

Übersetzung durch Karen Guida.

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Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction

Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction of 17 December 2008 (Federal Law Gazette I, p. 2586, 2587), last amended by Article 11 of the Act of 20 April 2013 (Federal Law Gazette I p. 831)

The Act was adopted by the Bundestag as Article 1 of Act 35-24/1 of 17 December 2008 (Federal Gazette I p. 2586) (Act to Reform Proceedings in Family Matters and in Matters of Non-Contentious Jurisdiction; *Gesetz zur Reform des Verfahrens in Familiensachen und in den Angelegenheiten der freiwilligen Gerichtsbarkeit*, FGG-RG). Pursuant to Article 112 (1) of this Act it took effect on 1 September 2009.

Section 376 (2) of the Act on Proceedings in Family Matters and in Matters of Non-Contentious Jurisdiction of 17 December 2008 (Federal Gazette I p. 2586) took effect pursuant to Article 14 (1) of the Act of 25 May 2009 (Federal Gazette I p. 1102), in deviation from Article 112 (1) of the Act of 17 December 2008 (Federal Gazette I p. 2586) on 29 May 2009.

Book 1 General Part

Part 1 General Provisions

Section 1 Area of Applicability

This Act shall apply to proceedings in family matters as well as in matters concerning non-contentious jurisdiction, to the extent allocated to the courts by federal law.

Section 2 Local Jurisdiction

- (1) In a case where more than one court has local jurisdiction, the court that was first involved with the matter has jurisdiction.
- (2) A court shall retain local jurisdiction although there may be a change in the circumstances at the basis thereof.
- (3) Court actions shall not become ineffective solely because they were performed by a court lacking local jurisdiction.

Section 3 Referral upon Lack of Jurisdiction

- (1) If the court invoked does not have either substantive or local jurisdiction, it shall, insofar as the court with jurisdiction can be determined, declare itself incompetent in the matter by

way of an order and refer the matter to the competent court. Prior to the referral the participants shall be heard.

(2) In the event that more than one court has jurisdiction, the matter shall be referred to the court selected by the applicant. If no selection is made or if the matter was initiated *ex officio*, the matter shall be referred by the court invoked to a court that it determines.

(3) The order shall not be appealable. It shall be binding on the court that is designated to have jurisdiction in the matter.

(4) The costs accrued in the proceedings before the court initially applied to shall be treated as part of the costs that accrue at the court designated in the order.

Section 4

Relinquishment to another Court

The court may relinquish the matter to another court for good cause when such other court has stated its willingness to assume the matter. Prior to the relinquishment the participants shall be heard.

Section 5

Court Determination of Jurisdiction

(1) The competent court shall be determined by the related court of the next higher level of jurisdiction when:

1. the court that would have jurisdiction is legally or otherwise factually unable to exercise jurisdiction in a particular matter;
2. with respect to the borders of different court districts or for other factual reasons it is unclear which court has jurisdiction in the matter;
3. more than one court has declared with final and binding effect that it has jurisdiction;
4. different courts, one of which has jurisdiction in the matter, have stated with final and binding effect that they do not have jurisdiction;
5. relinquishment for good cause (Section 4) is intended to take place but the courts cannot reach agreement thereupon.

(2) If the related court of the next higher level of jurisdiction is the Federal Court of Justice (*Bundesgerichtshof*) the competent court shall be determined by the Higher Regional Court (*Oberlandesgericht*) in the district of which the court is located that was initially involved in the matter.

(3) The order determining the competent court shall not be appealable.

Section 6

Disqualification and Recusal of Court Personnel

(1) Sections 41 through 49 of the Code of Civil Procedure (*Zivilprozessordnung*; ZPO) shall apply *mutatis mutandis* to the disqualification and recusal of court personnel. Any person who worked on a preceding administrative matter shall also be disqualified.

(2) The order in which an application for recusal is declared unfounded shall be challengeable by a complaint subject to a time limit upon application *mutatis mutandis* of sections 567 through 572 of the Code of Civil Procedure.

Section 7

Participants in Proceedings

(1) In proceedings initiated upon an application, the applicant shall be a participant.

(2) Those to be included as a participant are:

1. persons whose rights would be directly affected by the proceedings, and

2. persons who are to be included *ex officio* or upon application based upon this or another statute.

(3) The court may include additional persons as participants *ex officio* or based upon the filing of an application insofar as this is provided for in this or another statute.

(4) Those persons who are or who could be included in the proceedings as a participant based upon their application therefor shall be notified of the commencement of the proceedings to the extent they are known to the court. They shall be informed of their right to file an application.

(5) The court shall decide by way of an order when it denies an application for inclusion as a participant in accordance with subsections (2) or (3). The order shall be challengeable by a complaint subject to a time limit upon application *mutatis mutandis* of sections 567 through 572 of the Code of Civil Procedure.

(6) Any person who is to be heard or who has information to provide shall not thereby become a participant without fulfilling the prerequisites in subsections (2) or (3).

Section 8 Capacity to be a Participant

Those with capacity to be a participant are:

1. natural persons and legal entities,
2. organisations, groups of persons, and institutions, to the extent they can have a right,
3. public authorities.

Section 9 Capacity to Participate in Proceedings

(1) Those persons with capacity to participate in proceedings are:

1. persons with capacity to contract pursuant to civil law;
2. persons with limited capacity to contract pursuant to civil law, insofar as they are recognized as having capacity to contract in respect of the object of the proceedings under civil law,
3. persons with limited capacity to contract pursuant to civil law, insofar as they have reached the age of 14 and they are asserting a right granted under civil law in the proceedings that affect them,
4. those who are designated as such by this or another statute.

(2) To the extent a person who lacks capacity to contract or a person who has limited capacity to contract does not have capacity to participate in proceedings, a person authorised to do so under civil law shall act for him.

(3) Organisations and public authorities shall be represented by their legal representatives and directors.

(4) The fault of a legal representative shall be the same as the fault of a participant.

(5) Sections 53 through 58 of the Code of Civil Procedure shall apply *mutatis mutandis*.

Section 10 Authorised Representative

(1) To the extent representation by an attorney is not required, the participants may conduct the matter on their own behalf.

(2) The participants may also be represented by an attorney acting as an authorised representative. In addition, authorised representatives to the extent representation by an attorney is not required, shall only be authorised to represent:

1. employees of the participant or an affiliated enterprise (section 15 of the Stock Corporation Act) (*Aktiengesetz*; AktG); public authorities and legal entities under public law including associations formed for the purpose of fulfilling their public duties may also be represented by employees of other public authorities or legal entities under public law including associations formed for the purpose of fulfilling their public duties;

2. family members (section 15 of the Fiscal Code (*Abgabenordnung*; AO), section 11 of the Act on Registered Life Partnerships (*Lebenspartnerschaftsgesetz*; LPartG)) who have reached the age of majority, persons qualified to serve as judges, and the participants, if the representation is not performed in connection with paid duties;

3. notaries.

(3) The court shall dismiss representatives who do not have proper authorisation for representation in accordance with the standards set forth in subsection (2) by way of a court order that is not subject to appeal. Court actions performed by a representative who does not have the proper authorisation for representation as well as service of process and communications to him made prior to the order of dismissal shall be valid. The court may bar authorised representatives designated pursuant to subsection 2, sentence 2, numbers 1 and 2 through a court order not subject to appeal when they are not able to appropriately represent the factual relationship and the nature of the dispute.

(4) Before the Federal Court of Justice participants shall be represented by an attorney admitted to practice before the Federal Court of Justice except in proceedings concerning the exclusion or rejection of court personnel and in proceedings concerning legal aid. Public authorities and legal entities under public law including associations formed for the purpose of fulfilling their public duties may be represented by their own employees who are qualified to serve as judges or by employees qualified to serve as judges who are from another public authority or from another legal entity under public law including associations formed for the purpose of fulfilling their public duties. Sections 78b and 78c of the Code of Civil Procedure shall apply *mutatis mutandis* to the assignment of emergency legal counsel.

(5) Judges shall not act as authorised representatives before the court to which they belong.

Section 11

Power of Attorney for Proceedings

A written power of attorney shall be submitted to the court files. It may be subsequently submitted; the court may set a time limit therefor. A lack of a power of attorney may be asserted at any step of the proceedings. The court shall take a lack of a power of attorney into account *ex officio* when an attorney or notary appears as an authorised representative. In all other cases, sections 81 through 87 and section 89 of the Code of Civil Procedure shall apply *mutatis mutandis*.

Section 12

Advisers

Participants may appear at court hearings with advisers. A person may be an adviser when that person is authorised to act as an authorised representative in proceedings in which the participant could conduct the matter on his own behalf. The court may admit other persons as advisers when this is relevant and necessary in light of the circumstances of the individual case. Section 10 (3) sentences 1 and 3 and (5) shall apply *mutatis mutandis*. Statements made by the adviser shall be deemed to be submissions by the participant unless the participant immediately repudiates or corrects such statements.

Section 13

Inspection of Court Files

(1) The participants may inspect the court files at the offices of the court registry provided there are no serious interests of a participant or a third party that would conflict with this.

(2) Persons who are not participants in the proceedings shall only be allowed to inspect the files when they credibly demonstrate a justified interest in doing so and when there are no

serious interests of a participant or a third party that would conflict with this. Inspection of the files shall be prohibited in cases under section 1758 of the Civil Code (*Bürgerliches Gesetzbuch*; BGB).

(3) Insofar as inspection of the files is granted, those allowed to do so may request the registry to prepare counterparts, extracts, and copies. Copies shall be certified upon request.

(4) The court may allow an attorney, a notary, or a public authority that is a participant to take the files to official or professional offices. There shall be no right to allow inspection of pieces of evidence in official or professional offices. A decision pursuant to the first sentence shall not be appealable.

(5) If the court files are electronically maintained, section 299 (3) of the Code of Civil Procedure shall apply *mutatis mutandis*. Electronic access pursuant to section 299 (3) sentences 2 and 3 of the Code of Civil Procedure may also be granted to a notary or a public authority who is a participant.

(6) Drafts of orders and decrees, the documentation delivered for their preparation, and documents related to settlements, shall neither be presented nor notified in writing.

(7) The court shall decide concerning file inspections; in the case of judicial panels, the chairperson shall decide.

Section 14

Electronic Files; Electronic Documents

(1) Court files may be maintained electronically. Section 298a (2) and (3) of the Code of Civil Procedure shall apply *mutatis mutandis*.

(2) The participants may transmit applications and statements as electronic documents. Section 130a (1) and (3) as well as section 298 of the Code of Civil Procedure shall apply *mutatis mutandis* to electronic documents.

(3) Sections 130b and 298 of the Code of Civil Procedure shall apply *mutatis mutandis* to electronic judicial documents.

(4) The Federal Government and the *Land* governments shall determine for their areas of authority by way of statutory instrument the point in time from which electronic files shall be maintained and electronic documents may be submitted to the courts. The Federal Government and the *Land* governments shall determine for their areas of authority by way of statutory instrument the applicable organisational and technical frameworks for the development, management, and maintenance of electronic files and the appropriate form for processing such documents. The *Land* governments may delegate authority by way of statutory instrument to the highest *Land* authority competent therefor. The admission of electronic files and the electronic form may be limited to specific courts or proceedings.

