmission to the enforcement officer of the data obtained pursuant to number 1 of the first sentence is ruled out if the debtor is a citizen of the Union regarding whom it has not been determined that he has no rights under the principle of freedom of movement, or that he has lost such rights. The enforcement officer is permitted to collect the data pursuant to nos. 2 and 3 of the first sentence only if the claims to be enforced amount to at least 500 euros; the enforcement costs and ancillary claims shall be included in the calculation only if they alone are the subject matter of the enforcement instructions.

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## **Section 756**

### **Compulsory enforcement where performance is to be made concurrently**

(1) If the enforcement depends on concurrent performance by the creditor to the debtor, the court-appointed enforcement officer may not commence compulsory enforcement prior to having offered the debtor the performance to which the latter is entitled, doing so in a manner establishing default of acceptance, unless proof is submitted by public records or documents that the debtor has been satisfied or is defaulting on his acceptance, or by records or documents that have been publicly certified, and a copy of such records or documents has already been served, or is served concurrently.

(2) The court-appointed enforcement officer may commence compulsory enforcement if the debtor declares, upon the court-appointed enforcement officer having orally offered the payment or other action, that he will not accept such payment or other action.

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## **Section 757**

### **Physical submission of the legal title and receipt note**

(1) Following receipt of the payment or following other action he has taken, the court-appointed enforcement officer is to surrender to the debtor the enforceable execution copy in addition to a receipt note; should performance be made only partially, he is to note this on the enforceable execution copy and is to issue a receipt note to the debtor.

(2) The right of the debtor to retroactively demand that the creditor himself issue a receipt note is not affected by the present rules.

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## **Section 758**

### **Searches; use of force**

(1) The court-appointed enforcement officer is authorised to search the debtor's residence and any means of storage insofar as the purpose of the enforcement so requires.

(2) He is authorised to have any locked house doors opened, as well as doors to rooms and means of storage that may be locked.

(3) Should the court-appointed enforcement officer encounter resistance, he shall have authority to use force and may for this purpose ask the police for support.

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**Section 758a**  
**Search warrant issued by a judge; enforcement at an inopportune time**

(1) The debtor's residence may be searched without his consent only on the basis of a search warrant issued by a judge with the local court (Amtsgericht, AG) in the jurisdiction of which the search is to be performed. This shall not apply where procuring the warrant would jeopardise the success of the search.

(2) Subsection (1) shall not apply to the enforcement of a legal document ordering the vacation or surrender of premises, nor shall it be applied to the enforcement of a warrant for arrest pursuant to section 802g.

(3) Where the debtor consents to the search, or where a warrant pursuant to subsection (1), first sentence, has been issued, or where this can be dispensed with pursuant to subsection (1), second sentence, persons sharing in the custody of the debtor's residence are to tolerate the search. Any inequitable hardship for persons sharing in the custody and control of his property is to be avoided.

(4) The court-appointed enforcement officer shall not take an enforcement action during the night-time and on Sundays and holidays if this would entail an inequitable hardship for the debtor and the persons sharing in the custody and control of his property, or if the expected results are not congruent with the scope of the intrusion; in residences, the court-appointed enforcement officer shall take an enforcement action only on the basis of a special order issued by a judge at the local court (Amtsgericht, AG). The night-time hours are defined as the time from 21:00 hours to 6:00 hours.

(5) At the time compulsory enforcement is implemented, the order pursuant to subsection (1) is to be shown.

(6) The Federal Ministry of Justice is authorised to introduce forms for the petition for an issuance of a search warrant by a judge as provided for by subsection (1), such forms being subject to approval by the Bundesrat and being made by statutory instrument. To the extent forms have been introduced in accordance with the first sentence, the claimant must use them. Different types of forms may be introduced for proceedings before courts that process these matters electronically, and for proceedings before courts that do not process these matters electronically.

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**Section 759**  
**Involvement of witnesses**

In cases in which an enforcement action is resisted, or in which neither the debtor nor an adult family member, a person employed by the family or an adult permanent cohabitant is present when the enforcement action is to be taken in the debtor's residence, the court-appointed enforcement officer is to involve as witnesses two (2) adult persons, or a municipal official, or a police officer.

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**Section 760**  
**Inspection of files; copies of files**

Each person involved in the enforcement proceedings is to be allowed to inspect the files of the court-appointed enforcement officer upon a corresponding request being made, and copies of individual documents in the file are to be issued to that person. If the court-appointed enforcement officer keeps his files as electronic records, inspection of the files shall be enabled by providing hard-copy printouts, by transmitting electronic documents, or by displaying them on a screen; this also applies to the files electronically stored pursuant to section 885a (2), second sentence.

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**Section 761  
(repealed)**

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**Section 762  
Record of the hearing regarding enforcement measures**

(1) The court-appointed enforcement officer is to prepare a record of each enforcement action he has taken.

(2) The record must include:

1. The place and date of the enforcement action;
2. The subject matter of the enforcement action, briefly outlining the essential course of the enforcement and actions taken therein;
3. The names of the persons with whom he has had dealings;
4. The signature of these persons and the note that the document was signed after having been read out loud to them, or after having been submitted to them for their review, and after having been approved;
5. The signature of the court-appointed enforcement officer.

(3) Should it not have been possible to conform to one of the requirements designated in number 4, the reasons therefor are to be provided.

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**Section 763  
Notices and communications**

(1) The notices and other communications forming part of the enforcement measures are to be made orally by the court-appointed enforcement officer and shall be included fully in the record.

(2) Where this cannot be done orally, the court-appointed enforcement officer is to serve a copy of the record or is to mail it. The record must set out the note that this rule has been complied with. No service may be made by publication.

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**Section 764  
Court responsible for execution**

(1) Ordering enforcement measures as assigned to the courts, and the assistance with such measures, is the responsibility of the local courts (Amtsgericht, AG) as the courts responsible for execution.

(2) Unless another local court is designated by law, that local court shall be responsible for execution in the district of which the enforcement proceedings are to be performed or have been performed.

(3) The decisions of the execution court are issued by a court order.

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## **Section 765**

### **Orders issued by the execution court where performance is to be made concurrently**

If the enforcement depends on concurrent performance by the creditor to the debtor, the court responsible for execution may only direct enforcement activities if:

1. Proof is provided, by submitting public records or documents, or records or documents that have been publicly certified, and a copy of such records or documents has already been served, that the debtor has been satisfied or is defaulting on acceptance; no service need be made if the court-appointed enforcement officer had already commenced compulsory enforcement pursuant to section 756 (1) and such proof is provided by the record prepared by the court-appointed enforcement officer; or
2. The court-appointed enforcement officer has effected an enforcement measure pursuant to section 756 (2) and this is proven by the record prepared by the court-appointed enforcement officer.

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## **Section 765a**

### **Protection from execution**

- (1) Upon a corresponding petition being filed by the debtor, the court responsible for execution may reverse a measure of compulsory enforcement in its entirety or in part, may prohibit it, or may temporarily stay such measure if, upon comprehensively assessing the creditor's justified interest in protection, the court finds that the measure entails a hardship that due to very special circumstances is immoral (contra bonos mores). The execution court is authorised to deliver the orders designated in section 732 (2). Should the measure concern an animal, the execution court is to consider, in weighing the matter, the responsibility that the person has for the animal.
- (2) The court-appointed enforcement officer may delay a measure serving to obtain the surrender of objects until the court responsible for execution delivers a decision, but may not so delay it for longer than one (1) week, if the prerequisites set out in subsection (1), first sentence, are demonstrated to his satisfaction and if it was not possible for the debtor to refer the matter to the execution court.
- (3) In matters pertaining to the vacation of premises, the petition pursuant to subsection (1) is to be filed at the latest within two (2) weeks prior to the date set for the vacation of the premises, unless the grounds on which the petition is based came about only after this time or the debtor was prevented from filing the petition in due time through no fault of his own.
- (4) The execution court shall reverse its order, upon a corresponding petition being filed, or shall modify it, if this is mandated with a view to the change of the overall factual situation.
- (5) Enforcement activities may be abrogated in the cases provided for by subsection (1), first sentence, and subsection (4) only once the order has become final and binding.

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## **Section 766**

### **Reminder serving as a legal remedy against the nature and manner of compulsory enforcement**

- (1) The court responsible for execution shall rule on petitions, objections, and reminders concerning the nature and manner of compulsory enforcement or the manner of proceeding to be observed by the court-appointed officer in the course of compulsory enforcement. The execution court is authorised to deliver the orders designated in section 732 (2).

(2) The court responsible for execution shall also be entitled to hand down the decision should a court-appointed enforcement officer refuse to assume the enforcement instructions or to perform an enforcement action in accordance with the instructions, or if reminders are lodged for the costs charged by the court appointed enforcement officer.

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### **Section 767**

#### **Action raising an objection to the claim being enforced**

(1) Debtors are to assert objections that concern the claim itself as established by the judgment by filing a corresponding action with the court of first instance hearing the case.

(2) Such objections by way of an action may admissibly be asserted only insofar as the grounds on which they are based arose only after the close of the hearing that was the last opportunity, pursuant to the stipulations of the present Code, for objections to be asserted, and thus can no longer be asserted by entering a protest.

(3) In the action that he is to file, the debtor must assert all objections that he was able to assert at the time at which he filed the action.

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### **Section 768**

#### **Action brought against a court certificate of enforceability**

The stipulations of section 767 subsections (1) and (3) shall apply mutatis mutandis if, in the cases provided for by section 726 (1), sections 727 to 729, 738, 742, 744, section 745 (2) and section 749, the debtor disputes that the prerequisite for the issuance of the court certificate of enforceability has in fact been met, as had been assumed to be proven at the time such court certificate was issued, and shall so apply notwithstanding the authority of the debtor in such cases to file objections against the admissibility of the court certificate of enforceability pursuant to section 732.

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### **Section 769**

#### **Interim orders**

(1) Upon a corresponding petition being filed, the court hearing the case may direct that until the judgment has been entered regarding the objections designated in sections 767 and 768, compulsory enforcement be stayed against or without provision of security, or that it be continued only against the provision of security and that enforcement activities are to be abrogated against provision of security. The court shall not assess any security for the stay of compulsory enforcement where the debtor is unable to provide security, and where the action he is bringing holds out sufficient prospects of success. The factual assertions on which the petition is based are to be demonstrated to the satisfaction of the court.

(2) In urgent cases, the court responsible for execution may issue such an order, setting a time limit for the court hearing the case to deliver its decision. Once the deadline has expired without success, the compulsory enforcement shall be continued.

(3) The decision regarding these petitions is issued by a court order.

(4) Insofar as an action for modification is pending that is directed at a reduction, subsections (1) to (3) shall apply mutatis mutandis.

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## **Section 770**

### **Interim orders set out in the judgment**

The court hearing the case may issue the orders designated in the preceding section, or it may reverse, modify, or confirm any orders already issued, in the judgment by which a decision is taken as to the objections. The stipulations of section 718 shall apply mutatis mutandis to the contestation of such decision.

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## **Section 771**

### **Third-party proceedings instituted to prevent the execution of a judgment**

(1) If a third party claims to have title preventing the disposal of an object subject to compulsory enforcement, it shall lodge the opposition against compulsory enforcement by filing a corresponding court action with the court in the district of which compulsory enforcement is being pursued.

(2) Where the action is filed both against the creditor and the debtor, they are to be deemed joined parties.

(3) The stipulations of sections 769 and 770 shall apply mutatis mutandis to instances in which compulsory enforcement is stayed, and to the abrogation of any enforcement activities already pursued. Enforcement activities admissibly may be abrogated also without any security being provided.

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## **Section 772**

### **Third-party proceedings instituted to prevent the execution of a judgment where the disposition of assets has been prohibited**

As long as a prohibition of disposition of the type designated in sections 135 and 136 of the Civil Code (Bürgerliches Gesetzbuch, BGB) exists, the object to which such prohibition refers shall not be disposed of or transferred, by way of compulsory enforcement of any personal claim or based on a right that, as a result of the prohibition, is invalid. An opposition may be lodged subject to section 771 based on the prohibition of disposition.

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## **Section 773**

### **Third-party proceedings instituted to prevent the execution of a judgment by a reversionary heir**

An object forming part of the inheritance of the provisional heir shall not be disposed of or transferred by way of compulsory enforcement if the disposition or the transfer is invalid vis-à-vis the reversionary heir in those cases in which the reversionary succession occurs pursuant to section 2115 of the Civil Code (Bürgerliches Gesetzbuch, BGB). The reversionary heir may lodge an opposition subject to the provisions of section 771.

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## **Section 774**

### **Third-party proceedings instituted to prevent the execution of a judgment by a spouse**

If, pursuant to section 741, compulsory enforcement is pursued with regard to the common marital property of both spouses, one of the spouses may lodge an opposition pursuant to section 771 in

those cases in which, with a view to the common marital property, the judgment promulgated against the other spouse has no legal effect for the opposing spouse.

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### **Section 775**

#### **Termination or limitation of compulsory enforcement**

Compulsory enforcement shall be terminated or limited where:

1. The execution copy of an enforceable decision is produced that shows that the judgment to be enforced or its provisional enforceability have been repealed, or that compulsory enforcement has been declared inadmissible, or that its termination has been directed;
2. The execution copy of a court decision is produced that shows the temporary stay of enforcement or enforcement activities to have been directed, or that enforcement may be continued only against provision of security;
3. A public record or document is produced that shows that the security averting enforcement, or the lodgment required for this purpose, has been provided or made;
4. A public record or document is produced, or a private record or document created by the creditor, that shows that the creditor is satisfied after the delivery of the judgment to be enforced, or that he has consented to deferral;
5. The credit slip proving payment in cash or by wire transfer effected by a bank or savings bank is produced, showing that the amount required to satisfy the creditor has been paid into the account of the creditor or has been transferred to it for payment to same.

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### **Section 776**

#### **Abrogation of enforcement activities**

In the cases provided for by section 775 numbers 1 and 3, the enforcement activities already pursued are to be abrogated. In the cases provided for by numbers 4 and 5, these activities shall continue in force on a provisional basis; the same shall apply to the cases set out in number 2, provided that the decision does not also direct the repeal of the enforcement measures taken thus far.

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### **Section 777**

#### **Reminder serving as a legal remedy in the event sufficient security has been provided to the creditor**

Should the creditor possess a movable object belonging to the debtor, concerning which he is entitled to a security right or a right of retention for his claim, the debtor may oppose compulsory enforcement against his other assets pursuant to section 766 to the extent the claim is covered by the value of that object. If the creditor is entitled to such right concerning the object also for another claim, such opposition may only be admissibly lodged where this claim as well is covered by the value of the object.

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### **Section 778**

#### **Compulsory enforcement prior to acceptance of an inheritance**

(1) For as long as the heir has not accepted an inheritance, compulsory enforcement may admissibly be pursued only with regard to the estate for a claim against the estate.

(2) Compulsory enforcement regarding any liability the heir may have on his own may not permissibly be pursued against the estate prior to the heir's having accepted the inheritance. ,

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#### **Section 779**

##### **Continuation of compulsory enforcement following the debtor's death**

(1) Any compulsory enforcement that had already been commenced against the debtor at the time of his death shall be continued against his estate.

(2) Should it be necessary to involve the debtor in performing an enforcement action, and should the inheritance not have been accepted yet, or should the heir be unknown, or should it be uncertain whether or not he has accepted the inheritance, the court responsible for execution is to appoint a special provisional representative for the heir, upon the creditor having filed the corresponding petition. No such appointment shall be made where a curator has been appointed for the estate or where an executor is responsible for administering the estate.

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#### **Section 780**

##### **Reservation as to the limited liability of an heir for the debts of the estate**

(1) A defendant sentenced as a debtor's heir may assert a limitation of his liability only if this has been reserved in the judgment.

(2) No such reservation is required if the government treasury is made the statutory heir by a ruling of the court, or if the judgment is delivered regarding a liability of the estate against an attorney for the estate or any other court-appointed curator of the estate, or against an executor responsible for administering the estate.

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#### **Section 781**

##### **Limited liability of an heir in compulsory enforcement proceedings**

Should compulsory enforcement be pursued against the heir of the debtor, the limitation of liability shall not be taken into account until the heir has lodged objections against compulsory enforcement based on such limitation of liability.

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#### **Section 782**

##### **Defence pleas of the heir against creditors of the estate**

On the basis of the defence pleas to which he is entitled pursuant to sections 2014 and 2015 of the Civil Code (Bürgerliches Gesetzbuch, BGB), the heir may only demand that compulsory enforcement be limited, for the duration of the periods determined therein, to such enforcement activities that are admissible in order to enforce a seizure. Where, prior to the expiry of the period, the opening of insolvency proceedings regarding the estate is petitioned, the limitation of compulsory enforcement is to be upheld also after the expiry of the period, upon a corresponding petition having been filed, until a final and binding judgment has been delivered regarding the opening of the insolvency proceedings regarding the estate.

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### **Section 783**

#### **Defence pleas of the heir against personal creditors**

The heir may demand a limitation of compulsory enforcement concerning the items constituting the estate pursuant to section 782 also from those creditors who are not creditors of the estate, unless the heir is liable for the estate's liabilities without limitation.

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### **Section 784**

#### **Compulsory enforcement where an estate is in administration or subject to insolvency proceedings**

(1) If the administration of an estate has been directed, or if insolvency proceedings have been opened regarding the estate, the heir may demand that the enforcement activities be abrogated that have been taken to the benefit of a creditor of the estate against those of the heir's assets that do not constitute part of the estate, unless the heir is liable for the estate's liabilities without limitation.

(2) In the case of the estate being in administration, the attorney for the estate shall be entitled to the same rights as the heir regarding the enforcement activities that have been pursued against the estate to the benefit of another creditor in his capacity as creditor of the estate.

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### **Section 785**

#### **Action brought by the heir by way of raising an objection to the claim being enforced**

The objections raised in accordance with sections 781 to 784 shall be dealt with in accordance with the stipulations of sections 767, 769, 770.

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### **Section 786**

#### **Action raising an objection to the claim being enforced in the case of limited liability**

(1) The stipulations of section 780 (1) and of sections 781 to 785 shall apply mutatis mutandis to the limited liability given pursuant to section 1489 of the Civil Code (Bürgerliches Gesetzbuch, BGB), while the stipulations of section 780 (1) and of sections 781 and 785 shall apply mutatis mutandis to the limited liability given pursuant to sections 1480, 1504, 1629a, 2187 of the Civil Code (Bürgerliches Gesetzbuch, BGB).

(2) Where compulsory enforcement is pursued based on judgments promulgated prior to the date on which the Act Limiting the Liability of Minors (Minderjährigenhaftungsbeschränkungsgesetz) of 25 August 1998 entered into force (published in Federal Law Gazette (Bundesgesetzblatt, BGBl.) I page 2487) on 1 July 1999, the limitation of liability pursuant to section 1629a of the Civil Code (Bürgerliches Gesetzbuch, BGB) may be asserted also where it has not been reserved in the judgment pursuant to section 780 (1) of the present Code.

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### **Section 786a**

#### **Limitation of liability under the laws of the sea and the laws governing inland waterways transport**

(1) The stipulations of section 780 (1) and of section 781 shall apply mutatis mutandis to the limitation of liability arising in the cases provided for by section 611 subsections (1) or (3), sections 612 to 616 of the Commercial Code (Handelsgesetzbuch, HGB) or pursuant to sections 4 to 5m of the Inland Waterways Act (Binnenschiffahrtsgesetz).

(2) If the judgment has been promulgated subject to a reservation pursuant to section 305a, the following rules shall apply to compulsory enforcement:

1. Where a petition is filed to institute distribution proceedings under the laws of the sea or the laws governing inland waterways transport in accordance with the Distribution Ordinance under Shipping Laws (Schiffahrtsrechtliche Verteilungsordnung), in which the creditor is a party with his claim, the court shall deliver its decision pursuant to section 5 (3) of the Distribution Ordinance under Shipping Laws regarding the termination of compulsory enforcement; upon the institution of the distribution proceedings under the laws of the sea, the stipulations of section 8 subsections (4) and (5) of the Distribution Ordinance under Shipping Laws are to be applied; upon institution of the distribution proceedings under the laws governing inland waterways transport, the stipulations of section 8 subsections (4) and (5) in conjunction with section 41 of the Distribution Ordinance under Shipping Laws are to be applied.

2. Where, pursuant to Article 11 of the Convention on Limitation of Liability for Maritime Claims (section 611 (1), first sentence, of the Commercial Code (Handelsgesetzbuch, HGB)), a fund has been established by the debtor, or on his behalf, in another signatory state of the Convention, the stipulations of section 50 of the Distribution Ordinance under Shipping Laws are to be applied to the extent the creditor has asserted his claim against the fund. Where the creditor has not asserted the claim against the fund, or where the prerequisites set out in section 50 (2) of the Distribution Ordinance under Shipping Laws have not been met, any objections filed on the basis of the right to limit liability shall be dealt with and terminated pursuant to the stipulations of sections 767, 769, 770; the same shall apply where the fund is established in the other signatory state only upon the right to limit liability being asserted.

3. If a fund has been established by the debtor, or on his behalf, in another signatory state of the Strasbourg Convention on Limitation of Liability in Inland Navigation (CLNI, published in the Federal Law Gazette (Bundesgesetzblatt, BGBl.) 1988 II page 1643), then section 52 of the Distribution Ordinance under Shipping Laws is to be applied should the creditor have asserted his claim against the fund. Where the creditor has not asserted the claim against the fund, or where the prerequisites set out in section 52 (3) of the Distribution Ordinance under Shipping Laws have not been met, any objections filed on the basis of the right to limit liability pursuant to sections 4 to 5m of the Inland Waterways Act (Binnenschiffahrtsgesetz) shall be dealt with and terminated pursuant to the stipulations of sections 767, 769, 770; the same shall apply where the fund is established in the other signatory state only upon the right to limit liability being asserted.

(3) If the judgment of a foreign court has been promulgated subject to the reservation that the defendant may assert the right to limit liability if a fund has been established pursuant to Article 11 of the Convention on Limitation of Liability for Maritime Claims or pursuant to Article 11 of the Strasbourg Convention on Limitation of Liability in Inland Navigation, or if it is so established upon the right to limit liability being asserted, the stipulations of subsection (2) shall apply mutatis mutandis to compulsory enforcement against the claim established by that judgment.

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## **Section 787**

### **Compulsory enforcement where real estate or a ship is ownerless**

(1) Insofar as the compulsory enforcement is to assert a right to a plot of real estate that was relinquished by its previous owner pursuant to section 928 of the Civil Code (Bürgerliches Gesetzbuch, BGB) and has not yet been acquired by the party entitled to appropriation, the court responsible for execution is to appoint a representative, upon corresponding application being made, who shall be responsible, until title to the property has been entered in the land register in the name of

a new owner, for protecting the rights and fulfilling the obligations resulting from the property in compulsory enforcement proceedings.

(2) Subsection (1) shall apply mutatis mutandis where a right to a registered ship or ship under construction is to be asserted by compulsory enforcement, which ship or ship under construction had been relinquished by its owner pursuant to section 7 of the Act on Rights to Registered Ships and Ships under Construction (Gesetz über Rechte an eingetragenen Schiffen und Schiffsbauwerken) of 15 November 1940 (Law Gazette of the Reich (Reichsgesetzblatt, RGBl.) I page 1499) and has not yet been acquired by the party entitled to appropriation.

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## **Section 788**

### **Costs of compulsory enforcement**

(1) To the extent the costs of compulsory enforcement were required (section 91), they shall be borne by the debtor; they are to be recovered concurrently with the claim subject to compulsory enforcement. The costs of preparing an execution of the judgment and of serving it shall also be deemed to be the costs of compulsory enforcement. To the extent a plurality of debtors have been sentenced as joint and several debtors, they shall also be liable for the costs of compulsory enforcement as joint and several debtors; section 100 subsections (3) and (4) shall apply mutatis mutandis.

(2) Upon corresponding application being made, the execution court with which an enforcement action is pending at the time of the application shall determine the costs pursuant to section 103 (2) and sections 104 and 107; after the termination of compulsory enforcement, this shall be done by the court in the district of which the last enforcement action was taken. If enforcement is pursued in accordance with the stipulations of sections 887, 888 and 890, the court of first instance hearing the case shall take the decision.

(3) The debtor is to be reimbursed for the costs of compulsory enforcement wherever the judgment based on which compulsory enforcement was pursued has been repealed.

(4) The court may impose on the creditor the costs of proceedings pursuant to sections 765a, 811a, 811b, 829, 850k, 850l, 851a and 851b, in their entirety or in part, should this be equitable for special reasons given in the creditor's conduct.

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## **Section 789**

### **Involvement of public authorities**

Should a public authority need to be involved for the purposes of compulsory enforcement, the court is to request that the public authority take action.

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## **Section 790**

### **(repealed)**

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## **Section 791**

### **(repealed)**

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**Section 792**  
**Issuance of records or documents to creditors**

If the creditor requires a certificate of inheritance for the purposes of compulsory enforcement, or any other record or document that is to be issued to the debtor, upon corresponding application being made, by a public authority, a civil servant or a notary, he may take the stead of the debtor in demanding that it be so issued.

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**Section 793**  
**Complaint subject to a time limit**

A complaint subject to a time limit may be filed against decisions that may be taken in compulsory enforcement proceedings without a hearing for oral argument being held.

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**Section 794**  
**Further enforceable legal documents**

(1) Compulsory enforcement may furthermore be pursued:

1. Based on settlements concluded by the parties, or between one of the parties and a third party, in order to resolve the legal dispute either in its full scope or as regards a part of the subject matter of the litigation, before a German court or before a dispute-resolution entity established or recognised by the Land department of justice (Landesjustizverwaltung), as well as based on settlements that have been recorded pursuant to section 118 (1), third sentence, or section 492 (3) for the record of the judge;
2. Based on orders assessing the costs;
  - 2a. (repealed)
  - 2b. (repealed)
3. Based on decisions against which a complaint may be lodged as an appellate remedy;
  - 3a. (repealed)
4. Based on writs of execution;
  - 4a. Based on decisions declaring arbitration awards as enforceable, provided that the decisions are final and binding or have been declared provisionally enforceable;
  - 4b. Based on orders pursuant to section 796b or section 796c;
5. Based on records or documents that have been recorded in accordance with the requirements as to form by a German court or by a German notary within the bounds of his official authority, provided that the record or document has been recorded regarding a claim that can be provided for by a settlement, that is not directed at obtaining a declaration of intent, and that does not concern the existence of a tenancy relationship for residential spaces, and furthermore provided that the debtor has subjected himself, in the record or document, to immediate compulsory enforcement of the claim as specified therein;
6. Based on European orders for payment that have been declared enforceable.

(2) Insofar as, pursuant to the stipulations of sections 737, 743, section 745 (2), and of section 748 (2) it is necessary to sentence a party involved to tolerating compulsory enforcement, this shall be substituted by the party involved approving, in a record or document prepared pursuant to subsection (1) number 5, the immediate compulsory enforcement against the objects that are subject to the title he holds.

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#### **Section 794a**

##### **Compulsory enforcement based on a settlement reached regarding the vacation of premises**

(1) Where a debtor has entered into obligation to vacate residential premises in a settlement based on which compulsory enforcement may be pursued, the local court (Amtsgericht, AG) in the district of which the residential premises are located may approve, upon corresponding application being made, a period for clearing the premises that is reasonable under the circumstances. The petition is to be filed at the latest two (2) weeks prior to the day on which the premises are to be vacated pursuant to the settlement; sections 233 to 238 shall apply mutatis mutandis. The decision is delivered by a court order. Prior to the decision, the creditor is to be heard. The court is authorised to deliver the orders designated in section 732 (2).

(2) The period for clearing the premises may be extended or shortened upon corresponding application being made. Subsection (1) second to fifth sentences shall apply mutatis mutandis.

(3) The period for clearing the premises may not amount to more than one (1) year in total, calculated from the day on which the settlement was concluded. If the settlement has stipulated a later date for clearing the premises, the period set therefor shall be calculated from that day onwards.

(4) A complaint subject to a time limit may be lodged against the decision delivered by the local court (Amtsgericht, AG).

(5) Subsections 1 to 4 shall not apply to tenancy relationships governing residential premises in the sense as defined by section 549 (2) number 3, nor do they apply to the cases provided for by section 575 of the Civil Code (Bürgerliches Gesetzbuch, BGB). Should a tenancy relationship in the sense as defined by section 575 of the Civil Code be terminated without prior notice, the period for vacating the premises may be granted at the longest until the time contractually agreed as the end of the tenancy relationship.

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#### **Section 795**

##### **Application of the general regulations to additional, enforceable legal documents**

Unless sections 795a to 800 provide otherwise, the stipulations of sections 724 to 793 shall apply mutatis mutandis to compulsory enforcement based on the enforceable deeds of title mentioned in section 794. Where the enforceable deeds of title are based on judgments that are provisionally enforceable only against provision of security, section 720a shall apply mutatis mutandis to compulsory enforcement based on the enforceable deeds of title mentioned in section 794 (1) number 2. Additionally, sections 1093 to 1096 shall apply to compulsory enforcement based on European orders for payment that have been declared enforceable.

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#### **Section 795a**

##### **Compulsory enforcement based on a cost-assessment order**

Compulsory enforcement based on a cost-assessment order that has been included in the judgment pursuant to section 105 shall be pursued based on an enforceable execution copy of the judgment; no court certificate of enforceability need be issued for the court order assessing the costs.

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### **Section 795b**

#### **Declaration of enforceability of the court settlement**

In the case of settlements concluded before a German court (section 794 (1) number 1), the effectiveness of which depends exclusively on an event occurring that has been set out in the file on the proceedings, the court certificate of enforceability shall be issued by the records clerk of the court registry of the court of first instance and, where the legal dispute is pending with a court of higher instance, by the records clerk of the registry of that court.

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### **Section 796**

#### **Compulsory enforcement based on writs of execution**

(1) Writs of execution shall require a court certificate of enforceability only if compulsory enforcement is to be pursued on behalf of another creditor than the one designated in the writ of execution, or against another debtor than the one designated in the writ of execution.

(2) Objections concerning the claim as such shall be admissible only insofar as the grounds on which they are based arose after service of the writ of execution and can no longer be asserted by entering a protest.

(3) That court shall have jurisdiction that would have had jurisdiction for a decision in the litigation for actions brought for the issuance of a court certificate of enforceability, as well as for actions by which objections are asserted that concern the claim as such, or by which the occurrence of the prerequisite for the issuance of the court certificate of enforceability is disputed, which was assumed as having been proven when such court certificate was issued.

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### **Section 796a**

#### **Prerequisites for the settlement reached among attorneys to be declared enforceable**

(1) A settlement reached by attorneys on behalf of the parties they represent, upon having been correspondingly authorised, shall be declared enforceable, upon corresponding application being made by a party, if the debtor has subjected himself in such settlement to immediate compulsory enforcement and the settlement has been deposited, specifying the date on which it was reached, with a local court (Amtsgericht, AG) in the district of which one of the parties had its general venue at the time the settlement was reached.

(2) Subsection (1) shall not apply should the settlement be directed at the issuance of a declaration of intent or should it concern the existence of a tenancy relationship for residential premises.

(3) The declaration of enforceability shall be refused to be issued if the settlement is invalid or if its recognition would violate public order.

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### **Section 796b**

#### **Declaration of enforceability by the court hearing the case**

(1) That court as the court hearing the case shall be competent for the declaration of enforceability pursuant to section 796a (1) that would have had jurisdiction for the assertion before the court of the claim to be enforced.

(2) The opponent is to be heard prior to the decision being delivered on the petition for a declaration of enforceability. The decision is delivered by a court order. The decision is incontestable.

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### **Section 796c** **Declaration of enforceability by a notary**

(1) Furthermore, a notary who has his official residence in the district of a court that has jurisdiction pursuant to section 796a (1) may keep a settlement document safe and declare it enforceable, provided that the parties consent to his doing so. Sections 796a and 796b shall apply mutatis mutandis.

(2) Insofar as the notary refuses to issue a declaration of enforceability, he shall provide the grounds on which his decision is based. Such refusal by the notary may be contested by filing a petition for a court decision to be taken with the court that has jurisdiction pursuant to section 796b (1).

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### **Section 797** **Procedure pursued in the case of enforceable records or documents**

(1) The enforceable execution copy of court records or documents will be issued by the records clerk of the registry of the court in the safekeeping of which the record or document has remained.

(2) The enforceable execution copy of notarial records or documents will be issued by the notary in whose safekeeping the record or document has remained. Should the record or document have remained in the safekeeping of a public authority, the latter is to issue the enforceable execution copy.

(3) The decision regarding objections that concern the admissibility of the court certificate of enforceability and the admissibility of issuing a further enforceable execution copy will be taken, where court records or documents are involved, by the court in the safekeeping of which the record or document has remained, and, where notarial records or documents are involved, by that local court (Amtsgericht, AG) in the district of which the notary in the safekeeping of whom the record or document has remained has his official residence, or in the district of which the public authority in the safekeeping of which the record or document has remained has its official seat. The decision as to the issuance of a further enforceable execution copy will be taken, where court records or documents are involved, by the court in the safekeeping of which the record or document has remained, and, where notarial records or documents are involved, by the notary in the safekeeping of whom the record or document has remained, or, if the record or document has remained in the safekeeping of a public authority, by that local court (Amtsgericht, AG) in the district of which said public authority has its official seat.

(4) The limiting rule set out in section 767 (2) is not to be applied to the assertion of objections concerning the claim as such.

(5) That court with which the debtor has his general jurisdiction in Germany, and otherwise that court with which an action may be brought against the debtor pursuant to section 23, shall have jurisdiction for actions brought for the issuance of a court certificate of enforceability, or for actions by which the objections concerning the claim as such are asserted, or by which the occurrence of the prerequisite for the issuance of the court certificate of enforceability is disputed.

(6) Subsections (2) to (5) shall apply mutatis mutandis to orders pursuant to section 796c.

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### **Section 797a**

#### **Procedure pursued in the case of settlements being reached before a dispute-resolution entity**

(1) In the case of settlements having been reached before dispute resolution entities of the type designated in section 794 (1) number 1, the records clerk of the court registry of that local court (Amtsgericht, AG) shall issue the certificate of enforceability in the district of which the dispute-resolution entity has its seat.