(5) If court files have been transmitted to image recording media or other storage media in accordance with appropriate guidelines for substituting original documents and if there is documentary proof that the copy matches the original, then counterparts, extracts, and copies may be distributed from the image or storage media. In such cases, notations that are to be made on the original document shall be made on such copy.

Section 15

Notifications; Communication without Prescribed Form

(1) The participants shall be notified of documents, the contents of which contain a hearing date, deadline, or that cancel a deadline.

(2) The notification may be made by service of process pursuant to sections 166 through 195 of the Code of Civil Procedure or may be effectuated by service by mailing the writing to the recipient's address. If the notification is to be made within Germany, notification is considered to have been made three days after service by mailing, unless the participant credibly demonstrates that he did not receive the writing or that he received it at a later time.

(3) If notification is not required, documents may be communicated to the participants without a prescribed form.

Section 16
Deadlines

- (1) In the absence of any other provision, the period for a deadline shall begin to run upon notification.
- (2) Sections 222, 224 (2) and (3), and 225 of the Code of Civil Procedure shall apply *mutatis mutandis* to the deadlines.

Section 17
Restoration of the Status Quo Ante

- (1) If a person was prevented through no fault of his own from complying with a statutory deadline he shall be granted restoration of the status quo ante upon filing an application therefor.
- (2) Lack of fault shall be presumed in cases where information on legal rights was not provided or was flawed.

Section 18
Application for Restoration of the Status Quo Ante

- (1) An application for restoration of the status quo ante shall be submitted within two weeks after the impediment ceases. If a participant is prevented from complying with the deadline for providing the grounds for an appeal on points of law, the deadline shall be one month.
- (2) The form of the application for restoration of the status quo ante shall be determined by the provisions applicable to the delayed procedural step.
- (3) The facts forming the basis of the application shall be credibly demonstrated upon submission of the application or in the proceedings thereupon. The missed procedural step shall be completed within the application deadline. If this occurs, restoration of the status quo may be granted even without an application.
- (4) An application for restoration of the status quo ante shall not be submitted or granted more than one year after the end of the missed deadline.

Section 19
Decision Concerning Restoration of the Status Quo Ante

- (1) The court that would rule on the missed procedural step shall decide regarding restoration of the status quo ante.
- (2) Restoration of the status quo ante shall not be appealable.
- (3) The failure of the petition to restore the status quo ante shall be appealable in accordance with the provisions applicable to the missed procedural step.

Section 20
Consolidation and Separation of Proceedings

The court may consolidate or separate proceedings insofar as it determines it to be expedient.

Section 21
Suspension of Proceedings

- (1) The court may suspend the proceedings for good cause, particularly when the decision in whole or in part depends upon the existence or non-existence of a legal relationship that is at issue in another pending legal proceeding or that is to be determined by a public administrative authority. Section 249 of the Code of Civil Procedure shall apply *mutatis mutandis*.
- (2) The order shall be challengeable by a complaint subject to a time limit upon application *mutatis mutandis* of sections 567 through 572 of the Code of Civil Procedure.

Section 22
Withdrawal of Application; Declaration of Termination

- (1) An application may be withdrawn up until the final decision is final and binding. Withdrawal after the final decision has been made shall require the agreement of the other participants.
- (2) A decision that has been made but is not yet final shall become ineffective upon the withdrawal of the application without the requirement of express rescission. Upon application, the court shall set forth the effect obtained pursuant to the first sentence in an order. The order shall not be appealable.
- (3) A decision concerning an application shall not be issued insofar as all participants state their desire to terminate the proceedings.
- (4) Subsections (2) and (3) shall not apply in proceedings that could be commenced *ex officio*.

Section 22a

Communications to Family Courts and Custodianship Courts

- (1) If as a result of a court proceeding action by a family court or a custodianship court is required, the court shall communicate this to such family court or custodianship court.
- (2) Otherwise, courts and public authorities shall be permitted to transmit personal data to the family court and the custodianship court if in their judgment based upon what is known to it, family court or custodianship court measures are required, to the extent it is not apparent to the transmitting office that interests worthy of protection of the person concerned that would preclude the transmission do not outweigh the right to protection of a minor or person under custodianship or the public interest in transmission. Transmission shall not occur when it would contravene a specific federal or relevant *Land* rule on use.

Part 2

Proceedings in the First Instance

Section 23

Application for Commencement of Proceedings

- (1) An application for the commencement of proceedings shall contain the basis therefor. The application shall contain supporting facts and evidence and shall designate those persons that may be participants in the matter. In suitable cases, the application shall also contain information on whether such filing was preceded by a mediation or another proceeding to reach an out-of-court settlement, as well as a statement concerning whether there are grounds that would preclude such a proceeding. Originals or copies of documents that are referred to should accompany the application. The application shall be signed by the applicant or a person with his power of attorney.
- (2) The court shall transmit the application to the remaining participants.

Section 24

Proposal to Commence Proceedings

- (1) To the extent proceedings may be commenced *ex officio*, the commencement of proceedings may be proposed.
- (2) If the court does not accept the proposal pursuant to subsection (1) it shall inform the person who had proposed the commencement of proceedings, insofar as a justified interest in being informed is apparent.

Section 25

Applications and Declarations to be entered into the Record of the Court Registry

- (1) The participants may submit applications and declarations to the competent court in writing or orally to be entered into the record of the court registry to the extent representation by an attorney is not required.
- (2) When it is permissible to submit applications and declarations to the records clerk of the court registry, these may be submitted into the record of the court registry of any other Local Court (*Amtsgericht*).

(3) The court registry shall promptly transmit the record to the court addressed therein. No procedural step shall take effect before the record has been received at that court.

Section 26
Inquiry *ex officio*

The court shall conduct necessary inquiries *ex officio* to establish facts that are relevant to the decision.

Section 27
Cooperation of Participants

- (1) The participants shall cooperate in the inquiry concerning the factual circumstances.
- (2) The participants shall submit complete and truthful statements concerning the facts in the matter.

Section 28
Course of Proceedings

- (1) The court shall take steps to ensure that the participants provide timely statements concerning all relevant factual circumstances and provide elaboration on all insufficient statements. It shall inform the participants of a legal point when it has assessed the matter differently than the participants and it intends to support its decision thereupon.
- (2) In proceedings initiated by the filing of an application, the court shall also take steps to ensure that formal defects are corrected and that all relevant applications are submitted.
- (3) The court shall provide information pursuant to this provision as early as possible and shall place it in the record.
- (4) The court shall keep notes concerning court hearings and in-person hearings; a records clerk of the court registry may be requested to place the notes in the court record when this is necessary based upon the expected scope of the notes, with respect to the complexity of the matter, or for another significant reason. The notes shall set forth the essential occurrences at the court hearing or in-person hearings. Notes shall only be prepared concerning settlement attempts before a mediator pursuant to section 36 (5) when all participants state their agreement therewith. Preparation by way of recording on a storage medium in the form set forth in section 14 (3) shall be an option.

Section 29
Taking of Evidence

- (1) The court shall take the necessary evidence in a suitable manner. In this regard it shall not be bound to the statements of the participants.
- (2) The provisions of the Code of Civil Procedure as to the examination of persons subject to official secrecy obligations and the right to refuse to testify shall be applicable to the questioning of informants *mutatis mutandis*.
- (3) The court shall place the results of the taking of evidence into the record.

Section 30
Formal Taking of Evidence

- (1) The court shall decide within the scope of its discretionary power whether facts relevant to its decision have been established by way of the formal taking of evidence in accordance with the Code of Civil Procedure.
- (2) The formal taking of evidence shall occur when it has been so prescribed in this statute.
- (3) The formal taking of evidence concerning the accuracy of an assertion of fact shall occur when the court intends to significantly support its decision upon this fact and the correctness of the assertion will be explicitly contested by a participant.
- (4) The participants shall be given the opportunity to submit comments on the results of the formal taking of evidence to the extent necessary for the clarification of the matter or for ensuring a fair hearing.

Section 31

Credible Demonstration of Assertions

- (1) Whosoever seeks to credibly demonstrate a factual assertion may be permitted to make use of all evidence including a statutory declaration in lieu of an oath.
- (2) The taking of evidence that cannot occur immediately shall be inadmissible.

Section 32

Court Hearing

- (1) The court may discuss the matters with the participants at a court hearing. Sections 219 and 227 (1), (2), and (4) of the Code of Civil Procedure shall apply *mutatis mutandis*.
- (2) There shall be a reasonable time period between the summons and the court hearing.
- (3) In suitable cases the court shall discuss the matter with the participants in the form of sound and image transmission under application *mutatis mutandis* of section 128a of the Code of Civil Procedure.

Section 33

Personal Appearance of the Participants

- (1) The court may order the personal appearance of a participant at a court hearing and hear him when this appears relevant for clarifying the factual circumstances. If more than one participant shall be heard at a proceeding, the hearing of a participant shall occur outside of the presence of the other participants when necessary for the protection of the participant to be examined or for any other reason.
- (2) A participant with capacity to sue or be sued shall be summoned in person even if the participant has an authorised representative; the authorised representative shall be informed of the summons. The court shall order service of the summons when it is uncertain whether the participant will appear.
- (3) If the properly summoned participant fails to appear at the court hearing without excuse, a disciplinary fine may be imposed through an order. Imposition of the disciplinary fine may occur more than once. In the event of repeated absences, presentation of the participant may be ordered. Should a sufficient excuse subsequently be provided and if the participant credibly demonstrates to the court that he bears no fault in the delay in providing the excuse, the orders pursuant to sentences 1 through 3 above shall be rescinded. The order by which a disciplinary measure was imposed shall be challengeable by a complaint subject to a time limit upon application *mutatis mutandis* of sections 567 through 572 of the Code of Civil Procedure.
- (4) The participant shall be informed in the summons of the consequences of his failure to appear.

Section 34

In-person Hearing

- (1) The court shall conduct an in-person hearing:
 1. when necessary to ensure a fair legal hearing for the participants, or
 2. when so required by the provisions of this or another statute.
- (2) The in-person hearing of a participant need not occur when there is concern of significant health disadvantages to the participant or when the participant is obviously not in a position to make his wishes known.
- (3) If the participant is absent without excuse from the court hearing, the proceeding may be concluded without hearing him in-person. The participant shall be informed of the consequences of his absence.

Section 35

Coercive Measures

- (1) When there is a need for enforcement of an obligation to perform or refrain from performing an action based upon a court order, unless a statutory provision does not

otherwise provide, the court may impose a coercive fine on the person so obligated by way of an order. In the event that this cannot be recovered, the court may order coercive detention. If an order imposing a coercive fine is likely to be unsuccessful, the court shall order coercive detention.

(2) The court decision ordering the obligation to perform or refrain from performing an action shall provide information on the consequences of contravening the decision.

(3) A single coercive fine shall not exceed the sum of EUR 25,000. Together with the establishment of the coercive measure, the costs of this procedure shall also be imposed upon the obligated person. Section 802g (1) sentence 2 and (2), section 802h, and section 802j (1) of the Code of Civil Procedure shall apply to the enforcement of detention *mutatis mutandis*.

(4) If an obligation to produce or surrender an object or to perform a reasonable action is to be enforced, unless a statutory provision does not otherwise provide, the court may order in addition to or instead of a measure pursuant to subsections (1) or (2) above the measures provided for in sections 883, 886, and 887 of the Code of Civil Procedure. Sections 891 and 892 of the Code of Civil Procedure shall apply *mutatis mutandis*.

(5) The order by way of which a coercive measure is ordered shall be challengeable by a complaint subject to a time limit upon application *mutatis mutandis* of sections 567 through 572 of the Code of Civil Procedure.

Section 36 Settlement

(1) The participants may conclude a settlement to the extent they have the right of disposition over the object of the proceeding. The court shall facilitate an amicable settlement between the participants, except in matters concerning protection from violence.

(2) If a settlement is reached during a court hearing, it shall be set forth in writing in the court record. The provisions of the Code of Civil Procedure in respect of the written record of a settlement shall apply *mutatis mutandis*.

(3) A permissible settlement pursuant to subsection (1) sentence 1 may also be concluded in writing in accordance with section 278 (6) of the Code of Civil Procedure.

(4) Errors in the written record or in the order concerning the settlement shall be corrected in accordance with section 164 of the Code of Civil Procedure.

(5) In order to attempt to reach a settlement the court may refer the participants to a judge qualified therefor who is not authorised to decide in the matter (judicial mediator). The judicial mediator may employ all methods for conflict resolution including mediation. Subsections (1) through (4) shall apply *mutatis mutandis* to the proceedings before the mediator.

Section 36a Mediation, Out-of-Court Conflict Resolution

(1) The court may recommend some or all participants to participate in a mediation or another proceeding to reach an out-of-court resolution of the conflict. In matters concerning protection from violence, the interests worthy of protection of the person affected by violence shall be protected.

(2) In the event the participants decide in favour of conducting a mediation or another proceeding to reach an out-of-court resolution of the conflict, the court shall suspend the proceedings.

(3) Court orders and approvals shall remain unaffected by the implementation of a mediation or another proceeding to reach an out-of-court resolution of the conflict.

Section 37 Basis of Decision

(1) The court shall decide at its discretion and conviction derived from the total contents of the proceedings.

(2) The court may only support a decision that impacts the rights of a participant based on the facts and evidence that this participant could comment upon.

Part 3 Order

Section 38 Decision by Way of an Order

(1) The court shall decide by way of an order insofar as the object of the proceedings is concluded in whole or in part by the decision (final decision). As to register matters, statutory provisions may provide otherwise.

(2) The order shall contain:

1. the designation of the participants, their legal representatives, and their authorised representatives;
2. the designation of the court and the names of court personnel who worked upon the decision;
3. the operative provisions of the order.

(3) The grounds upon which the order is based shall be provided. It shall be signed. The date upon which the order is transmitted to the court registry or upon which the operative provisions of the order were notified by a reading thereof (*Erläss*) shall be set forth on the order.

(4) No grounds for the decision are required to be set forth to the extent:

1. the decision is made on the basis of an acknowledgement or waiver or is a default decision and is accordingly designated;
2. corresponding applications by the participants have been granted or the order is not contrary to the stated wishes of a participant; or
3. the order was notified orally in the presence of all participants and all participants waived the right to appeal.

(5) Subsection (4) shall not be applicable:

1. in marital matters with the exception of a decision concerning the grant of a divorce;
2. in matters concerning parentage;
3. in matters concerning custodianship;
4. when it is to be expected that the order will be asserted outside of Germany.

(6) In the event an order prepared without the grounds therefor is to be asserted outside of Germany, the provisions concerning the completion of decisions based on default or acknowledgment shall apply *mutatis mutandis*.

Section 39 Instructions on Legal Remedies

Every order shall contain instructions concerning the permissible appellate remedies, protest, objection, or reminder as a legal remedy, as well as the court to which such legal remedies should be directed, its seat, and the form and deadlines to be adhered to. Instructions concerning direct appeal on points of law shall not be required.

Section 40 Effectiveness

- (1) The order shall become effective upon notification to those participants as to whom the significant contents are directed.
- (2) An order, the object of which is the approval of a legal transaction, shall first become effective when it is final and binding. This shall be pronounced together with the decision.
- (3) An order granting an application to substitute the authorisation or permission of another as to a legal transaction or rescinding the limitation or exclusion of the entitlement of a spouse or life partner to perform transactions to provide the necessities of life for the other spouse or life partner (section 1357 (2) sentence 1 of the Civil Code, also in conjunction with section 8 (2) of the Act on Registered Life Partnerships), shall first become effective when it is final and binding. In cases of imminent danger the court may order that the order shall be immediately effective. The order shall become effective upon notification to the applicant.

Section 41 Notification of the Order

- (1) The order shall be notified to the participants. An order that is appealable shall be served upon those participants whose stated position it contravenes.
- (2) The order may also be notified to those present by a reading of the operative provisions. This shall be noted in the file. In such a case, the grounds for the decision shall promptly be subsequently included. In cases under the first sentence, the order shall also be notified in writing.
- (3) An order, the object of which is the approval of a legal transaction, shall also be notified to that individual as to whom the legal transaction was approved.

Section 42 Correction of Order

- (1) Clerical mistakes, errors in calculation, and similar obvious errors in the order shall be corrected at any time by the court, including *ex officio*.
- (2) The order that pronounces the correction shall be noted on the corrected order and on all copies. If the order as to the correction is in the form set forth in section 14 (3), it shall be maintained in a separate electronic document. The document shall be inseparably connected to the order.
- (3) The order by which an application for correction is dismissed shall not be appealable. An order that pronounces a correction shall be challengeable by a complaint subject to a time limit upon application *mutatis mutandis* of sections 567 through 572 of the Code of Civil Procedure.

Section 43 Amendment of Order

- (1) If an application that according to the files of the proceedings was submitted by a participant but was overlooked in whole or in part or if no decision on costs was made, the order shall be subsequently amended, based upon an application therefor.
- (2) An application for the subsequent decision shall be made within two weeks, beginning from the written notification of the order.

Section 44 Redress upon Violation of a Participant's Right to a Fair Legal Hearing

- (1) Upon the complaint of a participant negatively impacted by a decision, the proceedings shall be continued, when:
 1. there is no available appeal or redress as to the decision, nor is there another option for amending the decision, and
 2. the court violated the right of this participant to a fair legal hearing in a manner significant to the decision.

There shall be no complaint against a decision preceding the final decision.

(2) A complaint shall be lodged within two weeks of learning of the violation of the right to a fair legal hearing; the question of when the violation became known shall be credibly demonstrated to the court. No complaint can be lodged after a period of one year has lapsed from the time of the notification to this participant of the challenged decision. A complaint shall be lodged in writing or made on the record with the court that reached the decision challenged. The complaint shall designate the decision challenged and address the prerequisites set forth in subsection (1) sentence 1 no. 2.

(3) The remaining participants shall be given the opportunity to comment to the extent necessary.

(4) If the complaint lodged is not in the statutory form or within the deadline, it shall be overruled as inadmissible. If the complaint has no basis the court shall dismiss it. The decision shall be made by an order that shall not be appealable. The order should provide a brief statement of the grounds.

(5) If the complaint is well-founded, the court shall remedy it by continuing the proceedings insofar as required by the grounds for the complaint.

Section 45

Formal Final and Binding Effect

An order shall not become final and binding prior to the expiration of the deadline for lodging a permissible appeal or a permissible protest, objection, or reminder as a legal remedy. The final and binding effect shall be suspended upon the timely lodging of an appeal, protest, objection, or reminder as a legal remedy.

Section 46

Certificate of Final and Binding Effect

A certificate as to the final and binding effect of an order shall be issued based upon the file of the proceedings by the court registry of the court of first instance. During the time that the matter is pending before a higher court, the court registry of such court shall issue the certificate. In marital and parentage matters, the participants shall be issued *ex officio* a copy of the certificate of the final and binding effect without the grounds therefor. A decision by the court registry shall be appealable by way of reminder as a legal remedy upon application *mutatis mutandis* of section 573 of the Code of Civil Procedure.

Section 47

Continuing Validity of Legal Transactions

If an order, by way of which a person seeks the capacity or authorisation to perform a legal act or to accept a declaration of intent, is unjustified, the rescindment of the order shall have no effect on the validity of the legal transactions undertaken by or vis-à-vis the person up until that time, provided the order was not invalid from the outset.

Section 48

Modification and Reopening of Proceedings

(1) The court of the first instance may rescind or modify a permanent final and binding decision if the factual or legal circumstances at the basis of the decision have thereafter significantly changed. In proceedings that may only be commenced by the filing of an application, rescindment or modification shall also occur only upon an application therefor.

(2) A proceeding that has been concluded with final and binding effect may be reopened in accordance with application *mutatis mutandis* of the provisions of Book 4 of the Code of Civil Procedure.

(3) There shall be no restoration of the status quo ante, complaint pursuant to section 44, modification, or reopening of proceedings with respect to an order that granted or withheld approval for a legal transaction when the approval or the withholding thereof has become effective with respect to third parties.

Part 4

Interlocutory Orders

Section 49 Interlocutory Orders

(1) The court may impose temporary measures by way of interlocutory order insofar as it is justified in accordance with the relevant provisions concerning the legal relationship and there is an urgent need for immediate action.

(2) The measure may secure or temporarily regulate existing circumstances. A participant may be compelled to perform or to refrain from performing an act, in particular, disposition of an object may be prohibited. In the interlocutory order the court may also issue other orders necessary for its implementation.

Section 50 Jurisdiction

(1) The court that would have jurisdiction for the main action in the first instance shall have jurisdiction. If a main action is pending the court in the first instance shall have jurisdiction and if it is pending before the court handling the complaint on appeal, that court shall have jurisdiction.

(2) In particularly urgent cases, the Local Court in the district of which the need for court action became known or in which the person or object related to the interlocutory order is located may also decide. It shall *ex officio* promptly relinquish the matter to the court with jurisdiction pursuant to subsection (1).

Section 51 Proceedings

(1) An interlocutory order shall only be issued upon the filing of an application therefor when a corresponding main action can only be initiated by an application. The applicant shall provide grounds for the application and shall credibly demonstrate the prerequisites for the interlocutory order.

(2) The proceedings shall be in accordance with the provisions applicable to the main action on the matter to the extent the particular circumstances of the temporary legal protection do not provide otherwise. The court may decide without oral argument. Default decisions shall be excluded.

(3) The proceeding on the interlocutory order is an independent proceeding, even when a main action is pending. The court may disregard individual procedural steps in the main action when such were already undertaken in the proceedings on the interlocutory order and no additional information is expected to be gained from repeating the step.

(4) The general provisions shall apply to the costs of the proceedings on the interlocutory order.

Section 52 Commencement of the Main Action

(1) If an interlocutory order has been issued, upon the filing of an application by a participant the court shall commence the main action. Upon issuance of the interlocutory order the court may set a deadline, prior to which the application shall be inadmissible. The deadline shall not exceed three months.

(2) In proceedings that can only be initiated upon an application, upon an application the court shall order that the participant who had obtained the interlocutory order shall apply to the court for the commencement of the main action within a certain deadline or shall file an application for the approval of legal aid for the main action. The deadline shall not exceed three months. If the participant does not comply with this order, the interlocutory order shall be rescinded.

Section 53 Enforcement

- (1) An interlocutory order shall be required to contain an enforcement clause only if it is to be enforced in favour of or against a person other than a participant designated in the order.
- (2) In matters of protection against violence, as well as in other cases in which there is a particular need, the court may order that enforcement of the interlocutory order is permissible prior to service upon the obligated participant. In such cases, the interlocutory order shall be effective upon issuance.