(2) The court designated in subsection (1) shall decide on objections concerning the admissibility of a court certificate of enforceability.

(3) Section 797 (5) shall apply mutatis mutandis.

(4) The Land department of justice (Landesjustizverwaltung) may authorise the chairpersons of dispute resolution entities to issue certificates of enforceability for settlements that have been reached before the dispute-resolution entity. This authorisation shall not extend to the cases provided for by section 726 (1), sections 727 to 729, and section 733. The court designated in subsection (1) shall decide on objections concerning the admissibility of a certificate of enforceability.

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### **Section 798**

#### **Waiting period**

Compulsory enforcement based on a cost-assessment order that has not been set out on the judgment, based on orders pursuant to section 794 (1) number 4b as well as based on the records or documents recorded pursuant to section 794 (1) number 5 may be begun only if the enforceable deed of title has been served at least two (2) weeks previously.

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### **Section 798a**

#### **(repealed)**

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### **Section 799**

#### **Enforceable record or document in the case of legal succession**

Insofar as the owner of real estate encumbered by a mortgage, a charge on land, or an annuity charge on land has subjected himself to immediate compulsory enforcement in a record or document recorded pursuant to section 794 (1) number 5, and an enforceable execution copy has been issued to the creditor's successor in title, then wherever the successor in title has been entered in the land register as creditor, no service need be performed of the public record or document, or publicly certified record or document, that proves the legal succession.

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### **Section 799a**

#### **Liability for damages where other creditors are pursuing enforcement based on records or documents**

In cases in which the owner of real estate has subjected himself to immediate compulsory enforcement with a view to a mortgage or a charge on land in a record or document recorded pursuant to section 794 (1) number 5, and a creditor other than the creditor designated in the record

or document is pursuing the enforcement, then this other creditor shall be under obligation, to the extent the enforcement based on the record or document is declared inadmissible, to compensate the debtor for the damages the latter has suffered by the enforcement based on the record or document, or by his efforts made in order to avert the enforcement. The first sentence shall apply mutatis mutandis where the debtor has subjected himself to immediate enforcement against his property regarding the claims that were secured by the charge on real property, or for the claim based on an acknowledgment of debt serving the same purpose.

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## **Section 800**

### **Enforceable record or document against the respective owner of real estate**

(1) The owner may subject himself to immediate compulsory enforcement in a record or document recorded pursuant to section 794 (1) number 5 with a view to a mortgage, a charge on land, or an annuity charge on land in such manner that compulsory enforcement based on the record or document is to be admissible against the respective owner of the real estate. In such event, the subjection to immediate compulsory enforcement must be entered in the land register.

(2) If compulsory enforcement is pursued against a later owner who is entered in the land register, it is not necessary to serve the public record or document, or publicly certified record or document, proving the acquisition of ownership.

(3) Should immediate compulsory enforcement be admissible against the respective owner, that court shall have jurisdiction for the actions designated in section 797 (5) in the district of which the real estate is situate.

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## **Section 800a**

### **Enforceable record or document in the case of a maritime mortgage**

(1) The stipulations of sections 799 and 800 shall apply mutatis mutandis to registered ships and ships under construction encumbered by a maritime mortgage.

(2) Where immediate compulsory enforcement against the respective owner is admissible, that court shall have jurisdiction for the actions designated in section 797 (5) in the district of which the register for the ship or the ship under construction is being kept.

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## **Section 801**

### **Legal documents enforceable under Land law**

(1) The legislative powers of the Länder are not prevented from admitting the compulsory enforcement by a court based on other enforceable deeds of title than those designated in sections 704 and 794, nor are they prevented from establishing rules in this regard that are in derogation of the present Code as regards compulsory enforcement.

(2) Claims may be enforced based on enforceable deeds of title governed by Land law in the sense as defined by subsection (1) in the entire territory of the Federal Republic of Germany.

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## **Section 802**

### **Exclusive venue**

The venues directed in this Book are exclusive.

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## **Chapter 2**

### **Compulsory enforcement for monetary claims**

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## **Title 1**

### **General regulations**

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### **Section 802a**

#### **Principles of enforcement; general powers of the court-appointed enforcement officer**

(1) The court-appointed enforcement officer shall work towards ensuring that the recovery of monetary claims is effected promptly, fully, and in a cost-efficient manner.

(2) By reason of the corresponding enforcement instructions and the physical handover of the enforceable execution copy, the court-appointed enforcement officer has the following powers, notwithstanding any further competences he may have:

1. To make efforts at amicably terminating the matter (section 802b),
2. To obtain information from the debtor on his financial circumstances and the assets he owns (section 802c),
3. To obtain information from third parties on the debtor's financial circumstances and the assets he owns (section 802l),
4. To pursue the attachment and realisation of physical objects,
5. To give notice of imminent attachment of a debt (section 845); this shall not require the prior issuance of an enforceable execution copy, nor shall it require the service of the enforceable deed of title.

The measures are to be designated in the enforcement instructions; however, the measure pursuant to number 1 of the first sentence is to be so designated only if the instructions are limited thereto.

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### **Section 802b**

#### **Amicable termination of the matter; deferment of enforcement in the event of a payment agreement**

(1) In all situations of the proceedings, the court-appointed enforcement officer is to endeavour to achieve an amicable termination of the matter.

(2) Where the creditor has not ruled out a payment agreement, the court-appointed enforcement officer may grant to the debtor a period within which payment is to be made, or may allow the debt to be redeemed by partial performance (payment in instalments), provided the debtor demonstrates in a satisfactory way that he will be able to make the payments, which are to be determined in terms of

their amount and timing. Should a payment plan be determined in accordance with the first sentence, the enforcement shall be deferred. The redemption is to be completed within twelve (12) months.

(3) The court-appointed enforcement officer shall inform the creditor without undue delay of the payment plan determined pursuant to subsection (2) and of the deferment of enforcement. Where the creditor opposes the payment plan without undue delay, the payment plan shall be rendered invalid upon the debtor being notified of this fact; concurrently, the deferment of enforcement shall end. Should the debtor be in arrears for longer than two weeks with a payment determined, in its entirety or with a part of it, this shall have the same effect.

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### **Section 802c**

#### **Information from the debtor on his assets**

(1) For purposes of enforcing a monetary claim, the debtor is under obligation to provide information to the court-appointed enforcement officer, at the latter's demand, on his financial circumstances and the assets he owns, subject to the stipulations set out hereinbelow, and to provide his name at birth as well as his date and place of birth. Where the judgment debtor is a legal person or an association of persons, he is to provide the name, the number of the registry folio on which he is entered in the Commercial Register, and his registered seat.

(2) In providing such information, the debtor is to cite all assets belonging to him. Where he lists receivables, the reasons and the evidence proving his claim are to be designated. Furthermore, the debtor is to provide information on the following:

1. The dispositions the debtor has made against payment to a person with whom he has a close relationship (section 138 of the Insolvency Statute (Insolvenzordnung, InsO)) in the course of the last two (2) years prior to the date set out in section 802f (1) and up to the date on which he provided information on his assets;
2. The performance the debtor has made without payment in the last four (4) years prior to the date pursuant to section 802f (1) and up to the date on which he provided information on his assets, provided that this does not concern usual gifts made on certain occasions that are of little value.

Objects that are obviously not subject to attachment pursuant to section 811 (1) nos. 1 and 2 need not be listed unless attachment with substitution is an available option.

(3) The debtor is to record a statutory declaration in lieu of an oath, stating that he has correctly and fully made the statements according to subsections (1) and (2) to the best of his knowledge and belief. The stipulations of sections 478 to 480 and of section 483 shall apply mutatis mutandis.

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### **Section 802d**

#### **New information on assets**

(1) A debtor who, in the course of the last two years, has provided information on his financial circumstances and the assets he owns pursuant to section 802c of the present Code or pursuant to section 284 of the Fiscal Code (*Abgabenordnung*, AO) shall be obligated to once again provide such information only if a creditor satisfactorily demonstrates facts allowing the conclusion to be drawn that there has been a significant change to the debtor's financial circumstances and in the assets he owns. Alternatively, the court-appointed enforcement officer shall forward to the creditor a hard-copy printout of the last schedule of assets that has been provided. The creditor may use the data obtained solely for purposes of enforcement and shall delete the data upon such purpose having been achieved; the enforcement officer is to indicate this fact to the creditor. The enforcement officer shall

notify the debtor that a hard-copy printout has been forwarded in accordance with the second sentence and shall instruct him that he may potentially entered in the list of debtors (section 882c).

(2) Instead of having a hard-copy printout forwarded, the creditor may, upon filing a corresponding application, have the schedule of assets transmitted as an electronic document, provided that this has been furnished with a qualified electronic signature and is protected against its becoming known to unauthorised parties.

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## **Section 802e Competence**

(1) The court-appointed enforcement officer of the local court (Amtsgericht, AG) in the district of which the debtor has his place of residence or, absent such place of residence, his place of abode at the time the instructions are issued to the court-appointed enforcement officer, shall be the enforcement officer competent to take the information on the debtor's financial circumstances and assets and to administer the statutory declaration in lieu of an oath.

(2) Should the court-appointed enforcement officer first contacted not be competent, he shall forward the matter, upon the creditor having filed a corresponding application, to the competent enforcement officer.

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## **Section 802f Proceedings for taking the information on the debtor's assets**

(1) By way of taking the information on the debtor's financial circumstances and assets, the court-appointed enforcement officer shall set a deadline of two weeks, within which the debtor is to settle the claim. For the case that the claim has not been fully settled following the expiry of the deadline, the enforcement officer shall concurrently arrange a meeting for a date shortly after expiry of the deadline, on which the information on the debtor's financial circumstances and assets is to be provided, and shall summon the debtor to his offices for such meeting. The debtor is to produce the documentation required for providing information on his financial circumstances and assets at the meeting.

(2) In derogation from subsection (1), the court-appointed enforcement officer may determine that the debtor is to provide the information on his financial circumstances and assets in his own residence. The debtor may oppose this determination vis-à-vis the enforcement officer, and must do so within one week. In all other cases, the debtor shall be deemed to have failed to appear at the meeting in violation of his obligations should the debtor fail to provide the information on his financial circumstances and assets for reasons for which he is responsible.

(3) The debtor is to be instructed, with the summons to the meeting, regarding the statements to be made pursuant to section 802c (2). The debtor is to be instructed as regards his rights and obligations pursuant to subsections (1) and (2), regarding the consequences of a failure to appear at the meeting without excuse, or regarding a violation of his obligation to provide information, and about the possibility of information being obtained from third parties pursuant to section 802l as well as his potential entry in the list of debtors upon his providing information on his assets pursuant to section 882c.

(4) Demands for payment, summonses, determinations, and instructions pursuant to subsections (1) through (3) are to be served on the debtor, even in those cases in which the debtor has retained an attorney of record; no notice need be sent to the attorney of record. The appointed date as determined by the court shall be communicated to the creditor subject to the stipulations of section 357 (2).

(5) The court-appointed enforcement officer shall prepare a list containing the statements required pursuant to section 802c subsections (1) and (2) (schedule of assets), this being an electronic document. These statements are to be read to the debtor prior to his recording the declaration pursuant to section 802c (3), or they are to be reproduced on a screen for his inspection. Should the debtor so demand, a hard-copy printout shall be issued to him.

(6) The court-appointed enforcement officer shall lodge the schedule of assets with the central court responsible for execution pursuant to section 802k (1) and shall forward a hard-copy printout to the creditor without undue delay. The hard-copy printout must contain the note that it corresponds to the content set out in the schedule of assets; section 802d subsection (1), third sentence, and subsection (2) shall apply mutatis mutandis.

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### **Section 802g Coercive detention**

(1) Should the creditor file a corresponding application, the court shall issue a warrant of arrest against a debtor who has failed to appear at the meeting scheduled for the provision of the information on his financial circumstances and assets without having excused himself, or who refuses to provide the information on his financial circumstances and assets pursuant to section 802c without citing any grounds, in order to force the debtor to provide such information. The warrant for arrest is to designate the creditor, the debtor, and the grounds for the arrest. The warrant for arrest need not be served prior to being executed.

(2) The debtor shall be arrested by a court-appointed enforcement officer. A certified copy of the warrant for arrest is to be physically submitted to the debtor at the time of his arrest.

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### **Section 802h Inadmissibility of the execution of the arrest**

(1) The execution of the warrant for arrest is not an available remedy if two (2) years have lapsed since the date on which the warrant for arrest was issued by the court.

(2) Any arrest ordered against a debtor whose health would be subjected to an imminent and significant risk by an execution of the arrest may not be executed for as long as this state of the debtor's health continues.

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### **Section 802i Information on the assets of a debtor in arrest**

(1) A debtor who has been arrested may demand at any time that the court-appointed enforcement officer of the local court (Amtsgericht, AG), in the district of which he is being detained, take the information on his financial circumstances and assets. This demand is to be complied with without undue delay; section 802f (5) shall apply mutatis mutandis. Should the creditor file a corresponding application, his attendance shall be enabled, provided that his attendance does not result in delaying the taking of the information.

(2) After the debtor has provided the information on his assets, he shall be released from detention. Section 802f subsections (5) and (6) shall apply mutatis mutandis.

(3) Should the debtor be unable to make complete statements because he does not have the required documents at hand, the court-appointed enforcement officer may appoint a new date and may

suspend the execution of the warrant for arrest until that time. Section 802f shall apply mutatis mutandis; no deadline for payment need be set.

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### **Section 802j** **Duration of arrest, renewed arrest**

- (1) The arrest may not be ordered for a period longer than six (6) months. Following expiry of the six (6) months, the debtor shall be released from arrest ex officio.
- (2) Where a debtor is released from arrest upon the creditor having filed a corresponding petition, without the debtor having contributed to this, no renewed arrest shall be ordered against the debtor if the same creditor files a corresponding application.
- (3) If an arrest of six (6) months has been executed against a debtor due to his refusal to provide the information on his financial circumstances and assets, the provision of such information on his financial circumstances and assets may be imposed on him by ordering an arrest in the course of the subsequent two (2) years only subject to the pre-requisites of section 802d, even if a corresponding petition is filed by another creditor.

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### **Section 802k** **Central administration of schedules of assets**

- (1) Schedules of assets that are to be deposited pursuant to section 802f (6) of this Act or pursuant to section 284 (7), fourth sentence, of the Fiscal Code (Abgabenordnung, AO) shall be maintained in electronic form in each Land by a central execution court. It is possible to inspect the schedules of assets via a central, internet-based search in all databases of the Länder, and to retrieve such schedules of assets. The same applies to schedules of assets that were established based on a provision of federal or Land law equivalent to section 284 subsections (1) to (7) of the Fiscal Code, insofar as this provision orders their deposit. A schedule of assets according to the first sentence or second sentence is to be deleted upon the expiry of two (2) years from the date on which the information was provided, or upon the receipt of a new schedule of assets.
- (2) The court-appointed enforcement officers may retrieve copies of the schedules of assets maintained by the central execution courts pursuant to subsection (1) for purposes of execution. Those enforcement authorities shall be equivalent to court-appointed enforcement officers that

1. May demand information on assets owned pursuant to section 284 of the Fiscal Code (Abgabenordnung, AO),
2. Are authorised by federal or Land law to demand that the debtor provide information on the assets he owns, where this authority to obtain information has been ruled out by the establishment of a schedule of assets to be deposited pursuant to subsection (1), or
3. Are authorised by federal or Land law to demand that the debtor provide information to the court-appointed enforcement officer on the assets he owns pursuant to section 802c.

Furthermore, the courts responsible for execution, insolvency courts, and courts maintaining registers as well as the law enforcement agencies are authorised to inspect these schedules to the extent required by the fulfilment of the tasks incumbent on them.

- (3) The Land governments shall determine by statutory instrument which court is to perform the tasks of the central execution court pursuant to subsection (1). They may confer this authority upon the Land departments of justice. The central execution court pursuant to subsection (1) may have other

agencies perform the data processing on its behalf; the respectively applicable stipulations of data protection law concerning the processing of personal data on behalf of others are to be applied.

(4) The Federal Ministry of Justice is authorised to provide for the details of the content, form, recording, transmission, maintenance, and deletion of the schedules of assets pursuant to section 802f (5) of this Act and pursuant to section 284 subsection (7) of the Fiscal Code (Abgabenordnung, AO) or equivalent provisions in the sense of subsection (1), second sentence, and also for the details of the inspection, in particular by automated retrieval processes, such provision being subject to approval by the Bundesrat and being made by statutory instrument. The statutory instrument is to establish suitable rules for safeguarding data protection and data security. In particular, it is to be ensured that the schedules of assets:

1. Are protected against unauthorised third parties obtaining knowledge in the course of their being transmitted to the central execution court pursuant to subsection (1), as well as during the transfer to the other agencies pursuant to subsection (3), third sentence;
2. Are reproduced as a whole and completely;
3. May be allocated at any time to their source; and
4. May be retrieved only by registered users, with every retrieval being recorded.

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### **Section 802l Information rights of the court-appointed enforcement officer**

(1) Where the debtor does not comply with his obligation to provide information on his financial circumstances and the assets he owns, or if it is foreseeable that the enforcement against the assets listed therein will not achieve the full satisfaction of the creditor, the court-appointed enforcement officer may

1. Obtain from the statutory pension insurance funds the name, the first names, or the company name of the debtor, as well as the addresses of the current employers in whose services the debtor is working under an employment relationship entailing the obligation to make compulsory social insurance contributions;
2. Request that the Federal Central Tax Office (*Bundeszentralamt für Steuern*) retrieve the data designated in Section 93b (1) of the Fiscal Code (Abgabenordnung, AO) from credit institutions (section 93 (8) of the Fiscal Code);
3. Obtain from the Federal Motor Transport Authority (*Kraftfahrtbundesamt*) the data on the vehicle and the vehicle keeper pursuant to section 33 (1) of the Road Traffic Act (Strassenverkehrsgesetz, StVG) for any vehicle regarding which the debtor has been entered as the vehicle keeper.

Obtaining or requesting information and data shall be permissible only insofar as this is required for enforcement purposes and the claims to be enforced amount to at least 500 euros; the costs of compulsory enforcement and ancillary claims shall be included in computing this amount only if they alone are the subject matter of the enforcement instructions.

(2) The court-appointed enforcement officer shall delete or block, without undue delay, any data not required for enforcement purposes. A record is to be prepared of the deletion.

(3) The court-appointed enforcement officer shall inform the creditor without undue delay of the results of his efforts at obtaining data or of his request pursuant to subsection (1), observing the stipulations of subsection (2), and shall inform the debtor within four (4) weeks of receiving such data. Section 802d subsection (1), third sentence, and subsection (2) shall apply mutatis mutandis.

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## **Title 2**

### **Compulsory enforcement against movable property**

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#### **Section 803**

#### **Attachment**

(1) Compulsory enforcement against movable property is effected by attachment. It may not be extended beyond what is required to satisfy the creditor and to cover the costs of compulsory enforcement.

(2) No attachment shall be effected if it is not to be expected that the realisation of the objects to be attached will not achieve any surplus in excess of the costs of compulsory enforcement.

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#### **Section 804**

#### **Security right of a creditor**

(1) By the attachment, the creditor acquires a security right to the object so attached.

(2) The security right grants the same rights to the creditor, in his relationship to other creditors, as are entailed by pledged collateral acquired by way of an agreement; the security right takes precedence before rights of pledge and preferential rights, which shall not have equivalent status with pledged collateral in the event of insolvency proceedings being opened.

(3) Any security right established by an earlier attachment shall take precedence before a security right established by a subsequent attachment.

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#### **Section 805**

#### **Action for preferential satisfaction**

(1) A third party may not oppose the attachment of an object, should that third party not have possession of that object, based on a security right or preferential right; however, it may assert its claim for preferential satisfaction out of the proceeds by filing a corresponding court action, and may do so without considering the fact whether or not its claim is due for payment.

(2) The action is to be filed with the court responsible for execution and, where the local courts (Amtsgerichte, AG) do not have jurisdiction for the subject matter of the litigation, the action is to be filed with the regional court (Landgericht, LG) in the district of which the execution court has its seat.

(3) Should the action be directed against both the creditor and the debtor, they are to be regarded as joined parties.

(4) Provided the claim has been demonstrated to the satisfaction of the court, the court is to order the lodgment of the proceeds. In this context, the stipulations of sections 769 and 770 shall apply mutatis mutandis.

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### **Section 806** **No warranty where an attached object is disposed of**

Where an object is disposed of based on the attachment, the party acquiring that object shall have no claim to warranty for any defects of title or any material defect of the object being disposed of.

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### **Section 806a** **Notices from the court-appointed enforcement officer and interviews**

(1) If the court-appointed enforcement officer becomes aware, on the occasion of the compulsory enforcement, in the course of interviewing the debtor or as a result of his inspection of the documents, that the debtor has monetary claims against third parties, and if it is not possible to effect attachment, or if it is foreseeable that the attachment so effected will not achieve the full satisfaction of the creditor, he shall inform the creditor of the names and addresses of the third-party debtors, providing the basis for the claims and the securities established for them.

(2) If the court-appointed enforcement officer does not find the debtor at his residence and if it is not possible to effect attachment, or if it is foreseeable that the attachment so effected will not achieve the full satisfaction of the creditor, he may make inquiries with the adult persons belonging to the debtor's household regarding the debtor's employer. Said persons are not under obligation to provide this information, and the court-appointed enforcement officer is to draw their attention to the fact that this information is voluntary. The court-appointed enforcement officer shall inform the creditor of the insights he has gained.

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### **Section 806b** **(repealed)**

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### **Section 807** **Taking the information on the debtor's financial circumstances and assets following efforts to attach assets**

(1) Where the creditor has applied to have assets of the debtor attached and

1. The debtor has refused to consent to the search (section 758) or
2. The efforts to attach assets have obtained the result that the attachment foreseeably will not achieve the full satisfaction of the creditor,

the court-appointed enforcement officer may, in derogation from the stipulations of section 802f, take the information on the debtor's financial circumstances and assets immediately, should the creditor have filed a corresponding application. Section 802f subsections (5) and (6) shall apply.

(2) The debtor may oppose the immediate taking of information. In such event, the court-appointed enforcement officer shall proceed pursuant to section 802f; no deadline for payment need be set.

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## **Subtitle 2**

### **Compulsory enforcement against physical objects**

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#### **Section 808**

##### **Attachment with the debtor**

(1) The attachment of the physical objects in the custody and control of the debtor is effected by the court-appointed enforcement officer taking possession of them.

(2) Objects other than money, valuables, and securities are to be left in the custody and control of the debtor unless doing so jeopardises the satisfaction of the creditor. Should the objects be left in the custody and control of the debtor, their attachment will be valid only if it is made visible by applying seals or using other means.

(3) The court-appointed enforcement officer is to inform the debtor of the attachment having been effected.

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#### **Section 809**

##### **Attachment with the creditor or with third parties**

The above rules shall apply mutatis mutandis to the attachment of objects in the custody and control of the creditor or of a third party who is prepared to surrender them.

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#### **Section 810**

##### **Attachment of unharvested fruits**

(1) Fruits that have not yet been harvested may be attached as long as their attachment has not been effected by way of compulsory enforcement against immovable assets. The attachment may not be effected earlier than one (1) month prior to the time at which the fruit is usually ripe.

(2) A creditor entitled to satisfaction out of the plot of real estate may oppose the attachment subject to the provisions of section 771 unless the attachment has been effected for a claim taking precedence in the compulsory enforcement effected against the plot of real estate.

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#### **Section 811**

##### **Objects exempted from attachment**

(1) The following objects are not subject to attachment:

1. Objects serving the debtor's personal use or his household, in particular items of clothing, linen goods, beds, household and kitchen appliances insofar as the debtor requires them for a modest lifestyle and housekeeping needs in line with his professional activities and his indebtedness; furthermore: summer houses, garden houses, and similar facilities serving residential purposes that are subject to compulsory enforcement against movable property and that the debtor or his family require as permanent residential accommodations;
2. The foodstuff, fuel for heating and cooking, and lighting means required for four (4) weeks by the debtor, his family, the members of his household serving as household help or, to the extent no such supplies are given for this period of time and their procurement by other means is not assured, the amount of money required to so procure them;
3. Small animals in a limited number as well as one (1) dairy cow or, at the selection of the debtor, instead of the dairy cow a total of two (2) pigs, goats, or sheep if these animals are required for the nourishment of the debtor, his family, the members of his household serving as household help, in his agricultural business or in his commercial business; furthermore the supplies required for four (4) weeks of feedstuffs and bedding or, to the extent no such supplies are given for this period of time and their procurement by other means is not assured, the amount of money required to so procure them;
4. Where the debtor operates an agricultural business: the equipment and livestock required for the business operation, as well as the necessary fertiliser and the agricultural products to the extent they are required to secure the maintenance of the debtor, his family, and his employees, or to maintain the agricultural business until the next harvest of the same or similar products;
- 4a. Where the debtor is an employee in an agricultural business: the goods delivered to him as remuneration in kind, to the extent the debtor requires them in order to maintain himself and his family;
5. Where the debtor earns his maintenance using his intellectual or physical capacities or other personal performance: the objects required to continue pursuing these economic activities;
6. Concerning the widows and heirs of the persons designated in number 5 above, provided they continue to pursue the economic activities on their own account by a representative: the objects required to continue pursuing these economic activities;
7. Service clothing and service equipment insofar as they are determined for use by the debtors; where civil servants, clerics, attorneys, notaries, medical practitioners, and midwives are concerned: the objects they require to pursue their profession including appropriate clothing;
8. Where the debtor draws recurrent earnings of the type designated in sections 850 to 850b of the present Code or in section 54 subsections (3) to (5) of the First Book of the Social Code (Sozialgesetzbuch), or where the debtor draws ongoing child benefits: an amount of money corresponding to the part of the earnings that is not subject to attachment for the time from the attachment until the next payment date;
9. The appliances, containers, and goods indispensable for operating a pharmacy;
10. The books determined for the debtor's use and that of his family in church or in school or in any other institution of instruction, or for home devotionals;
11. The household records and business account ledgers, family papers as well as any wedding bands, decorations, and badges of honour;
12. Artificial limbs, glasses and other aids necessary to alleviate physical handicaps insofar as these objects are intended for use by the debtor and his family;

13. The objects determined for direct use at an interment.

(2) An object designated in subsection (1) numbers 1, 4, 5 to 7 may be attached where the seller enforces his monetary claim under the sale that has been secured by a reservation of title. Proof of the reservation of title having been agreed is to be provided by records or documents.

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#### **Section 811a Attachment with substitution**

(1) An object exempted from attachment pursuant to section 811 (1) numbers 1, 5 and 6 may admissibly be attached notwithstanding its exemption if, prior to taking the object, the creditor permits the debtor to use a replacement object serving the purpose protected by the exemption, or gives him the amount of money required to procure such replacement; should it not be possible for the creditor to obtain such replacement in due time, or where this cannot be reasonably expected of him, the attachment may be admitted subject to the proviso that the debtor is given the amount of money required to procure the replacement out of the proceeds of the execution (attachment with substitution).

(2) The court responsible for execution shall decide by court order on the admissibility of the attachment with substitution, upon the creditor filing a corresponding petition. The court is to admit such attachment with substitution only if this is reasonable under the circumstances given at that time, and in particular if it is to be expected that the proceeds of the execution will be significantly higher than the value of the replacement object. The court shall assess the value of a replacement object offered by the creditor or the amount of money required to obtain such replacement. In the case of attachment with substitution being performed pursuant to subsection (1), first clause of the sentence, the amount assessed is to be reimbursed to the creditor out of the proceeds of the execution; this shall form part of the costs of compulsory enforcement.

(3) The amount of money given to the debtor is exempted from attachment.

(4) In the case of attachment with substitution being effected pursuant to subsection (1), second clause of the sentence, the object attached may be taken only after the court order admitting it has become final and binding.

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#### **Section 811b Provisional attachment with substitution**

(1) Insofar as no prior decision of the court has been given, a provisional attachment with substitution may admissibly be effected, provided the court can be expected to admit such provisional attachment with substitution. The court-appointed enforcement officer is to effect the attachment with substitution only if it can be expected that the proceeds of the execution will be significantly higher than the value of the replacement object.

(2) The attachment is to be released if the creditor has filed a petition pursuant to section 811a (2) with the court responsible for execution, within a period of two (2) weeks after having been notified of the attachment, or if such petition has been dismissed in a final and binding judgment.

(3) The notice to the creditor is to inform him that the attachment was effected as attachment with substitution and is to set out the period within which the application is to be filed, while also setting out the consequences of any failure to comply with it.

(4) The physical submission of the replacement object to the debtor, or of the amount of money required to procure it, and the continuation of compulsory enforcement shall be effected at the

creditor's instructions only upon the order pursuant to section 811a (2) having been delivered. Section 811a subsection (4) shall apply mutatis mutandis.

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### **Section 811c**

#### **Domestic animals exempted from attachment**

(1) Animals kept in a residential area that do not serve any economic purpose are not subject to attachment.

(2) Upon a corresponding petition being filed by the creditor, the court responsible for execution shall allow an animal to be attached in light of its great value if exempting it from attachment would entail a hardship for the creditor that is not justifiable, also taking account of the concerns of the protection of animals and the debtor's justified interests.

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### **Section 811d**

#### **Temporary attachment (without actual possession being taken)**

(1) If it is to be expected that an object will become attachable in the near future, it may be attached, while, however, being left in the debtor's custody and control. The enforcement may be continued only where the object has become attachable.

(2) The attachment is to be released should the object have failed to become attachable within one (1) year.

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### **Section 812**

#### **Attachment of household effects**

Objects forming part of the customary household effects that are in use in the debtor's household shall not be attached if their realisation would manifestly obtain proceeds that bear no relation whatsoever to the objects' actual value.

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### **Section 813**

#### **Appraisal**

(1) The objects attached are to be appraised regarding their usual market value. Valuables are to be appraised by an expert. The court responsible for execution may direct that an expert perform the appraisal also in other cases, provided that a corresponding petition is filed by the creditor or by the debtor.

(2) If it is not possible to appraise the value of the objects attached, this is to be performed retroactively without undue delay, and the result obtained is to be recorded retroactively in the attachment record. Should the court-appointed enforcement officer keep his files electronically, the result is to be recorded in a separate electronic document. The document is to be joined to the attachment record such that it cannot be separated.

(3) Where it is to be assumed that the value of the objects to be attached will be higher than 500 euros, an agricultural expert is to be involved in the attachment of fruits that have not yet been harvested, and likewise where objects of the type designated in section 811 (1) number 4 are to be attached from persons operating an agricultural business.

(4) The Land department of justice (Landesjustizverwaltung) may determine that an expert is to be involved also in other cases.

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#### **Section 813a (repealed)**

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#### **Section 813b (repealed)**

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#### **Section 814 Sale at public auction**

(1) The court-appointed enforcement officer is to offer the objects attached for sale at public auction; valuables are to be appraised by an expert prior to the auction.

(2) At the election of the court-appointed enforcement officer, the public auction may be effected as:

1. An auction on site; or
2. As a generally accessible auction in the internet using an auction platform.

(3) Where internet auctions pursuant to subsection (2) number 2 are concerned, the Land governments shall determine by statutory instrument:

1. The time following which the implementation of such auction is admissible;
2. The auction platform;
3. The registration of bidders for the auction, or the refusal to so register them; insofar as the registration of a bidder or the refusal to register him for an auction is based on the requirement that natural persons prove their identity; the use of the electronic identification document (section 18 of the Act on Identity Cards (Personalausweisgesetz, PAuswG)) is to be allowed for this purpose at the latest from 1 January 2013;
4. Commencement, end, and termination of the auction;
5. The auction terms and the other legal consequences of the auction, including instructions to the bidders as to the exclusion of warranty pursuant to section 806;
6. The anonymisation of the debtor's personal information prior to their being published, and the option to so anonymise the bidders' personal data;
7. Any other special procedures to be followed.

They may confer the authorisation by statutory instrument upon the Land departments of justice (Landesjustizverwaltungen).

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## **Section 815**

### **Attached cash**

- (1) Any attached cash is to be surrendered to the creditor.
- (2) Should it be demonstrated to the satisfaction of the court-appointed enforcement officer that a third party has rights to the attached cash that prevent its being disposed over, the cash is to be lodged. Compulsory enforcement is to be continued unless a decision is delivered, within a period of two (2) weeks from the date of the attachment, by the court having jurisdiction pursuant to section 771 (1), ordering the termination of compulsory enforcement.
- (3) Where the court-appointed enforcement officer takes away the cash from the debtor, this shall be deemed to be payment by the debtor unless such cash is to be lodged pursuant to subsection (2) or pursuant to section 720.

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## **Section 816**

### **Time and place of the auction**

- (1) The sale at auction of the objects attached may not be effected prior to the expiry of one (1) week from the date of attachment unless the creditor and the debtor agree on an earlier auction, or unless such earlier auction is required in order to avert the risk of the object to be sold at auction undergoing a significant loss in value, or in order to avoid any disproportionate costs entailed by longer storage.
- (2) The object shall be sold at auction in the municipality in which it was attached, or at another location in the judicial district of the court responsible for execution, unless the creditor and the debtor agree on a third location.
- (3) The public notice of the time and place of the auction is to include a general designation of the objects to be sold at auction.
- (4) The rule set out in section 1239 (1), first sentence, of the Civil Code (Bürgerliches Gesetzbuch, BGB) shall apply mutatis mutandis to the sale at auction; section 1239 (2) of the Civil Code (Bürgerliches Gesetzbuch, BGB) shall likewise apply mutatis mutandis to the sale at auction performed on site.
- (5) Subsections (2) and (3) shall not apply to internet auctions.

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## **Section 817**

### **Successful bids and delivery**

- (1) If the auction is performed on site, the object shall go to the highest bidder after having been called three times. Should the object be auctioned off in the internet, the winning bidder shall be that person who has made the highest bid at the time at which the auction ends, this being at least the minimum bid that is to be attained pursuant to section 817a (1), first sentence; that person shall be notified that he has won the auction. Section 156 of the Civil Code (Bürgerliches Gesetzbuch, BGB) shall apply mutatis mutandis.
- (2) The object so acquired may be delivered to the successful bidder only if the purchase money has been paid, or if it is paid at the time of delivery.
- (3) If the highest bidder has failed to demand the delivery of the object against payment of the purchase money within the period determined in the auction rules, or, absent such rules, prior to the end of the auction on that date, the object shall be auctioned off otherwise. The highest bidder shall

not be admitted to make another offer; he shall be liable for any shortfall and shall not be entitled to any surplus proceeds.

(4) Where the creditor is the winning bidder, he shall be released from making payment in cash insofar as the proceeds are to be used, after deduction of the costs of compulsory enforcement, to satisfy his claim, unless the debtor has been permitted to avert enforcement by providing security or by lodgment. To the extent the creditor is released from the obligation to make payment in cash, the amount shall be deemed to have been paid by the debtor to the creditor.

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#### **Section 817a** **Minimum bid**

(1) The object being sold at auction may go only to the bidder whose bid came in at at least half the usual market value of the object (minimum bid). The usual market value and the minimum bid are to be announced while the object is being offered for bid.

(2) Should the object not be sold because the bids made are lower than the minimum set, the creditor's security right shall continue in force. He may petition at any time that a new date be scheduled for an auction, or may petition that the court order another form of realising the attached object pursuant to section 825. If another form of realisation is directed, subsection (1) shall apply mutatis mutandis.

(3) Objects made of gold or silver may not be sold to a bidder bidding less than the value of the material of the gold or silver object. Where no bid is made that would allow the object to be sold, the court-appointed enforcement officer may conclude a private sale at the price that is equivalent to the value of the gold or silver, but not lower than half the usual market value.

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#### **Section 818** **Discontinuation of the auction**

The auction will be closed as soon as the proceeds suffice to satisfy the creditor and to cover the costs of compulsory enforcement.

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#### **Section 819** **Effect of accepting the proceeds**

The possession taken by the court-appointed enforcement officer of the proceeds shall be deemed to be a payment made by the debtor unless the debtor has been permitted to avert the enforcement by providing security or lodgment.

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#### **Section 820** **(repealed)**

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#### **Section 821** **Realisation of securities**

If attached securities have an exchange price or market price, they are to be sold by the court-appointed enforcement officer directly concluding a direct sale at the then current price and, where they do not have such a price, they are to be auctioned off in accordance with the general provisions.

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## **Section 822**

### **Transfer of registered securities**

Should securities be made out to bearers, the court responsible for execution may authorise the enforcement officer to have the securities made out in the name of the buyer and to make the declarations required in this regard in the debtor's stead.

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## **Section 823**

### **Bearer instruments that are withdrawn from circulation**

If a bearer instrument is withdrawn from circulation by being registered in a particular name, or in any other way, the court responsible for execution may authorise the enforcement officer to obtain their return to circulation and to make the declarations required in this regard in the debtor's stead.

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## **Section 824**

### **Realisation of fruits that have not yet been harvested**

Fruits that have been attached but have not yet been harvested may be sold at auction only after they have become ready for harvest (ripe). The auction may be implemented before or after the fruits have been harvested; in the latter case, the court-appointed enforcement officer is to have the harvest performed.

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## **Section 825**

### **Other form of realisation**

(1) Upon the creditor or the debtor filing a corresponding petition, the court-appointed enforcement officer may realise an attached object in another manner or at another location than has been determined in the above sections. The court-appointed enforcement officer is to inform the respondent of the realisation intended. He may not realise the object prior to the expiry of two (2) weeks following the service of the information notice unless the respondent has agreed to this being done.

(2) Upon the creditor or the debtor filing a corresponding petition, the court responsible for execution may direct an attached object to be sold at auction by another person than the court-appointed enforcement officer.

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## **Section 826**

### **Subordinate attachment**

(1) In order to attach objects that have already been attached, it shall suffice to record the declaration by the court-appointed enforcement officer that he is attaching the objects on behalf of his principal.

(2) Where the first attachment has been performed by a different court-appointed enforcement officer, a copy of the record is to be sent to him.

(3) The debtor is to be informed of the further attachments.

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### **Section 827**

#### **Procedure pursued in the case of several attachments**

(1) By law, the tasks conferred on the second creditor shall devolve to the court-appointed enforcement officer who has effected the first attachment unless the court responsible for execution instructs, upon a corresponding petition being filed by a creditor or by the debtor, that the tasks of that first enforcement officer are to be assumed by a different enforcement officer. The sale at auction shall be performed on behalf of all creditors involved.

(2) Insofar as the proceeds obtained do not suffice to cover the claims, and the creditor on whose behalf the second or a later attachment was performed demands that such proceeds be distributed differently than in the sequence in which the attachments were made, without the other creditors involved consenting to this, the court-appointed enforcement officer is to notify the execution court of the overall factual situation and is to lodge the proceeds obtained. The documents relevant to the proceedings are to be attached to this notification.

(3) Where the attachment was performed for several creditors simultaneously, the same procedure is to be followed.

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### **Subtitle 3**

#### **Compulsory enforcement against claims and other property rights**

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### **Section 828**

#### **Jurisdiction of the execution court**

(1) The court responsible for execution shall take the court actions that concern compulsory enforcement against claims and other property rights.

(2) The execution court shall be that local court (Amtsgericht, AG) with which the debtor has his general venue in Germany, and in all other cases the local court with which an action may be filed against the debtor pursuant to section 23.

(3) If the court before which the action has initially been brought does not have jurisdiction, it shall relinquish jurisdiction to the competent court upon the creditor filing a corresponding petition. The relinquishment shall not be binding upon that court.

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### **Section 829**

#### **Attachment of a monetary claim**

(1) In cases in which a monetary claim is to be attached, the court is to prohibit the third-party debtor from making payment to the debtor. Concurrently, the court is to issue an order to the debtor that he is to refrain from any disposition over the claim, in particular its collection. The attachment of several monetary claims against various third-party debtors is to be ordered by a uniform court order, upon the creditor filing a corresponding petition, provided that this appears to be mandated for the

enforcement purpose and further provided that there is no reason to assume that interests warranting protection of the third-party debtor would contravene this.

(2) The creditor is to have the court order served on the third-party debtor. The court-appointed enforcement officer is to immediately serve the order, together with a copy of the record of service, on the debtor, unless service by publication is required. Where a debtor is located abroad, the order shall not be served and instead shall be mailed.

(3) Upon the order being served on the third-party debtor, the attachment is to be deemed as having been effected.

(4) The Federal Ministry of Justice is authorised to introduce forms serving the petition for the court to issue an order of attachment and transfer, such forms being subject to approval by the Bundesrat and being made by statutory instrument. To the extent forms have been introduced in accordance with the first sentence, the petitioner must use them. Different types of forms may be introduced for proceedings before courts that process these matters electronically, and for proceedings before courts that do not process these matters electronically.

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### **Section 829a**

#### **Simplified petition for enforcement in the case of writs of execution**

(1) In cases in which an electronic petition is filed for compulsory enforcement under a writ of execution, which does not require a court certificate of enforceability, forwarding the executed copy of the writ of execution may be dispensed with in the case of a monetary claim being attached and transferred (sections 829, 835), provided that

1. The monetary claim due that is set out in the writ of execution does not amount to more than 5,000 euros; the costs of compulsory enforcement and ancillary claims shall be included in computing the amount of the claim only if they alone are the subject matter of the petition for enforcement;
2. There are no stipulations requiring the submission of any records other than the executed copy of the writ of execution;
3. The creditor attaches to his petition, as an electronic document, a copy of the writ of execution along with a certificate of service, and
4. The creditor assures that he has at hand an executed copy of the writ of execution and a certificate of service and the claim continues to exist in the amount set out in the petition for enforcement.

Where the costs of the compulsory enforcement are to be executed, a reviewable itemisation of the costs and the corresponding vouchers are to be attached to the petition as electronic documents in addition to the documents listed in number 3 of the first sentence.

(2) Should the court have doubts as to an executed copy of the writ of execution existing or the other pre-requisites for enforcement having been met, it shall inform the creditor of this fact and shall perform the compulsory enforcement only once the creditor has forwarded the executed copy of the writ of execution or has proven that the other pre-requisites for the enforcement have been met.

(3) Section 130a (2) shall remain unaffected hereby.

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### **Section 830**

#### **Attachment of a mortgage claim**

(1) In order to attach a claim for which a mortgage has been established, the physical submission of the mortgage deed to the creditor is another prerequisite in addition to an attachment order being issued. Insofar as the physical submission is effected by way of compulsory enforcement, this shall be deemed to have been performed by the court-appointed enforcement officer taking away the deed for the purpose of surrendering it to the creditor. Where handing over the mortgage deed is ruled out, its attachment shall be entered in the land register; such entry shall be made on the basis of the attachment order.

(2) If the attachment order is served upon the third-party debtor prior to the physical submission of the mortgage deed or prior to the attachment being entered in the land register, the attachment shall be deemed to have been effected upon service.

(3) These rules are not to be applied in cases in which the attachment concerns claims to the performance designated in section 1159 of the Civil Code (Bürgerliches Gesetzbuch, BGB). The same shall apply to any debt-securing mortgage in the case provided for by section 1187 of the Civil Code regarding the attachment of the principal claim.

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### **Section 830a**

#### **Attachment of a maritime mortgage claim**

(1) In order to attach a claim for which a maritime mortgage has been established, the attachment is to be entered in the register of ships or in the register of ships under construction; such entry shall be made on the basis of the attachment order.

(2) In cases in which the attachment order is served on the third-party debtor prior to the attachment being entered in the register, the attachment shall be deemed to have been effected upon service.

(3) These rules are not to be applied if the attachment concerns claims to the performance designated in section 53 of the Act Governing Rights in Registered Ships and Ships under Construction (Gesetz über Rechte an eingetragenen Schiffen und Schiffsbauwerken) dated 15 November 1940 (Law Gazette of the Reich (Reichsgesetzblatt, RGBl.) I page 1499). The same shall apply where the principal claim of a maritime mortgage is being attached for a claim under a bearer debenture, under a bill of exchange, or under any other paper transferable by endorsement.

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### **Section 831**

#### **Attachment of endorsable bills**

The attachment of claims under bills of exchange and other bills that may be transferred by endorsement is effected by the court-appointed enforcement officer taking possession of such bills.

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### **Section 832**

#### **Scope of attachment in the event of ongoing emoluments**

The security right acquired by the attachment of a wage claim or a similar claim consisting of ongoing emoluments shall extend to cover also those amounts that fall due after the attachment.

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### **Section 833**

#### **Scope of attachment in the case of earned income and service income**

(1) Insofar as service income is attached, this shall also concern the income that the debtor stands to earn as a result of having been transferred to another office, of having been appointed to another office, or as a result of a wage increase. This rule is not to be applied to any cases in which the employer changes.

(2) Should the work relationship or service relationship end and the debtor and the third-party debtor establish a new such relationship within nine (9) months, the attachment shall also extend to cover the claim under the new work or service relationship.

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### **Section 833a**

#### **Scope of attachment in the case of credit balances on an account**

The attachment of a credit balance on an account kept with a credit institution comprises the credit balance existing on the date on which the attachment order is served, as well as the daily balances given on the days following the attachment.

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### **Section 834**

#### **Debtor is not heard**

The debtor is not to be heard, prior to the attachment, regarding the request for attachment.

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### **Section 835**

#### **Transfer of a monetary claim**

(1) The monetary claim that has been attached is to be transferred to the creditor, at his choice, either for collection or, in lieu of payment at the nominal value.

(2) In the latter case, the claim devolves onto the creditor; this has the effect that the creditor is satisfied as concerns his claim vis-à-vis the debtor in the extent to which the claim exists.

(3) The stipulations of section 829 subsections (2) and (3) shall apply mutatis mutandis to the transfer. Should a debtor be an individual and his balance with a credit institution have been attached and transferred to the creditor, payment out of the balance may be made to the creditor, or the amount may be lodged, only four (4) weeks after the court order as to the transfer has been served on the third-party debtor; where a balance has been attached that will be credited only at a future date, the court responsible for execution will additionally order, upon a corresponding petition being filed, that payment may be made to the creditor, or the amount may be lodged, only four (4) weeks after the amounts have been credited to the debtor's account.

(4) Where a balance has been attached that will be transferred to the debtor only at a future date and credited to an account exempted from attachment in the sense as defined by section 850k (7), the third-party debtor may make payment to the creditor, or lodge the amount, only after one (1) calendar month has expired following the month in which the respective amount has been credited to the debtor's account. The court responsible for execution may issue an order in derogation herefrom, upon a corresponding petition having been filed by the creditor, should the provision made in the first sentence result in the creditor being subjected to a hardship that said creditor cannot reasonably be expected to bear, even if the debtor's interest in protection is fully taken into account.

(5) Where remuneration for work performed or services provided personally by the debtor, who is an individual, which is payable to same on a non-recurrent basis, is transferred to the creditor, or where other income that is not earned income is so transferred to the creditor, the third-party debtor may make payment to the creditor, or lodge the amount, only four (4) weeks following service of the court order as to transfer.

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### **Section 836**

#### **Effect of the transfer**

(1) The transfer takes the stead of formal declarations made by the debtor on which the entitlement to collect the claim depends pursuant to the stipulations of civil law.

(2) The court order as to the transfer shall be deemed to be legally valid, even if it has been issued wrongly, to the benefit of the third-party debtor vis-à-vis the debtor until it is repealed and the third-party debtor becomes aware of this fact.

(3) The debtor is under obligation to provide the creditor with the information the latter requires in order to assert his claim, and to surrender to the creditor the records or documents available with the debtor concerning the claim. Should the debtor fail to provide such information, he shall be under obligation, upon the creditor filing a corresponding petition, to make the corresponding declarations for the record and to give an assurance regarding his statements by a statement made in lieu of an oath. The court-appointed enforcement officer competent pursuant to section 802e shall summon the debtor to take the latter's information and to administer the statutory declaration in lieu of an oath. The stipulations of section 802f (4), of sections 802g through 802i, and of section 802j subsections (1) and (2) shall apply mutatis mutandis. The creditor may obtain the surrender of the records or documents by way of compulsory enforcement.

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### **Section 837**

#### **Transfer of a mortgage claim**

(1) The physical delivery of the court order regarding the transfer to the creditor shall be sufficient for transferring an attached claim for which a mortgage exists. In those cases in which the handover of the mortgage deed is ruled out, the transfer in lieu of payment shall require the transfer to be entered in the land register; the entry shall be made on the basis of the court order as to the transfer.

(2) These rules are not to be applied to the extent the transfer concerns claims to the performance designated in section 1159 of the Civil Code (Bürgerliches Gesetzbuch, BGB). The same shall apply to the transfer of the principal claim in the case of a debt-securing mortgage as provided for by section 1187 of the Civil Code.

(3) In the case of a debt-securing mortgage of the type designated in section 1190 of the Civil Code (Bürgerliches Gesetzbuch, BGB), the principal claim may be attached and transferred pursuant to the general regulations, provided that the creditor has filed a petition for the claim to be transferred without the mortgage in lieu of payment.

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### **Section 837a**

#### **Transfer of a maritime mortgage claim**

(1) Where the claim is transferred for collection, the physical delivery to the creditor of the court order as to the transfer shall be sufficient for transferring an attached claim for which a maritime mortgage exists. The transfer in lieu of payment shall require the transfer to be entered in the register of ships or

in the register of ships under construction; the entry shall be made on the basis of the court order as to the transfer.

(2) These rules are not to be applied insofar as the transfer concerns claims to the performance designated in section 53 of the Act Governing Rights in Registered Ships and Ships under Construction (Gesetz über Rechte an eingetragenen Schiffen und Schiffsbauwerken) dated 15 November 1940 (Law Gazette of the Reich (Reichsgesetzblatt, RGBL.) I page 1499). The same shall apply, in the case of a maritime mortgage, if the principal claim is being transferred for a claim under a bearer debenture, under a bill of exchange or under any other instrument transferable by endorsement.

(3) Should a maritime mortgage have been limited to a maximum amount (section 75 of the Act referred to in subsection (2)), section 837 (3) shall apply mutatis mutandis.

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### **Section 838**

#### **Objection of the debtor in the case of pledged collateral**

Insofar as a claim secured by pledged collateral is transferred, the debtor may refuse to surrender to the creditor the collateral subjected to the pledge until he is provided with security for the liability to which he may be subject in the event the creditor violates his obligations vis-à-vis the pledgor of the collateral.

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### **Section 839**

#### **Transfer where the debtor is authorised to avert enforcement**

If the debtor is able to avert the enforcement pursuant to section 711, first sentence, section 712 (1), first sentence, by providing a security or lodgment, the attached monetary claims shall be transferred only for collection and only with the effect of the third-party debtor having to lodge the amount owed.

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### **Section 840**

#### **Obligation of the third-party debtor to make declarations**

(1) Upon the creditor so demanding, the third-party debtor is to declare to the creditor, within two (2) weeks of the date on which the attachment order was served:

1. Whether and to what extent he acknowledges the claim as being justified and is prepared to make payment;
2. Whether any other persons are pursuing any claims, and if so, which these claims are;
3. Whether any claims have already been attached for other creditors, and if so, which these claims are
4. Whether an order as been issued in the course of the past twelve (12) months instructing that the balance credited to the account of which the credit balance has been attached is exempted from attachment in accordance with section 850I, and
5. Whether or not the account of which the balance has been attached is an account exempted from attachment in the sense as defined by section 850k (7).

(2) The record of service must include the notice that such declarations are to be made. The third-party debtor shall be liable to the creditor for any damage arising from the failure to fulfil his obligations.

(3) The declarations by the third-party debtor may be made to the court-appointed enforcement officer at the time the attachment order is served or within the period determined in the first subsection. In the former case, they are to be included in the record of service and are to be signed by the third-party debtor.

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#### **Section 841**

##### **Obligation to give third-party notice**

A creditor pursuing his claim before the courts is under obligation to give third-party notice to the debtor in the court proceedings unless this requires service abroad or service by publication.

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#### **Section 842**

##### **Compensation of damages for delayed recovery of claims**

The creditor delaying the recovery of a claim that has been transferred to him for collection shall be liable to the debtor for any damage arising therefrom.

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#### **Section 843**

##### **Waiver by the creditor having a right of lien**

The creditor may waive the rights acquired by the attachment and transfer for collection notwithstanding his claim. The waiver is effected by a corresponding declaration, which is to be served on the debtor. The declaration is to be served on the third-party debtor as well.

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#### **Section 844**

##### **Other form of realisation**

(1) Should the attached claim be subject to conditions, or should it have a fixed maturity date, or should its collection entail difficulties because it depends on counter-performance being made, or should it entail other difficulties, the court may, upon a corresponding petition having been filed, direct another form of realisation to be implemented instead of a transfer.

(2) The opponent is to be heard prior to the court order being issued by which the petition is complied with, unless service abroad or service by publication is required.

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#### **Section 845**

##### **Notice of imminent attachment of a debt**

(1) Based on an enforceable deed of title, the creditor may have a notice served on the third-party debtor and the debtor, even prior to the attachment, that the attachment is imminent, which is to include the notice to the third-party debtor that he is to not make payment to the debtor, and the notice to the debtor to forgo any disposition over the claim, in particular its collection. The court-

appointed enforcement officer is to himself prepare the notification with the said notices if he has been expressly instructed to do so by the creditor. In cases in which a debtor is located abroad, the order shall not be served and instead shall be mailed.

(2) The notification to the third-party debtor has the effect of a seizure (section 930), provided the claim is attached within one (1) month. The period shall commence on the day on which the notification is served.

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## **Section 846**

### **Compulsory enforcement against claims to surrender**

Compulsory enforcement against claims that concern the surrender or the transfer of ownership of physical objects shall be performed in accordance with sections 829 to 845, taking account of the provisions made hereinbelow.

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## **Section 847**

### **Claim to surrender of a movable object**

(1) In attaching a claim concerning a movable physical object, an order shall direct that the object is to be surrendered to a court-appointed enforcement officer charged with this task by the creditor.

(2) The rules regarding the realisation of attached objects are to be applied to the realisation of the object.

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## **Section 847a**

### **Claim to surrender of a ship**

(1) In attaching a claim concerning a registered ship, it is to be ordered that the ship be surrendered to a fiduciary, who is to be appointed by the court responsible for execution.

(2) Should the claim be directed at obtaining the transfer of ownership, the fiduciary shall represent the debtor in transferring ownership. Upon the ownership devolving to the debtor, the creditor shall obtain a maritime mortgage for his claim. The fiduciary is to approve the entry of the maritime mortgage in the register of ships.

(3) Compulsory enforcement against the ship shall be effected in accordance with the rules applying to compulsory enforcement against immovable property.

(4) The above rules shall apply mutatis mutandis where the claim concerns a ship under construction that has been entered, or has the capacity to so be entered, in the register of ships under construction.

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## **Section 848**

### **Claim to surrender of immovable property**

(1) In attaching a claim concerning immovable property, an order is to be issued, upon the creditor filing a corresponding petition, that the property be surrendered to a sequestrator, who is to be appointed by the local court (Amtsgericht, AG) in the district of which the property is located.

(2) In cases in which the claim is directed at obtaining the transfer of ownership, conveyance shall be made to the sequestrator as the debtor's representative. Upon the ownership devolving to the debtor, the creditor shall obtain a debt-securing mortgage for his claim. The sequestrator is to approve the entry of the debt-securing mortgage.

(3) Compulsory enforcement against the object surrendered shall be effected in accordance with the rules applying to compulsory enforcement against immovable property.

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### **Section 849** **No transfer in lieu of payment**

It is inadmissible to transfer, in lieu of payment, the claims designated in section 846.

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### **Section 850** **Exemption from attachment of earned income**

(1) Earned income that is payable in money may be attached only subject to the stipulations set out in sections 850a through 850i.

(2) Earned income in the sense of this rule consists of the remuneration and pensions of civil servants, wages and service pay, retirement pensions, and similar continuous earnings granted after the person concerned has temporarily or permanently left service or his work relationship, and furthermore consists of pensions paid to surviving dependents as well as of other remuneration for services of any kind that make up the debtor's economic activities either in their entirety or to a significant degree.

(3) The following emoluments are defined as earned income to the extent they are payable in money:

- a) Emoluments that an employee may claim as compensation for non-compete restrictions for the time following the date on which his relationship of service has ended;
- b) Pensions granted on the basis of insurance contracts, if such insurance has been taken out in the interests of providing a pension to the insured or to his dependent next of kin.

(4) The attachment of the earned income payable in money covers all forms of remuneration to which the debtor is entitled for the performance of his work or service obligations, regardless of how such remuneration is designated or computed.

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### **Section 850a** **Emoluments exempted from attachment**

The following are exempted from attachment:

1. Half of those parts of the earned income that are paid for overtime work;
2. The emoluments granted in addition to the earned income for the duration of a holiday, allowances granted on the occasion of a special event within the operation, and fidelity bonuses, provided that they remain within the scope of what is usual;

3. Expense allowances, daily allowances, and other social allowances granted for activities pursued away from the office, payments made for work material provided by the employee, danger pay, as well as dirt and hardship pay, provided that these emoluments remain within the scope of what is usual;
4. Christmas bonuses up to the amount of half the monthly earned income, the exemption being capped at 500 euros;
5. Marriage and child birth benefits, provided that the enforcement is being pursued for other claims than those arising from the marriage or the birth of the child;
6. Child-raising allowances, student allowances, and similar emoluments;
7. Death benefits and survivors' benefits under work or service relationships;
8. Special allowances for the blind.

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**Section 850b**  
**Emoluments attachable subject to conditions**

(1) Furthermore, the following are exempted from attachment:

1. Pensions to be paid for an injury to limb or health;
2. Maintenance pensions based on a statutory rule, as well as the pensions to be paid because the recipient has been stripped of such a claim;
3. Continued earnings that a debtor receives from foundations or otherwise as a result of the care and generosity of a third party, or due to the provisions made for retired farmers remaining on the farm, or due to the provisions made in an agreement on removal from a house;
4. Emoluments paid by plans established for the maintenance of widows and orphans, aid and assistance plans, and health insurance funds, such emoluments being granted exclusively or to a significant part for the purpose of providing maintenance, and furthermore claims under life insurance policies that have been taken out only against the risk of the insured party's dying, provided the amount insured is not higher than 3,579 euros.

(2) These emoluments may be attached pursuant to the rules applying to earned income where the enforcement against the debtor's other movable assets has not achieved, or foreseeably will not achieve, the full satisfaction of the creditor, and where the attachment is equitable in light of the circumstances of the case, in particular in light of the nature of the claim to be recovered and the amount of the emoluments.

(3) Prior to delivering its decision, the court responsible for execution shall hear the parties involved.

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**Section 850c**  
**Attachment-exempt threshold for earned income**

(1) Earned income shall be exempted from attachment provided it does not amount to more than 930 euros 1) per month,

217.50 euros 2) per week, or

43.50 euros 3) per day,

depending on the period of time for which it is being paid. In cases in which, as a result of a statutory obligation, the debtor makes maintenance payments to a spouse, a divorced spouse, a partner under a civil union, or a former partner under a civil union, or to a relative, or where the debtor makes such payments to a parent pursuant to sections 1615l and 1615n of the Civil Code (Bürgerliches Gesetzbuch, BGB), the amount up to which earned income shall be exempted from attachment shall increase to up to

2,060 euros 4) per month,

478.50 euros 5) per week, or

96.50 euros 6) per day,

doing so by

350 euros 7) per month,

81 euros 8) per week, or

17 euros 9) per day,

for the first person to whom such maintenance is granted, and by

195 euros 10) per month,

45 euros 11) per week, or

9 euros 12) per day

in each case for the second through fifth person.

(2) If the earned income is higher than the amount up to which such earned income is exempt from attachment pursuant to subsection (1), based on the number of persons to which the debtor is paying maintenance, the excess amount shall be partly exempted from attachment in the amount of three tenths if the debtor is not paying maintenance to any of the persons set out in subsection (1), two further tenths for the first person to whom maintenance is paid, and one further tenth for each of the second to fifth persons. That part of the earned income that is in excess of 2,851 euros 13) per month (658 euros 14) per week, 131.58 euros 15) per day) shall not be taken into account in computing the amount that is exempted from attachment.

(2a) The amounts that have been exempted from attachment pursuant to subsection (1) and subsection (2), second sentence, shall be modified in each case by 1 July of every second year, and shall so be modified for the first time as per 1 July 2003; the computation of the modification is to be based on the percentage change, as compared to the respective previous year, of the basic personal allowance granted pursuant to section 32a (1) number 1 of the Income Tax Act (Einkommensteuergesetz) and on the version of section 32a (1) number 1 of the Income Tax Act applicable as per 1 January of the respective year. The Federal Ministry of Justice shall publish the relevant amounts in due time in the Federal Law Gazette (Bundesgesetzblatt, BGBl.).

(3) In computing the part of the earned income that is attachable pursuant to subsection (2), the earned income is to be rounded down, where applicable after having deducted the amount that is attachable pursuant to subsection (2), second sentence, that has been set out in the table annexed to

the present Code; such rounding shall be made for monthly payments to an amount divisible by 10 euros, for weekly payments to an amount divisible by 2.50 euros, and for daily payments to an amount divisible by 0.50 euros. The attachment order shall be deemed to be sufficiently clear if it makes reference to said table.

(4) Should a person to whom the debtor is paying maintenance based on statutory obligations have earnings of his own, the court responsible for execution may determine at its equitably exercised discretion, upon the creditor having filed a corresponding petition, that this person shall not be considered, either entirely or in part, in computing the part of the debtor's earned income that is exempted from attachment; should that person be taken into account only partially, subsection (3), second sentence, shall not be applied.

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#### **Section 850d**

##### **Liability to attachment where the debtor must comply with claims to maintenance**

(1) Regarding claims to maintenance to which a relative, a spouse, a divorced spouse, a partner under a civil union, or a former partner under a civil union is entitled, or a parent pursuant to sections 1615l and 1615n of the Civil Code (Bürgerliches Gesetzbuch, BGB), the earned income and the emoluments set out in section 850a numbers 1, 2 and 4 are attachable without the limitations designated in section 850c. However, the debtor is to be left sufficient funds as he requires for his necessary maintenance and in order to fulfil his current statutory maintenance obligations to the beneficiaries taking precedence before the creditor, or to satisfy, in equal measure, the beneficiaries ranking equally with the creditor; of the emoluments set out in section 850a numbers 1, 2 and 4, he is to be left with at least half of the amount exempted from attachment pursuant to section 850a. The part of the debtor's earned income left to him thereafter may not be higher than the amount that would have to be left to him in accordance with the stipulations of section 850c to the detriment of those creditors who are not privileged. The stipulations of the present subsection shall not apply insofar as it cannot be assumed, under the circumstances given at that time, that the debtor intentionally evaded his payment obligation where overdue performance is to be attached that fell due longer than one (1) year prior to the petition having been filed for issuance of the attachment order.

(2) Where there are several beneficiaries as defined in subsection (1), they are to be considered in the order of their claims pursuant to section 1609 of the Civil Code (Bürgerliches Gesetzbuch, BGB) and pursuant to section 16 of the Act on Civil Unions (Lebenspartnerschaftsgesetz), in which context several beneficiaries with similar entitlements shall have equal rank amongst each other.

(3) In the case of the enforcement of claims designated in subsection (1), as well as in the case of pensions to be paid on the occasion of injuries to limb or health, the income that will be earned in future may be attached and transferred together with the attachment of due claims in order to satisfy the claims becoming due at a future date.

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#### **Section 850e**

##### **Computation of attachable earned income**

In computing attachable earned income, the following shall apply:

1. The emoluments that are exempted from attachment pursuant to section 850a shall not be included in the computation, nor shall amounts be included that are to be remitted directly based on the stipulations of tax law or welfare law in order to fulfil the debtor's obligations under law. These amounts shall be equivalent to amounts payable in the disbursement period that the debtor:

a) Pays according to the stipulations of the acts governing social insurance in order to maintain his social insurance coverage; or

b) Pays to a health insurance plan comprising a specific group of insured persons or a private health insurance company, provided that they remain within the scope of what is usual.

2. Should the debtor earn income from several sources, the court responsible for execution is to add them up in the context of the attachment, upon corresponding application being made. The basic personal allowance exempted from attachment is to be deducted first and foremost from the earned income on which the debtor's livelihood is essentially based.

2a. Upon a corresponding application being made, the claims to current monetary benefits paid pursuant to the Social Code (Sozialgesetzbuch) are to be added to the earned income to the extent they are subject to attachment. To the extent the attachment is not being effected for statutory claims to maintenance, the basic personal allowance exempted from attachment is to be taken primarily from the current monetary benefits paid in accordance with the Social Code. Claims to monetary benefits for children may be added to the earned income only to the extent they may be attached pursuant to section 76 of the Income Tax Act (Einkommensteuergesetz) or pursuant to section 54 (5) of the First Book of the Social Code.

3. Should the debtor receive remuneration in kind in addition to the income payable in money, the cash remuneration and the remuneration in kind are to be added to each other. In such event, the amount payable in cash shall be attachable insofar as the part of the debtor's total income that is exempted from attachment pursuant to section 850c is covered by the value of the remuneration in kind left to the debtor.

4. Where an attachment, an assignment, or any other disposition regarding one of the claims designated in section 850d collides with an attachment for any other claim, the parts of the earned income that are liable to attachment in an extended scope pursuant to section 850d are to be set off initially from the claims to maintenance. The court responsible for execution shall perform the set-off upon a party involved filing the corresponding petition. As long as no decision by the execution court has been served on the third-party debtor, he may make payments with redemptive effect based on the content of the attachment orders, assignments and other dispositions of which he is aware.

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### **Section 850f Modification of the amount exempted from attachment**

(1) Upon corresponding application being made, the court responsible for execution may leave a part of the debtor's attachable earned income as defined by sections 850c, 850d and 850i to the debtor if:

a) The debtor proves that, should the attachment-exempt thresholds be applied as have been set out in the appendix to this Code (under section 850c), the necessary livelihood in the sense as defined in the Third and Eleventh Chapter of the Twelfth Book of the Social Code (Sozialgesetzbuch) or in Chapter 3 Division 2 of the Second Book of the Social Code is not covered for himself and the persons to whom he is to pay maintenance;

b) This is required by special needs of the debtor on personal or professional grounds; or if

c) This is required by the substantial scope of the debtor's statutory obligations to pay maintenance, in particular the number of his dependents,

and if this is not contravened by overriding interests of the creditor.

(2) Should compulsory enforcement be pursued for a claim arising from intentionally committed tort, the execution court may determine, upon the creditor filing a corresponding petition, the attachable part of the earned income without taking account of the limitations provided for in section 850c;

however, the debtor is to be left with sufficient funds to cover his necessary maintenance and to allow him to fulfil his current statutory obligations to pay maintenance.

(3) Where compulsory enforcement is pursued for claims other than those designated in subsection (2) and in section 850d, and in those cases in which the debtor's earned income amounts to more than 2,815 euros 1) per month (641 euros 2) per week, 123.50 euros 3) per day), the execution court may at its sole discretion determine, upon the creditor filing a corresponding petition, the attachment of amounts above and beyond those amounts that are attachable pursuant to section 850c, and in so doing the court shall take account of the creditor's and of the debtor's concerns. However, the debtor is to be left at least the amount that would result for an earned income of 2,815 euros 1) per month (641 euros 2) per week, 123.50 euros 3) per day) under section 850c. The amounts according to sentences 1 and 2 shall be modified in accordance with the provision made in section 850c (2)a in each case as per 1 July of every second year, and for the first time as per 1 July 2003. The Federal Ministry of Justice shall publish the relevant amounts in due time in the Federal Law Gazette (Bundesgesetzblatt, BGBl.).

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### **Section 850g**

#### **Modification of the prerequisites for an exemption from attachment**

Should the prerequisites for assessing the part of the earned income that is exempted from attachment change, the court responsible for execution is to correspondingly modify the attachment order upon the debtor or creditor having filed a corresponding petition. A third party shall also be entitled to file such a petition if the debtor is obligated under law to pay maintenance to that party. The third-party debtor may perform in accordance with the content of the earlier attachment order, with redemptive effect, until the court order as to the modification is served on him.