Section 54 **Revocation or Modification of Decision**

- (1) The court may revoke or modify the decision in an interlocutory order matter. Revocation or modification shall only take place upon the filing of an application therefor if the corresponding main action can only be initiated upon an application. The preceding sentence shall not apply if the decision was issued without conducting a prior hearing necessary in accordance with the statute.
- (2) If the decision in a family matter is made without oral argument, upon an application therefor the matter shall be decided a second time based upon oral argument.
- (3) The court that issued the interlocutory order shall have jurisdiction over the matter. If the court had previously relinquished or referred the matter to another court, that court shall have jurisdiction over the matter.
- (4) While an interlocutory order matter is pending before the appellate court, revocation or modification of the challenged decision by the court of first instance shall be impermissible.

Section 55 **Suspension of Enforcement**

- (1) In cases under section 54 the court, or in matters under section 57 the appellate court, may suspend or limit enforcement of an interlocutory order. The order shall not be appealable.
- (2) If a corresponding application is filed, a decision thereupon shall be made in advance.

Section 56 **Expiration**

- (1) Unless otherwise previously determined by the court, the interlocutory order shall expire upon the effectiveness of a different provision. If this is the final decision in a family matter, its final and binding effect shall be determinative, insofar as it does not become effective at a later point in time.
- (2) In cases that can only be initiated upon an application, the interlocutory order shall also expire when:

1. the application has been withdrawn in the main action;
2. the application has been rejected with final and binding effect in the main action;
3. there is agreement that the main action is declared to be concluded; or
4. the main action was otherwise concluded.

- (3) Upon application, the court that made the most recent decision in the interlocutory order matter in the first instance shall pronounce the effect set forth in subsections (1) and (2). The decision shall be appealable.

Section 57 **Appellate Remedies**

Decisions in proceedings on interlocutory orders in family matters shall not be appealable. This shall not apply in proceedings pursuant to section 151 nos. 6 and 7, nor shall it apply when the court in the first instance reached a decision based upon an oral discussion:

1. concerning parental custody for a child;

2. concerning surrender of a child to the other parent;
3. concerning an application for a child to remain with a curator or a person who he trusts;
4. concerning an application pursuant to sections 1 and 2 of the Violence Protection Act (*Gewaltschutzgesetz*); or
5. in a matter concerning the marital home regarding an application for allocation of the residence.

Part 5 Appellate Remedies

Chapter 1 Complaint on Appeal

Section 58 Admissibility of Complaint on Appeal

(1) A complaint on appeal may be lodged against a final decision in the first instance by the Local Court or the Regional Court (*Landgericht*) in matters pursuant to this statute to the extent no statute provides otherwise.

(2) The decisions reached prior to the final decision that could not be challenged independently shall also be subject to judgment of the court handling the complaint on appeal.

Section 59 Persons Entitled to a Complaint on Appeal

(1) Any person may file a complaint on appeal whose rights are affected by an order.

(2) When an order can only be issued upon the filing of an application therefor and the application has been dismissed, a complaint on appeal shall only be available to the applicant.

(3) The right of public authorities to a complaint on appeal shall be governed by special provisions in this or other statutes.

Section 60 Rights of Minors to a Complaint on Appeal

A child, who is subject to parental custody, or a ward subject to guardianship, may exercise his right to file a complaint on appeal without the cooperation of his legal representative in all matters that affect him. The same shall apply in other matters in which the child or ward is to be examined prior to a decision by the court. This shall not apply to persons who lack capacity to contract or who have not reached the age of 14 by the time of the issuance of the decision.

Section 61 Value of Complaint on Appeal; Leave to File a Complaint on Appeal

(1) In pecuniary matters a complaint on appeal shall be admissible only when the value of the object of the appeal exceeds EUR 600.

(2) If the object of the complaint on appeal does not exceed the value set forth in subsection (1), the appeal shall be admissible when the court in the first instance has granted leave to appeal.

(3) The court in the first instance shall grant leave to file a complaint on appeal when:

1. the legal matter is of fundamental significance or the further development of the law or the interest in ensuring uniform adjudication requires a decision by the appellate court, and

2. the participant has not been encumbered with a sum greater than EUR 600 by the order.

The appellate court shall be bound by the grant of leave to file a complaint on appeal.

Section 62

Availability of Complaint on Appeal after Conclusion of the Main Action

(1) If the challenged decision was concluded in the main action, upon an application therefor the appellate court shall declare that the court's decision in the first instance violated the appellant's rights when the appellant has a justified interest in this determination.

(2) In general, a justified interest exists when:

1. there is a serious encroachment on a fundamental right, or
2. there is a specific expectation of a recurrence.

Section 63

Time Limit for Complaint on Appeal

(1) Insofar as no other statutory deadline has been set, the time limit for filing a complaint on appeal shall be one month.

(2) The appeal shall be filed within two weeks when it is directed toward one of the following types of decisions:

1. final decisions in proceedings concerning interlocutory orders, or
2. decisions concerning applications for approval to conduct legal transactions.

(3) The deadline shall begin each time upon the written notification of the order to the participants. If written notification cannot be effectuated as to a participant, the deadline shall begin at the latest upon the expiration of five months after the issuance of the order.

Section 64

Filing of the Complaint on Appeal

(1) The complaint on appeal shall be filed with the court that issued the challenged order. Applications for the granting of legal aid as to an intended complaint on appeal shall be filed with the court that issued the challenged order.

(2) The complaint on appeal shall be filed by the submission of a written complaint on appeal or by stating it on the record of the court registry. The filing of a complaint on appeal by stating it on the record of the court registry shall be impermissible in cases involving marital matters and family disputes. The complaint on appeal shall designate the challenged order and shall contain a statement that an appeal is lodged against such order. It shall be signed by the appellant or his authorised representative.

(3) The appellate court may issue an interlocutory order prior to a decision; it may in particular order that enforcement of the challenged order shall be suspended.

Section 65

Grounds for Complaint on Appeal

(1) The complaint on appeal shall be well-founded.

(2) The appellate court or the presiding judge may set forth a deadline by which the appellant must submit the grounds for the complaint on appeal.

(3) The complaint on appeal may be supported by new facts and evidence.

(4) The complaint on appeal shall not be supported by the argument that the court in the first instance improperly accepted jurisdiction.

Section 66

Joined Appeal

A participant may join the complaint on appeal even when it had waived appeals or when the deadline for filing an appeal has lapsed; joining the appeal shall take place by the

submission of written grounds for the appeal with the appellate court. The joined appeal shall cease to have effect when the appeal is withdrawn or rejected as inadmissible.

Section 67

Waiver of Complaint on Appeal; Withdrawal of Complaint on Appeal

- (1) The complaint on appeal shall be inadmissible when the appellant had waived appeals subsequent to the notification of the order by a declaration to this effect to the court.
- (2) A joined complaint on appeal shall be inadmissible when the joining appellant had waived joining the appeal subsequent to the filing of the main complaint on appeal by a declaration to this effect to the court.
- (3) A statement of waiver to another participant shall only result in the inadmissibility of an appeal when that participant invokes such statement.
- (4) The appellant may withdraw the complaint on appeal up until the time of the issuance of the decision on the appeal by a declaration to that effect to the court.

Section 68

Course of Proceedings on Complaint on Appeal

- (1) If the court that issued the challenged order deems the complaint on appeal to be well-founded, it shall redress the matter; otherwise it shall promptly submit the complaint on appeal to the appellate court. The court shall not be authorised to provide redress when the appeal at issue relates to a final decision in a family matter.
- (2) The appellate court shall examine whether the complaint on appeal is admissible and whether it has been submitted in compliance with the statutory form and deadline. If there is a deficiency with respect to these requirements, the complaint on appeal shall be overruled as inadmissible.
- (3) The appeal proceedings shall in all other ways comport with the provisions governing the proceedings in the first instance. The appellate court may refrain from conducting a court hearing, oral argument, or individual procedural actions when such action was previously conducted in the first instance and no additional knowledge is to be expected from repeated action.
- (4) The appellate court may transfer the matter by way of a court order to one of its members for him to decide as a judge sitting alone; section 526 of the Code of Civil Procedure shall apply *mutatis mutandis* with the proviso that transfer to a probationary judge shall be excluded.

Section 69

Decision on Complaint on Appeal

- (1) The appellate court shall decide the matter itself. It shall only refer the proceeding back to the court of first instance upon overruling a challenged order when that court had not yet reached a decision in the matter. The same shall apply insofar as the proceedings contained a significant error, a more intensive or extensive gathering of evidence would be necessary, and a participant applies for referral back to the court of first instance. The court of first instance shall state the basis of its legal judgment upon which the appellate court based its decision to overrule and shall also state the basis of its decision.
- (2) The grounds for the order by the appellate court shall be provided.
- (3) In all other respects the provisions concerning the order in the first instance shall apply *mutatis mutandis* to the decision on the complaint on appeal.

Chapter 2

Appeal on Points of Law

Section 70

Availability of Appeal on Points of Law

- (1) An appeal on points of law shall be available as a remedy to a participant when the appellate court or the Higher Regional Court in the first instance granted leave to appeal in the order.

(2) An appeal on points of law shall be admissible when:

1. the legal matter is of fundamental significance, or
2. the further development of the law or the interest in ensuring uniform adjudication requires a decision by the court hearing the appeal.

The court hearing the appeal shall be bound to the admissibility of the appeal.

(3) An appeal on points of law against an order by the court hearing the complaint on appeal shall be admissible without leave of the court in:

1. matters concerning custodianship for the appointment of a custodian, the removal of a custodian, and for an order or withdrawal of a reservation of consent,
2. matters concerning involuntary commitment and proceedings pursuant to section 151 nos. 6 and 7, and
3. matters concerning a deprivation of liberty.

In cases under nos. 2 and 3 of the first sentence, this shall only apply when the appeal on points of law is directed toward the order imposing the involuntary commitment or the deprivation of liberty.

(4) There shall be no appeal on points of law against orders in proceedings concerning the order, modification, or rescission of an interlocutory order or an arrest.

Section 71

Deadline and Form of Appeal on Points of Law

(1) The appeal on points of law shall be filed within one month after the written notification of the order by way of submission of a brief on appeal to the appellate court. The brief on appeal shall contain:

1. the designation of the order against which the appeal on points of law is directed, and
2. a statement that an appeal on points of law is lodged against this order.

The brief on appeal shall be signed. An original or a notarized copy of the challenged order shall be submitted together with the brief on appeal.

(2) Grounds for the appeal on points of law shall be filed within one month when the grounds were not contained within the brief on appeal. The deadline shall begin upon the written notification of the challenged order. Section 551 (2) sentences 5 and 6 of the Code of Civil Procedure shall apply *mutatis mutandis*.

(3) The grounds for the appeal on points of law shall contain:

1. a statement of the extent to which the order is challenged and to which its overruling is applied for (application for appeal on points of law);
2. the reasons for the appeal on points of law, in particular
 - a) a specific description of the circumstances from which the violation of law arises;
 - b) to the extent the appeal on points of law is based on that the law was violated in relation to the proceedings, a description of the facts from which the violation arises.

(4) The appeal on points of law and the written grounds therefor shall be notified to the other participants.

Section 72

Grounds for Appeal on Points of Law

- (1) An appeal on points of law shall only be based upon that the challenged decision relates to a violation of the law. There is a violation of the law when a legal standard has not been applied or has been applied incorrectly.
- (2) An appeal on points of law shall not be based upon a claim that the court of first instance improperly assumed jurisdiction in a matter.
- (3) Sections 547, 556, and 560 of the Code of Civil Procedure shall apply *mutatis mutandis*.

Section 73

Joining the Appeal on Points of Law

A participant may join the appeal on points of law by submitting a written joinder to the appellate court up to one month after the disclosure of the written grounds for the appeal, even if he had waived the right to appeal on points of law, the deadline for an appeal on points of law has lapsed, or the appeal on points of law is not admissible. The joinder brief on appeal shall contain the grounds therefor and shall be signed. The joined appeal shall become invalid when the appeal on points of law is withdrawn, rejected as inadmissible, or is dismissed pursuant to section 74a (1).

Section 74

Decision on the Appeal on Points of Law

- (1) The appellate court shall examine whether the appeal on points of law is admissible, whether it was submitted in the proper form within the proper deadline, and whether it is well-founded. If there are deficiencies with respect to these prerequisites, the appeal on points of law shall be overruled as inadmissible.
- (2) If the grounds upon which the appeal on points of law is based may show a violation of the law but the decision is correct for other reasons, the appeal on points of law shall be rejected.
- (3) The examination by the appellate court shall be subject only to the applications of the participants. The appellate court shall not be bound to the grounds asserted for the appeal on points of law. The challenged decision shall only be examined for procedural error that is not to be considered *ex officio* when the error complained of is one pursuant to section 71 (3) and section 73 second sentence. Sections 559 and 564 of the Code of Civil Procedure shall apply *mutatis mutandis*.
- (4) The provisions applicable to the proceedings in the first instance shall be applicable *mutatis mutandis* to the remainder of the proceedings insofar as nothing to the contrary arises from the provisions under this Chapter.
- (5) To the extent the appeal on points of law is well-founded, the challenged order shall be reversed.
- (6) The appellate court shall decide the matter of its own accord when the matter is at the stage for a final decision. Otherwise, upon reversing the challenged order, it shall refer the matter back to the court hearing the complaint on appeal for further proceedings and a renewed decision or, if there are exceptional reasons to do so, it shall remand the matter back to the court of first instance. The remand may be made to a different body of the court than that which had reached the challenged decision. The court to which the matter is remanded shall use the grounds at the basis of the reversal for the basis of its decision as well.
- (7) No grounds are required for a decision when this would not be suitable for contributing to clarification of a legal question of fundamental significance or for the further development of the law or the interest in ensuring uniform adjudication.

Section 74a

Court Order Dismissing Appeal

- (1) By a unanimous decision the appellate court shall dismiss an appeal on points of law as to which the court hearing the complaint on appeal granted leave to appeal without oral argument or discussion at a court hearing when it is convinced that the prerequisites for the

admission of the appeal on points of law are not fulfilled and the appeal on points of law has no chance of success.

(2) The appellate court or the presiding judge shall inform the participants of the intention to dismiss the appeal on points of law, stating the grounds therefor and setting forth a specific deadline within which the appellant may provide comments.

(3) The order pursuant to subsection (1) shall provide the grounds therefor to the extent the grounds for the dismissal have not already been set forth in the information provided in accordance with subsection (2).

Section 75

Direct Appeal on Points of Law

(1) Upon application, there shall be a direct appeal on points of law bypassing the complaint on appeal instance (*Sprungrechtsbeschwerde*) against orders issued in the first instance as to which the filing of a complaint on appeal was denied, when:

1. the participants agree to a direct appeal on points of law bypassing the complaint on appeal instance, and
2. the appellate court permits such direct appeal.

An application requesting the admissibility of a direct appeal on points of law and a statement agreeing thereto shall apply as waivers of a complaint on appeal.

(2) Direct appeals on points of law shall be submitted within the deadline set forth in section 63. As to the remainder of the proceedings section 566 subsections (2) through (8) of the Code of Civil Procedure shall apply *mutatis mutandis*.

Part 6

Legal Aid

Section 76

Prerequisites

(1) The provisions of the Code of Civil Procedure concerning assistance with court costs shall apply *mutatis mutandis* to the approval of legal aid insofar as none of the following provisions provides otherwise.

(2) An order issued in the proceedings on legal aid shall be challengeable by a complaint subject to a time limit upon application *mutatis mutandis* of sections 567 through 572 and section 127 (2) through (4) of the Code of Civil Procedure.

Section 77

Approval

(1) Prior to an approval of legal aid, the court may grant the other participants the opportunity to comment. In proceedings initiated by the filing of an application, the opposing participant shall have the opportunity to comment on whether he believes the prerequisites are fulfilled for the approval of legal aid insofar as there are no particular reasons such that this would appear to be irrelevant.

(2) The approval of legal aid for enforcement concerning movable property shall encompass all enforcement actions in the district of the enforcement court including the proceedings for the making of a statutory declaration in lieu of an oath.

Section 78

Assignment of Attorney

(1) If representation by an attorney is compulsory, the participant shall be assigned an attorney of his choice who is willing to represent him.

(2) If representation by an attorney is not compulsory, upon an application therefor, the participant shall be assigned an attorney of his choice who is willing to represent him when representation by an attorney appears necessary based upon the complexity of the factual and legal circumstances.

- (3) An attorney who is not established in the judicial district of the court handling the proceedings shall only be assigned when no further costs would thereby accrue.
- (4) If particular circumstances so require, upon application of the participant, an attorney of his choice who is willing to represent him may be assigned to appear at a court hearing for the taking of evidence before the examining judge or for facilitating communications with the authorised representative in the proceedings.
- (5) If the participant does not find an attorney willing to represent him, the presiding judge shall assign him an attorney upon an application therefor.

Section 79

(repealed)

Part 7 Costs

Section 80

Scope of the Obligation to Bear Costs

Costs are the court costs (fees and expenses) and those expenditures of the participants necessary for the implementation of the proceedings. Section 91 (1) sentence 2 of the Code of Civil Procedure shall apply *mutatis mutandis*.

Section 81

Principle of the Obligation to Bear Costs

- (1) The court may impose the costs of the proceedings at its discretion upon the participants in whole or in part. In addition, it may order that no costs shall be imposed. In family matters, there shall always be a decision on costs.
- (2) The court shall impose the costs of the proceedings upon one participant in whole or in part when:
1. it was the gross negligence of the participant that gave rise to the court case;
 2. the application of the participant had no possibility of succeeding from the outset and the participant must have recognized this;
 3. the participant culpably submitted false information concerning a significant matter;
 4. the participant significantly delayed the proceedings by culpably violating his duty to cooperate;
 5. the participant did not comply with a judicial order to participate in a cost-free information discussion concerning mediation or another option for an out-of-court resolution of the conflict pursuant to section 156 (1) sentence 3 or a court order to participate in counselling pursuant to section 156 (1) sentence 4, insofar as the participant does not have a sufficient excuse therefor.

- (3) A minor shall not have costs of proceedings imposed on him in parent and child matters concerning the minor.
- (4) Costs of the proceedings shall only be imposed upon a third party insofar as the court's action was prompted by him and he was grossly negligent.
- (5) Provisions of federal law that regulate the obligation in a manner different than the above provisions, shall remain unaffected.

Section 82

Timing of Decision on Costs

If a decision on costs is made, the court shall decide thereupon in the final decision.

Section 83

Obligation to Bear Costs upon Settlement, Conclusion, and Withdrawal

- (1) If the action is concluded by a settlement and the participants did not reach an agreement on the costs, the court costs shall be imposed equally among the participants. Each participant shall bear his own out-of-court costs.
- (2) If the action is otherwise concluded or if the application is withdrawn, section 81 shall apply *mutatis mutandis*.

Section 84
Costs of Appeals

The court shall impose the costs of an unsuccessful appeal on that participant that had filed for it.

Section 85
Establishment of Costs

Sections 103 through 107 of the Code of Civil Procedure concerning the establishment of the costs to be reimbursed shall apply *mutatis mutandis*.

Part 8
Enforcement

Chapter 1
General Provisions

Section 86
Enforcement instrument

- (1) Enforcement shall take place based upon:
1. judicial orders;
 2. judicially approved settlements (section 156 (2));
 3. other enforcement instruments within the meaning of section 794 of the Code of Civil Procedure insofar as the participants have the right of disposal over the object of the proceedings.
- (2) The order shall be enforceable upon becoming effective.
- (3) Enforcement instruments shall only require an enforcement clause when the enforcement is not carried out by the court that had issued the instrument.

Section 87
Proceedings; Complaint on Appeal

- (1) In matters that can be commenced by the court *ex officio* the court shall act *ex officio* and shall determine the enforcement measures to be undertaken in the event of noncompliance. The entitled participant may apply for enforcement action to be taken; if the court does not allow the application, it shall set forth its decision in an order.
- (2) Enforcement shall only start when the order previously has been served or is concurrently served.
- (3) The court-appointed enforcement officer shall be authorised to request the assistance of police enforcement bodies when necessary. Section 758 (1) and (2) and sections 759 through 763 of the Code of Civil Procedure shall apply *mutatis mutandis*.
- (4) An order issued in the enforcement action shall be challengeable by a complaint subject to a time limit upon application *mutatis mutandis* of sections 567 through 572 of the Code of Civil Procedure.
- (5) Sections 80 through 82 and section 84 shall apply *mutatis mutandis* to the decision on costs.

Chapter 2
**Enforcement of Decisions Concerning the Surrender of Persons
and Rules Governing Contact**

Section 88 Principles

- (1) Enforcement shall be undertaken by the court in the district of which the person has his place of usual residence at the time of the commencement of the enforcement.
- (2) The Youth Office shall provide support to the court in suitable cases.

Section 89 Administrative Means of Coercion

- (1) In cases of non-compliance with an enforcement instrument requiring the surrender of a person and rules governing contact, the court may impose an administrative fine on the obligated person and, in the event this cannot be recovered, administrative detention. If an order for an administrative fine is likely to be unsuccessful, the court may order administrative detention. The orders shall be made by way of an order.
- (2) The order issued to order the surrender of persons or the rules governing contact shall refer to the consequences of non-compliance with the instrument of enforcement.
- (3) The amount of a single administrative fine shall not exceed EUR 25,000. As to the enforcement of administrative detention, section 802g (1) sentence 2 and (2) and sections 802h and 802j (1) of the Code of Civil Procedure shall apply *mutatis mutandis*.
- (4) Coercive measures shall not be established when the obligated person sets forth grounds demonstrating that that he bears no responsibility for the non-compliance. If grounds are subsequently presented justifying the failure to comply, the establishment of administrative means of coercion shall be revoked.

Section 90 Use of Direct Coercion

- (1) The court may order enforcement through direct coercion by way of a specific order, when:
1. the establishment of administrative means of coercion has been unsuccessful;
 2. the establishment of administrative means of coercion is likely to be unsuccessful;
 3. immediate enforcement of the decision is essential.
- (2) The use of direct coercion against a child shall not be permitted when the child is to be surrendered for the purpose of exercising rights of contact. Otherwise, direct coercion against a child shall only be permitted when justified in consideration of the child's well-being and implementation of the obligation is not possible through less serious measures.