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### **Section 850h**

#### **Disguised earned income**

(1) Insofar as the recipient of the work performed or services provided by the debtor has entered into obligation to perform vis-à-vis a third party, which performance represents remuneration for the debtor's performance under the circumstances given at that time, either as a whole or in part, the claim of the third-party beneficiary may be attached in this regard, based on the enforceable deed of title against the debtor, as if the debtor was entitled to such claim. The attachment of the debtor's claim to remuneration shall comprise, without any further requirements needing to be met, the claim of the third-party beneficiary. The attachment order is to be served on the third-party beneficiary as well as on the debtor.

(2) Should the debtor perform work for or provide services to a third party in a permanent relationship that, by their nature and scope, are usually remunerated, and so performs the work and provides the services without remuneration, or against remuneration that is disproportionately low, a reasonable remuneration shall be deemed owed in the relationship of the creditor to the recipient of the work and services. In reviewing whether or not these prerequisites are given, and in assessing the remuneration, all circumstances of the individual case are to be taken into account, in particular the nature of the work performed and services provided, the family or other relationship given between the party entitled to the performance of the services and the party obligated to perform them, and the economic capacity of the party entitled to the performance of the services.

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### **Section 850i**

#### **Exemption from attachment of other earnings**

(1) Where remuneration that is not payable on a regularly recurring basis for work performed or services provided personally by the debtor, or other earnings that are not earned income, has/have been attached, the court is to leave funds to the debtor, upon corresponding petition being made, for a reasonable period of time, in that amount that would remain for him, according to the court's estimate at its free discretion, if the income he was earning consisted of current wages or service pay. In taking the decision, the debtor's economic circumstances, and in particular his other options for earning his living, are to be assessed at the court's discretion. . The court is to refuse to comply with a petition filed by the debtor insofar as it is contravened by overriding concerns of the creditor.

(2) The stipulations of section 27 of the Home Work Act (Heimarbeitsgesetz) of 14 March 1951 (published in Federal Law Gazette (Bundesgesetzblatt, BGBl.) I page 191) shall remain unaffected hereby.

(3) The provisions of the rules governing insurance, nursing care, and pensions as well as other statutory stipulations concerning the attachment of claims of a certain kind shall remain unaffected hereby.

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### **Section 850k Account exempted from attachment**

(1) Where the balance credited to the debtor's account with a credit institution, such account being exempted from attachment, is attached, the debtor may dispose of the balance up to the amount of the monthly allowance pursuant to section 850c (1), first sentence, in conjunction with section 850c (2a); in this regard, the balance is not subject to attachment. The balance in the sense of the first sentence includes any balance that may not be paid to the creditor or lodged until the expiry of the period provided for by section 835 (4). Insofar as, in the course of the respective calendar month, the debtor has not disposed of the balance in the amount that is exempt from attachment pursuant to the first sentence, this balance shall not be subject to attachment in the following calendar month, in addition to the balance exempted from attachment under the first sentence. The first to third sentences shall apply mutatis mutandis where the balance credited to a current account of the debtor has been attached, and such current account is converted to an account exempted from attachment prior to expiry of four (4) weeks following service of the court order as to transfer.

(2) In all other regards, the attachment of the credit balance shall be deemed to have been ordered subject to the proviso that the following amounts are not subject to attachment, thus increasing the allowance pursuant to subsection (1):

1. The amounts exempted from attachment pursuant to section 850c (1), second sentence, in conjunction with section 850c (2a), first sentence, where

- a) The debtor is paying maintenance to one or several persons based on statutory obligations, or
- b) The debtor is receiving monetary benefits pursuant to the Second or Twelfth Book of the Social Code (Sozialgesetzbuch) for persons living with him in a household in the sense as defined by section 7 (3) of the Second Book of the Social Code or sections 19, 20, 36, first sentence, or section 43 of the Twelfth Book of the Social Code, vis-à-vis whom the debtor is not obligated to pay maintenance in accordance with statutory provisions;

2. Non recurrent monetary benefits in the sense as defined by section 54 (2) of the First Book of the Social Code and monetary benefits serving to compensate the additional expenditures resulting from a physical disability or ill health, in the sense as defined by section 54 (3) number 3 of the First Book of the Social Code;

3. Child benefits or any other monetary benefits received with regard to children, unless these are attached due to a child's claim to maintenance payments regarding whom the benefits are being granted, or regarding whom the benefits are taken into account.

For the amounts governed by the first sentence, subsection (1), third sentence, shall apply mutatis mutandis.

(3) The amount that the court responsible for execution has left unattached in the attachment order shall take the stead of the amounts exempted from attachment under subsection (1) and subsection (2), first sentence, number 1 if the balance is attached due to the claims designated in section 850d.

(4) The court responsible for execution may determine an amount to be exempted from attachment, upon the corresponding petition being filed, that deviates from the amounts set out in subsection (1), subsection (2), first sentence, number 1 and subsection (3). Sections 850a, 850b, 850c, 850d (1) and (2), sections 850e, 850f, 850g and 850i as well as sections 851c and 851d of the present Code as well as section 54 subsection (2), subsection (3) numbers 1, 2 and 3, subsections (4) and (5) of the First Book of the Social Code, section 17 (1), second sentence, of the Twelfth Book of the Social Code and section 76 of the Income Tax Act (Einkommensteuergesetz) are to be applied mutatis mutandis. In all other regards, the execution court has the authority to deliver the orders designated in section 732 (2).

(5) The credit institution is under obligation vis-à-vis the debtor to perform under the contractual arrangements in place as concerns the credit balance that is not subject to attachment in accordance with subsections (1) and (3). This shall apply to the amounts not subject to attachment pursuant to subsection (2) only insofar as the debtor proves – by submitting a certificate of his employer, the institution making payment of the child benefits (Familienkasse), the authority making subsistence payments or any suitable person or authority in the sense of section 305 (1) number 1 of the Insolvency Statute (Insolvenzordnung, InsO) – that the credit balance is not subject to attachment. The performance by the credit institution to the debtor has redemptive effect if it is not aware, also not due to gross negligence on its part, that the certificate is incorrect. Where the debtor is unable to submit proof as stipulated by the second sentence, the court responsible for execution is to determine the amounts in accordance with subsection (2) upon the corresponding petition being filed. The first to fourth sentences also apply with a view to any lodged amounts.

(6) Where a monetary benefit pursuant to the Social Code or child benefits are credited to an account exempted from attachment, the credit institution may set off the claim arising by the credit only from those claims, or offset only those claims from such credit, for a period of fourteen (14) days from the date on which such amount was credited, to which it is entitled as remuneration for managing the account or based on dispositions over the account by the beneficiary within that period of time. Up to the amount of the credit balance remaining thereafter, the credit institution is not authorised, for a period of fourteen (14) days from the date on which said amount was credited, to refuse to implement payment instructions for lack of funds if the beneficiary proves, or if it is otherwise known to the credit institution, that the amount credited is a monetary benefit granted pursuant to the Social Code, or that it consists of child benefits. The remuneration of the credit institution for its management of the account may also be set off against amounts pursuant to subsections (1) to (4).

(7) In the agreement on which the management of a current account is based, the customer, this being an individual, or his legal representative may agree with the credit institution that the current account is to be managed as an account exempted from attachment. The customer may demand at any time that the credit institution manage his current account as an account exempted from attachment. Where the balance credited to the current account has already been attached, the debtor may demand that the current account be kept as an account exempted from attachment as per the beginning of the fourth (4<sup>th</sup>) bank working day following the date on which he made the corresponding declaration.

(8) Every person may maintain only one account exempted from attachment. In the contractual arrangements, the customer is to assure the credit institution that he is not maintaining any other account exempted from attachment. The credit institution may notify information services that it is managing an account exempted from attachment for the customer. The information services may use this information only to provide information to credit institutions making the corresponding inquiries in order to check the veracity of the assurance made in accordance with the second sentence hereof, as to whether or not the person concerned is maintaining an account exempted from attachment. Even if

the data subject grants his consent, it is not admissible to collect, process, and use the data for any other purpose than that set out in the fourth sentence.

(9) Where, contrary to the stipulations of subsection (8), first sentence, a debtor maintains several current accounts as accounts exempted from attachment, the court responsible for execution will order, upon a creditor filing the corresponding petition, that only the current account the creditor has designated in the petition will remain an account exempted from attachment. The creditor is to demonstrate to the satisfaction of the court that the pre-requisites set out in the first sentence have been met by submitting the corresponding declarations by the third-party debtors. The debtor will not be heard. The decision is to be served on all third-party debtors. Upon the decision being served on those credit institutions managing current accounts that have not been determined as accounts exempted from attachment, the effects set out in subsections (1) to (6) shall cease.

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### **Section 850I**

#### **Order as to amounts being non-attachable that have been credited to accounts exempted from attachment**

Upon the debtor filing a corresponding petition, the court responsible for execution may order that the credit balance on the account exempted from attachment not be subject to attachment for a term of up to twelve (12) months if the debtor proves that, in the six (6) months preceding the date on which he filed the petition, the vast majority of the amounts credited to the said account were non-attachable amounts, and if the debtor demonstrates to the satisfaction of the court that it can be expected that the vast majority of the amounts to be credited to the account in the coming twelve (12) months likewise will be non-attachable amounts. The court may refuse to issue this order if this is contravened by overriding interests of the creditor. The order is to be reversed, upon a creditor filing the corresponding petition, if the pre-requisites therefor are no longer given, or if the order is contravened by the creditor's overriding interests.

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### **Section 851**

#### **Non-transferable claims**

(1) Where no special rules exist, a claim shall be liable to attachment only insofar as it is transferable.

(2) A claim that is not transferable pursuant to section 399 of the Civil Code (Bürgerliches Gesetzbuch, BGB) may be attached and transferred for collection insofar as the object owed is liable to attachment.

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### **Section 851a**

#### **Exemption from attachment for farmers**

(1) The attachment of claims, to which a debtor operating an agricultural operation is entitled for the sale of agricultural products, is to be vacated by the court responsible for execution, upon the debtor having filed a corresponding petition, insofar as the earnings are indispensable for the maintenance of the debtor, his family and employees, or in order to maintain a proper administration of his operation.

(2) No attachment shall be performed in cases in which it is obvious that the prerequisites for repealing compulsory enforcement pursuant to subsection (1) are given.

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## **Section 851b**

### **Exemption from attachment in the case of rents under tenancy and lease agreements**

(1) Upon the debtor filing a corresponding petition, the attachment of rents paid under tenancy and lease agreements is to be vacated by the court responsible for execution insofar as these earnings are indispensable for the debtor to maintain the property, to perform the necessary upkeep work and to satisfy claims that would take precedence, in the event of compulsory enforcement being effected against the property, before the creditor's claim pursuant to section 10 of the Act on Enforced Auctions and Receivership (Gesetz über die Zwangsversteigerung und die Zwangsverwaltung). The same shall apply to the attachment of cash funds and credit balances resulting from rent payments made under tenancy and lease agreements that are indispensable for the purposes designated in the first sentence.

(2) Should the petition not have been filed within a period of two (2) weeks, it shall be dismissed without having been reviewed on its merits in those cases in which the execution court is convinced that the debtor failed to file the petition earlier with the intention of protracting the proceedings or due to his gross negligence. The period shall commence with the attachment.

(3) Orders pursuant to subsection (1) may be issued in several instances and, insofar as this is mandated under the circumstances given at that time, they may be reversed or modified upon corresponding application being made.

(4) The creditor is to be heard prior to the decisions designated in subsections (1) and (3) being delivered, insofar as this is possible without any significant delays. The factual circumstances that are relevant to the decision are to be demonstrated to the satisfaction of the court. No attachment shall be made if it is obvious that the prerequisites for repealing a compulsory enforcement pursuant to subsection (1) are given.

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## **Section 851c**

### **Exemption from attachment in the case of old-age pensions**

(1) Claims to payments made on the basis of agreements may be attached like earned income only if:

1. The payment is made at regular intervals on a life-long basis, but not prior to the recipient's 60<sup>th</sup> birthday, or only upon the occurrence of occupational disability;
2. The claims under the agreement may not be disposed of;
3. The determination of third parties as beneficiaries is ruled out, to the exception of surviving dependents or beneficiaries; and
4. No payment of a capital lump sum was agreed, except as death benefits.

(2) In order to enable the debtor to provide for his old age within reasonable bounds, he may accumulate a determined amount that is exempted from attachment, on the basis of an agreement designated in subsection (1), up to a total of 256,000 euros, such accumulation being scaled in accordance with his age in life and taking account of the developments on the capital market, the mortality risk, and the amount of the attachment-exempt threshold. The debtor may accumulate, from when he is 18 years of age until his 29<sup>th</sup> birthday: 2,000 euros per year, from when he is 30 year of age until his 39<sup>th</sup> birthday: 4,000 euros per year, from when he is 40 years of age until his 47<sup>th</sup> birthday: 4,500 euros per year, from when he is 48 years of age until his 53<sup>rd</sup> birthday: 6,000 euros per year, from when he is 54 years old until his 59<sup>th</sup> birthday: 8,000 euros per year, and from when he is 60 years old until his 67<sup>th</sup> birthday: 9,000 euros per year. Where the surrender value of the old-age provisions exceeds the amount that is exempted from attachment, three tenths of the surplus amount shall be exempted from attachment. The third sentence shall not apply to the part of the

surrender value that is in excess of the amount set out in the first sentence, multiplied by a factor of three (3).

(3) Section 850e numbers 2 and 2a shall apply mutatis mutandis.

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### **Section 851d**

#### **Exemption from attachment in the case of retirement assets subsidised by tax credits**

Monthly payments made in the form of a life-long pension, or monthly instalments paid out, in the context of a withdrawal plan pursuant to section 1 (1), first sentence, number 4 of the Act Governing the Certification of Agreements for Old-Age Provisions (Altersvorsorgeverträge-Zertifizierungsgesetz), from retirement assets subsidised by tax credits are attachable as if they were earned income.

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### **Section 852**

#### **Claims attachable subject to restrictions**

(1) The claim to a compulsory portion of an estate shall be liable to attachment only if it has been acknowledged by contract or if it has become *lis pendens*.

(2) The same shall apply to the claim to which a donor is entitled pursuant to section 528 of the Civil Code (Bürgerliches Gesetzbuch, BGB) to surrender of the gift, and likewise to the claim of a spouse to the equalisation of accrued gains.

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### **Section 853**

#### **Several attachments of a monetary claim**

Should a monetary claim have been attached for a plurality of creditors, the third-party debtor shall be entitled and, at the request of a creditor to whom the claim was transferred, the third-party debtor shall be obligated to lodge the amount owed, giving notice of the overall factual situation and making physical delivery of the orders served on him to the local court (Amtsgericht, AG), the order of which was first served on him.

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### **Section 854**

#### **Several attachments of a claim to movable assets**

(1) If a claim concerning a movable asset of a physical nature has been attached for a plurality of creditors, the third-party debtor shall be entitled and, at the request of a creditor to whom the claim was transferred, the third-party debtor shall be obligated to surrender the asset, giving notice of the overall factual situation and making physical delivery of the orders served on him to the court-appointed enforcement officer who, according to the order first served on the debtor, is authorised to take possession of the asset. Should the creditor not have designated such a court-appointed enforcement officer, the enforcement officer shall be appointed, upon corresponding application being made by the third-party debtor, by the local court (Amtsgericht, AG) in the district of which the asset that is to be surrendered is located.

(2) If the proceeds obtained do not suffice to cover the claims and if the creditor on whose behalf the second or a later attachment was performed demands that they be distributed differently than in the sequence in which the attachments were made, without the other creditors involved consenting to this, the court-appointed enforcement officer is to notify the local court (Amtsgericht, AG), whose

order was first served on the third-party debtor of the overall factual situation, and is to lodge the proceeds. The documents relevant to the proceedings are to be attached to this notification.

(3) Should the attachment have been performed for several creditors simultaneously, the same procedure is to be followed.

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### **Section 855** **Several attachments of a claim to immovable property**

Where the claim concerns immovable property, the third-party debtor shall be entitled and, should a creditor to whom the claim has been transferred so demand, the third-party debtor shall be obligated to surrender the property, giving notice of the overall factual situation and making physical delivery of the orders served on him to the sequestrator appointed by the local court (Amtsgericht, AG) in the district of which the property is situate, or to the sequestrator appointed as per the petition filed.

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### **Section 855a** **Several attachments of a claim to a ship**

(1) In cases in which the claim concerns a registered ship, the third-party debtor shall be entitled and, should a creditor to whom the claim has been transferred so demand, the third-party debtor shall be obligated to surrender the ship, giving notice of the overall factual situation and making physical delivery of the orders served on him to the fiduciary appointed in the order first served on him.

(2) Subsection (1) shall apply mutatis mutandis if the claim concerns a ship under construction that has been entered in the register of ships under construction, or that is eligible for entry in such register.

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### **Section 856** **Action brought in the case of several attachments**

(1) Each creditor to whom the claim has been transferred is entitled to bring an action before the courts against the third-party debtor for fulfilment of the obligations incumbent on the latter pursuant to the stipulations of sections 853 to 855.

(2) Each creditor for whom the claim has been attached may join the plaintiff, in any situation that the legal dispute may be in, as a joined party.

(3) The third-party debtor is to file a petition with the court hearing the case that the creditors who have not filed the action and who have not joined the plaintiff are to be summoned to the hearing for oral argument.

(4) The decision delivered in the legal dispute regarding the claim raised in the action shall take effect for and against the entirety of all creditors.

(5) The third-party debtor may not take recourse, vis-à-vis a creditor, to the decision in the third-party debtor's favour if the creditor was not summoned to the hearing scheduled for oral argument.

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**Section 857**  
**Compulsory enforcement against other property rights**

- (1) The above provisions shall apply mutatis mutandis to compulsory enforcement against other property rights that are not subject to compulsory enforcement against the immovable property.
- (2) Where there is no third-party debtor, the attachment shall be deemed to have been effected at that point in time at which the order has been served on the debtor stipulating that he is to refrain from disposing over the right in any way.
- (3) Absent any special rules, an inalienable right shall be subject to attachment insofar as its exercise may be left to another party.
- (4) The court may issue special orders in effecting compulsory enforcement against inalienable rights, the exercise of which may be left to another party. In particular in cases of compulsory enforcement against rights of use, it may direct receivership; in such event the attachment shall be effected by the physical submission to the receiver of the object to be used, unless this has already been effected previously by service of the order.
- (5) Insofar as it is admissible to dispose over the right as such, this disposition may be directed by the court as well.
- (6) The rules regarding compulsory enforcement against a claim for which a mortgage has been created shall apply mutatis mutandis to compulsory enforcement against a realty charge, a charge on land, or an annuity charge on land.
- (7) The rule set out in section 845 (1), second sentence, shall not be applied.

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**Section 858**  
**Compulsory enforcement against a share in a ship**

- (1) Section 857 shall apply to compulsory enforcement against a share in a ship (sections 489 et seq. of the Commercial Code (Handelsgesetzbuch, HGB)), with the following departures from the rule.
- (2) That local court (Amtsgericht, AG) shall have jurisdiction as the court responsible for execution with which the register for the ship is kept.
- (3) The attachment must be entered in the register of ships; such entry shall be made on the basis of the attachment order. The attachment order is to be served on the managing owner of the ship; where the order is served on the managing owner prior to the entry in the register, the attachment shall be deemed to have been effected against him upon service having been made.
- (4) The attached share in a ship is realised by way of disposition. An excerpt from the register of ships is to be enclosed with the petition that the court order the disposition, which excerpt is to set out all of the entries concerning the ship and the share in the ship; said excerpt may not be older than one (1) week.
- (5) Should the excerpt from the register of ships show that the share in the ship is encumbered by a security right to which another creditor is entitled than the creditor pursuing compulsory enforcement, the court shall order the proceeds to be lodged. In such event, the proceeds shall be distributed according to the stipulations of sections 873 to 882; claims regarding which a security right to the share in the ship has been entered are to be included in the distribution plan in accordance with the content of the register of ships.

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**Section 859**  
**Attachment of shares in jointly held property**

(1) The share of a partner in the company assets of a partnership concluded pursuant to section 705 of the Civil Code (Bürgerlichen Gesetzbuch, BGB) is liable to attachment. The share of a partner in the individual objects belonging to the company assets is not liable to attachment.

(2) The same rules shall apply to a share of a joint heir to the estate and to the individual items constituting the estate.

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**Section 860**  
**Attachment of shares to common marital property**

(1) In cases in which the regime of common marital property has been agreed, the share of one spouse to the common marital property and the individual items constituting it is not liable to attachment. The same shall apply, in the event of the regime of common marital property continuing, to the shares of the surviving spouse and the descendants.

(2) Once the community under the regime of common marital property has ended, the share to common marital property is liable to attachment to the benefit of the creditor of the party entitled to the share.

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**Sections 861 and 862**  
**(repealed)**

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**Section 863**  
**Limitations of attachment where usufruct under an inheritance is concerned**

(1) Insofar as a debtor is limited as an heir pursuant to section 2338 of the Civil Code (Bürgerliches Gesetzbuch, BGB) as a result of a reversionary heir having been named, the usufruct of inheritance is not liable to attachment to the extent it is required by the debtor in order to fulfil his statutory obligation to pay maintenance to his spouse, his divorced spouse, his partner under a civil union, a former partner under a civil union, or his relatives, and in order to cover the costs of his maintenance suitable to his station in life. The same shall apply, where the debtor is limited pursuant to section 2338 of the Civil Code by an executor having been appointed, regarding his claim to the annual net proceeds.

(2) The attachment is admissible without limitation if the claim of a creditor of an estate is enforced, or a right that is effective also vis-à-vis the reversionary heir or the executor.

(3) These rules shall apply mutatis mutandis where the share held by a descendant in the common marital property, in the event of the regime of common marital property continuing pursuant to section 1513 (2) of the Civil Code (Bürgerliches Gesetzbuch, BGB), is subject to a limitation of the type designated in subsection (1).

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**Title 3**  
**Compulsory enforcement against immovable property**

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**Section 864**  
**Subject matter of enforcements against real estate**

(1) Besides plots of real estate, those entitlements shall be subject to compulsory enforcement against immovable property to which those rules apply that refer to plots of real estate, as shall be the ships entered in the register of ships and the ships under construction entered in the register of ships under construction or that are eligible for entry in such register.

(2) Compulsory enforcement against a portion of a plot of real estate, of an entitlement of the type designated in subsection (1), or of a ship or a ship under construction shall be admissible only where the portion consists of the share of a co-owner or where the creditor's claim is based on a right with which the portion as such has been encumbered.

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**Section 865**  
**Relationship to enforcements against movable property**

(1) Compulsory enforcement against immovable property shall comprise also those objects to which the mortgage extends in the case of plots of real estate and entitlements, and to which the maritime mortgage extends in the case of ships or ships under construction.

(2) Insofar as they are accessories, these items cannot be attached. Under all other circumstances, they shall be subject to compulsory enforcement against movable property provided that they were not attached as part of a compulsory enforcement against immovable property.

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**Section 866**  
**Types of enforcement**

(1) Compulsory enforcement against a plot of real estate is implemented by entry of a debt-securing mortgage for the claim, by enforced auction, and by receivership.

(2) The creditor may demand that one of these measures be implemented alone or in addition to the others.

(3) A debt-securing mortgage (subsection (1)) may be entered only for an amount greater than 750 euros; interest being enforced as an ancillary claim shall not be taken into account in this context. A uniform debt-securing mortgage may be entered based on several enforceable deeds of title to which one and the same creditor is entitled.

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**Section 867**  
**Judgment creditor's mortgage**

(1) Upon the creditor filing a corresponding petition, the debt-securing mortgage shall be entered in the land register; such entry is to be noted on the executory title. The mortgage shall be created by the entry being made. The plot of real estate shall be liable also for the costs of entry to be borne by the debtor.

(2) In cases in which several of the debtor's plots of real estate are to be encumbered by the mortgage, the amount of the claim is to be allocated to the individual plots of real estate. The creditor shall determine the amounts so allocated; section 866 (3), first sentence, shall apply mutatis mutandis to the parts.

(3) The executory title bearing the notice of entry shall be sufficient basis for satisfying the creditor's claim from the plot of real estate by implementing an enforced auction.

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### **Section 868**

#### **Acquisition of the judgment creditor's mortgage by the owner**

(1) If an enforceable judgment reverses the decision to be enforced, or its provisional enforceability, or if compulsory enforcement is declared inadmissible, or if directions are issued for it to be terminated, the owner of the plot of real estate shall acquire the mortgage.

(2) The same shall apply where a court decision directs the temporary stay of the enforcement and, at the same time, abrogates the enforcement activities taken, or where security is provided or lodgment made as permitted by the court so as to avert the enforcement.

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### **Section 869**

#### **Enforced auction and receivership**

The enforced auction and receivership have been provided for in a separate law.

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### **Section 870**

#### **Rights equivalent to real estate**

The rules governing compulsory enforcement against plots of real estate shall apply mutatis mutandis to compulsory enforcement against an entitlement governed by the rules applying to plots of real estate.

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### **Section 870a**

#### **Compulsory enforcement against a ship or a ship under construction**

(1) Compulsory enforcement against a ship entered in the register of ships, or against a ship under construction entered in the register of ships under construction, or that is eligible for entry in such register, shall be effected by the entry of a maritime mortgage regarding the claim or by enforced auction. Ordering the enforced auction of an ocean-going vessel is inadmissible where said vessel is travelling and not lying at harbour.

(2) Section 866 subsections (2) and (3), section 867 shall apply mutatis mutandis.

(3) Should an enforceable judgment reverse the decision to be enforced, or its provisional enforceability, or should compulsory enforcement be declared inadmissible or directions be issued for it to be terminated, the maritime mortgage shall expire; section 57 (3) of the Act Governing Rights in Registered Ships and Ships under Construction (Gesetz über Rechte an eingetragenen Schiffen und Schiffsbauwerken) dated 15 November 1940 (Law Gazette of the Reich (Reichsgesetzblatt, RGBL.) I page 1499) is to be applied. The same shall apply where a court decision directs the temporary stay of the enforcement and, at the same time, abrogates the enforcement activities taken, or where security is provided or lodgment made as permitted by the court in order to avert the enforcement.

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## **Section 871**

### **Reservations under Land law applying to railway operations**

The stipulations of Land law shall remain unaffected, according to which the rights of use and certain objects dedicated to the railway operation or local railway line form part of the immovable property with a view to compulsory enforcement if a party other than the owner of a railway operation or a local railway line operates the railway operation or local railway line based on its right of use, and according to which compulsory enforcement has been provided for in derogation from the stipulations of the laws of the Federal Republic.

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## **Title 4**

### **Distribution proceedings**

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## **Section 872**

### **Prerequisites**

The proceedings for the distribution of assets available for creditors is an available remedy if the amount of money lodged in the course of compulsory enforcement against the movable property is not sufficient to satisfy the creditors involved.

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## **Section 873**

### **Request made by the court responsible for the distribution of assets**

Upon receiving the notification as regards the overall factual situation, the local court (Amtsgericht, AG) responsible (sections 827, 853, 854) is to deliver a notice to each of the creditors involved requesting that they submit a calculation of their respective claim in terms of principal, interest, costs, and other ancillary claims within two (2) weeks.

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## **Section 874**

### **Distribution plan**

- (1) Following expiry of the two-week periods, the court shall prepare a distribution plan.
- (2) The amount of the costs of the proceedings is to be deducted in advance from the existing assets.
- (3) The claim of a creditor, who has failed to comply with the request issued to him by the court by the date of the distribution plan being prepared, shall be calculated in accordance with the notification and its documents. The claim may not be amended retroactively.

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## **Section 875**

### **Determination of a hearing date by the court**

- (1) The court is to determine a hearing date at which the parties may state their positions regarding the distribution plan and at which the distribution is to be implemented. The distribution plan must be deposited for inspection by the parties involved with the court registry no later than three (3) days prior to the hearing.

(2) It is not necessary to summon the debtor to the hearing if such summons were to be served abroad or by publication.

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### **Section 876**

#### **Hearing for declaration and implementation**

If no opposition is lodged against the plan at the hearing, it is to be implemented. If an opposition is lodged, each of the creditors involved is to immediately react in substance. Should the opposition lodged be acknowledged by the parties involved as having merit, or should an agreement be reached otherwise, the plan is to be corrected accordingly. Where an opposition cannot be conclusively dealt with, the plan shall be implemented insofar as it is not affected by the opposition.

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### **Section 877**

#### **Consequences of a failure to comply with procedural rules**

(1) Should a creditor have failed to make an appearance at a hearing and have likewise failed to lodge an opposition with the court prior to the hearing, it is assumed to his detriment that he agrees to the plan being implemented.

(2) If a creditor who has failed to make an appearance at a hearing is involved in the opposition lodged by another creditor, it is assumed that he does not acknowledge this opposition to have merit.

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### **Section 878**

#### **Action brought in support of an opposition lodged**

(1) The creditor lodging an opposition must submit evidence to the court, without a prior request needing to be made, and doing so within a period of one (1) month beginning on the date of the hearing, that he has brought proceedings in court against the creditors involved. Once this deadline has expired without success, the court shall direct the plan to be implemented without consideration of the opposition lodged.

(2) The authority of the creditor opposing the plan to enforce a better right against the creditor who has received an amount of money under the plan by way of bringing a corresponding court action, is not ruled out should he have failed to adhere to the period, nor is it ruled out by the implementation of the plan.

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### **Section 879**

#### **Court competent for the action brought in support of the opposition**

(1) The action is to be brought with the court responsible for the distribution of assets and, where the local courts (Amtsgerichte, AG) are not competent for the subject matter of the litigation, with the regional court (Landgericht, LG), in the district of which the court responsible for the distribution of assets has its seat.

(2) The regional court (Landgericht, LG) shall have jurisdiction for the entirety of all actions brought if its competence, based on the content of the oppositions entered in the hearing without having been dealt with conclusively, it has jurisdiction for one single action alone, unless the entirety of all creditors involved agree that the court responsible for the distribution of assets is to decide on all instances in which an opposition was entered.

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## **Section 880**

### **Content of the ruling**

The ruling handed down on the opposition entered is to likewise determine the amounts in which the portion of the assets that is at issue is to be paid out to which creditors. Should this not be deemed appropriate, the judgment is to order a new plan to be prepared, as well as new proceedings for the distribution of assets available for execution creditors.

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## **Section 881**

### **Default judgment**

The default judgment against a creditor who has entered an opposition is to be delivered to the effect that the opposition is to be deemed retracted.

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## **Section 882**

### **Procedure following the ruling**

Based on the ruling delivered, the court responsible for the distribution of assets shall direct the disbursement of the assets, or the other proceedings for the distribution of assets available for execution creditors.

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## **Title 5**

### **Compulsory enforcement against legal persons under public law**

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## **Section 882a**

### **Compulsory enforcement for a monetary claim**

(1) Unless rights in rem are being pursued, compulsory enforcement for a monetary claim against the Federation or against a Land may commence only four (4) weeks following the time at which the creditor has given notice, to the public authority authorised to represent the debtor, of his intention to pursue compulsory enforcement and, to the extent such compulsory enforcement is to be effected against assets managed by another public authority, to the responsible Minister of Finance. Upon this being demanded, the receipt of the notice is to be confirmed to the creditor. Insofar as compulsory enforcement is to be implemented by the court-appointed enforcement officer in such cases, the enforcement officer is to be determined, upon the creditor filing a corresponding petition, by the court responsible for execution.

(2) Compulsory enforcement is not admissible against objects that are indispensable for the performance by the debtor of tasks governed by public law, or the disposition over which is contravened by public interest. In the event of a dispute, the matter of whether or not the prerequisites set out in sentence 1 have been met shall be decided on pursuant to section 766. Prior to the decision being handed down, the responsible minister is to be heard.

(3) The stipulations of subsections (1) and (2) are to be applied to compulsory enforcement against corporations, institutions, and foundations under public law, subject to the proviso that the legal representatives shall take the stead of the public authority in the sense as used in subsection (1). The limitations of subsections (1) and (2) shall not apply to banks and loan institutions under public law.

(4) (repealed)

(5) If the matter concerns the execution of an injunction, the requirements of providing an advance notice of compulsory enforcement and of the waiting period set out in subsections (1) and (3) need not be complied with.

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## **Title 6 List of debtors**

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### **Section 882b Content of the list of debtors**

(1) The central court responsible for execution pursuant to section 882h (1) shall keep a register (list of debtors) of those persons

1. Whose entry in the list the court-appointed enforcement officer has instructed subject to the stipulations of section 882c;
2. Whose entry the enforcement authority has instructed subject to the stipulations of section 284 (9) of the Fiscal Code (Abgabenordnung, AO); the instructions by an enforcement authority to enter a debtor in the list of debtors shall be equivalent to an order for entry in same pursuant to section 284 (9) of the Fiscal Code (AO) where such instructions have been issued based on an equivalent provision of federal law or Land law.
3. Whose entry the insolvency court has instructed subject to the stipulations of section 26 (2) or of section 303a of the Insolvency Statute (Insolvenzordnung, InsO).

(2) The list of debtors shall provide the following:

1. Name, first name, and name at birth of the debtor, as well as the company name and the number of the registry folio on which the debtor is entered in the Commercial Register,
  2. Date and place of birth of the debtor,
  3. Residences of the debtor or the debtor's registered seat,
- including any deviating personal data.

(3) Furthermore, the list of debtors shall provide:

1. The reference number and the court or enforcement authority responsible for the enforcement matter or the insolvency proceedings,
2. In the case of subsection (1) no. 1, the date on which the instructions were issued to enter the debtor in the list and the reason pursuant to section 882c giving rise to the entry,
3. In the case of subsection (1) no. 2, the date on which the instructions were issued to enter the debtor in the list and the reason pursuant to section 284 (9) of the Fiscal Code (Abgabenordnung, AO), or pursuant to an equivalent provision in the sense of subsection (1) no. 2, second clause of the sentence, giving rise to the entry,

4. In the case of subsection (1) number 3, the date on which the instructions were issued to enter the debtor in the list of debtors, as well as the determination that a request to open insolvency proceedings on the debtor's assets has been refused for insufficiency of assets pursuant to section 26 (1), first sentence, of the Insolvency Statute (Insolvenzordnung, InsO), or, in the event of an entry being made pursuant to section 303a of the Insolvency Statute, the reason based on which such an entry is made and the date on which the insolvency court handed down the decision.