Section 91 Judicial Search Warrant

- (1) The residence of the obligated person may be searched without his agreement only on the basis of a judicial search warrant. The foregoing shall not apply when the issuance of the order would jeopardize the success of the search.
- (2) Subsection (1) shall not apply to the enforcement of an arrest warrant pursuant to section 94 in conjunction with section 802g of the Code of Civil Procedure.
- (3) If the obligated person agrees to the search or if an order has been issued against him pursuant to subsection (1) sentence 1 or is unnecessary pursuant to subsection (1) sentence 2, persons sharing in the custody of the obligated person's residence shall tolerate the search. Undue hardship for persons sharing in the custody of the residence shall be avoided.
- (4) The warrant pursuant to subsection (1) shall be presented at the time of the enforcement.

Section 92 Enforcement Proceedings

(1) Prior to the establishment of administrative means of coercion, the obligated person shall be heard. This shall also be applicable to an order of direct coercion unless by so doing the enforcement would be obstructed or made significantly more difficult.

(2) The costs of the proceedings shall be imposed upon the obligated person together with the establishment of administrative means of coercion or the order of direct coercion.

(3) The previous implementation of a proceeding in accordance with section 165 shall not be a prerequisite for the establishment of administrative means of coercion or an order of direct coercion. The implementation of such a proceeding does not preclude the establishment of administrative means of coercion or an order of direct coercion.

Section 93

Discontinuation of Enforcement

(1) By way of an order the court may temporarily discontinue or limit enforcement and set aside the enforcement measures when:

1. an application has been made for return to the status quo ante;
2. an application has been made for reopening the proceedings;
3. a complaint on appeal has been filed against a decision;
4. an application has been made for modification of a decision;
5. an application has been made for the implementation of a conciliation procedure (section 165).

At the complaint on appeal instance a decision concerning temporary discontinuance of enforcement shall be made in advance. The decision shall not be appealable.

(2) Section 775 nos. 1 and 2 and section 776 of the Code of Civil Procedure shall apply *mutatis mutandis* to the discontinuance or limitation of the enforcement and the setting aside of enforcement measures.

Section 94

Statutory Declaration in Lieu of an Oath

If a person to be surrendered is not found, the court may order the obligated person to provide a statutory declaration in lieu of an oath concerning their location. Section 883 (2) and (3) of the Code of Civil Procedure shall apply *mutatis mutandis*.

Chapter 3

Enforcement pursuant to the Code of Civil Procedure

Section 95

Application of the Code of Civil Procedure

(1) To the extent there is no provision to the contrary in the previous chapters, the provisions of the Code of Civil Procedure in respect of compulsory enforcement shall be applicable *mutatis mutandis* to enforcement of:

1. a monetary claim;
2. the surrender of movable or immovable property;
3. the taking of an action that may be taken by others or an action that may not be taken by others;
4. compelling the toleration of an action or refraining from an action; or
5. the submission of a declaration of intent.

(2) Rather than a judgment there shall be an order pursuant to the provisions of this Act.

(3) If the person obligated to pay a monetary claim credibly demonstrates that the enforcement will cause him an irreparable disadvantage, upon his application the court shall

preclude the enforcement in the decision prior to it becoming final and binding. In cases under section 707 (1) and section 719 (1) of the Code of Civil Procedure, enforcement shall only be discontinued upon fulfilment of the same prerequisites.

(4) If an obligation to surrender or present an item or to take an action that may be taken by others is to be enforced the court may, through an order, concurrent with or instead of a measure pursuant to sections 883 and 885 through 887 of the Code of Civil Procedure order a measure provided for in section 888 of the Code of Civil Procedure, insofar as no other law prescribes otherwise.

Section 96

Enforcement in Proceedings under the Act on Protection against Violence and in Matters Concerning the Marital Home

(1) If the obligated person acts in contravention of an order pursuant to section 1 of the Act on Protection against Violence (*Gewaltschutzgesetz*; *GewSchG*) the entitled person may make use of a court-appointed enforcement officer to eliminate a continuing violation. The court-appointed judicial officer shall proceed in accordance with section 758 (3) and section 759 of the Code of Civil Procedure. In addition, sections 890 and 891 of the Code of Civil Procedure shall remain applicable.

(2) In cases of an interlocutory order in matters concerning protection against violence, insofar as the object of the proceedings relates to rules as to matters concerning the marital home, and in matters concerning the marital home, repeated instructions may be issued concerning possession within the meaning of section 885 (1) of the Code of Civil Procedure for the duration of the proceedings. Renewed service on the obligated person shall not be required.

Section 96a

Enforcement in Matters Relating to Parentage

(1) Enforcement of titled claims arising from a final and binding order or a judicial settlement pursuant to section 1598a of the Civil Code to acquiesce in the taking of a genetic sample in compliance with recognized principles of science, in particular the taking of a saliva or blood sample, shall be precluded when the person to be examined cannot reasonably be expected to undergo the taking of this sample.

(2) In the case of repeated unjustified rejection of the examination, direct coercion may also be applied, in particular, compulsory transit to the examination may be ordered.

Part 9

Proceedings with Transnational Elements

Chapter 1

Relationship to International Law Agreements and Legal Acts of the European Community

Section 97

Priority and Integrity

(1) Provisions in international law agreements shall have priority over the provisions in this statute insofar as they have become directly applicable national law. Provisions in legal acts of the European Community shall remain unaffected.

(2) Provisions enacted for the implementation and execution of agreements and legal acts within the meaning of subsection (1) shall remain unaffected.

Chapter 2

International Jurisdiction

Section 98

Marital Matters; Interconnection of Divorce and Ancillary Proceedings

(1) German courts shall have jurisdiction over marital matters when:

1. a spouse is or was German at the time of entering into the marriage;
2. both spouses have their place of usual residence in Germany;
3. one spouse is a stateless person with place of usual residence in Germany;
4. one spouse has his place of usual residence in Germany, with the proviso that the decision to be made obviously would not be recognized under the law of any state of which one of the spouses is a national.

(2) In cases of the interconnection of divorce and ancillary proceedings, the jurisdiction of German courts pursuant to subsection (1) shall extend to such ancillary proceedings.

Section 99 Parent and Child Matters

(1) Except for proceedings pursuant to section 151 no. 7, German courts shall have jurisdiction when the child:

1. is German or
2. his place of usual residence is in Germany.

In addition, German courts shall have jurisdiction to the extent the child requires the care of a German court.

(2) If both German courts and the courts of a foreign country have jurisdiction with respect to the order of guardianship and if guardianship is pending in the other country, the German court may refrain from issuing a guardianship order when this is in the interests of the ward.

(3) If both German courts and the courts of a foreign country have jurisdiction with respect to the order of guardianship and if a guardianship exists within Germany, the court before which the guardianship proceeding is pending may relinquish the matter to the country whose courts would have jurisdiction over a guardianship order when this is in the interests of the ward, the guardian states agreement therewith, and the other country states its willingness to assume the guardianship. If the guardian, or, in cases where two or more persons have joint guardianship, one of the guardians, agrees, then instead of the court where the guardianship is pending, a decision shall be made by the court of a higher instance in the proceedings. The order shall not be appealable.

(4) Subsections (2) and (3) shall apply *mutatis mutandis* to proceedings pursuant to section 151 nos. 5 and 6.

Section 100 Matters Relating to Parentage

German courts shall have jurisdiction when the child, the mother, the father, or the man who has made a declaration in lieu of an oath that he and the mother had sexual relations during the time of conception:

1. is German or
2. has his place of usual residence in Germany.

Section 101 Matters Relating to Adoption

German courts shall have jurisdiction when the person seeking to adopt, one of the spouses seeking to adopt, or the child:

1. is German or
2. has his place of usual residence in Germany.

Section 102 Matters Relating to the Equalisation of Pension Rights

German courts shall have jurisdiction when:

1. the applicant or the respondent has his place of usual residence in Germany;
2. a decision is to be made concerning claims within Germany, or
3. a German court dissolved the marriage between the applicant and respondent.

Section 103

Matters Concerning Life Partnerships

(1) German courts shall have jurisdiction over matters concerning life partnerships relating to the dissolution of the life partnership based upon the Act on Registered Life Partnerships or the establishment of the existence or non-existence of a life partnership when:

1. a life partner is or was German at the time of the establishment of the life partnership,
2. the place of usual residence of one of the life partners is in Germany, or
3. the life partnership was established before a competent German public body.

(2) In cases of the interconnection of the dissolution of life partnerships and ancillary proceedings, the jurisdiction of German courts pursuant to subsection (1) shall extend to such proceedings.

(3) Sections 99, 101, 102, and 105 shall apply *mutatis mutandis*.

Section 104

Matters Concerning Custodianship and Involuntary Commitment; Curatorship for Adults

(1) German courts shall have jurisdiction when the person concerned or the adult ward;

1. is German or
2. his place of usual residence is in Germany.

In addition, German courts shall have jurisdiction to the extent the person concerned or the adult ward requires the care of a German court.

(2) Section 99 (2) and (3) shall apply *mutatis mutandis*.

(3) In cases of involuntary commitment pursuant to section 312 no. 3, subsections (1) and (2) shall not be applicable.

Section 105

Other Proceedings

In other proceedings pursuant to this statute, German courts shall have jurisdiction when local jurisdiction lies with a German court.

Section 106

Non-exclusionary Effect of Jurisdiction

Jurisdiction as set forth in this Chapter shall not be exclusive.

Chapter 3

Recognition and Enforceability of Foreign Judgments in Marital Matters

Section 107

Recognition of Foreign Judgments in Marital Matters

(1) Judgments annulling, terminating, or dissolving a marriage, or declaring a legal separation, or establishing the existence or non-existence of a marriage between the participants in a foreign country shall only be recognized when the *Land* justice administration department has established that the prerequisites for recognition are fulfilled. If a court or a public authority of the state of which both spouses were citizens at the time of

the judgment reached a decision, recognition shall not be dependent upon such an establishment by the *Land* justice administration department.

(2) The justice administration department in the *Land* in which one spouse has his place of usual residence shall have jurisdiction. If neither spouse has a place of usual residence in Germany, the justice administration department of the *Land* shall have jurisdiction in which a new marriage or life partnership is to be entered into; the *Land* justice administration department may request proof that the marriage or life partnership entered into has been registered. When no other basis for jurisdiction exists the Berlin *Land* justice administration department shall have jurisdiction.

(3) The *Land* governments may transfer the authority of the *Land* justice administration department in accordance with these provisions to one or more of the presidents of the Higher Regional Courts by way of statutory instrument. The *Land* governments may transfer the power in the first sentence by way of statutory instrument to the *Land* justice administration department.

(4) A decision shall be made upon application therefor. The application can only be filed by a person who credibly demonstrates a legal interest in the recognition.

(5) If the *Land* justice administration department rejects the application, the applicant may apply for a decision from the Higher Regional Court.

(6) If the *Land* justice administration department establishes that the prerequisites for recognition are fulfilled, a spouse who had not submitted the application may apply for a decision from the Higher Regional Court. The decision of the *Land* justice administration department shall become effective upon notification to the applicant. However, the *Land* justice administration department may determine in its decision that such decision shall first become effective after a certain period of time has passed.

(7) Jurisdiction shall lie with a civil panel of the Higher Regional Court in the district of which the *Land* justice administration department has its seat. An application for a judicial decision shall not have suspensive effect. Parts 4 and 5 and sections 14 (1) and (2) and 48 (2) shall apply *mutatis mutandis*.

(8) The above provisions shall be applicable *mutatis mutandis* to an application that seeks to establish that the prerequisites for recognition are not fulfilled.

(9) The establishment that the prerequisites are or are not fulfilled shall be binding upon courts and administrative authorities.

(10) If on 1 November 1941 a German family register (marriage register) contained a notation based upon a foreign decision concerning an annulment, termination, dissolution, separation, or the existence or non-existence of a marriage, the notation shall be equivalent to recognition pursuant to these provisions.

Section 108

Recognition of Other Foreign Judgments

(1) With the exclusion of judgments in marital matters, foreign judgments shall be recognized without the requirement of a particular proceeding.

(2) Participants who have a legal interest therein may apply for a decision on the recognition or non-recognition of a foreign judgment that does not involve property law. Section 107 (9) shall apply *mutatis mutandis*. As to the recognition or non-recognition of the adoption of a child, however, sections 2, 4, and 5 of the *Act on the Effect of Adoptions according to Foreign Law (Adoptionswirkungsgesetz, AdWirkG)* shall be applicable when the adopted person at the time of the adoption had not yet reached the age of 18.

(3) Local jurisdiction for a decision on an application in accordance with subsection (2) sentence 1 shall lie with the court in the district of which at the time of the filing of the application:

1. the person opposing the application or the person that the decision on the application relates to has his usual place of abode or

2. if there is no local jurisdiction pursuant to no. 1, interest in the establishment became known or the need for care arose.

This jurisdiction shall be exclusive.

Section 109

Impediments to Recognition

(1) Recognition of a foreign judgment shall be excluded:

1. when the courts of the other state do not have jurisdiction under German law;
2. when a participant, who did not comment on the main action and claims that the document initiating the proceeding was improper or that notification was untimely so that he could not properly exercise his rights;
3. when the judgment is incompatible with a judgment issued or recognized earlier in Germany, or when the proceedings at the basis of such judgment are incompatible with proceedings that were previously pending here;
4. when recognition of the judgment would lead to a result that is obviously incompatible with significant principles of German law, in particular when recognition is incompatible with fundamental rights.

(2) Section 98 (1) no. 4 shall not proscribe recognition of a foreign judgment in a marital matter when a spouse has his place of usual residence in the state in which its courts decided. If a foreign judgment in a marital matter is recognized by the states of which the spouses are nationals, section 98 shall proscribe recognition of the judgment.

(3) Section 103 shall not proscribe recognition of a foreign decision in a life partnership matter when the country that maintains the register recognizes the judgment.

(4) Recognition of a foreign judgment relating to:

1. matters concerning family disputes;
2. an obligation of care and support in the community of the life partners;
3. governance of the legal relationship as to the joint residence and household objects of the life partners,
4. decisions pursuant to section 6 sentence 2 of the Act on Registered Life Partnerships in conjunction with sections 1382 and 1383 of the Civil Code, or
5. decisions pursuant to section 7 sentence 2 of the Act on Registered Life Partnerships in conjunction with sections 1426, 1430, and 1452 of the Civil Code

shall also be excluded when reciprocity is not guaranteed.

(5) An examination of the legitimacy of the foreign judgment shall not take place.

Section 110

Enforceability of Foreign Judgments

(1) A foreign judgment shall not be enforceable when it cannot be recognized.

(2) Insofar as the substance of a foreign judgment relates to a duty in section 95 (1), enforceability shall be ruled upon in an order. The order shall contain the grounds therefor.

(3) The Local Court in the district that would have general local jurisdiction over the obligor shall have jurisdiction for the order, otherwise the Local Court in which a lawsuit could be filed against the obligor pursuant to section 23 of the Code of Civil Procedure shall have jurisdiction. The order shall first be issued only after the judgment of the foreign court becomes final and binding under the laws applicable to that court.

Book 2

Proceedings in Family Matters

Part 1
General Provisions

Section 111
Family Matters

Family matters are:

1. marital matters;
2. parent and child matters;
3. parentage matters;
4. adoption matters;
5. matters concerning the marital home and household objects;
6. matters concerning protection from violence;
7. matters concerning the equalisation of pension rights;
8. matters concerning maintenance;
9. matters concerning marital property law;
10. other family matters;
11. matters concerning life partnerships.

Section 112
Matters Concerning Family Disputes

Matters concerning family disputes are the following family matters:

1. matters concerning maintenance pursuant to section 231 (1) and life partnership matters pursuant to section 269 (1) nos. 8 and 9;
2. matters concerning marital property law pursuant to section 261 (1) and life partnership matters pursuant to section 269 (1) no. 10; and
3. other family matters pursuant to section 266 (1) and life partnership matters pursuant to section 269 (2).

Section 113
Application of Provisions from the Code of Civil Procedure

(1) In marital matters and in family dispute matters, sections 2 through 22, 23 through 37, 40 through 45, 46 sentences 1 and 2, sections 47, 48, and 76 through 96 shall not be applicable. The general provisions of the Code of Civil Procedure and the provisions of the Code of Civil Procedure concerning proceedings before the Regional Courts shall be applicable *mutatis mutandis*.

(2) In family dispute matters the provisions of the Code of Civil Procedure concerning proceedings on claims arising from a deed, proceedings on claims arising from a bill of exchange, and proceedings for payment orders, shall apply *mutatis mutandis*.

(3) In marital matters and family disputes, section 227 (3) of the Code of Civil Procedure shall not be applicable.

(4) In marital matters, the provisions of the Code of Civil Procedure in respect of:

1. the consequences of ignoring or refusing to provide explanations of facts;
2. the prerequisites for modification of the lawsuit;

3. the determination of the form of procedure, an early first court hearing, preliminary proceedings conducted in writing, and the statement of defence;
4. a conciliation hearing;
5. the effect of admissions before a court;
6. acknowledgment;
7. the consequences of ignoring or refusing to provide explanations concerning the authenticity of documents; and
8. waiver of placing the opponent, witnesses, or experts under oath

shall not be applicable.

(5) Upon application of the Code of Civil Procedure, in place of the term:

1. "procedure" or "legal dispute" the term "proceeding,"
2. "complaint/action" the term "application,"
3. "plaintiff" the term "applicant,"
4. "defendant" the term "respondent,"
5. "party" the term "participant"

shall be used.

Section 114

Representation by an Attorney; Power of Attorney

- (1) In marital matters and in ancillary proceedings, spouses before the family court and the Higher Regional Court and participants in independent family dispute matters shall be represented by an attorney.
- (2) Before the Federal Court of Justice the participants shall be represented by an attorney admitted to practice before the Federal Court of Justice.
- (3) Public authorities and legal entities under public law including cooperations formed by them for fulfilling their public duties may be represented by their own employees or by employees of other public authorities or legal entities under public law including cooperations formed by them for fulfilling their public duties. Before the Federal Court of Justice they must be represented by authorised persons who are qualified to hold judicial office.
- (4) Representation by an attorney is not required:
 1. in proceedings on interlocutory orders;
 2. in matters concerning maintenance as to participants who are represented by the Youth Welfare Office as legal adviser, guardian, or Supplemental guardian;
 3. for agreement to a divorce, to withdrawal of an application for divorce, and to withdrawal of an agreement on divorce,
 4. for an application for severance of an ancillary proceeding from a divorce proceedings;
 5. in proceedings on legal aid;
 6. in matters under section 78 (3) of the Code of Civil Procedure; and
 7. for an application for implementation of equalisation of pension rights pursuant to section 3 (3) of the Act on the Equalisation of Pension Rights (*Versorgungsausgleichgesetz*; *VersAusglG*) and the declarations concerning option rights

to be made pursuant to section 15 (1) and (3) of the Act on the Equalisation of Pension Rights.

(5) An authorised representative in marital matters shall have a special power of attorney specific to the proceedings. The power of attorney for divorce matters shall also be applicable to the ancillary proceedings.

Section 115

Dismissal of Means of Challenge or Defence

In matters concerning marriage and in family dispute matters, means of challenge or defence that were not timely submitted shall be dismissed when in the sole discretion of the court their admissibility would delay the conclusion of the proceedings and the delay relates to gross negligence. Otherwise, means of challenge or defence in deviation from the general provisions shall be admissible.

Section 116

Decision by Order; Effectiveness

- (1) The court shall decide in family matters by way of an order.
- (2) Final decisions in marital matters shall become effective when they are final and binding.
- (3) Final decisions in family dispute matters shall become effective when they are final and binding. The court may order that the decision has immediate effect. Insofar as the decision contains an obligation to pay maintenance, the court shall order immediate effect.

Section 117

Appellate Remedies in Marital and Family Dispute Matters

- (1) In marital matters and family dispute matters, as the basis of the complaint on appeal the applicant shall submit a particular request for relief together with the grounds therefor. The statement shall be submitted to the appellate court. The deadline for providing the grounds for the appeal shall be two months and shall commence upon the written notification of the order, however, at the latest five months after the issuance of the order. Section 520 (2) sentences 2 and 3 as well as section 522 (1) sentences 1, 2, and 4 of the Code of Civil Procedure shall apply *mutatis mutandis*.
- (2) In appellate proceedings sections 514, 516 (3), 521 (2), 524 (2) sentences 2 and 3, 527, 528, 538 (2), and 539 of the Code of Civil Procedure shall apply *mutatis mutandis*. A conciliation hearing shall not be required in proceedings on complaints on appeal or in appeals on points of law.
- (3) If the appellate court intends to forego specific procedural steps based upon section 68 (3) sentence 2 the court shall inform the participants prior thereto.
- (4) If the final decision is pronounced at the court hearing in which the oral argument was concluded, the grounds therefor may also be included in the record.
- (5) Sections 233 and 234 (1) sentence 2 of the Code of Civil Procedure shall apply *mutatis mutandis* to restoration of the status quo ante in respect of failure to observe the time limit for submitting the grounds for a complaint on appeal or an appeal on points of law.

Section 118

Reopening of Proceedings

Sections 578 through 591 of the Code of Civil Procedure shall apply *mutatis mutandis* to the reopening of proceedings in marital matters and family dispute matters.

Section 119

Interlocutory Order and Seizure

- (1) In family dispute matters the provisions of this statute concerning interlocutory orders shall be applicable. In family dispute matters pursuant to section 112 nos. 2 and 3, section 945 of the Code of Civil Procedure shall apply *mutatis mutandis*.
- (2) In family dispute matters the court may order seizure. Sections 916 through 934 and sections 943 through 945 of the Code of Civil Procedure shall apply *mutatis mutandis*.

Section 120 Enforcement

(1) Enforcement in marital matters and family dispute matters shall take place in accordance with the provisions of the Code of Civil Procedure concerning compulsory enforcement.

(2) Final decisions shall be enforceable upon taking effect. If the obligated person credibly demonstrates that enforcement will cause him an irreparable disadvantage, upon his application the court shall dismiss or limit the enforcement in the final decision prior to it becoming final and binding. In cases under section 707 (1) and section 719 (1) of the Code of Civil Procedure, the enforcement shall only be discontinued or limited upon the fulfilment of the same prerequisites.

(3) An obligation to enter into marriage and to establish marital life shall not be subject to enforcement.