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### **Section 882c** **Instructions to enter a debtor in the list of debtors**

(1) The competent court-appointed enforcement officer shall issue instructions ex officio to have the debtor entered in the list of debtors if

1. The debtor has failed to comply with his obligation to provide information on his financial circumstances and assets;
2. According to the content of the schedule of assets, the enforcement manifestly would not be suited to achieve the full satisfaction of the creditor based on whose application the information on the debtor's financial circumstances and assets was provided, or to whom the information so provided was forwarded; or
3. The debtor fails to prove to the enforcement officer, within one (1) month of having provided the information on his financial circumstances and assets, or within one (1) month of having been notified of the forwarding of the schedule of assets pursuant to section 802d (1), second sentence, that the creditor has been fully satisfied based on whose application the information on the debtor's financial circumstances and assets was provided, or to whom the information so provided was forwarded. This shall not apply for as long as a payment plan has been determined pursuant to section 802b and this plan has not become invalid.

(2) The grounds for issuing instructions to have the debtor entered in the list of debtors are to be provided briefly. This reasoning is to be served on the debtor, unless he has been informed of the grounds orally and they have been included in the record (section 763).

(3) The instructions to have the debtor entered in the list of debtors are to include the data set out in section 882b subsections (2) and (3). Where the court-appointed enforcement officer is not aware of the data to be included in the list of debtors pursuant to section 882b (2) nos. 1 through 3, he shall obtain such information from the authorities set out in section 755 subsections (1) and (2), first sentence, no. 1, or by inspecting the Commercial Register.

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### **Section 882d** **Enforcement of the instructions to enter a debtor in the list of debtors**

(1) The debtor may lodge an opposition against the instructions to have him entered in the list of debtors pursuant to section 882c within two (2) weeks from the date of issuance, doing so with the competent court responsible for execution. The opposition shall not suspend the enforcement. Once the period set out in the first sentence has expired, the court-appointed enforcement officer shall forward by electronic means the instructions, without undue delay, to the central court responsible for execution pursuant to section 882h (1). This court shall arrange the entry of the debtor in the list of debtors.

(2) Upon the debtor filing a corresponding application, the court responsible for execution may instruct that the entry be temporarily stayed. The central court responsible for execution pursuant to section 882h (1) is to refrain from entering the debtor in the list of debtors if the executed copy of an

enforceable decision is submitted to it showing that the instructions to enter the debtor in the list of debtors have been temporarily stayed.

(3) The debtor is to be instructed on the remedies available to him, pursuant to subsections (1) and (2), upon the instructions to have him entered in the list of debtors being issued. The court that has decided on the remedies shall electronically transmit its decision to the central court responsible for execution pursuant to section 882h (1).

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### **Section 882e Cancellation**

(1) The central court responsible for execution pursuant to section 882h (1) shall cancel an entry made in the list of debtors upon expiry of three (3) years from the date of the instructions to enter a debtor in same.

(2) The records clerk of the court registry shall decide on objections against the cancellation pursuant to subsection (1) or its denial. A reminder pursuant to section 573 may be filed against his decision.

(3) In derogation from subsection (1), an entry shall be cancelled in accordance with the instructions issued by the central court responsible for execution pursuant to section 882h (1) if

1. It has been proven to said court that the creditor has been fully satisfied;
2. It has become known that the grounds for registering the debtor in the list of debtors do not exist or have ceased to exist;
3. The executed copy of an enforceable decision is submitted showing that the instructions to enter the debtor in the list of debtors have been repealed or temporarily stayed.

(4) Where it becomes known to the court responsible for execution pursuant to section 882h (1) that the substance of an entry was deficient from the outset, the records clerk of the court registry shall modify the entry. Where the debtor or a third party is aggrieved by the modification of the entry, a reminder pursuant to section 573 may be filed against his decision.

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### **Section 882f Inspection of the list of debtors**

Anyone is permitted to inspect the list of debtors who demonstrates that he requires the information pursuant to section 882b:

1. For purposes of compulsory enforcement;
2. In order to fulfil statutory obligations to review economic reliability;
3. To review whether the prerequisites for public benefits to be granted are given;
4. In order to avert economic disadvantages that might result from debtors not fulfilling their payment obligations;
5. For purposes of criminal prosecution and the execution of sentences;
6. In order to obtain information about entries concerning himself.

The information may be used only for the purpose for which it has been transmitted; once the purpose has been achieved, it is to be cancelled. Where such information is transmitted to non-public agencies, attention is to be drawn to this fact.

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### **Section 882g Issuance of excerpts**

(1) Upon corresponding application being made, excerpts from the list of debtors may be printed as hard copies on a regular basis, and may also be transmitted in a format readable only by machines. In the event the excerpts are transmitted in a format readable only by machines, the data transmission rules of the respective Land department of justice (Landesjustizverwaltung) shall apply.

(2) The following parties will receive the excerpts:

1. Chambers of commerce and industry as well as corporations under public law, in which the members of a profession are associated by virtue of the law (chambers);
2. Claimants using the excerpts in order to establish and update non-public, centrally managed lists of debtors; or
3. Claimants whose legitimate interests cannot be sufficiently satisfied by granting them the right to inspect individual entries in the Land lists of debtors or by sending them lists pursuant to subsection (5).

(3) The excerpts are to be kept confidential and may not be made available to third parties. Upon the regular transmission of the excerpts ending, they are to be destroyed without undue delay and this information may no longer be provided.

(4) The chambers may provide information to their members or the members of another chamber. Other parties receiving regular transmissions of excerpts may issue information to the extent this is part of their activities in keeping with regulations. Subsection (3) shall apply mutatis mutandis. The information may also be provided in automated retrieval procedures, to the extent such procedure is appropriate in view of the interests warranting protection of the affected parties and of the business purposes of the parties entitled to so retrieve such excerpts.

(5) The chambers may bundle the excerpts in lists or may have third parties perform such task; they are to supervise said third parties in performing the task. Upon corresponding application being made, the chambers may be permitted to use the lists on a regular basis and to obtain transmission of the lists on a regular basis. Subsection (2) number 3 and subsection (3) shall apply mutatis mutandis to the regular transmission of the lists. The parties receiving the lists may provide information only to parties whose interests they are to represent by virtue of the law or based on a contract.

(6) Section 882e subsection (1) shall apply mutatis mutandis to excerpts, lists, and records concerning an entry in the list of debtors that are based on the processing of excerpts or lists or on information regarding entries made in the list of debtors. The parties receiving the excerpts are to be notified of early cancellations from the list (section 882e (3)) within one (1) month. They shall notify the recipients of lists without undue delay (subsection (5), second sentence,). The entries are to be deleted without undue delay from the records prepared on the basis of the excerpts and lists. Likewise, the lists are to be destroyed without undue delay insofar as they are replaced by new lists.

(7) In the cases provided for by subsection (2) numbers 2 and 3 as well as by subsection (5), section 38 of the Federal Data Protection Act (Bundesdatenschutzgesetz) shall apply to parties that are not governed by public law, subject to the proviso that the supervisory authority will also monitor the processing and use of these personal data as contained in files or as obtained from files. The same shall apply to any parties that are not governed by public law that have obtained information from the agencies set out in subsection (2).

(8) The Federal Ministry of Justice is authorised to provide for the following, such provision being subject to approval by the Bundesrat and being made by statutory instrument:

1. To establish rules for the regular transmission of excerpts pursuant to subsections (1) and (2) and for the approval procedure, as well as regarding the regular transmission of lists pursuant to subsection (5);
2. To provide for the details of the establishment and structure of automated retrieval procedures pursuant to subsection (4), fourth sentence, in particular retrievals recording processes for the purpose of monitoring compliance with data protection rules;
3. To provide for the details of the issuance and storage of excerpts from the list of debtors; for the preparation, use and forwarding of lists; for the notice as to cancellations and the factual cancellation; for the declaration that a party is no longer eligible to receive regular transmissions of excerpts and lists; in order to safeguard the proper handling of notices, the protection of the excerpts and lists against unauthorised use, and the cancellation of entries in due time;
4. To provide for the levy of coercive penalty payments in order to enforce the obligations to destroy and cancel the excerpts, and for fines in the event the approval is revoked; the individual coercive penalty payment may not be levied in an amount in excess of 25,000 euros.

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### **Section 882h Competence; structure of the list of debtors**

(1) The list of debtors will be maintained for each Land by a central execution court. The content of the list of debtors may be inspected via a central internet query connecting to all Land databases. The Länder may confer upon the responsible agency of a Land the task of collecting and allocating the fees as well as other administrative tasks connected to the query.

(2) The Land governments shall determine by statutory instrument which court is to perform the tasks of the central execution court pursuant to subsection (1). Section 802k (3) second and third sentences shall apply mutatis mutandis. The management of the list of debtors is a matter for which the Land department of justice (Justizverwaltung) is responsible.

(3) The Federal Ministry of Justice is authorised to provide for the details concerning the format and transmission of the instructions to enter the debtor in the list of debtors pursuant to section 882b (1) and the decisions pursuant to section 882d (3), second sentence, of the present Code and section 284 (10), second sentence, of the Fiscal Code (Abgabenordnung, AO), or of equivalent provisions in the sense as defined by section 882b (1) number 2, second clause of the sentence of the present Code, as well as for the details concerning the content of the list of debtors and the manner in which it is inspected, in particular by an automated retrieval procedure; such provisions being subject to approval by the Bundesrat and being made by statutory instrument.. The statutory instrument is to establish suitable rules safeguarding data protection and data security. In particular, it is to be ensured that the data:

1. Are protected against unauthorised third parties obtaining knowledge in the course of their being transmitted to the central execution court pursuant to subsection (1), as well as during the transfer to the other agencies pursuant to subsection (2), second sentence;
2. Are reproduced as a whole and completely;
3. May be allocated at any time to their source; and

4. May be retrieved only by registered users specifying the intended use, with every retrieval being recorded, and with users becoming ineligible for an inspection of the data should they have retrieved or used data improperly in abuse of the law.

The data of users may be used only for the purposes set out in the third sentence number 4.

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### **Chapter 3**

#### **Compulsory enforcement serving to obtain the surrender of objects or serving to ensure that actions are taken or refrained from**

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### **Section 883**

#### **Surrender of specific movable objects**

(1) If the debtor is to surrender a movable asset or a number of specific movable objects, the court-appointed enforcement officer is to take them away from the debtor and to physically submit them to the creditor.

(2) Where the object to be surrendered is not found, the debtor is under obligation – upon the creditor having filed a corresponding petition – to declare for the records of the court, in lieu of an oath, that he is not in possession of the object and that he does not know where it is located. The court-appointed enforcement officer competent pursuant to section 802e shall summon the debtor to administer the statutory declaration in lieu of an oath. The stipulations of sections 478 to 480, of section 483, 802f (4), sections 802g through 802i and of section 802j subsections (1) and (2) shall apply mutatis mutandis.

(3) The court may decide to change the statutory declaration in lieu of an oath to reflect the overall factual situation.

(4) (repealed)

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### **Section 884**

#### **Provision of a specific amount of fungible things**

Should the debtor have to provide a specific number or amount of fungible things that in business dealings are customarily specified by number, measure, or weight, or should the debtor have to provide securities, the rule set out in section 883 (1) shall apply mutatis mutandis.

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### **Section 885**

#### **Surrender of plots of real estate or ships**

(1) Insofar as the debtor is to surrender an immovable property or a ship entered in the register of ships, or a ship under construction so entered in the register; or insofar as he is to grant permission to use such property, ship, or ship under construction; or insofar as he is to vacate them, the court-appointed enforcement officer is to remove the debtor from possession and is to put the creditor into possession. The court-appointed enforcement officer is to demand that the debtor provide an address at which documents may be served, or that he name an authorised recipient.

(2) The court-appointed enforcement officer shall remove any movable objects that are not the subject of compulsory enforcement and shall physically submit them, or make them available, to the debtor

or, if the debtor is absent, to an attorney-in-fact of the debtor, an adult family member, a person employed by the family, or to an adult permanent cohabitant.

(3) Where neither the debtor nor one of the persons designated is present, or where acceptance is refused, the court-appointed enforcement officer is to take the objects designated in subsection (2) to the storage office for attached objects, or is to ensure their safekeeping in another way, doing so at the costs of the debtor. Movable objects in the safekeeping of which there is manifestly no interest are to be destroyed without undue delay.

(4) Should the debtor fail to redeem the objects within a period of one (1) month following the vacation, the court-appointed enforcement officer shall dispose of them and shall lodge the proceeds. The court-appointed enforcement officer shall dispose of the objects and lodge the proceeds also in those cases in which the debtor has demanded return of the objects within a period of one (1) month without paying for the costs within a period of two (2) months following the vacation. Sections 806, 814 and 817 shall apply mutatis mutandis. Objects that cannot be realised shall be destroyed.

(5) Objects exempted from attachment, and those objects for which it is not to be expected that their realisation will generate any proceeds, are to be surrendered at any time at the demand of the debtor without any further requirements needing to be met.

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#### **Section 885a**

##### **Limited enforcement instructions**

(1) The enforcement instructions may be limited to the measures pursuant to section 885 (1).

(2) The court-appointed enforcement officer is to document in the record (section 762) the movable objects that are obviously perceivable when he takes the enforcement action. In preparing the documentation, he may create images in electronic format.

(3) The creditor may at any time remove those of the movable objects that are not the subject of compulsory enforcement and is to keep them safe. He may at any time destroy movable objects in the safekeeping of which there is manifestly no interest. The creditor shall accept responsibility regarding the measures set out in the first and second sentences only insofar as wilful misconduct and gross negligence are involved.

(4) Should the debtor fail to redeem the objects from the creditor within a period of one (1) month after the creditor has been put into possession, the creditor may realise the objects. Sections 372 through 380, 382, 383 and 385 of the Civil Code (Bürgerliches Gesetzbuch) are to be applied mutatis mutandis. No warning shall be issued that the objects may be sold at auction. Objects that cannot be realised may be destroyed.

(5) Objects exempted from attachment, and those objects for which it is not to be expected that their realisation will generate any proceeds, are to be surrendered at any time at the demand of the debtor without any further requirements needing to be met.

(6) Along with giving notice of the date set for the vacation of the premises, the court-appointed enforcement officer shall indicate to the creditor and to the debtor the stipulations made in subsections (2) through (5).

(7) The costs pursuant to subsections (3) and (4) shall be deemed costs of the compulsory enforcement.

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## **Section 886**

### **Surrender in the case of a third party having custody and control**

If an object to be surrendered is in the custody and control of a third party, the claim of the debtor to surrender of the object is to be transferred to the creditor, upon his having filed the corresponding petition, in accordance with the provisions governing the attachment and transfer of a monetary claim.

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## **Section 887**

### **Actions that may be taken by others**

(1) Should the debtor fail to meet his obligation to take an action, where such action can be taken by a third party, the creditor is to be authorised by the court of first instance hearing the case, upon his having filed a corresponding petition, to have this action taken by a third party at the costs of the debtor.

(2) Concurrently, the creditor may file the petition that the court sentence the debtor to make advance payment of the costs that will result from having a third party so take the action, notwithstanding the right to any supplementary claim.

(3) The above rules are not to be applied to any compulsory enforcement serving to obtain the surrender or provision of objects.

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## **Section 888**

### **Actions that may not be taken by others**

(1) Where an action that depends exclusively on the will of the debtor cannot be taken by a third party, and where a corresponding petition has been filed, the court of first instance hearing the case is to urge the debtor to take the action in its ruling by levying a coercive penalty payment and, for the case that such payment cannot be obtained, by coercive punitive detention, or by directly sentencing him to coercive punitive detention. The individual coercive penalty payment may not be levied in an amount in excess of 25,000 euros. The stipulations of Chapter 2 regarding detention shall apply mutatis mutandis to coercive punitive detention.

(2) No warning shall be issued regarding the coercive measures.

(3) These rules shall not be applied in those cases in which a person is sentenced to provide services under a service agreement.

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## **Section 888a**

### **No enforcement of actions where there is a duty to pay compensation**

If, in the case provided for by section 510b, the defendant has been sentenced to payment of compensation, any compulsory enforcement based on the stipulations of sections 887 and 888 is ruled out.

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## **Section 889**

### **Statutory declaration in lieu of an oath pursuant to civil law**

(1) In cases in which, in accordance with the stipulations of civil law, the debtor has been sentenced to making a statutory declaration in lieu of an oath, this declaration shall be made before the local court (Amtsgericht, AG) as the court responsible for execution, in the district of which the debtor has his place of residence in Germany or, should he not have such a place of residence, where the debtor has his place of abode, and otherwise before the local court as the execution court, in the district of which the court of first instance hearing the case has its seat. The stipulations of sections 478 to 480 and section 483 shall apply mutatis mutandis.

(2) Should the debtor fail to appear at the hearing determined for the statutory declaration in lieu of an oath to be made, or should he refuse to make such a statutory declaration in lieu of an oath, the execution court shall proceed as set out in section 888.

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### **Section 890**

#### **Forcing the debtor to cease and desist from actions, or to tolerate actions**

(1) Should the debtor violate his obligation to cease and desist from actions, or to tolerate actions to be taken, the court of first instance hearing the case is to sentence him for each count of the violation, upon the creditor filing a corresponding petition, to a coercive fine and, for the case that such payment cannot be obtained, to coercive detention or coercive detention of up to six (6) months. The individual coercive fine may not be levied in an amount in excess of 250,000 euros, and the coercive detention may not be longer than a total of two (2) years.

(2) The sentence must be preceded by a corresponding warning that is to be issued by the court of first instance hearing the case, upon corresponding application being made, unless it is set out in the judgment providing for the obligation.

(3) Moreover, upon the creditor having filed a corresponding petition, the debtor may be sentenced to creating a security for any damages that may arise as a result of future violations, such security being created for a specific period of time.

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### **Section 891**

#### **Procedure; hearing of the debtor; ruling on the payment of costs**

The decisions to be delivered pursuant to sections 887 to 890 are issued by a court order. The debtor is to be heard prior to the decision being delivered. Sections 91 to 93, 95 to 100, 106, and 107 shall apply mutatis mutandis to the ruling on the payment of costs.

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### **Section 892**

#### **Resistance by the debtor**

Should the debtor resist an action being taken, which he is to tolerate pursuant to the stipulations of sections 887 and 890, the creditor may involve a court-appointed enforcement officer in order to deal with such resistance, which enforcement officer is to proceed in accordance with the stipulations of section 758 subsection (3) and of section 759.

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### **Section 892a (repealed)**

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### **Section 893**

#### **Action brought for performance of the equivalent in money**

(1) The stipulations of the present Chapter do not affect the right of the creditor to demand performance of the equivalent in money.

(2) The creditor is to enforce his claim to performance of the equivalent in money by filing a corresponding court action with the court of first instance hearing the case.

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### **Section 894**

#### **Fiction of a declaration of intent having been made**

Where the debtor has been sentenced to make a declaration of intent, such declaration shall be deemed to have been made as soon as the judgment has attained legal force. Where the declaration of intent depends on counter-performance being made, this effect shall occur as soon as an enforceable execution copy of the final and binding judgment has been issued in accordance with the stipulations of sections 726 and 730.

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### **Section 895**

#### **Declaration of intent for the purpose of entering it in a register in the event of provisionally enforceable judgments**

Where the debtor has been sentenced, in a provisionally enforceable judgment, to make a declaration of intent, based on which an entry is to be made in the land register, the register of ships, or the register of ships under construction, the entry of a priority notice or of an opposition shall be deemed approved. The priority notice or the opposition shall expire once the judgment is reversed by an enforceable judgment.

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### **Section 896**

#### **Issuance of records or documents to the creditor**

Insofar as an entry is to be made in a public book or register on the basis of a judgment substituting a declaration of intent by the debtor, the creditor may demand, in the stead of the debtor, that the records or documents designated in section 792 be issued, insofar as the creditor requires these records or documents in order to obtain the entry in the book or register.

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### **Section 897**

#### **Transfer of ownership; creation of charges on real property**

(1) Should the debtor have been sentenced to transferring ownership or to creating a right to a movable object, the object shall be deemed to have been physically submitted where the court-appointed enforcement officer has taken away the object for the purpose of delivering it to the creditor.

(2) The same shall apply to the physical submission of the mortgage certificate, of the certificate of the charge on land, or of the certificate of the annuity charge on land if the debtor has been sentenced to creating a mortgage, charge on land, or annuity charge on land, or if he has been sentenced to assigning or encumbering a mortgage claim, charge on land, or annuity charge on land.

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## **Section 898 Acquisition in good faith**

The stipulations of civil law are to be applied to the benefit of those parties deriving rights from a person having no authority in this regard where an acquisition takes place pursuant to sections 894 and 897.

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## **Chapter 4 (repealed)**

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## **Sections 899 to 915h (repealed)**

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## **Chapter 5 Seizure and injunction**

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### **Section 916 Claim to seizure**

(1) Seizure is a remedy serving to secure compulsory enforcement against movable or immovable property for a monetary claim or a claim that may evolve to become a monetary claim.

(2) The admissibility of a seizure is not ruled out by the fact that the claim is subject to conditions or has a fixed maturity date, unless the claim so subject to conditions does not have any current asset value in light of the remote possibility of the condition in fact occurring.

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### **Section 917 Grounds for a writ of seizure to be issued in the case of seizure against the assets of a potential debtor**

(1) Seizure is an available remedy wherever there is the concern that without a writ of pre-judgment seizure being issued, the enforcement of the judgment would be frustrated or be significantly more difficult.

(2) It is to be deemed sufficient grounds for a writ of seizure to be issued if the judgment would have to be enforced abroad and reciprocity has not been granted. No grounds for a writ of seizure need be given if the seizure is being implemented solely by way of securing the compulsory enforcement against a ship.

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### **Section 918 Grounds for a writ of seizure to be issued in the case of a debtor being arrested in person**

Arresting a debtor in person is an available remedy only if this is required in order to ensure compulsory enforcement against the property of the debtor when such compulsory enforcement is at risk.

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### **Section 919**

#### **Court responsible for the seizure**

Both the court before which the main action is being pursued as well as the local court (Amtsgericht, AG) in the district of which the object to be seized or the person whose personal liberty is to be limited are situated or resident shall be responsible for issuing the writ of seizure.

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### **Section 920**

#### **Request for writ of seizure**

(1) The request is to set out the designation of the claim, specifying the amount of money or the monetary value, as well as the grounds for a writ of seizure to be issued.

(2) The claim and the grounds for a writ of seizure to be issued are to be demonstrated to the satisfaction of the court.

(3) The request may be recorded with the registry for the files of the court.

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### **Section 921**

#### **Decision regarding the request for a writ of seizure**

Insofar as the claim or the grounds for a writ of seizure to be issued have not been demonstrated to its satisfaction, the court may issue a writ of seizure, provided that security is provided for the disadvantages that the opponent risks suffering. The court may make the issuance of the writ of seizure dependent on security being provided even if the claim and the reasons for a writ of seizure to be issued have been demonstrated satisfactorily.

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### **Section 922**

#### **Judgment ordering seizure and order of seizure**

(1) The decision regarding the request shall be delivered by a final judgment if the matter is dealt with in a hearing for oral argument, and in all other cases by a court order. Where a decision ordering the seizure is to be enforced abroad, the decision is to cite the reasons on which it is based.

(2) The party that has obtained the court order of seizure is to have that order served.

(3) The court order dismissing the request for a writ of seizure or declaring that security must first be provided shall not be communicated to the opponent.

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### **Section 923**

#### **Authorisation to avert enforcement**

The writ of seizure is to determine an amount of money that, if lodged, will suspend the enforcement of the seizure and will entitle the debtor to file a petition for the enforced seizure to be set aside.

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## **Section 924 Opposition**

- (1) Filing an opposition against the court order directing the seizure is an available remedy.
- (2) In its opposition, the party filing it is to demonstrate the grounds that it intends to assert in order for the seizure to be set aside. The court is to schedule a hearing for oral argument ex officio. Where the court responsible for the seizure is a local court (Amtsgericht, AG), the opposition shall be lodged in writing, or it is to be recorded with the registry for the files of the court, citing the grounds that are to be asserted as the basis on which the seizure is to be set aside.
- (3) Lodging an opposition will not suspend the enforcement of the seizure. However, the court may issue an interim order pursuant to section 707; section 707 (1), second sentence, shall not be applied.

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## **Section 925 Decision following an opposition having been lodged**

- 1) In cases in which an opposition is lodged, a final judgment is to decide on whether or not the seizure is lawful.
- (2) The court may confirm the seizure as a whole or in part, may modify or repeal it, and may also make the confirmation, modification, or repeal dependent on security being provided.

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## **Section 926 Order as to proceedings having to be brought in the courts**

- (1) If the main action is not pending, the court responsible for the seizure is to order, upon corresponding application being made and without holding a hearing for oral argument, that the party having obtained the writ of seizure is to bring proceedings in the courts within a period to be determined.
- (2) Should this order not be complied with and a corresponding application be made, the seizure is to be set aside in a final judgment.

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## **Section 927 Seizure set aside due to a change in circumstances**

- (1) Also after the seizure has been confirmed, a petition may be filed for it to be set aside due to a change in circumstances, in particular because the reasons for the writ of seizure to be issued have been conclusively dealt with, or because an offer has been made to provide security.
- (2) The decision is to be delivered by a final judgment; it shall be issued by the court ordering the seizure and, where the main action is pending, by the court before which the main action is being pursued.

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## **Section 928**

### **Enforcement of the seizure**

The rules governing compulsory enforcement shall apply mutatis mutandis to the enforcement of the seizure unless otherwise provided for by the sections hereinbelow.

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## **Section 929**

### **Court certificate of enforceability; enforcement period**

(1) A writ of seizure shall require a court certificate of enforceability only if it is to be enforced for a different creditor than the creditor designated in the writ of seizure, or against a different debtor than the debtor designated in the writ of seizure.

(2) The enforcement of the writ of seizure is no longer an available remedy if one (1) month has lapsed since the date on which the writ of seizure was issued or on which it was served on the party at the request of which it was issued.

(3) The enforcement may admissibly be pursued prior to the writ of seizure being served on the debtor. However, it shall be without effect if the writ of seizure is not served within one (1) week following the enforcement and prior to the expiry of the period determined for same in the preceding subsection.

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## **Section 930**

### **Enforcement against movable property and receivables**

(1) The seizure of movable property is enforced by attachment. The attachment shall be implemented in accordance with the same principles as any other attachment; it creates a security right having the effects set out in section 804. The court responsible for the seizure shall have jurisdiction, as execution court, for the attachment of receivables.

(2) Any money that has been attached, and any amount of the proceeds accruing to the creditor in the course of the proceedings for the distribution of assets available for creditors, will be lodged.

(3) The court responsible for execution may direct, upon corresponding application being made, that a movable asset of a physical nature be sold at auction if it is subject to the risk of a significant loss of value or if its storage would entail unreasonable costs, and that the proceeds be lodged.

(4) Enforcing seizure against an unregistered ocean-going vessel is inadmissible where the vessel is travelling and not lying at harbour.

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## **Section 931**

### **Enforcement against a registered ship or a registered ship under construction**

(1) The enforcement of the seizure against a ship entered in the register of ships, or against a ship under construction so entered in the register, is effected by attachment in accordance with the rules governing the attachment of movable property, with the following departures from the rule applying as set out hereinbelow.

(2) The attachment establishes a security right to the ship, or ship under construction, that has been attached; such security right grants the creditor the same rights, in the relationship to other rights, as a maritime mortgage would grant him.

(3) Upon the creditor filing a corresponding petition, the attachment is directed by the court responsible for the seizure acting as execution court; concurrently, the court is to request that the court maintaining the register enter a priority notice in the register of ships or register of ships under construction, such priority notice serving to secure the security right of a seizure creditor; the priority notice shall expire if the enforcement of the seizure ceases to be an available remedy.

(4) Upon attachment of the ship or ship under construction, the court-appointed enforcement officer is to take the ship or ship under construction into his custody and safekeeping.

(5) If, at the time the seizure of the ship or ship under construction is enforced, the enforced auction of the ship or ship under construction has been initiated, the confiscation of the ship or ship under construction implemented in this procedure shall be deemed to be the first attachment in the sense as defined by section 826; the copy of the attachment record is to be submitted to the execution court.

(6) Upon the creditor filing a corresponding petition, the security right of a seizure creditor is entered in the register of ships or register of ships under construction; the amount of money established pursuant to section 923 is to be designated as the maximum amount for which the ship or the ship under construction will be liable. In all other regards, and unless otherwise determined hereinabove, section 867 subsections (1) and (2) and section 870a (3) shall apply mutatis mutandis.

(7) Enforcing seizure against a registered ocean-going vessel is inadmissible where the vessel is travelling and not lying at harbour.

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## **Section 932**

### **Seizure lien**

(1) The enforcement of the seizure against a plot of real estate, or against an entitlement to which the rules concerning plots of real estate apply, shall be effected by registering a debt-securing mortgage for the receivable; the amount of money established pursuant to section 923 is to be designated as the maximum amount for which the plot of real estate or the entitlement will be liable. The creditor shall not be entitled pursuant to section 1179a or section 1179b of the Civil Code (Bürgerliches Gesetzbuch, BGB), nor shall the creditor of the debt-securing mortgage who has been entered in the land register be so entitled.

(2) In all other regards, the stipulations of section 866 (3), first sentence, section 867 subsections (1) and (2), and of section 868 shall apply.

(3) The application for entry of the mortgage shall be deemed to be, in the sense as defined by section 929 subsections (2) and (3), the enforcement of the writ of seizure.

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## **Section 933**

### **Enforcement of the personal arrest of a debtor**

The enforcement of the personal arrest of a debtor shall be governed, where it is effected by an arrest, by the stipulations of sections 802g, 802h and 802j subsections (1) and (2) and, where it is effected by other limitations of his personal liberty, by the special orders to be issued by the court responsible for the seizure, which shall be subject to the restrictions of an arrest. The warrant for arrest shall set out the amount of money established pursuant to section 923.

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### **Section 934**

#### **Setting aside the enforcement of the seizure**

- (1) Should the amount of money established in the writ of seizure be lodged, the enforcement of the seizure as effected shall be repealed by the execution court.
- (2) The execution court may also direct that the enforcement of the seizure be repealed if its continuation would require costs to be incurred, and the party upon the petition of which the enforcement of the seizure was ordered fails to make advance payment of the funds required.
- (3) The decisions mentioned in the present section are issued by a court order.
- (4) A complaint subject to a time limit may be filed against the order repealing the enforcement of the seizure.

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### **Section 935**

#### **Injunction regarding the subject matter of the litigation**

Injunctions regarding the subject matter of the litigation are an available remedy given the concern that a change of the status quo might frustrate the realisation of the right enjoyed by a party, or might make its realisation significantly more difficult.

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### **Section 936**

#### **Application of the rules governing arrest**

The rules regarding the order of writs of seizure and regarding the attachment procedure shall apply mutatis mutandis to the order of injunctions and the further procedure, unless the following sections set out deviating rules.

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### **Section 937**

#### **Competent court**

- (1) That court shall be competent for ordering injunctions before which the main action is being pursued.
- (2) The decision may be issued without a hearing for oral argument being held in urgent cases, and also if the petition that an injunction be issued is to be dismissed.

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### **Section 938**

#### **Content of the injunction**

- (1) The court shall determine at its sole discretion which orders are required in order to achieve the purpose intended.
- (2) The injunction may consist of a temporary deprivation of property (sequestration) and also in the opponent being required to take an action or being prohibited from taking it, in particular by prohibiting

him from the sale, encumbrance, or pledge of a plot of real estate, of a registered ship, or of a ship under construction.

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### **Section 939**

#### **Abrogation of an injunction against provision of security**

The repeal of an injunction against provision of security is permissible only under special circumstances.

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### **Section 940**

#### **Injunction serving to provide a temporary status**

Injunctions are also admissible for the purpose of providing for a temporary status concerning a legal relationship that is in dispute, to the extent this provision is deemed to be necessary in order to avert significant disadvantages, to prevent impending force, or for other reasons, in particular in the case of legal relationships of a long-term nature existing.

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### **Section 940a**

#### **Vacation of residential premises**

(1) The vacation of residential premises may be ordered by injunction only in the case of an unlawful interference with the possession of another, or in the case of a specific danger to life or limb.

(2) The vacation of residential premises may be ordered by injunction also against a third party that is in possession of the rented premises if an enforceable eviction order exists against the lessee and the lessor has become aware of the third party having entered into possession only after the hearing for oral argument has been closed.

(3) Where an action has been brought for the vacation of premises due to payments having been defaulted on, the vacation of residential premises may be ordered by injunction also if the defendant fails to comply with a court order for securitisation (section 283a) in the proceedings of the main action.

(4) In the cases of subsections (2) and (3), the court is to hear the opponent prior to issuing an eviction order.

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### **Section 941**

#### **Requests for entries to be made in the land register etc.**

Where, based on an injunction, an entry is to be made in the land register, the register of ships, or the register of ships under construction, the court is authorised to request that the land registry or the authority keeping the register make the corresponding entry.

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### **Section 942**

#### **Competence of the local court in the district of which the object is located**

(1) In urgent cases, the local court (Amtsgericht, AG) in the district of which the object of the litigation is located may deliver an injunction that determines the period within which the petition for the summons of the opponent to the hearing regarding the legal validity of the injunction is to be filed with the court responsible for the main action.

(2) The local court (Amtsgericht, AG) may deliver the injunction based on which a priority notice is to be entered in the land register, the register of ships, or the register of ships under construction, or an opposition challenging the correctness of such register, in the district of which the plot of real estate is situate, or the home port or home city of the ship, or the location at which the ship under construction is located, even if the case is not deemed urgent; in cases in which the ship's home port is not located in Germany, the injunction may be delivered by the local court in Hamburg. The period designated in subsection (1) is to be determined only upon corresponding application being made by the opponent.

(3) Once the deadline has expired without success, the local court (Amtsgericht, AG) is to repeal the ruling delivered upon corresponding application being made.

(4) The decisions by the local court mentioned in the present section are issued by a court order.

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### **Section 943**

#### **Court responsible for the main action**

(1) The court responsible for the main action in the sense as defined by the rules of this Chapter shall be deemed to be the court of first instance and, if the main action is pending in the appellate instance on fact and law, this shall be deemed to be the court of appeal.

(2) The court before which the main action is being pursued shall have exclusive jurisdiction for the orders to be issued pursuant to section 109 if the main action is or was pending.

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### **Section 944**

#### **Decision of the presiding judge in urgent cases**

In urgent cases, the presiding judge may decide, instead of the court, on the requests mentioned in this Chapter, provided that they need not be dealt with in a hearing.

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### **Section 945**

#### **Obligation to compensate for damages**

Should the order of a seizure or an injunction prove to have been unfounded from the start, or should the measure directed be repealed pursuant to section 926 subsection (2) or section 942 (3), the party that has obtained the order is under obligation to compensate the opponent for the damages that he has suffered as a result of the measure directed having been enforced, or as a result of the opponent having provided security in order to avert the enforcement or to obtain the repeal of the measure.

### **Section 945b Authorisation to issue statutory instruments**

The Federal Ministry of Justice is to make more detailed determinations by statutory instrument, subject to approval by the Bundesrat, as regards the establishment of the register and the keeping of same, the application for entry in the register of writs of protection, the retrieval of writs of protection from said register, the charging of fees, as well as the details of communicating and storing data and the particulars of data security and eAccessibility.

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## **Sections 946 to 1024 (repealed)**

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## **Book 10 Arbitration proceedings**

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### **Chapter 1 General regulations**

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#### **Section 1025 Scope of application**

(1) The rules of the present Book are to be applied where the venue of the arbitration proceedings in the sense as defined by section 1043 (1) is located in Germany.

(2) The stipulations of sections 1032, 1033 and 1050 are to be applied also in those cases in which the venue of the arbitration proceedings is located abroad or has not yet been determined.

(3) For as long as the venue of the arbitration proceedings has not yet been determined, the German courts shall be competent for exercising the court tasks designated in sections 1034, 1035, 1037, and 1038, provided the defendant or the plaintiff has its registered seat or his habitual place of abode in Germany.

(4) Sections 1061 to 1065 shall apply to the recognition and enforcement of foreign arbitration awards.

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#### **Section 1026 Scope of the activities that a court may pursue**

A court may take action in the matters provided for by sections 1025 to 1061 only insofar as provided for by this Book.

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#### **Section 1027 Loss of the right to file objections**

Insofar as a provision of the present Book, from which the parties to a dispute may deviate, has not been complied with, or a requirement agreed in the arbitration proceedings has not been met, a party that has failed to object to this irregularity without undue delay, or within a period set for such objections, may not assert this objection later. This shall not apply where the party was not aware of the irregularity.

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## **Section 1028**

### **Receipt of written communications by a party whose whereabouts are unknown**

(1) Should the whereabouts of a party or of a person authorised to receive written communications be unknown, such communications shall be deemed to have been received, unless the parties to the dispute agree otherwise, on the date on which they could have been received at the last known postal address or place of business, or at the last known habitual place of abode of the recipient if mailed properly by registered letter with return receipt, or by any other means providing proof of service.

(2) Subsection (1) is not to be applied to communications sent in court proceedings.

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## **Chapter 2**

### **Arbitration agreement**

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## **Section 1029**

### **Definition**

(1) An arbitration agreement is an agreement by the parties that they subject themselves to the decision passed by an arbitral tribunal on all or individual disputes that have arisen between them or may arise in future as regards a specific legal relationship that is contractual or non-contractual in nature.

(2) An arbitration agreement may be concluded in the form of an independent agreement (agreement as to arbitration) or in the form of a clause of an agreement (arbitration clause).

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## **Section 1030**

### **Eligibility for arbitration**

(1) Any claim under property law may become the subject matter of an arbitration agreement. An arbitration agreement regarding non-pecuniary claims has legal effect insofar as the parties to the dispute are entitled to conclude a settlement regarding the subject matter of the dispute.

(2) An arbitration agreement regarding legal disputes arising in the context of a tenancy relationship for residential space in Germany is invalid. This shall not apply to the extent the residential premises concerned are of the type determined in section 549 subsection (2) numbers 1 to 3 of the Civil Code (Bürgerliches Gesetzbuch, BGB).

(3) Any stipulations of the law outside of the present Book, according to which disputes may not be subjected to arbitration proceedings, or only if specific prerequisites have been met, shall remain unaffected hereby.

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## **Section 1031**

### **Form of the arbitration agreement**

(1) The arbitration agreement must be set out either in a document signed by the parties, or in letters, telefax copies, telegrams, or other forms of transmitting messages as exchanged by the parties, and that ensure proof of the agreement by supporting documents.

(2) The requirement as to form stipulated by subsection (1) shall be deemed to have been met also in those cases in which the arbitration agreement is contained in a document transmitted by one party to another party, or by a third party to both parties, the content of which document is regarded, in the event an opposition is lodged late and in accordance with customary standards, to be the content of an agreement.

(3) Where an agreement that is in compliance with the requirements as to form set out in subsection (1) or (2) makes reference to a document containing an arbitration clause, this establishes an arbitration agreement wherever the reference is made such that this clause is included as a component part of the agreement.

(4) (repealed).

(5) Arbitration agreements in which a consumer is involved must be contained in a record or document signed by the parties in their own hands. The written form as set out in the first sentence may be replaced by the electronic form pursuant to section 126a of the Civil Code (Bürgerliches Gesetzbuch, BGB). The record or document, or the electronic document may not contain agreements other than those making reference to the arbitration proceedings; this shall not apply if the agreement is recorded by a notary.

(6) Any failure to comply with formal requirements shall be remedied by an appearance being made, in the hearing before the arbitral tribunal, on the merits of the case.

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## **Section 1032**

### **Arbitration agreement and proceedings brought before the courts**

(1) Should proceedings be brought before a court regarding a matter that is subject to an arbitration agreement, the court is to dismiss the complaint as inadmissible provided the defendant has raised the corresponding objection prior to the hearing on the merits of the case commencing, unless the court determines the arbitration agreement to be null and void, invalid, or impossible to implement.

(2) Until the arbitral tribunal has been formed, a petition may be filed with the courts to have it determine the admissibility or inadmissibility of arbitration proceedings.

(3) Where proceedings are pending in the sense as defined by subsection (1) or (2), arbitration proceedings may be initiated or continued notwithstanding that fact, and an arbitration award may be handed down.

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## **Section 1033**

### **Arbitration agreement and preliminary measures taken by the court**

An arbitration agreement does not rule out that a court may order, before or after arbitration proceedings have commenced, and upon a party having filed a corresponding petition, that a provisional measure or one serving to provide security be taken with regard to the subject matter of the dispute being dealt with in the arbitration proceedings.

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## **Chapter 3**

### **Formation of the arbitral tribunal**

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### **Section 1034**

#### **Composition of the arbitral tribunal**

(1) The parties may agree on the number of arbitral judges. Absent such agreement, the number of arbitral judges shall be three.

(2) If the arbitration agreement provides for one party to be more strongly represented in the composition of the arbitral tribunal, and this places the other party at a disadvantage, the latter party may file a petition with the court that it appoint the arbitral judge(s) in derogation from the appointment(s) made or the appointment provisions agreed. The petition is to be filed no later than the expiry of two (2) weeks after the party has become aware of the composition of the arbitral tribunal. Section 1032 (3) shall apply mutatis mutandis.

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### **Section 1035**

#### **Appointment of arbitral judges**

(1) The parties may agree on a procedure for the appointment of one or several arbitral judges.

(2) Unless the parties to the dispute have agreed otherwise, a party shall be bound by the appointment of an arbitral judge that it has made as soon as the respective other party has received the notice of that arbitral judge's appointment.

(3) Absent an agreement by the parties providing for the appointment of the arbitral judges, the court shall appoint the individual arbitral judge, upon a party having filed a corresponding petition, if the parties to the dispute are unable to come to agreement regarding his appointment. In arbitration proceedings in which three (3) arbitral judges are involved, each of the parties shall appoint one (1) arbitral judge; these two (2) arbitral judges shall in turn appoint the third arbitral judge, who shall preside over the arbitral tribunal. Should a party have failed to appoint the arbitral judge within one (1) month of having received a corresponding notice from the other party, or should the two (2) arbitral judges be unable to come to agreement, within one (1) month of their having been appointed, regarding the third arbitral judge, the court is to appoint the third arbitral judge upon a party having filed a corresponding petition.

(4) Where the parties to the dispute have agreed on a procedure for the appointment, and where one party does not adhere to this procedure, or where the parties to the dispute or the two (2) arbitral judges are unable to come to an agreement in accordance with the said procedure, or where a third party does not fulfil the tasks conferred upon it under the procedure, each party may file a petition with the court for it to order the required measure, unless the appointment procedure provides otherwise for ensuring an appointment.

(5) In appointing an arbitral judge, the court is to consider all of the prerequisites required by the parties' agreement for the arbitral judge and is to take account of all aspects by which the appointment of an independent and impartial arbitral judge is ensured. In appointing an individual arbitral judge or a third arbitral judge, the court is to also deliberate the option of whether appointing an arbitral judge of a different nationality than that of the parties might serve the intended purpose.

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### **Section 1036**

#### **Recusal of an arbitral judge**

(1) A person asked to serve as an arbitral judge is to disclose any and all circumstances that might give rise to doubts as to his impartiality. An arbitral judge is under obligation to disclose such circumstances to the parties without undue delay, also after his appointment and until the close of the arbitration proceedings, if he has failed to so inform them previously.

(2) The appointment of an arbitral judge may be refused only if any circumstances give rise to justified doubts as to his impartiality or independence, or if he does not meet the prerequisites established by the parties. A party may recuse an arbitral judge whom it has itself appointed, or in the appointment of whom it has assisted, only for reasons of which it became aware only after he was appointed.

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### **Section 1037**

#### **Recusal procedure**

(1) Subject to the provisions made in subsection (3), the parties may agree on a procedure for the recusal of an arbitral judge.

(2) Absent such agreement by the parties, the party intending to recuse an arbitral judge is to submit to the arbitral tribunal its grounds for wishing his recusal in writing, doing so within two (2) weeks of having become aware of the composition of the arbitral tribunal or of a circumstance in the sense as defined by section 1036 (2). Should the arbitral judge so recused refuse to resign from office, or should the other party not consent to the recusal, the arbitral tribunal shall rule on the recusal.

(3) Should the recusal in accordance with the procedure agreed by the parties, or in accordance with the procedure set out in subsection (2) fail to meet with success, the party intending to recuse the arbitral judge may file a petition that the court take a decision on the recusal, doing so within one (1) month of having become aware of the decision by which the recusal was refused; the parties to the dispute may also agree on a different period. For the period during which such a petition is pending, the arbitral tribunal, including the arbitral judge who is to be recused, may continue the arbitration proceedings and may deliver an arbitration award.

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### **Section 1038**

#### **Failure to act or impossibility of performing the tasks assigned**

(1) Should an arbitral judge be unable to perform the tasks assigned to him, either legally or factually, or should he fail to perform the tasks assigned to him within a reasonable period for other reasons, then his appointment shall end upon his resigning from office or upon the parties to the dispute agreeing on his termination. Where the arbitral judge does not resign, or where the parties to the dispute are unable to agree on his termination, each of the parties may file a petition with the court to obtain a decision as to the termination of the arbitral judge's appointment.

(2) If an arbitral judge resigns in the cases set out in subsection (1) or section 1037 (2), or if a party consents to terminating his appointment as arbitral judge, this does not entail the recognition of the grounds for resignation set out in subsection (1) or section 1036 (2).

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### **Section 1039**

#### **Appointment of a substitute arbitral judge**

(1) In cases in which the appointment of an arbitral judge ends pursuant to sections 1037 or 1038, or due to his having resigned from office for another reason, or due to his having been recused by agreement of the parties, a substitute arbitral judge is to be appointed. The appointment shall be made in accordance with the rules that were to be applied to the appointment of the arbitral judge for whom a substitute is being appointed.

(2) The parties may make an agreement in derogation herefrom.

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## **Chapter 4**

### **Competence of the arbitral tribunal**

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#### **Section 1040**

##### **Authority of the arbitral tribunal to decide on its own competence**

(1) The arbitral tribunal may decide on its own competence, and in this context also regarding the existence or the validity of the arbitration agreement. In this context, an arbitration clause is to be treated as an agreement independent of the other provisions of the agreement.

(2) The objection as to a lack of competence of the arbitral tribunal is to be submitted by no later than the time at which the reply to the request for arbitration is made. A party shall not be prevented from raising such an objection because of its having appointed an arbitral judge, or because of its having assisted in his appointment. The objection as to the arbitral tribunal having exceeded its authorities is to be raised as soon as the matter with regard to which this allegation is being made is discussed in the arbitration proceedings. In either case, the arbitral tribunal may permit such an objection to be raised later if the party raising it provides sufficient excuse for such delay.

(3) Where the arbitral tribunal believes it has competence, it shall rule on an objection raised pursuant to subsection (2) in an interim decision as a matter of principle. In such event, each of the parties may apply for a court decision to be taken, doing so within one (1) month of having received the written notice as to the interim decision. For the period during which such a petition is pending, the arbitral tribunal may continue the arbitration proceedings and may deliver an arbitration award.

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#### **Section 1041**

##### **Measures of temporary relief**

(1) Unless the parties to the dispute have agreed otherwise, the arbitral tribunal may direct, upon a party having filed a corresponding petition, provisional measures or measures serving to provide security as it deems fit with a view to the subject matter of the litigation. The arbitral tribunal may demand, in connection with such measure, that each of the parties provide reasonable security.

(2) Upon a party having filed a corresponding petition, the court may permit the enforcement of a measure pursuant to subsection (1), unless a corresponding measure of temporary relief has already been petitioned with a court. It may issue a differently worded order if this is required for the enforcement of the measure.

(3) Upon corresponding application being made, the court may reverse or modify the order pursuant to subsection (2).

(4) Should the order of a measure pursuant to subsection (1) prove to have been unfounded from the start, the party that has obtained its enforcement is under obligation to compensate the opponent for the damage it has suffered as a result of the measure being enforced, or as a result of his having provided security in order to avert the enforcement. The claim may be asserted in the pending arbitration proceedings.

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## **Chapter 5**

### **Implementation of the arbitration proceedings**

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## **Section 1042**

### **General procedural rules**

- (1) The parties are to be accorded equal treatment. Each of the parties is to be given an effective and fair legal hearing.
- (2) Attorneys may not be prohibited from acting as attorneys-in-fact.
- (3) In all other cases, the parties to the dispute may themselves provide for the procedure, subject to the mandatory stipulations set out in the present Book, or by making reference to existing rules of arbitration.
- (4) Absent an agreement by the parties, and in those cases regarding which the present Book does not make any provisions, the procedural rules shall be determined by the arbitral tribunal at its sole discretion. The arbitral tribunal is authorised to decide on the admissibility of the taking of evidence, to take evidence, and to assess the results at its sole discretion.

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## **Section 1043**

### **Venue of the arbitration proceedings**

- (1) The parties may make an agreement as to the venue of the arbitration proceedings. Absent such agreement, the arbitral tribunal shall determine the venue of the arbitration proceedings. In this context, the circumstances of the case including the suitability of the venue for the parties to the dispute are to be taken into account.
- (2) Unless otherwise agreed by the parties to the dispute, the arbitral tribunal may convene, notwithstanding the provisions made in subsection (1), at any venue it deems suitable for a hearing, and may do so in order to examine witnesses, experts, or the parties; for deliberations amongst its members; in order to inspect objects; or in order to review documents.

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## **Section 1044**

### **Commencement of the arbitration proceedings**

Unless otherwise agreed by the parties to the dispute, the arbitration proceedings regarding a certain dispute shall commence on the date on which the defendant has received the petition to bring the matter before an arbitral tribunal. The petition must designate the parties as well as the subject matter of the litigation, and it must indicate that an arbitration agreement was concluded.

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## **Section 1045**

### **Language of the proceedings**

- (1) The parties may agree on the language(s) to be used in the arbitration proceedings. Absent such agreement, the arbitral tribunal shall determine the language of the proceedings. Unless otherwise provided for therein, the agreement of the parties or the determination by the arbitral tribunal shall govern regarding the written declarations submitted by a party, the hearings, arbitration awards, other decisions, and other communications of the arbitral tribunal.
- (2) The arbitral tribunal may direct that any evidence submitted in writing must be accompanied by a translation into the language(s) that the parties have agreed on or that the arbitral tribunal has determined.

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**Section 1046**  
**Request for arbitration and reply to the request for arbitration**

(1) Within the period determined by the parties or by the arbitral tribunal, the plaintiff is to present his claim and the facts on which this claim is based, and the defendant is to state his position in this regard. In this context, the parties may submit all documents that they deem significant, or they may designate any other evidence of which they intend to avail themselves.

(2) Unless otherwise agreed by the parties to the dispute, each of the parties may modify or amend its request for arbitration in the course of the arbitration proceedings, or the means of challenge or defence it has submitted; this shall not apply if the arbitral tribunal refuses to admit such modifications or amendments due to insufficient excuse having been provided for the delay with which they are submitted.

(3) Subsections (1) and (2) shall apply mutatis mutandis to any countercharges that may be brought.

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**Section 1047**  
**Hearing for oral argument; proceedings conducted in writing**

(1) Subject to an agreement by the parties having been made, the arbitral tribunal shall decide whether the matter is to be dealt with in oral argument, or whether the proceedings are to be implemented on the basis of documents and other records. Where the parties to the dispute have not ruled out a hearing for oral argument, the arbitral tribunal is to hold such a hearing in the course of a suitable phase of the proceedings should a party file a corresponding petition.

(2) The parties are to be informed in due time of any hearing and any assembly of the arbitral tribunal arranged for the purpose of taking evidence.

(3) The respective other party is to be made aware of any written pleadings, documents, and other communications that a party may submit to the arbitral tribunal, while expert reports and other written evidence on which the arbitral tribunal may base its decision are to be sent to both parties for their information.

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**Section 1048**  
**Failure by a party to comply with procedural rules**

(1) Should the plaintiff fail to submit his request for arbitration pursuant to section 1046 (1), the arbitral tribunal shall terminate the proceedings.

(2) Should the defendant fail to reply to the request for arbitration pursuant to section 1046 (1), the arbitral tribunal shall continue the proceedings, without the failure to comply with procedural rules as such being deemed to be an acknowledgment of the assertions made by the plaintiff.

(3) Should a party fail to make an appearance at a hearing for oral argument, or should it fail to produce a document as evidence, the arbitral tribunal may continue the proceedings and may issue the arbitration award based on the insights it has obtained.

(4) Where, according to the conviction of the arbitral tribunal, sufficient excuse has been provided by a party for its failure to comply with procedural rules, such failure shall not be taken into account. In all other cases, the parties to the dispute may agree otherwise as concerns the consequence of a failure to comply with procedural rules.

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## **Section 1049**

### **Expert appointed by the arbitral tribunal**

(1) Unless otherwise agreed by the parties to the dispute, the arbitral tribunal may appoint one or several experts, who are to prepare a report regarding specific questions determined by the arbitral tribunal. Furthermore, the arbitral tribunal may ask a party to provide the expert with any information serving the purpose intended, or to produce or make available to him for his inspection any and all of the documents or objects that are relevant to the proceedings.

(2) Unless otherwise agreed by the parties to the dispute, the expert is to attend a hearing for oral argument should a party file a corresponding petition, or should the arbitral tribunal believe this to be required, after he has submitted his written or oral report. At the hearing, the parties to the dispute may ask questions of the expert and may have experts they have themselves retained state their position regarding the matters at issue.

(3) Sections 1036, 1037 subsection (1) and 2 shall apply mutatis mutandis to the experts appointed by the arbitral tribunal.

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## **Section 1050**

### **Support provided by the court in taking evidence and other actions reserved for judges**

The arbitral tribunal or, with the consent of the arbitral tribunal, a party may file a petition that the court provide support by taking evidence or by taking any other actions reserved for judges that the arbitral tribunal is not authorised to take. The court shall deal with the petition, unless it deems it to be inadmissible, in accordance with its procedural rules as applying to the taking of evidence or any other actions reserved for judges. The arbitral judges are entitled to attend the court hearing at which evidence is taken and to ask questions.

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## **Chapter 6**

### **Arbitration award and conclusion of the proceedings**

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## **Section 1051**

### **Applicable laws**

(1) The arbitral tribunal is to decide on the matter in dispute in accordance with the statutory provisions that the parties have designated as being applicable to the content of the legal dispute. Unless the parties to the dispute have expressly agreed otherwise, the designation of the laws or the legal system of a specific state is to be understood as a direct referral to the rules of substantive law of this state, and not to its rules relating to the conflict of laws.

(2) Where the parties to the dispute failed to determine which statutory provisions are to be applied, the arbitral tribunal is to apply the laws of that state to which the subject matter of the proceedings has the closest ties.

(3) The arbitral tribunal is to take its decision based on considerations of what is fair and equitable only if the parties to the dispute have expressly authorised it to do so. The authorisation may be granted up until the time the arbitral tribunal takes such decision.

(4) In all cases, the arbitral tribunal is to decide in accordance with the provisions of the agreement and is to take account of any commercial practices that may exist.

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## **Section 1052**

### **Decision by a panel of arbitral judges**

(1) Unless otherwise agreed by the parties to the dispute, each decision taken by the arbitral tribunal in arbitration proceedings involving more than one arbitral judge is to be passed by a majority of the votes cast by all members of the tribunal.

(2) Should an arbitral judge refuse to participate in such a vote, the other arbitral judges may decide on the matter without him, provided that the parties to the dispute have not agreed otherwise. The intention to vote on the arbitration award without the arbitral judge so refusing to participate in the vote is to be communicated to the parties beforehand. In the case of other decisions, the parties to the dispute are to be informed of the refusal to participate in the vote retroactively.

(3) The presiding arbitral judge may decide on individual procedural issues alone if the parties to the dispute or the other members of the arbitral tribunal have correspondingly authorised him to do so.

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## **Section 1053**

### **Settlement**

(1) Insofar as, in the course of the arbitration proceedings, the parties to the dispute reach a settlement regarding the dispute, the arbitral tribunal shall terminate the proceedings. Upon corresponding application being made by the parties, it shall record the settlement in the form of an arbitration award, the wording of which has been agreed by the parties, provided that the content of the settlement does not violate public order.

(2) An arbitration award, the wording of which has been agreed by the parties, is to be delivered pursuant to section 1054 and must specify that it is an arbitration award. Such an arbitration award has the same effect as any other arbitration award regarding the dispute.

(3) Insofar as declarations must be recorded by a notary in order to be effective, this requirement shall be replaced by an arbitration award in which the declarations of the parties are included by way of the parties agreeing on its wording.

(4) Provided that the parties consent to this being done, an arbitration award, the wording of which has been agreed by the parties, may also be declared enforceable by a notary having his official residence in the district of the court that is competent for the declaration of enforceability pursuant to section 1062 subsections (1) and (2). The notary shall refuse to make such a declaration of enforceability where the prerequisites of subsection (1), second sentence, have not been met.

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## **Section 1054**

### **Form and content of the arbitration award**

(1) The arbitration award is to be delivered in writing and is to be signed by the arbitral judge(s). In arbitration proceedings in which more than one arbitral judge was involved, the signature of the majority of all members of the arbitral tribunal shall correspond to the present formal requirement, provided that the reasons for which a signature is missing are specified.

(2) The reasons for the arbitration award are to be provided unless the parties to the dispute have agreed that no reasons need be provided, or unless the parties have agreed on the wording of the arbitration award in the sense as defined by section 1053.

(3) The arbitration award is to set out the date on which it was delivered and the venue of the arbitration proceedings determined pursuant to section 1043 (1). The arbitration award shall be deemed to have been delivered on that date and at that venue.

(4) An arbitration award signed by the arbitral judges is to be transmitted to each of the parties.

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### **Section 1055** **Effects of the arbitration award**

Amongst the parties, the arbitration award has the effect of a final and binding judgment handed down by a court.

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### **Section 1056** **Termination of the arbitration proceedings**

(1) The arbitration proceedings are terminated upon the final and conclusive arbitration award being delivered, or by the arbitral tribunal issuing an order pursuant to subsection (2).

(2) The arbitral tribunal determines the termination of the arbitration proceedings by issuing an order if:

1. The plaintiff:

a) Fails to submit his request for arbitration pursuant to section 1046 (1) and no case as provided for in section 1048 (4) is given; or

b) Withdraws the request for arbitration unless the defendant enters an opposition and the arbitral tribunal acknowledges that the defendant has a legitimate interest in conclusively resolving the dispute; or

2. The parties to the dispute agree on terminating the proceedings; or

3. The parties to the dispute no longer pursue the arbitration proceedings in spite of a corresponding request having been made by the arbitral tribunal, or it has become impossible for other reasons to continue the proceedings.

(3) Subject to the stipulations of section 1057 (2) and of sections 1058, 1059 (4), the arbitral tribunal's appointment shall end upon the arbitration proceedings having ended.

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### **Section 1057** **Decision as to costs**

(1) Unless the parties to the dispute have agreed otherwise, the arbitral tribunal is to decide, in its arbitration award, on the share of the costs of the arbitration proceedings that the parties to the dispute are to bear, including the costs accruing to the parties that were necessary in order to appropriately file a request for arbitration proceedings or to defend against such a request. In this

context, the arbitral tribunal shall decide after having duly assessed the circumstances while taking account of the circumstances of the individual case, in particular the outcome of the proceedings.

(2) Insofar as the costs of the arbitration proceedings have been established, the arbitral tribunal is to also decide in which amount the parties to the dispute are to bear such costs. Should the costs not have been determined, or should it be possible to determine them only after the termination of the arbitration proceedings, a separate arbitration award shall rule on that matter.

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## **Section 1058**

### **Correction, interpretation, and amendment of the arbitration award**

(1) Each of the parties may file a petition with the arbitral tribunal that:

1. It correct computation errors, spelling mistakes, or typographical errors, or errors of a similar nature in the arbitration award;
2. It interpret specific parts of the arbitration award;
3. It deliver an amending arbitration award regarding those claims that, while they had been asserted in the arbitration proceedings, were not addressed in the arbitration award.

(2) Unless the parties to the dispute have agreed a different period, the petition is to be filed within one (1) month of the arbitration award having been received.

(3) The arbitral tribunal is to decide on the correction or interpretation of the arbitration award within one (1) month, and on the amendment of the arbitration award within two (2) months.

(4) The arbitral tribunal may correct the arbitration award also without a petition being filed.

(5) Section 1054 is to be applied to the correction, interpretation, or amendment of the arbitration award.

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## **Chapter 7**

### **Legal remedies against the arbitration award**

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## **Section 1059**

### **Petition for reversal of an arbitration award**

(1) Only a petition for reversal of the arbitration award by a court pursuant to subsections (2) and (3) may be filed against an arbitration award.

(2) An arbitration award may be reversed only if:

1. The petitioner asserts, and provides reasons for his assertion, that:
  - a) One of the parties concluding an arbitration agreement pursuant to sections 1029 and 1031 did not have the capacity to do so pursuant to the laws that are relevant to such party personally, or that the arbitration agreement is invalid under the laws to which the parties to the dispute have subjected it, or, if the parties to the dispute have not made any determinations in this regard, that it is invalid under German law; or that

- b) He has not been properly notified of the appointment of an arbitral judge, or of the arbitration proceedings, or that he was unable to assert the means of challenge or defence available to him for other reasons; or that
- c) The arbitration award concerns a dispute not mentioned in the agreement as to arbitration, or not subject to the provisions of the arbitration clause, or that it contains decisions that are above and beyond the limits of the arbitration agreement; however, where that part of the arbitration award referring to points at issue that were subject to the arbitration proceedings can be separated from the part concerning points at issue that were not subject to the arbitration proceedings, only the latter part of the arbitration award may be reversed; or where the petitioner asserts, and provides reasons for his assertion, that
- d) The formation of the arbitral tribunal or the arbitration proceedings did not correspond to a provision of this Book or to an admissible agreement between the parties, and that it is to be assumed that this has had an effect on the arbitration award; or if

## 2. The court determines that

- a) the subject matter of the dispute is not eligible for arbitration under German law; or
- b) The recognition or enforcement of the arbitration award will lead to a result contrary to public order.

(3) Unless the parties to the dispute agree otherwise, the petition for reversal must be filed with the court within a period of three (3) months. The period begins on the day on which the petitioner has received the arbitration award. In cases in which a petition has been filed pursuant to section 1058, the period shall be extended by at most one (1) month following receipt of the decision regarding this petition. The petition for reversal of the arbitration award may no longer be filed once a German court has declared the arbitration award to be enforceable.

(4) If the reversal has been petitioned, the court may remand the matter to the arbitral tribunal where appropriate, as petitioned by a party, while reversing the arbitration award.

(5) In cases of doubt, the reversal of the arbitration award will result in the arbitration agreement once again entering into force concerning the subject matter of the dispute.

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## **Chapter 8**

### **Prerequisites for the recognition and enforcement of arbitration awards**

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## **Section 1060**

### **Domestic arbitration awards**

(1) Compulsory enforcement is an available remedy provided the arbitration award has been declared enforceable.

(2) The petition for a declaration of enforceability to be issued is to be denied, while reversing the arbitration award, if one of the grounds for reversal designated in section 1059 (2) is given. Such grounds for reversal shall not be taken into account insofar as a petition for reversal based on these grounds has been denied, in a final and binding judgment, at the time the petition for declaration of enforceability is received. Grounds for reversal pursuant to section 1059 (2) number 1 also shall not be taken into account if the periods determined in section 1059 (3) have expired, without the respondent having filed a petition for reversal of the arbitration award.

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## **Section 1061**

### **Foreign arbitration awards**

(1) The recognition and enforcement of foreign arbitration awards is governed by the Convention of 10 June 1958 on the recognition and enforcement of foreign arbitral awards (published in Federal Law Gazette (Bundesgesetzblatt, BGBl.) 1961 II page 121). The stipulations of other treaties concerning the recognition and enforcement of arbitration awards shall remain unaffected hereby.

(2) Insofar as the declaration of enforceability is to be denied, the court shall determine that the arbitration award is not to be recognised in Germany.

(3) Where the arbitration award is reversed abroad, after having been declared enforceable, a petition may be filed that the declaration of enforceability be repealed.

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## **Chapter 9**

### **Court proceedings**

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## **Section 1062**

### **Jurisdiction**

(1) The higher regional court (Oberlandesgericht, OLG) designated in the arbitration agreement or, if no such designation was made, the higher regional court in the district of which the venue of the arbitration proceedings is located, is competent for decisions on petitions and applications regarding:

1. The appointment of an arbitral judge (sections 1034, 1035), the recusal of an arbitral judge (section 1037), or the termination of the office as arbitral judge (section 1038);
2. The determination of the admissibility or inadmissibility of arbitration proceedings (section 1032) or regarding the decision of an arbitral tribunal, in which the latter has affirmed its competence in an interim decision (section 1040);
3. The enforcement, reversal, or modification of orders providing for provisional measures or measures serving to provide security by the arbitral tribunal (section 1041);
4. The reversal (section 1059) or the declaration of enforceability of the arbitration award (sections 1060 et seq.), or the reversal of the declaration of enforceability (section 1061).

(2) If no venue for arbitration proceedings has been arranged in Germany in the cases provided for by subsection (1) number 2 first alternative, number 3 or number 4, that higher regional court (Oberlandesgericht, OLG) shall have jurisdiction in the district of which the respondent has his registered seat or his habitual place of abode, or in which assets of the respondent are located, or in which the object being laid claim to by the request for arbitration proceedings, or affected by the measure, is located; as an alternative, the higher regional court of Berlin (Kammergericht, KG) shall have jurisdiction.

(3) In the cases provided for by section 1025 (3), that higher regional court (Oberlandesgericht, OLG) shall have jurisdiction in the district of which the plaintiff or the defendant has his registered seat or his habitual place of abode.

(4) That local court (Amtsgericht, AG) shall be responsible for providing assistance in taking evidence and other actions reserved for judges (section 1050) in the district of which the said action is to be taken.

(5) Where several higher regional courts (Oberlandesgerichte, OLG) have been established in a Land, the Land government is authorised to assign jurisdiction to a specific higher regional court or to the highest Land court, doing so by statutory instrument; the Land government may confer the authorisation upon the Land department of justice (Landesjustizverwaltung), doing so by statutory instrument. Several Länder may agree on the competence of the higher regional court across the boundaries separating them.

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### **Section 1063**

#### **General regulations**

(1) The court decides by court order. Prior to the decision, the opponent is to be heard.

(2) The court is to order a hearing for oral argument to be held if the reversal of the arbitration award has been petitioned or if grounds for reversal pursuant to section 1059 (2) are conceivable in the case of a petition having been filed for the recognition or declaration of enforceability of the arbitration award.

(3) The presiding judge of the Division for Civil Matters (Zivilsenat) may direct, without having previously heard the opponent, that the petitioner may pursue compulsory enforcement under the arbitration award until a decision has been delivered regarding the petition, or that he is allowed to enforce the provisional measures, or measures serving to provide security, ordered by the arbitral tribunal pursuant to section 1041. Compulsory enforcement under the arbitration award may not extend beyond measures serving to provide security. The respondent is authorised to avert compulsory enforcement by providing security in that amount in which the petitioner may pursue compulsory enforcement.

(4) For as long as no hearing for oral argument has been arranged, petitions may be filed with the registry for the files of the court, and declarations may be recorded with it.

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### **Section 1064**

#### **Special aspects of declaring arbitration awards enforceable**

(1) The arbitration award, or a certified copy of same, is to be enclosed with the petition for a declaration of enforceability of an arbitration award. The certification may also be performed by the attorney retained and authorised for the court proceedings.

(2) The court order by which an arbitration award is declared enforceable is to be declared provisionally enforceable.

(3) Subsections (1) and (2) are to be applied to foreign arbitration awards, unless otherwise provided for in treaties.

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### **Section 1065**

#### **Appellate remedies**

(1) The complaint on points of law is an available remedy against the decisions set out in section 1062 (1) numbers 2 and 4. In all other cases, the decisions delivered in the proceedings designated in section 1062 (1) are incontestable.

(2) The complaint on points of law may also be based on the fact that the decision is based on a violation of a state treaty. Sections 707, 717 shall apply mutatis mutandis.

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## **Chapter 10**

### **Arbitral tribunals not governed by agreements**

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## **Section 1066**

### **Application mutatis mutandis of the provisions made in Book 10**

The stipulations of the present Book shall apply mutatis mutandis to the arbitral tribunals established, in a manner permissible under statute, by last wills or other rulings not based on an agreement.

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## **Book 11**

### **Judicial collaboration within the European Union**

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## **Chapter 1**

### **Service of records or documents pursuant to Council Regulation (EC) No 1393/2007**

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## **Section 1067**

### **Service of records or documents by diplomatic or consular missions**

Any service intended to be performed in the Federal Republic of Germany pursuant to Article 13 of Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters, and repealing Council Regulation (EC) No 1348/2000 (Official Journal L 324 page 79), is permissible only if the intended recipient of the record or document to be served is a citizen of the state from which the documents are being transmitted.

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## **Section 1068**

### **Service of records or documents by post**

(1) The return receipt or equivalent proof shall be sufficient proof of the records or documents having been served pursuant to Article 14 of Council Regulation (EC) No 1393/2007.

(2) A record or document regarding which a German receiving agency is to obtain or initiate service in the context of Article 7 (1) of Council Regulation (EC) No 1393/2007 may also be served by registered mail, return receipt requested.

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## **Section 1069 Responsibilities**

(1) For the service of records or documents abroad, the following bodies are responsible as the German transmitting agencies in the sense as defined by Article 2 (1) of Council Regulation (EC) No 1393/2007:

1. The court interested in having the records or documents served, where they are court documents; and
2. That local court (Amtsgericht, AG) in the district of which the person interested in having the records or documents served has his place of residence or habitual place of abode, in those cases in which the documents are extrajudicial documents; in the case of notarial records or documents, this shall be the local court in the district of which the recording notary has his official residence; in the case of legal persons, their registered seat shall govern in lieu of the place of residence or the habitual place of abode; the Land governments may confer the tasks of a transmitting agency to one local court acting for the districts of several local courts, doing so by statutory instrument.

(2) For the service of records or documents in the Federal Republic of Germany, that local court (Amtsgericht, AG) in the district of which the record or document is to be served, shall be responsible, as the German receiving agency in the sense as defined by Article 2 (2) of Council Regulation (EC) No 1393/2007. The Land governments may assign the tasks of a transmitting agency to one local court acting for the districts of several local courts, doing so by statutory instrument.

(3) The Land governments shall determine the agency that is responsible as the German central agency in the respective Land in the sense as defined by Article 3 first sentence of Council Regulation (EC) No 1393/2007, doing so by statutory instrument. The tasks of the central agency may be assigned, in each Land, only to a single agency.

(4) The Land governments may confer the authority to issue a statutory instrument pursuant to subsection (1) number 2, subsection (2), second sentence, and subsection (3), first sentence, upon a supreme Land authority.

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## **Section 1070 (repealed)**

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## **Section 1071 (repealed)**

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## **Chapter 2 Taking of evidence in accordance with Council Regulation (EC) No 1206/2001**

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## **Section 1072 Taking of evidence in the Member States of the European Union**

Should evidence have to be taken in accordance with Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters (OJEC number L 174 page 1), the court:

1. May directly request that the competent court of another Member State take the evidence; or
2. May request to take evidence directly in another Member State, subject to the prerequisites of Article 17 of Council Regulation (EC) No 1206/2001.

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### **Section 1073 Participation rights**

(1) The requesting German court or a member of the court correspondingly delegated may be present and involved, in the scope of application of Council Regulation (EC) No 1206/2001, when the requesting court's request for the taking of evidence is dealt with by the requested court. The parties, their representatives as well as any experts retained may involve themselves in the respective proceedings in the scope in which they would be entitled to involve themselves in the respective proceedings were the evidence to be taken in Germany.

(2) Any direct taking of evidence abroad pursuant to Article 17 (3) of Council Regulation (EC) No 1206/2001 may be performed by a member of the court or by any experts that the court may correspondingly charge.

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### **Section 1074 Responsibilities pursuant to Council Regulation (EC) No 1206/2001**

(1) For evidence to be taken in the Federal Republic of Germany, that local court (Amtsgericht, AG) in the district of which the procedural action is to be taken shall be responsible as the requested court in the sense as defined by Article 2 (1) of Council Regulation (EC) No 1206/2001.

(2) The Land governments may assign the tasks of a requested court to one local court (Amtsgericht, AG) acting for the districts of several local courts, doing so by statutory instrument.

(3) The Land governments shall determine by statutory instrument the agency that shall, in the respective Land:

1. Be responsible as the German central body in the sense as defined by Article 3 (1) of Council Regulation (EC) No 1206/2001;
2. Accept, as the competent body, any requests for the direct taking of evidence in the sense as defined by Article 17 (1) of Council Regulation (EC) No 1206/2001.

The tasks pursuant to numbers 1 and 2 may be assigned only to a single agency in each Land.

(4) The Land governments may confer the authority to issue a statutory instrument pursuant to subsections (2) and (3), first sentence, upon a supreme Land authority.

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### **Section 1075 Language of incoming requests**

Requests for the taking of evidence submitted from a foreign counterpart, as well as communications pursuant to Council Regulation (EC) No 1206/2001, must be written in German, or must be accompanied by a translation into German.

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### **Chapter 3**

#### **Assistance with court costs pursuant to Council Directive 2003/8/EC**

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#### **Section 1076**

##### **Applicable regulations**

Unless otherwise provided for hereinbelow, sections 114 to 127a shall apply to assistance with court costs in cross-border disputes within the European Union pursuant to Council Directive 2003/8/EC of 27 January 2003 to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes (OJEC number L 26 page 41, Official Journal L 32 page 15).

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#### **Section 1077**

##### **Outgoing applications**

(1) That local court (Amtsgericht, AG), in the district of which the petitioner has his place of residence or habitual place of abode, shall be competent for receiving and transmitting applications filed by individuals for assistance with court costs in cross-border disputes. The Land governments may assign the tasks of a transmitting authority to one local court acting for the districts of several local courts, doing so by statutory instrument. They may confer the authorisation upon the Land departments of justice by statutory instrument. Section 21 first sentence of the Act for the Recovery of Maintenance in Relations with Foreign States (Gesetz zur Geltendmachung von Unterhaltsansprüchen im Verkehr mit ausländischen Staaten, AUG) shall remain unaffected hereby.

(2) The Federal Ministry of Justice is authorised to introduce, subject to approval by the Bundesrat and doing so by statutory instrument, the standard forms provided for by Article 16 (1) of Council Directive 2003/8/EC to be used for applications for assistance with court costs in cross-border disputes and for the transmission of such applications. Insofar as such standard forms for applications for assistance with court costs in cross-border disputes and for the transmission of such applications have already been introduced, the applicant and the transmitting authority must use them.

(3) The transmitting authority may refuse to transmit the application, as a whole or in part, doing so by order, where the application is manifestly unfounded or manifestly outside the scope of Council Directive 2003/8/EC. To the extent required in order to prepare a decision pursuant to the first sentence hereof, the transmitting authority may prepare translations ex officio of the foreign-language supporting documents attached to the application. A complaint subject to a time limit is an available remedy against any decision refusing to comply with the application, subject to the provisions made in section 127 (2) second and third sentences.

(4) The transmitting authority shall prepare translations ex officio of the entries made in the standard form for applications for assistance with court costs, as well as translations of the supporting documents to be enclosed therewith:

- a) Into one of the official languages of the Member State of the competent receiving authority, which corresponds to one of the official languages of the European Union; or
- b) Into another language which that Member State accepts.

The transmitting authority shall review the petition for completeness and shall work towards those supporting documents being enclosed, of which it is aware that they are required for a decision on the petition to be taken.

(5) The transmitting authority shall send the application and the supporting documents to be enclosed, without any legalisation or equivalent formal requirements, to the competent receiving authority of the Member State in which the court is sitting or where enforcement is sought. The transmission shall be made within fourteen (14) days of the translations having been made available that are to be prepared pursuant to subsection (4).

(6) Should the competent body of the other Member State have refused to comply with the application for assistance with court costs based on the petitioner's personal and economic circumstances, or should it have given notice that it will not comply with the application, the transmitting authority shall issue, upon corresponding application being made, a confirmation of indigence if, in corresponding proceedings in Germany, the petitioner would be deemed indigent pursuant to section 115 (1) and (2). Subsection (4), first sentence, shall apply mutatis mutandis to the translation of such confirmation. The transmitting authority shall send the confirmation of indigence to the receiving authority of the other Member State for the purpose of amending the original application for assistance with court costs in cross-border disputes.

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## **Section 1078**

### **Incoming applications**

(1) The court hearing the case or the court responsible for execution shall be responsible for applications for assistance with court costs in cross-border disputes. The applications must be completed in German and their supporting documents must be accompanied by a translation into German. No legalisation or equivalent formalities may be demanded.

(2) The court shall decide on the application subject to the stipulations set out in sections 114 to 116. It shall send a copy of its decision to the transmitting authority.

(3) Applicants shall be granted assistance with court costs in cross-border disputes also if they can prove that they are unable to pay the costs of the proceedings as a whole, only in part, or only in instalments, or as a result of differences in the costs of living between the Member State of domicile or habitual residence on the one hand and of the forum on the other.

(4) Should assistance with court costs in cross-border disputes have been granted, it shall be assumed that a new application for assistance with court costs in cross-border disputes has been filed for each level of jurisdiction initiated by the applicant or the opponent. The court is to work towards the petitioner demonstrating the prerequisites based on which the approval of assistance with court costs in cross-border disputes is granted for the respective level of jurisdiction.

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## **Chapter 4**

### **European enforcement orders pursuant to Council Regulation (EC) No 805/2004**

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## **Title 1**

### **Certificate of domestic enforcement orders as European enforcement orders**

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## **Section 1079**

### **Competence**

Those courts, public authorities, or notaries who are under obligation to issue an enforceable execution copy of the legal title, shall be competent for issuing the European Enforcement Order certificates pursuant to

1. Article 9 (1), Article 24 (1), Article 25 (1); and
2. Article 6 subsections (2) and (3)

of Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims (Official Journal L 143 page 15.

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### **Section 1080 Decision**

(1) Certificates pursuant to Article 9 (1), Article 24 (1), Article 25 (1), and Article 6 (3) of Council Regulation (EC) No 805/2004 are to be issued without the debtor being heard. An execution of the certificate is to be served on the debtor ex officio.

(2) Where the application for issuance of a certificate is dismissed, the rules regarding the contestation of the decision to issue a court certificate of enforceability shall apply mutatis mutandis.

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### **Section 1081 Rectification and withdrawal**

(1) An application pursuant to Article 10 (1) of Council Regulation (EC) No 805/2004 for the rectification or withdrawal of a court certificate is to be filed with the court that has issued the certificate. That court shall decide on the application. An application for rectification or withdrawal of a notarial certificate, or of a certificate issued by an authority, is to be directed to whichever body has issued the certificate. The notaries or public authorities shall transmit the application without undue delay to the local court (Amtsgericht, AG), for its decision, in the district of which they have their official seat.

(2) The debtor may admissibly file an application for withdrawal only within a period of one (1) month. Should the certificate have to be served abroad, the period shall amount to two (2) months. This is a statutory period and shall begin upon the certificate having been served; it shall begin at the earliest, however, upon the enforcement title having been served to which the certificate makes reference. The application for withdrawal is to set out the grounds for which the certificate was obviously granted wrongly.

(3) Section 319 subsections (2) and 3 shall apply mutatis mutandis to rectification and withdrawal.

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## **Title 2 Compulsory enforcement under European enforcement orders in Germany**

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### **Section 1082 Enforcement title**

Compulsory enforcement shall be pursued in Germany under an enforcement title that was certified as a European enforcement order in another Member State of the European Union pursuant to Council Regulation (EC) No 805/2004, without this requiring a court certificate of enforceability.

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### **Section 1083 Translation**

In cases in which the creditor is to submit a translation prepared in accordance with Article 20 (2) lit. c of Council Regulation (EC) No 805/2004, this is to be in German and is to be certified by a person qualified to do so in one of the Member States of the European Union.

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### **Section 1084 Applications pursuant to Articles 21 and 23 of Council Regulation (EC) No 805/2004**

(1) The local court (Amtsgericht, AG) as the court responsible for execution shall be competent for applications for refusal, suspension, or limitation of compulsory enforcement pursuant to Articles 21 and 23 of Council Regulation (EC) No 805/2004. The stipulations of Book 8 regarding the local competence of the execution court shall apply mutatis mutandis. The competence pursuant to sentences 1 and 2 hereof shall be exclusive.

(2) The decision as to the application pursuant to Article 21 of Council Regulation (EC) No 805/2004 shall be delivered by a court order. Section 769 subsections (1) and (3) as well as section 770 shall apply mutatis mutandis to the termination of compulsory enforcement and the abrogation of enforcement activities already pursued. Enforcement activities may also be abrogated without security being provided.

(3) The decision regarding the suspension or limitation of enforcement pursuant to Article 23 of Council Regulation (EC) No 805/2004 shall be taken by interim order. The decision is incontestable.

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### **Section 1085 Termination of compulsory enforcement**

Compulsory enforcement is to be stayed or limited in accordance with sections 775 and 776 also in those cases in which the execution of a certificate indicating the lack or limitation of enforceability pursuant to Article 6 (2) of Council Regulation (EC) No 805/2004 is submitted.

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### **Section 1086 Action raising an objection to the claim being enforced**

(1) For actions brought pursuant to section 767, that court shall have exclusive local jurisdiction in the district of which the debtor has his place of residence, or, lacking such place of residence in Germany, that court in the district of which compulsory enforcement is to take place or has already taken place. The seats of societies or legal persons shall be equivalent to the place of residence.

(2) Section 767 (2) is to be applied mutatis mutandis to court settlements and public records or documents.

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**Chapter 5**  
**European order for payment procedure pursuant to Council Regulation (EC) No 1896/2006**

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**Title 1**  
**General regulations**

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**Section 1087**  
**Competence**

The local court (Amtsgericht, AG) of Wedding in Berlin shall have exclusive jurisdiction for processing applications for the issuance and review of a European payment order, as well as for the declaration of its enforceability, pursuant to Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure (Official Journal L 399 page 1).

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**Section 1088**  
**Automatic processing**

(1) The petition for issuance of the European payment order and the statement of opposition may be transmitted in a form that is only machine-readable if the court deems this format to be suited for its automatic processing systems. Section 130a (3) shall apply mutatis mutandis.

(2) The Senate of the Land of Berlin determines by statutory instrument, which does not require the consent of the Bundesrat, the point in time at which the local court (Amtsgericht, AG) of Wedding is to introduce the automatic processing of summary proceedings for a payment order; it may confer the authorisation by statutory instrument upon the Senate Administration of Justice of the Land of Berlin (Senatsverwaltung für Justiz des Landes Berlin).

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**Section 1089**  
**Service**

(1) Where the European payment order is to be served in Germany, the rules governing the procedure for service ex officio shall apply mutatis mutandis. Sections 185 to 188 shall not be applied.

(2) Where the European payment order is to be served in another Member State of the European Union, the stipulations of Council Regulation (EC) No 1393/2007 shall apply mutatis mutandis, while section 1068 (1) and section 1069 (1) shall apply mutatis mutandis to the service.

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**Title 2**  
**Statement of opposition against the European payment order**

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**Section 1090**  
**Procedure following a statement of opposition**

(1) In the case provided for by Article 17 (1) of Council Regulation (EC) No 1896/2006, the court shall ask the claimant, in its communication providing the information pursuant to Article 17 (3) of Council Regulation (EC) No 1896/2006, to designate the court competent for implementing the legal proceedings determining whether or not a claim is justified. The court shall set a period for the claimant that is reasonable under the circumstances and shall notify him that the court designated for the implementation of the legal proceedings determining whether or not a claim is justified remains responsible for reviewing whether or not it has jurisdiction. The request shall be communicated also to the respondent.

(2) Upon receipt of the notice by the claimant pursuant to subsection (1), first sentence, the court that has issued the European payment order shall transfer the proceedings ex officio to the court designated by the claimant. Section 696 (1) third to fifth sentences, section 696 subsections (2), (4) and (5) as well as section 698 shall apply mutatis mutandis.

(3) The dispute shall be deemed to be pending upon service of the European payment order, provided that it is transferred promptly upon the request pursuant to subsection (1), first sentence, having been sent, and taking account of the period pursuant to subsection (1), second sentence.

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### **Section 1091 Initiation of dispute proceedings**

Section 697 subsections (1) to (3) shall apply mutatis mutandis.

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### **Title 3 Review of the European payment order in exceptional cases**

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### **Section 1092 Procedure**

(1) The decision regarding the application for review of the European payment order pursuant to Article 20 subsections (1) or (2) of Council Regulation (EC) No 1896/2006 shall be delivered by court order. The court order is incontestable.

(2) The respondent is to substantiate the facts and circumstances on which a repeal of the European payment order should be based.

(3) Should the court declare the European payment order to be null and void, the proceedings pursuant to Council Regulation (EC) No 1896/2006 shall be terminated.

(4) The period pursuant to Article 16 (2) of Council Regulation (EC) No 1896/2006 shall not be reinstated.

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### **Title 4 Compulsory enforcement under the European payment order**

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### **Section 1093**

#### **Court certificate of enforceability**

Compulsory enforcement is an available remedy in Germany under a European payment order issued and declared enforceable pursuant to Council Regulation (EC) No 1896/2006, without this requiring a court certificate of enforceability.

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### **Section 1094**

#### **Translation**

If the creditor is to submit a translation pursuant to Article 21 (2) lit. b of Council Regulation (EC) No 1896/2006, this is to be in German and is to be certified by a person qualified to do so in one of the Member States of the European Union.

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### **Section 1095**

#### **Protection against enforcement; action raising an objection to the claim being enforced under the European payment order issued in Germany**

(1) Insofar as the review of a European payment order issued in Germany is applied for in accordance with Article 20 of Council Regulation (EC) No 1896/2006, section 707 shall apply mutatis mutandis. That court shall be competent to take the decision on the petition filed pursuant to section 707 that is to decide on the application filed pursuant to Article 20 of Council Regulation (EC) No 1896/2006.

(2) Statements of opposition concerning the claim as such may admissibly be filed only insofar as the reasons on which they are based arose following service of the European payment order and thus can no longer be asserted by filing an opposition in accordance with Article 16 of Council Regulation (EC) No 1896/2006.

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### **Section 1096**

#### **Applications pursuant to Articles 22 and 23 of Council Regulation (EC) No 1896/2006; action raising an objection to the claim being enforced**

(1) Section 1084 subsections (1) and (2) shall apply mutatis mutandis to applications that compulsory enforcement be refused pursuant to Article 22 (1) of Council Regulation (EC) No 1896/2006. Section 1084 subsections (1) and (3) shall apply mutatis mutandis to applications for suspension or limitation of compulsory enforcement pursuant to Article 23 of Council Regulation (EC) No 1896/2006.

(2) Section 1086 (1) shall apply mutatis mutandis to applications for refusal of compulsory enforcement pursuant to Article 22 (2) of Council Regulation (EC) No 1896/2006. Section 1086 (1) and section 1095 (2) shall apply mutatis mutandis to actions pursuant to section 767.

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## **Chapter 6**

### **European small claims procedure pursuant to Council Regulation (EC) No 861/2007**

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## **Title 1**

### **Procedure serving the judicial decision of a court**

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### **Section 1097**

#### **Commencement and conduct of the procedure**

(1) The standard claim forms provided for by Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure (Official Journal L 199 page 1) as well as other applications or declarations may be submitted to the court as a written pleading, a telefax copy or, subject to the provisions made in section 130a, as electronic documents.

(2) In the case provided for by of Article 4 (3) of Council Regulation (EC) No 861/2007, the court shall proceed with the claim without applying the stipulations of Council Regulation (EC) No 861/2007.

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### **Section 1098**

#### **Refusal to accept a record or document by reason of its language**

The period for declaring the refusal to accept a record or document pursuant to Article 6 (3) of Council Regulation (EC) No 861/2007 shall be one (1) week. This is a statutory period and shall begin upon the record or document being served. The recipient is to be instructed as to the consequences of failing to comply with that period.

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### **Section 1099**

#### **Counterclaim**

(1) A counterclaim that does not correspond to the stipulations of Council Regulation (EC) No 861/2007 is to be dismissed as inadmissible, to the exception of the case provided for by Article 5 (7), first sentence, of Council Regulation (EC) No 861/2007.

(2) In the case provided for by Article 5 (7), first sentence, of Council Regulation (EC) No 861/2007, the court shall proceed with the claim and the counterclaim without applying the stipulations of Council Regulation (EC) No 861/2007. The procedure shall be taken over in the situation it was in at the time the counterclaim was brought.

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### **Section 1100**

#### **Oral hearing**

(1) The court may permit the parties, as well as their attorneys-in-fact and persons providing assistance, to be at a different location during an oral hearing and to take procedural action at that venue. Section 128a subsection (1), second sentence, and subsection (3) shall remain unaffected hereby.

(2) The determination of an advance first oral hearing (section 275) is ruled out.

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### **Section 1101**

#### **Taking of evidence**

(1) The court may take evidence in the manner it deems suitable, unless otherwise provided for by Article 9 subsections (2) and (3) of Council Regulation (EC) No 861/2007.

(2) The court may permit a witness, expert, or a party to be at a different location during an oral hearing. Section 128a subsection (2) second and third sentences and subsection (3) shall remain unaffected hereby.

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## **Section 1102 Judgment**

Judgments need not be pronounced. The service of a judgment shall take the stead of its pronouncement.

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## **Section 1103 Failure to comply with procedural rules**

Should a party fail to make a statement within the period set for it, or should it fail to appear at the hearing for oral argument, the court shall take its decision on the basis of the record as it stands. Section 251a shall not be applied.

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## **Section 1104 Redress granted in the event the defendant failed to comply with procedural rules through no fault of his own**

(1) Given the prerequisites of Article 18 (1) of Council Regulation (EC) No 861/2007, the procedure shall be continued; that status shall be reinstated that the procedure was in prior to the judgment having been entered. Upon corresponding application being made, the court shall determine by court order that the judgment is null and void.

(2) The defendant is to demonstrate satisfactorily that the prerequisites of Article 18 (1) of Council Regulation (EC) No 861/2007 are given.

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## **Title 2 Compulsory enforcement**

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## **Section 1105 Compulsory enforcement of domestic enforcement titles**

(1) Judgments are to be declared provisionally enforceable without provision of security. Sections 712 and 719 (1), first sentence, in conjunction with section 707 are not to be applied.

(2) The court before which the main action is being pursued is competent for applications to limitation of enforcement pursuant to Article 15 (2) in conjunction with Article 23 of Council Regulation (EC) No 861/2007. The decision shall be delivered by a preliminary order. It is incontestable. The factual prerequisites of Article 23 of Council Regulation (EC) No 861/2007 are to be demonstrated to the satisfaction of the court.

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**Section 1106**  
**Certificate of domestic enforcement titles**

(1) That court shall be competent to issue the certificate provided for by Article 20 (2) of Council Regulation (EC) No 861/2007 that is responsible for the issuance of an enforceable execution copy of the legal title.

(2) The debtor is to be heard prior to the certificate being executed. If the application for issuance of a certificate is dismissed, the rules governing the contestation of the decision to issue a court certificate of enforceability shall apply mutatis mutandis.

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**Section 1107**  
**Foreign enforcement titles**

Compulsory enforcement shall be pursued in Germany based on an enforcement title issued in a Member State of the European Union pursuant to Council Regulation (EC) No 861/2007 without requiring a court certificate of enforceability.

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**Section 1108**  
**Translation**

If the creditor is to submit a translation pursuant to Article 21 (2) lit. b of Council Regulation (EC) No 861/2007, this is to be in German and is to be certified by a person qualified to do so in one of the Member States of the European Union.

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**Section 1109**  
**Applications pursuant to Articles 22 and 23 of Council Regulation (EC) No 861/2007; action raising an objection to the claim being enforced**

(1) Section 1084 subsections (1) and (2) shall apply mutatis mutandis to applications pursuant to Article 22 of Council Regulation (EC) No 861/2007. Section 1084 subsections (1) and (3) shall apply mutatis mutandis to applications pursuant to Article 23 of Council Regulation (EC) No 861/2007.

(2) Section 1086 shall apply mutatis mutandis.

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**Annex (re. section 850c)<sup>\*)</sup>**

Reference for the original text: published in Federal Law Gazette (Bundesgesetzblatt, BGBl.) I 2005, 3363 - 3378

Net monthly wage	Amount attachable from a debtor who is under obligation to pay maintenance for ... persons					
	0	1	2	3	4	5 and more
	in euros					
to	-	-	-	-	-	-

939.99						
940.00	to					
949.99	7.00	-	-	-	-	-
950.00	to					
959.99	14.00	-	-	-	-	-
960.00	to					
969.99	21.00	-	-	-	-	-
970.00	to					
979.99	28.00	-	-	-	-	-
980.00	to					
989.99	35.00	-	-	-	-	-
990.00	to					
999.99	42.00	-	-	-	-	-
1,000.00	to					
1,009.99	49.00	-	-	-	-	-
1,010.00	to					
1,019.99	56.00	-	-	-	-	-
1,020.00	to					
1,029.99	63.00	-	-	-	-	-
1,030.00	to					
1,039.99	70.00	-	-	-	-	-
1,040.00	to					
1,049.99	77.00	-	-	-	-	-
1,050.00	to					
1,059.99	84.00	-	-	-	-	-
1,060.00	to					
1,069.99	91.00	-	-	-	-	-
1,070.00	to					
1,079.99	98.00	-	-	-	-	-
1,080.00	to					
1,089.99	105.00	-	-	-	-	-
1,090.00	to					
1,099.99	112.00	-	-	-	-	-
1,100.00	to					
1,109.99	119.00	-	-	-	-	-
1,110.00	to					
1,119.99	126.00	-	-	-	-	-
1,120.00	to					
1,129.99	133.00	-	-	-	-	-
1,130.00	to					
1,139.99	140.00	-	-	-	-	-
1,140.00	to					
1,149.99	147.00	-	-	-	-	-
1,150.00	to					
1,159.99	154.00	-	-	-	-	-
1,160.00	to					
1,169.99	161.00	-	-	-	-	-
1,170.00	to					
1,179.99	168.00	-	-	-	-	-
1,180.00	to					
1,189.99	175.00	-	-	-	-	-
1,190.00	to					
1,199.99	182.00	-	-	-	-	-

1,200.00	to						
1,209.99	189.00	-	-	-	-	-	-
1,210.00	to						
1,219.99	196.00	-	-	-	-	-	-
1,220.00	to						
1,229.99	203.00	-	-	-	-	-	-
1,230.00	to						
1,239.99	210.00	-	-	-	-	-	-
1,240.00	to						
1,249.99	217.00	-	-	-	-	-	-
1,250.00	to						
1,259.99	224.00	-	-	-	-	-	-
1,260.00	to						
1,269.99	231.00	-	-	-	-	-	-
1,270.00	to						
1,279.99	238.00	-	-	-	-	-	-
1,280.00	to						
1,289.99	245.00	-	-	-	-	-	-
1,290.00	to						
1,299.99	252.00	5.00	-	-	-	-	-
1,300.00	to						
1,309.99	259.00	10.00	-	-	-	-	-
1,310.00	to						
1,319.99	266.00	15.00	-	-	-	-	-
1,320.00	to						
1,329.99	273.00	20.00	-	-	-	-	-
1,330.00	to						
1,339.99	280.00	25.00	-	-	-	-	-
1,340.00	to						
1,349.99	287.00	30.00	-	-	-	-	-
1,350.00	to						
1,359.99	294.00	35.00	-	-	-	-	-
1,360.00	to						
1,369.99	301.00	40.00	-	-	-	-	-
1,370.00	to						
1,379.99	308.00	45.00	-	-	-	-	-
1,380.00	to						
1,389.99	315.00	50.00	-	-	-	-	-
1,390.00	to						
1,399.99	322.00	55.00	-	-	-	-	-
1,400.00	to						
1,409.99	329.00	60.00	-	-	-	-	-
1,410.00	to						
1,419.99	336.00	65.00	-	-	-	-	-
1,420.00	to						
1,429.99	343.00	70.00	-	-	-	-	-
1,430.00	to						
1,439.99	350.00	75.00	-	-	-	-	-
1,440.00	to						
1,449.99	357.00	80.00	-	-	-	-	-
1,450.00	to						
1,459.99	364.00	85.00	-	-	-	-	-
1,460.00	to 371.00	90.00	-	-	-	-	-

1,469.99						
1,470.00	to					
1,479.99		378.00	95.00	-	-	-
1,480.00	to					
1,489.99		385.00	100.00	2.00	-	-
1,490.00	to					
1,499.99		392.00	105.00	6.00	-	-
1,500.00	to					
1,509.99		399.00	110.00	10.00	-	-
1,510.00	to					
1,519.99		406.00	115.00	14.00	-	-
1,520.00	to					
1,529.99		413.00	120.00	18.00	-	-
1,530.00	to					
1,539.99		420.00	125.00	22.00	-	-
1,540.00	to					
1,549.99		427.00	130.00	26.00	-	-
1,550.00	to					
1,559.99		434.00	135.00	30.00	-	-
1,560.00	to					
1,569.99		441.00	140.00	34.00	-	-
1,570.00	to					
1,579.99		448.00	145.00	38.00	-	-
1,580.00	to					
1,589.99		455.00	150.00	42.00	-	-
1,590.00	to					
1,599.99		462.00	155.00	46.00	-	-
1,600.00	to					
1,609.99		469.00	160.00	50.00	-	-
1,610.00	to					
1,619.99		476.00	165.00	54.00	-	-
1,620.00	to					
1,629.99		483.00	170.00	58.00	-	-
1,630.00	to					
1,639.99		490.00	175.00	62.00	-	-
1,640.00	to					
1,649.99		497.00	180.00	66.00	-	-
1,650.00	to					
1,659.99		504.00	185.00	70.00	-	-
1,660.00	to					
1,669.99		511.00	190.00	74.00	-	-
1,670.00	to					
1,679.99		518.00	195.00	78.00	-	-
1,680.00	to					
1,689.99		525.00	200.00	82.00 3.00	-	-
1,690.00	to					
1,699.99		532.00	205.00	86.00 6.00	-	-
1,700.00	to					
1,709.99		539.00	210.00	90.00 9.00	-	-
1,710.00	to					
1,719.99		546.00	215.00	94.00 12.00	-	-
1,720.00	to					
1,729.99		553.00	220.00	98.00 15.00	-	-

1,730.00	to						
1,739.99	560.00	225.00	102.00	18.00	-	-	
1,740.00	to						
1,749.99	567.00	230.00	106.00	21.00	-	-	
1,750.00	to						
1,759.99	574.00	235.00	110.00	24.00	-	-	
1,760.00	to						
1,769.99	581.00	240.00	114.00	27.00	-	-	
1,770.00	to						
1,779.99	588.00	245.00	118.00	30.00	-	-	
1,780.00	to						
1,789.99	595.00	250.00	122.00	33.00	-	-	
1,790.00	to						
1,799.99	602.00	255.00	126.00	36.00	-	-	
1,800.00	to						
1,809.99	609.00	260.00	130.00	39.00	-	-	
1,810.00	to						
1,819.99	616.00	265.00	134.00	42.00	-	-	
1,820.00	to						
1,829.99	623.00	270.00	138.00	45.00	-	-	
1,830.00	to						
1,839.99	630.00	275.00	142.00	48.00	-	-	
1,840.00	to						
1,849.99	637.00	280.00	146.00	51.00	-	-	
1,850.00	to						
1,859.99	644.00	285.00	150.00	54.00	-	-	
1,860.00	to						
1,869.99	651.00	290.00	154.00	57.00	-	-	
1,870.00	to						
1,879.99	658.00	295.00	158.00	60.00	1.00	-	
1,880.00	to						
1,889.99	665.00	300.00	162.00	63.00	3.00	-	
1,890.00	to						
1,899.99	672.00	305.00	166.00	66.00	5.00	-	
1,900.00	to						
1,909.99	679.00	310.00	170.00	69.00	7.00	-	
1,910.00	to						
1,919.99	686.00	315.00	174.00	72.00	9.00	-	
1,920.00	to						
1,929.99	693.00	320.00	178.00	75.00	11.00	-	
1,930.00	to						
1,939.99	700.00	325.00	182.00	78.00	13.00	-	
1,940.00	to						
1,949.99	707.00	330.00	186.00	81.00	15.00	-	
1,950.00	to						
1,959.99	714.00	335.00	190.00	84.00	17.00	-	
1,960.00	to						
1,969.99	721.00	340.00	194.00	87.00	19.00	-	
1,970.00	to						
1,979.99	728.00	345.00	198.00	90.00	21.00	-	
1,980.00	to						
1,989.99	735.00	350.00	202.00	93.00	23.00	-	
1,990.00	to 742.00	355.00	206.00	96.00	25.00	-	

1,999.99						
2,000.00	to					
2,009.99		749.00	360.00	210.00	99.00	27.00 -
2,010.00	to					
2,019.99		756.00	365.00	214.00	102.00	29.00 -
2,020.00	to					
2,029.99		763.00	370.00	218.00	105.00	31.00 -
2,030.00	to					
2,039.99		770.00	375.00	222.00	108.00	33.00 -
2,040.00	to					
2,049.99		777.00	380.00	226.00	111.00	35.00 -
2,050.00	to					
2,059.99		784.00	385.00	230.00	114.00	37.00 -
2,060.00	to					
2,069.99		791.00	390.00	234.00	117.00	39.00 -
2,070.00	to					
2,079.99		798.00	395.00	238.00	120.00	41.00 1.00
2,080.00	to					
2,089.99		805.00	400.00	242.00	123.00	43.00 2.00
2,090.00	to					
2,099.99		812.00	405.00	246.00	126.00	45.00 3.00
2,100.00	to					
2,109.99		819.00	410.00	250.00	129.00	47.00 4.00
2,110.00	to					
2,119.99		826.00	415.00	254.00	132.00	49.00 5.00
2,120.00	to					
2,129.99		833.00	420.00	258.00	135.00	51.00 6.00
2,130.00	to					
2,139.99		840.00	425.00	262.00	138.00	53.00 7.00
2,140.00	to					
2,149.99		847.00	430.00	266.00	141.00	55.00 8.00
2,150.00	to					
2,159.99		854.00	435.00	270.00	144.00	57.00 9.00
2,160.00	to					
2,169.99		861.00	440.00	274.00	147.00	59.00 10.00
2,170.00	to					
2,179.99		868.00	445.00	278.00	150.00	61.00 11.00
2,180.00	to					
2,189.99		875.00	450.00	282.00	153.00	63.00 12.00
2,190.00	to					
2,199.99		882.00	455.00	286.00	156.00	65.00 13.00
2,200.00	to					
2,209.99		889.00	460.00	290.00	159.00	67.00 14.00
2,210.00	to					
2,219.99		896.00	465.00	294.00	162.00	69.00 15.00
2,220.00	to					
2,229.99		903.00	470.00	298.00	165.00	71.00 16.00
2,230.00	to					
2,239.99		910.00	475.00	302.00	168.00	73.00 17.00
2,240.00	to					
2,249.99		917.00	480.00	306.00	171.00	75.00 18.00
2,250.00	to					
2,259.99		924.00	485.00	310.00	174.00	77.00 19.00

2,260.00	to						
2,269.99		931.00	490.00	314.00	177.00	79.00	20.00
2,270.00	to						
2,279.99		938.00	495.00	318.00	180.00	81.00	21.00
2,280.00	to						
2,289.99		945.00	500.00	322.00	183.00	83.00	22.00
2,290.00	to						
2,299.99		952.00	505.00	326.00	186.00	85.00	23.00
2,300.00	to						
2,309.99		959.00	510.00	330.00	189.00	87.00	24.00
2,310.00	to						
2,319.99		966.00	515.00	334.00	192.00	89.00	25.00
2,320.00	to						
2,329.99		973.00	520.00	338.00	195.00	91.00	26.00
2,330.00	to						
2,339.99		980.00	525.00	342.00	198.00	93.00	27.00
2,340.00	to						
2,349.99		987.00	530.00	346.00	201.00	95.00	28.00
2,350.00	to						
2,359.99		994.00	535.00	350.00	204.00	97.00	29.00
2,360.00	to						
2,369.99		1,001.00	540.00	354.00	207.00	99.00	30.00
2,370.00	to						
2,379.99		1,008.00	545.00	358.00	210.00	101.00	31.00
2,380.00	to						
2,389.99		1,015.00	550.00	362.00	213.00	103.00	32.00
2,390.00	to						
2,399.99		1,022.00	555.00	366.00	216.00	105.00	33.00
2,400.00	to						
2,409.99		1,029.00	560.00	370.00	219.00	107.00	34.00
2,410.00	to						
2,419.99		1,036.00	565.00	374.00	222.00	109.00	35.00
2,420.00	to						
2,429.99		1,043.00	570.00	378.00	225.00	111.00	36.00
2,430.00	to						
2,439.99		1,050.00	575.00	382.00	228.00	113.00	37.00
2,440.00	to						
2,449.99		1,057.00	580.00	386.00	231.00	115.00	38.00
2,450.00	to						
2,459.99		1,064.00	585.00	390.00	234.00	117.00	39.00
2,460.00	to						
2,469.99		1,071.00	590.00	394.00	237.00	119.00	40.00
2,470.00	to						
2,479.99		1,078.00	595.00	398.00	240.00	121.00	41.00
2,480.00	to						
2,489.99		1,085.00	600.00	402.00	243.00	123.00	42.00
2,490.00	to						
2,499.99		1,092.00	605.00	406.00	246.00	125.00	43.00
2,500.00	to						
2,509.99		1,099.00	610.00	410.00	249.00	127.00	44.00
2,510.00	to						
2,519.99		1,106.00	615.00	414.00	252.00	129.00	45.00
2,520.00	to	1,113.00	620.00	418.00	255.00	131.00	46.00

2,529.99				
2,530.00	to			
2,539.99		1,120.00 625.00 422.00 258.00	133.00	47.00
2,540.00	to			
2,549.99		1,127.00 630.00 426.00 261.00	135.00	48.00
2,550.00	to			
2,559.99		1,134.00 635.00 430.00 264.00	137.00	49.00
2,560.00	to			
2,569.99		1,141.00 640.00 434.00 267.00	139.00	50.00
2,570.00	to			
2,579.99		1,148.00 645.00 438.00 270.00	141.00	51.00
2,580.00	to			
2,589.99		1,155.00 650.00 442.00 273.00	143.00	52.00
2,590.00	to			
2,599.99		1,162.00 655.00 446.00 276.00	145.00	53.00
2,600.00	to			
2,609.99		1,169.00 660.00 450.00 279.00	147.00	54.00
2,610.00	to			
2,619.99		1,176.00 665.00 454.00 282.00	149.00	55.00
2,620.00	to			
2,629.99		1,183.00 670.00 458.00 285.00	151.00	56.00
2,630.00	to			
2,639.99		1,190.00 675.00 462.00 288.00	153.00	57.00
2,640.00	to			
2,649.99		1,197.00 680.00 466.00 291.00	155.00	58.00
2,650.00	to			
2,659.99		1,204.00 685.00 470.00 294.00	157.00	59.00
2,660.00	to			
2,669.99		1,211.00 690.00 474.00 297.00	159.00	60.00
2,670.00	to			
2,679.99		1,218.00 695.00 478.00 300.00	161.00	61.00
2,680.00	to			
2,689.99		1,225.00 700.00 482.00 303.00	163.00	62.00
2,690.00	to			
2,699.99		1,232.00 705.00 486.00 306.00	165.00	63.00
2,700.00	to			
2,709.99		1,239.00 710.00 490.00 309.00	167.00	64.00
2,710.00	to			
2,719.99		1,246.00 715.00 494.00 312.00	169.00	65.00
2,720.00	to			
2,729.99		1,253.00 720.00 498.00 315.00	171.00	66.00
2,730.00	to			
2,739.99		1,260.00 725.00 502.00 318.00	173.00	67.00
2,740.00	to			
2,749.99		1,267.00 730.00 506.00 321.00	175.00	68.00
2,750.00	to			
2,759.99		1,274.00 735.00 510.00 324.00	177.00	69.00
2,760.00	to			
2,769.99		1,281.00 740.00 514.00 327.00	179.00	70.00
2,770.00	to			
2,779.99		1,288.00 745.00 518.00 330.00	181.00	71.00
2,780.00	to			
2,789.99		1,295.00 750.00 522.00 333.00	183.00	72.00

2,790.00	to					
2,799.99		1,302.00	755.00	526.00	336.00	185.00 73.00
2,800.00	to					
2,809.99		1,309.00	760.00	530.00	339.00	187.00 74.00
2,810.00	to					
2,819.99		1,316.00	765.00	534.00	342.00	189.00 75.00
2,820.00	to					
2,829.99		1,323.00	770.00	538.00	345.00	191.00 76.00
2,830.00	to					
2,839.99		1,330.00	775.00	542.00	348.00	193.00 77.00
2,840.00	to					
2,849.99		1,337.00	780.00	546.00	351.00	195.00 78.00
2,850.00	to					
2,851.00		1,344.00	785.00	550.00	354.00	197.00 79.00
Any amount in excess of 2,851.00 euros is fully attachable.						
Amount attachable from a debtor who is under obligation to pay maintenance for ...						
Net weekly wage	persons					
	0	1	2	3	4	5 and more
	in euros					
to 219.99	-	-	-	-	-	-
220.00 to 222.49	1.75	-	-	-	-	-
222.50 to 224.99	3.50	-	-	-	-	-
225.00 to 227.49	5.25	-	-	-	-	-
227.50 to 229.99	7.00	-	-	-	-	-
230.00 to 232.49	8.75	-	-	-	-	-
232.50 to 234.99	10.50	-	-	-	-	-
235.00 to 237.49	12.25	-	-	-	-	-
237.50 to 239.99	14.00	-	-	-	-	-
240.00 to 242.49	15.75	-	-	-	-	-
242.50 to 244.99	17.50	-	-	-	-	-
245.00 to 247.49	19.25	-	-	-	-	-
247.50 to 249.99	21.00	-	-	-	-	-
250.00 to 252.49	22.75	-	-	-	-	-
252.50 to 254.99	24.50	-	-	-	-	-
255.00 to 257.49	26.25	-	-	-	-	-
257.50 to 259.99	28.00	-	-	-	-	-
260.00 to 262.49	29.75	-	-	-	-	-
262.50 to 264.99	31.50	-	-	-	-	-
265.00 to 267.49	33.25	-	-	-	-	-
267.50 to 269.99	35.00	-	-	-	-	-
270.00 to 272.49	36.75	-	-	-	-	-
272.50 to 274.99	38.50	-	-	-	-	-
275.00 to 277.49	40.25	-	-	-	-	-
277.50 to 279.99	42.00	-	-	-	-	-
280.00 to 282.49	43.75	-	-	-	-	-
282.50 to 284.99	45.50	-	-	-	-	-
285.00 to 287.49	47.25	-	-	-	-	-
287.50 to 289.99	49.00	-	-	-	-	-
290.00 to 292.49	50.75	-	-	-	-	-
292.50 to 294.99	52.50	-	-	-	-	-
295.00 to 297.49	54.25	-	-	-	-	-
297.50 to 299.99	56.00	-	-	-	-	-

300.00 to 302.49	57.75	0.75	-	-	-	-
302.50 to 304.99	59.50	2.00	-	-	-	-
305.00 to 307.49	61.25	3.25	-	-	-	-
307.50 to 309.99	63.00	4.50	-	-	-	-
310.00 to 312.49	64.75	5.75	-	-	-	-
312.50 to 314.99	66.50	7.00	-	-	-	-
315.00 to 317.49	68.25	8.25	-	-	-	-
317.50 to 319.99	70.00	9.50	-	-	-	-
320.00 to 322.49	71.75	10.75	-	-	-	-
322.50 to 324.99	73.50	12.00	-	-	-	-
325.00 to 327.49	75.25	13.25	-	-	-	-
327.50 to 329.99	77.00	14.50	-	-	-	-
330.00 to 332.49	78.75	15.75	-	-	-	-
332.50 to 334.99	80.50	17.00	-	-	-	-
335.00 to 337.49	82.25	18.25	-	-	-	-
337.50 to 339.99	84.00	19.50	-	-	-	-
340.00 to 342.49	85.75	20.75	-	-	-	-
342.50 to 344.99	87.50	22.00	-	-	-	-
345.00 to 347.49	89.25	23.25	0.60	-	-	-
347.50 to 349.99	91.00	24.50	1.60	-	-	-
350.00 to 352.49	92.75	25.75	2.60	-	-	-
352.50 to 354.99	94.50	27.00	3.60	-	-	-
355.00 to 357.49	96.25	28.25	4.60	-	-	-
357.50 to 359.99	98.00	29.50	5.60	-	-	-
360.00 to 362.49	99.75	30.75	6.60	-	-	-
362.50 to 364.99	101.50	32.00	7.60	-	-	-
365.00 to 367.49	103.25	33.25	8.60	-	-	-
367.50 to 369.99	105.00	34.50	9.60	-	-	-
370.00 to 372.49	106.75	35.75	10.60	-	-	-
372.50 to 374.99	108.50	37.00	11.60	-	-	-
375.00 to 377.49	110.25	38.25	12.60	-	-	-
377.50 to 379.99	112.00	39.50	13.60	-	-	-
380.00 to 382.49	113.75	40.75	14.60	-	-	-
382.50 to 384.99	115.50	42.00	15.60	-	-	-
385.00 to 387.49	117.25	43.25	16.60	-	-	-
387.50 to 389.99	119.00	44.50	17.60	-	-	-
390.00 to 392.49	120.75	45.75	18.60	0.45	-	-
392.50 to 394.99	122.50	47.00	19.60	1.20	-	-
395.00 to 397.49	124.25	48.25	20.60	1.95	-	-
397.50 to 399.99	126.00	49.50	21.60	2.70	-	-
400.00 to 402.49	127.75	50.75	22.60	3.45	-	-
402.50 to 404.99	129.50	52.00	23.60	4.20	-	-
405.00 to 407.49	131.25	53.25	24.60	4.95	-	-
407.50 to 409.99	133.00	54.50	25.60	5.70	-	-
410.00 to 412.49	134.75	55.75	26.60	6.45	-	-
412.50 to 414.99	136.50	57.00	27.60	7.20	-	-
415.00 to 417.49	138.25	58.25	28.60	7.95	-	-
417.50 to 419.99	140.00	59.50	29.60	8.70	-	-
420.00 to 422.49	141.75	60.75	30.60	9.45	-	-
422.50 to 424.99	143.50	62.00	31.60	10.20	-	-
425.00 to 427.49	145.25	63.25	32.60	10.95	-	-
427.50 to 429.99	147.00	64.50	33.60	11.70	-	-
430.00 to 432.49	148.75	65.75	34.60	12.45	-	-

432.50 to 434.99	150.50	67.00	35.60	13.20	-	-
435.00 to 437.49	152.25	68.25	36.60	13.95	0.30	-
437.50 to 439.99	154.00	69.50	37.60	14.70	0.80	-
440.00 to 442.49	155.75	70.75	38.60	15.45	1.30	-
442.50 to 444.99	157.50	72.00	39.60	16.20	1.80	-
445.00 to 447.49	159.25	73.25	40.60	16.95	2.30	-
447.50 to 449.99	161.00	74.50	41.60	17.70	2.80	-
450.00 to 452.49	162.75	75.75	42.60	18.45	3.30	-
452.50 to 454.99	164.50	77.00	43.60	19.20	3.80	-
455.00 to 457.49	166.25	78.25	44.60	19.95	4.30	-
457.50 to 459.99	168.00	79.50	45.60	20.70	4.80	-
460.00 to 462.49	169.75	80.75	46.60	21.45	5.30	-
462.50 to 464.99	171.50	82.00	47.60	22.20	5.80	-
465.00 to 467.49	173.25	83.25	48.60	22.95	6.30	-
467.50 to 469.99	175.00	84.50	49.60	23.70	6.80	-
470.00 to 472.49	176.75	85.75	50.60	24.45	7.30	-
472.50 to 474.99	178.50	87.00	51.60	25.20	7.80	-
475.00 to 477.49	180.25	88.25	52.60	25.95	8.30	-
477.50 to 479.99	182.00	89.50	53.60	26.70	8.80	-
480.00 to 482.49	183.75	90.75	54.60	27.45	9.30	0.15
482.50 to 484.99	185.50	92.00	55.60	28.20	9.80	0.40
485.00 to 487.49	187.25	93.25	56.60	28.95	10.30	0.65
487.50 to 489.99	189.00	94.50	57.60	29.70	10.80	0.90
490.00 to 492.49	190.75	95.75	58.60	30.45	11.30	1.15
492.50 to 494.99	192.50	97.00	59.60	31.20	11.80	1.40
495.00 to 497.49	194.25	98.25	60.60	31.95	12.30	1.65
497.50 to 499.99	196.00	99.50	61.60	32.70	12.80	1.90
500.00 to 502.49	197.75	100.75	62.60	33.45	13.30	2.15
502.50 to 504.99	199.50	102.00	63.60	34.20	13.80	2.40
505.00 to 507.49	201.25	103.25	64.60	34.95	14.30	2.65
507.50 to 509.99	203.00	104.50	65.60	35.70	14.80	2.90
510.00 to 512.49	204.75	105.75	66.60	36.45	15.30	3.15
512.50 to 514.99	206.50	107.00	67.60	37.20	15.80	3.40
515.00 to 517.49	208.25	108.25	68.60	37.95	16.30	3.65
517.50 to 519.99	210.00	109.50	69.60	38.70	16.80	3.90
520.00 to 522.49	211.75	110.75	70.60	39.45	17.30	4.15
522.50 to 524.99	213.50	112.00	71.60	40.20	17.80	4.40
525.00 to 527.49	215.25	113.25	72.60	40.95	18.30	4.65
527.50 to 529.99	217.00	114.50	73.60	41.70	18.80	4.90
530.00 to 532.49	218.75	115.75	74.60	42.45	19.30	5.15
532.50 to 534.99	220.50	117.00	75.60	43.20	19.80	5.40
535.00 to 537.49	222.25	118.25	76.60	43.95	20.30	5.65
537.50 to 539.99	224.00	119.50	77.60	44.70	20.80	5.90
540.00 to 542.49	225.75	120.75	78.60	45.45	21.30	6.15
542.50 to 544.99	227.50	122.00	79.60	46.20	21.80	6.40
545.00 to 547.49	229.25	123.25	80.60	46.95	22.30	6.65
547.50 to 549.99	231.00	124.50	81.60	47.70	22.80	6.90
550.00 to 552.49	232.75	125.75	82.60	48.45	23.30	7.15
552.50 to 554.99	234.50	127.00	83.60	49.20	23.80	7.40
555.00 to 557.49	236.25	128.25	84.60	49.95	24.30	7.65
557.50 to 559.99	238.00	129.50	85.60	50.70	24.80	7.90
560.00 to 562.49	239.75	130.75	86.60	51.45	25.30	8.15
562.50 to 564.99	241.50	132.00	87.60	52.20	25.80	8.40

565.00 to 567.49	243.25	133.25	88.60	52.95	26.30	8.65
567.50 to 569.99	245.00	134.50	89.60	53.70	26.80	8.90
570.00 to 572.49	246.75	135.75	90.60	54.45	27.30	9.15
572.50 to 574.99	248.50	137.00	91.60	55.20	27.80	9.40
575.00 to 577.49	250.25	138.25	92.60	55.95	28.30	9.65
577.50 to 579.99	252.00	139.50	93.60	56.70	28.80	9.90
580.00 to 582.49	253.75	140.75	94.60	57.45	29.30	10.15
582.50 to 584.99	255.50	142.00	95.60	58.20	29.80	10.40
585.00 to 587.49	257.25	143.25	96.60	58.95	30.30	10.65
587.50 to 589.99	259.00	144.50	97.60	59.70	30.80	10.90
590.00 to 592.49	260.75	145.75	98.60	60.45	31.30	11.15
592.50 to 594.99	262.50	147.00	99.60	61.20	31.80	11.40
595.00 to 597.49	264.25	148.25	100.60	61.95	32.30	11.65
597.50 to 599.99	266.00	149.50	101.60	62.70	32.80	11.90
600.00 to 602.49	267.75	150.75	102.60	63.45	33.30	12.15
602.50 to 604.99	269.50	152.00	103.60	64.20	33.80	12.40
605.00 to 607.49	271.25	153.25	104.60	64.95	34.30	12.65
607.50 to 609.99	273.00	154.50	105.60	65.70	34.80	12.90
610.00 to 612.49	274.75	155.75	106.60	66.45	35.30	13.15
612.50 to 614.99	276.50	157.00	107.60	67.20	35.80	13.40
615.00 to 617.49	278.25	158.25	108.60	67.95	36.30	13.65
617.50 to 619.99	280.00	159.50	109.60	68.70	36.80	13.90
620.00 to 622.49	281.75	160.75	110.60	69.45	37.30	14.15
622.50 to 624.99	283.50	162.00	111.60	70.20	37.80	14.40
625.00 to 627.49	285.25	163.25	112.60	70.95	38.30	14.65
627.50 to 629.99	287.00	164.50	113.60	71.70	38.80	14.90
630.00 to 632.49	288.75	165.75	114.60	72.45	39.30	15.15
632.50 to 634.99	290.50	167.00	115.60	73.20	39.80	15.40
635.00 to 637.49	292.25	168.25	116.60	73.95	40.30	15.65
637.50 to 639.99	294.00	169.50	117.60	74.70	40.80	15.90
640.00 to 642.49	295.75	170.75	118.60	75.45	41.30	16.15
642.50 to 644.99	297.50	172.00	119.60	76.20	41.80	16.40
645.00 to 647.49	299.25	173.25	120.60	76.95	42.30	16.65
647.50 to 649.99	301.00	174.50	121.60	77.70	42.80	16.90
650.00 to 652.49	302.75	175.75	122.60	78.45	43.30	17.15
652.50 to 654.99	304.50	177.00	123.60	79.20	43.80	17.40
655.00 to 657.49	306.25	178.25	124.60	79.95	44.30	17.65
657.50 to 658.00	308.00	179.50	125.60	80.70	44.80	17.90
Any amount in excess of 658.00 euros is fully attachable.						
Amount attachable from a debtor who is under obligation to pay maintenance for ...						
persons						
Net daily wage	0	1	2	3	4	5 and more
in euros						
to 43.99	-	-	-	-	-	-
44.00 to 44.49	0.35	-	-	-	-	-
44.50 to 44.99	0.70	-	-	-	-	-
45.00 to 45.49	1.05	-	-	-	-	-
45.50 to 45.99	1.40	-	-	-	-	-
46.00 to 46.49	1.75	-	-	-	-	-
46.50 to 46.99	2.10	-	-	-	-	-
47.00 to 47.49	2.45	-	-	-	-	-
47.50 to 47.99	2.80	-	-	-	-	-

48.00	to 48.49	3.15	-	-	-	-	-
48.50	to 48.99	3.50	-	-	-	-	-
49.00	to 49.49	3.85	-	-	-	-	-
49.50	to 49.99	4.20	-	-	-	-	-
50.00	to 50.49	4.55	-	-	-	-	-
50.50	to 50.99	4.90	-	-	-	-	-
51.00	to 51.49	5.25	-	-	-	-	-
51.50	to 51.99	5.60	-	-	-	-	-
52.00	to 52.49	5.95	-	-	-	-	-
52.50	to 52.99	6.30	-	-	-	-	-
53.00	to 53.49	6.65	-	-	-	-	-
53.50	to 53.99	7.00	-	-	-	-	-
54.00	to 54.49	7.35	-	-	-	-	-
54.50	to 54.99	7.70	-	-	-	-	-
55.00	to 55.49	8.05	-	-	-	-	-
55.50	to 55.99	8.40	-	-	-	-	-
56.00	to 56.49	8.75	-	-	-	-	-
56.50	to 56.99	9.10	-	-	-	-	-
57.00	to 57.49	9.45	-	-	-	-	-
57.50	to 57.99	9.80	-	-	-	-	-
58.00	to 58.49	10.15	-	-	-	-	-
58.50	to 58.99	10.50	-	-	-	-	-
59.00	to 59.49	10.85	-	-	-	-	-
59.50	to 59.99	11.20	-	-	-	-	-
60.00	to 60.49	11.55	-	-	-	-	-
60.50	to 60.99	11.90	-	-	-	-	-
61.00	to 61.49	12.25	0.25	-	-	-	-
61.50	to 61.99	12.60	0.50	-	-	-	-
62.00	to 62.49	12.95	0.75	-	-	-	-
62.50	to 62.99	13.30	1.00	-	-	-	-
63.00	to 63.49	13.65	1.25	-	-	-	-
63.50	to 63.99	14.00	1.50	-	-	-	-
64.00	to 64.49	14.35	1.75	-	-	-	-
64.50	to 64.99	14.70	2.00	-	-	-	-
65.00	to 65.49	15.05	2.25	-	-	-	-
65.50	to 65.99	15.40	2.50	-	-	-	-
66.00	to 66.49	15.75	2.75	-	-	-	-
66.50	to 66.99	16.10	3.00	-	-	-	-
67.00	to 67.49	16.45	3.25	-	-	-	-
67.50	to 67.99	16.80	3.50	-	-	-	-
68.00	to 68.49	17.15	3.75	-	-	-	-
68.50	to 68.99	17.50	4.00	-	-	-	-
69.00	to 69.49	17.85	4.25	-	-	-	-
69.50	to 69.99	18.20	4.50	-	-	-	-
70.00	to 70.49	18.55	4.75	0.20	-	-	-
70.50	to 70.99	18.90	5.00	0.40	-	-	-
71.00	to 71.49	19.25	5.25	0.60	-	-	-
71.50	to 71.99	19.60	5.50	0.80	-	-	-
72.00	to 72.49	19.95	5.75	1.00	-	-	-
72.50	to 72.99	20.30	6.00	1.20	-	-	-
73.00	to 73.49	20.65	6.25	1.40	-	-	-
73.50	to 73.99	21.00	6.50	1.60	-	-	-
74.00	to 74.49	21.35	6.75	1.80	-	-	-

74.50	to 74.99	21.70	7.00	2.00	-	-	-
75.00	to 75.49	22.05	7.25	2.20	-	-	-
75.50	to 75.99	22.40	7.50	2.40	-	-	-
76.00	to 76.49	22.75	7.75	2.60	-	-	-
76.50	to 76.99	23.10	8.00	2.80	-	-	-
77.00	to 77.49	23.45	8.25	3.00	-	-	-
77.50	to 77.99	23.80	8.50	3.20	-	-	-
78.00	to 78.49	24.15	8.75	3.40	-	-	-
78.50	to 78.99	24.50	9.00	3.60	-	-	-
79.00	to 79.49	24.85	9.25	3.80	0.15	-	-
79.50	to 79.99	25.20	9.50	4.00	0.30	-	-
80.00	to 80.49	25.55	9.75	4.20	0.45	-	-
80.50	to 80.99	25.90	10.00	4.40	0.60	-	-
81.00	to 81.49	26.25	10.25	4.60	0.75	-	-
81.50	to 81.99	26.60	10.50	4.80	0.90	-	-
82.00	to 82.49	26.95	10.75	5.00	1.05	-	-
82.50	to 82.99	27.30	11.00	5.20	1.20	-	-
83.00	to 83.49	27.65	11.25	5.40	1.35	-	-
83.50	to 83.99	28.00	11.50	5.60	1.50	-	-
84.00	to 84.49	28.35	11.75	5.80	1.65	-	-
84.50	to 84.99	28.70	12.00	6.00	1.80	-	-
85.00	to 85.49	29.05	12.25	6.20	1.95	-	-
85.50	to 85.99	29.40	12.50	6.40	2.10	-	-
86.00	to 86.49	29.75	12.75	6.60	2.25	-	-
86.50	to 86.99	30.10	13.00	6.80	2.40	-	-
87.00	to 87.49	30.45	13.25	7.00	2.55	-	-
87.50	to 87.99	30.80	13.50	7.20	2.70	-	-
88.00	to 88.49	31.15	13.75	7.40	2.85	0.10	-
88.50	to 88.99	31.50	14.00	7.60	3.00	0.20	-
89.00	to 89.49	31.85	14.25	7.80	3.15	0.30	-
89.50	to 89.99	32.20	14.50	8.00	3.30	0.40	-
90.00	to 90.49	32.55	14.75	8.20	3.45	0.50	-
90.50	to 90.99	32.90	15.00	8.40	3.60	0.60	-
91.00	to 91.49	33.25	15.25	8.60	3.75	0.70	-
91.50	to 91.99	33.60	15.50	8.80	3.90	0.80	-
92.00	to 92.49	33.95	15.75	9.00	4.05	0.90	-
92.50	to 92.99	34.30	16.00	9.20	4.20	1.00	-
93.00	to 93.49	34.65	16.25	9.40	4.35	1.10	-
93.50	to 93.99	35.00	16.50	9.60	4.50	1.20	-
94.00	to 94.49	35.35	16.75	9.80	4.65	1.30	-
94.50	to 94.99	35.70	17.00	10.00	4.80	1.40	-
95.00	to 95.49	36.05	17.25	10.20	4.95	1.50	-
95.50	to 95.99	36.40	17.50	10.40	5.10	1.60	-
96.00	to 96.49	36.75	17.75	10.60	5.25	1.70	-
96.50	to 96.99	37.10	18.00	10.80	5.40	1.80	-
97.00	to 97.49	37.45	18.25	11.00	5.55	1.90	0.05
97.50	to 97.99	37.80	18.50	11.20	5.70	2.00	0.10
98.00	to 98.49	38.15	18.75	11.40	5.85	2.10	0.15
98.50	to 98.99	38.50	19.00	11.60	6.00	2.20	0.20
99.00	to 99.49	38.85	19.25	11.80	6.15	2.30	0.25
99.50	to 99.99	39.20	19.50	12.00	6.30	2.40	0.30
100.00	to 100.49	39.55	19.75	12.20	6.45	2.50	0.35
100.50	to 100.99	39.90	20.00	12.40	6.60	2.60	0.40

101.00 to 101.49	40.25	20.25	12.60	6.75	2.70	0.45
101.50 to 101.99	40.60	20.50	12.80	6.90	2.80	0.50
102.00 to 102.49	40.95	20.75	13.00	7.05	2.90	0.55
102.50 to 102.99	41.30	21.00	13.20	7.20	3.00	0.60
103.00 to 103.49	41.65	21.25	13.40	7.35	3.10	0.65
103.50 to 103.99	42.00	21.50	13.60	7.50	3.20	0.70
104.00 to 104.49	42.35	21.75	13.80	7.65	3.30	0.75
104.50 to 104.99	42.70	22.00	14.00	7.80	3.40	0.80
105.00 to 105.49	43.05	22.25	14.20	7.95	3.50	0.85
105.50 to 105.99	43.40	22.50	14.40	8.10	3.60	0.90
106.00 to 106.49	43.75	22.75	14.60	8.25	3.70	0.95
106.50 to 106.99	44.10	23.00	14.80	8.40	3.80	1.00
107.00 to 107.49	44.45	23.25	15.00	8.55	3.90	1.05
107.50 to 107.99	44.80	23.50	15.20	8.70	4.00	1.10
108.00 to 108.49	45.15	23.75	15.40	8.85	4.10	1.15
108.50 to 108.99	45.50	24.00	15.60	9.00	4.20	1.20
109.00 to 109.49	45.85	24.25	15.80	9.15	4.30	1.25
109.50 to 109.99	46.20	24.50	16.00	9.30	4.40	1.30
110.00 to 110.49	46.55	24.75	16.20	9.45	4.50	1.35
110.50 to 110.99	46.90	25.00	16.40	9.60	4.60	1.40
111.00 to 111.49	47.25	25.25	16.60	9.75	4.70	1.45
111.50 to 111.99	47.60	25.50	16.80	9.90	4.80	1.50
112.00 to 112.49	47.95	25.75	17.00	10.05	4.90	1.55
112.50 to 112.99	48.30	26.00	17.20	10.20	5.00	1.60
113.00 to 113.49	48.65	26.25	17.40	10.35	5.10	1.65
113.50 to 113.99	49.00	26.50	17.60	10.50	5.20	1.70
114.00 to 114.49	49.35	26.75	17.80	10.65	5.30	1.75
114.50 to 114.99	49.70	27.00	18.00	10.80	5.40	1.80
115.00 to 115.49	50.05	27.25	18.20	10.95	5.50	1.85
115.50 to 115.99	50.40	27.50	18.40	11.10	5.60	1.90
116.00 to 116.49	50.75	27.75	18.60	11.25	5.70	1.95
116.50 to 116.99	51.10	28.00	18.80	11.40	5.80	2.00
117.00 to 117.49	51.45	28.25	19.00	11.55	5.90	2.05
117.50 to 117.99	51.80	28.50	19.20	11.70	6.00	2.10
118.00 to 118.49	52.15	28.75	19.40	11.85	6.10	2.15
118.50 to 118.99	52.50	29.00	19.60	12.00	6.20	2.20
119.00 to 119.49	52.85	29.25	19.80	12.15	6.30	2.25
119.50 to 119.99	53.20	29.50	20.00	12.30	6.40	2.30
120.00 to 120.49	53.55	29.75	20.20	12.45	6.50	2.35
120.50 to 120.99	53.90	30.00	20.40	12.60	6.60	2.40
121.00 to 121.49	54.25	30.25	20.60	12.75	6.70	2.45
121.50 to 121.99	54.60	30.50	20.80	12.90	6.80	2.50
122.00 to 122.49	54.95	30.75	21.00	13.05	6.90	2.55
122.50 to 122.99	55.30	31.00	21.20	13.20	7.00	2.60
123.00 to 123.49	55.65	31.25	21.40	13.35	7.10	2.65
123.50 to 123.99	56.00	31.50	21.60	13.50	7.20	2.70
124.00 to 124.49	56.35	31.75	21.80	13.65	7.30	2.75
124.50 to 124.99	56.70	32.00	22.00	13.80	7.40	2.80
125.00 to 125.49	57.05	32.25	22.20	13.95	7.50	2.85
125.50 to 125.99	57.40	32.50	22.40	14.10	7.60	2.90
126.00 to 126.49	57.75	32.75	22.60	14.25	7.70	2.95
126.50 to 126.99	58.10	33.00	22.80	14.40	7.80	3.00
127.00 to 127.49	58.45	33.25	23.00	14.55	7.90	3.05

127.50 to 127.99	58.80	33.50	23.20	14.70	8.00	3.10
128.00 to 128.49	59.15	33.75	23.40	14.85	8.10	3.15
128.50 to 128.99	59.50	34.00	23.60	15.00	8.20	3.20
129.00 to 129.49	59.85	34.25	23.80	15.15	8.30	3.25
129.50 to 129.99	60.20	34.50	24.00	15.30	8.40	3.30
130.00 to 130.49	60.55	34.75	24.20	15.45	8.50	3.35
130.50 to 130.99	60.90	35.00	24.40	15.60	8.60	3.40
131.00 to 131.49	61.25	35.25	24.60	15.75	8.70	3.45
131.50 to 131.58	61.60	35.50	24.80	15.90	8.80	3.50
Any amount in excess of 131.58 euros is fully attachable.						

\*) This annex was amended by an official announcement regarding Section 850c of the Code of Civil Procedure (bulletin regarding the thresholds applying to attachment exemptions 2005) dated 25 February 2005 (published in Federal Law Gazette (Bundesgesetzblatt, BGBl.) I page 493).