Part 2 Proceedings in Marital Matters; Proceedings in Divorce Matters and Ancillary Proceedings

Chapter 1 Proceedings in Marital Matters

Section 121 Marital Matters

Marital matters are proceedings:

1. concerning dissolution of the marriage (divorce matters),
2. concerning annulment of the marriage, and
3. concerning the establishment of the existence or non-existence of a marriage between the participants.

Section 122 Local Jurisdiction

The exclusive jurisdiction of a court shall take priority as follows:

1. the court in the district of which one of the spouses has his place of usual residence with all of the common minor children;
2. the court in the district of which one of the spouses has his place of usual residence with some of the common minor children, to the extent that none of the common minor children have their place of usual residence with the other spouse;
3. the court in the district of which the spouses together most recently had their place of usual residence when one of the spouses had his place of usual residence in the district of this court at the time of the commencement of the legal proceedings;
4. the court in the district of which the respondent has his place of usual residence;
5. the court in the district of which the applicant has his place of usual residence;
6. the Schöneberg Local Court in Berlin.

Section 123 Transfer of Proceedings in Cases of Pendency of Several Marital Matters

If marital matters that relate to the same marriage are pending at different courts in the first instance, when only one of the proceedings is a divorce matter the remaining marital matters shall be relinquished *ex officio* to the court before which the divorce matter is pending. In all other cases relinquishment shall be made to the court before which a marital matter was first

pending. Section 281 (2) and (3) sentence 1 of the Code of Civil Procedure shall apply *mutatis mutandis*.

Section 124
Application

The proceedings in marital matters shall commence upon the filing of a written application. The provisions of the Code of Civil Procedure concerning the statement of claim shall apply *mutatis mutandis*.

Section 125
Capacity to Participate in Proceedings

- (1) In marital matters a spouse who has only limited capacity to contract shall have capacity to participate in the proceedings.
- (2) As to a spouse who does not have capacity to contract, the proceedings shall be handled by the legal representative. The legal representative shall require the approval of the family or custodianship court to file an application for divorce or annulment of the marriage.

Section 126
Several Marital Matters; Marital Matters and Other Proceedings

- (1) Marital matters that relate to the same marriage may be joined together.
- (2) Joinder of marital matters with other proceedings shall be inadmissible. Section 137 shall remain unaffected hereby.
- (3) If both divorce and annulment have been applied for in the same proceeding and if each is well-founded, only annulment of the marriage shall be pronounced.

Section 127
Limited Judicial Inquiry

- (1) The court shall conduct the necessary inquiries *ex officio* to establish the facts necessary for a decision.
- (2) In proceedings on divorce or annulment of the marriage, facts not presented by the participants shall only be considered when they are suitable for serving to uphold the marriage or when the applicant does not object to their consideration.
- (3) In proceedings on divorce the court shall consider extraordinary circumstances pursuant to section 1568 of the Civil Code only when presented by the spouse who objects to the divorce.

Section 128
Personal Appearance of the Spouses

- (1) The court shall order the personal appearance of the spouses and shall hear them. The hearing of a spouse shall take place in the absence of the other spouse when this is necessary to protect the spouse being heard or for other reasons. The court may examine *ex officio* one or both of the spouses as participants even if the prerequisites pursuant to section 448 of the Code of Civil Procedure are not fulfilled.
- (2) If there are common minor children of the marriage, the court shall also hear the spouses on the issues of parental custody and contact and shall inform them of options for counselling.
- (3) If a spouse is unable to appear or if he lives such a distance from the seat of the court that it is unreasonable to require him to appear, the hearing or examination may take place before a requested judge.
- (4) The measures to be taken against a spouse who fails to appear shall be the same as those taken against a witness who does not appear at the examination hearing; administrative detention shall be excluded.

Section 129
Cooperation of Administrative Authorities or Third Persons

(1) If a competent administrative authority or in the case of a violation set forth in section 1306 of the Civil Code a third person applies for annulment of the marriage, the application shall be directed toward both spouses.

(2) If a spouse or a third person submits an application in cases under section 1316 (1) no. 1 of the Civil Code the competent administrative authority shall be informed. In such cases the competent administrative authority, even when it did not submit the application, may conduct the proceedings, especially with respect to the submission of independent applications or appeals. In the case of an application for establishment of the existence or non-existence of a marriage between the participants, sentences 1 and 2 shall apply *mutatis mutandis*.

Section 130 **Default of a Participant**

(1) A default judgment against the applicant shall be issued so that the application is considered to have been withdrawn.

(2) A default judgment against the respondent, as well as a decision based on the record as it stands, shall be inadmissible.

Section 131 **Death of a Spouse**

If a spouse dies before the final judgment in the marital matter is final and binding, the proceeding shall be treated as concluded in the main action.

Section 132 **Costs upon Annulment of the Marriage**

(1) If annulment of the marriage is pronounced, the costs of the proceedings shall be shared. If this appears inequitable in light of the fact that upon entering into the marriage one spouse alone had knowledge that the marriage could be annulled or if one spouse through wilful deception or illegal threat against the other spouse or with knowledge thereof intended to enter into the marriage, the court at its discretion may otherwise apportion the costs.

(2) Subsection (1) shall not be applicable when the marriage is annulled based upon an application submitted by the competent administrative authority or by a third person in the case of a violation set forth in section 1306 of the Civil Code.

Chapter 2 **Proceedings in Divorce Matters and Ancillary Proceedings**

Section 133 **Contents of the Written Application**

(1) The written application shall contain:

1. the name and birthdate of the common minor children and information on their place of usual residence,
2. a statement whether the spouses have reached agreement in respect of parental custody, visitation, support concerning the common minor children, statutory spousal maintenance arising based upon the establishment of the marriage, the legal status concerning the marital home and household property, and
3. information concerning whether there are any other family matters pending in which both spouses are participants.

(2) The marriage certificate and the birth certificates of the common minor children should accompany the written application.

Section 134 **Approval of Divorce and of Withdrawal; Revocation**

- (1) Approval of the divorce or of withdrawal of the application for divorce may be made orally to be recorded by the registry clerk or may be stated orally during oral argument for recording by the court.
- (2) Approval of the divorce may be revoked up until the conclusion of the oral argument at which a decision on the divorce will be made. The revocation may be made orally to be recorded by the registry clerk or may be stated orally during oral argument for recording by the court.

Section 135

Out-of-Court Conflict Resolution as to Ancillary Proceedings

The court may order that the spouses individually or jointly participate in a free informational interview concerning mediation or other options for out-of-court conflict resolution in respect of pending ancillary proceedings with a person or agency selected by the court and shall submit a confirmation of this. The order shall not be independently appealable nor shall it be enforceable by administrative means of coercion.

Section 136

Suspension of Proceeding

- (1) The court should suspend the proceeding *ex officio* when at its discretion it is convinced that there is a reasonable prospect that the marriage will continue. If the spouses have lived apart for more than one year, the proceeding cannot be suspended against the objection of both spouses.
- (2) If the applicant applies for suspension of the proceeding, the court shall not grant a dissolution of the marriage before the proceeding was suspended.
- (3) The suspension shall only be repeated one time. It shall not exceed a total duration of one year and in the case of a separation for longer than three years, it shall not exceed six months.
- (4) Upon suspension, the court as a rule shall recommend that the spouses participate in marriage counselling.

Section 137

Joinder of Divorce Proceedings and Ancillary Proceedings

- (1) Divorce and ancillary proceedings are to be argued and decided together (Joinder).
- (2) Ancillary proceedings are:
1. proceedings on the equalisation of pension rights,
 2. maintenance and support proceedings, to the extent there is a duty of support in respect of common children or statutory maintenance arising from the establishment of the marriage, with the exception of simplified proceedings concerning support for minors,
 3. proceedings concerning the marital home and household objects, and
 4. proceedings concerning marital property law matters

when a decision in the case of divorce is to be made and the family matter was filed at the latest two weeks prior to the oral argument in the first instance in the divorce proceeding by one of the spouses. As to the equalisation of pension rights no application is required in cases pursuant to section 6 through 19 and 28 of the Act on the Equalisation of Pension Rights.

(3) A proceeding on parent and child matters is also an ancillary proceeding when the issues involve the transfer or revocation of parental custody, contact rights, surrender of a common child of the spouses, or contact rights of one spouse with a child of the other spouse, when one spouse submits an application for joinder of the issues prior to the conclusion of the oral argument in the first instance in the divorce matter, except when the court does not find joinder to be proper based upon the best interests of the child.

(4) In the case of a referral or relinquishment, proceedings that fulfil the prerequisites of subsection (2) or subsection (3) shall be joined as ancillary proceedings before the court where the divorce proceeding is pending.

(5) Severed ancillary proceedings pursuant to subsection (2) shall remain ancillary proceedings; if more than one ancillary proceeding is severed, those matters shall remain joined. Ancillary proceedings pursuant to subsection (3) shall be continued as independent matters after severance.

Section 138 Assignment of Counsel

(1) If the respondent in a divorce proceeding is not represented by counsel, the court shall assign counsel to him for the divorce matter and an ancillary proceeding involving parent and child matters *ex officio* for asserting his rights in the first instance when at the discretion of the court this measure appears necessary for the protection of the participant; section 78c (1) and (3) of the Code of Civil Procedure shall apply *mutatis mutandis*. Prior to the assignment the participant shall be heard in-person and shall also be informed that, and under which conditions, family matters may be addressed and decided concurrently with the divorce proceeding.

(2) The assigned counsel shall have the status of adviser.

Section 139 Joinder of Additional Participants and Third Parties

(1) If there are other participants in addition to the spouses, prepared written pleadings, copies, or transcripts shall only be disclosed or served to the extent the contents of the writing concern such person. The same shall apply to the service of decisions on third persons who are entitled to file appeals.

(2) Additional participants may be excluded from participation in the oral argument to the extent that the family matter in which they are included is not the subject matter of the oral argument.

Section 140 Severance

(1) If in an ancillary proceeding concerning maintenance or marital property law an additional person beyond the spouses is a participant in the proceedings, the ancillary proceeding shall be severed.

(2) The court may sever an ancillary proceeding from joined matters. This shall only be permissible when:

1. a decision is not possible in an ancillary proceeding concerning the equalisation of pension rights or marital property law prior to the dissolution of the marriage,
2. in a proceeding concerning the equalisation of pension rights the proceeding has been suspended because a legal dispute in respect of the existence or amount of a right is pending before another court,
3. in an ancillary proceeding concerning parent and child matters the court finds that it is in the best interests of the child to do so or the proceeding has been suspended,
4. more than three months have passed since the legal pendency of the application for divorce, both spouses have undertaken the necessary actions for cooperating in the equalisation of pension rights proceeding, and they jointly agree to apply for severance, or
5. the grant of the divorce has been so unusually delayed that in light of the significance of the ancillary proceeding further delay would present undue hardship and one spouse has applied for severance.

(3) In cases under subsection (2) no. 3 upon the application of a spouse the court may also sever an ancillary proceeding concerning maintenance when this appears necessary based upon a connection to an ancillary proceeding concerning parent and child matters.

(4) In cases under subsection (2) nos. 4 and 5 the time prior to the expiration of one year from the time the spouses began living separately shall not be considered. This shall not apply to the extent the conditions set forth in section 1565 (2) of the Civil Code have been met.

(5) An application for severance may be recorded by the clerk of the court registry or may be recorded by the court in the record of the oral argument.

(6) The decision shall be made in the form of a separate order; it shall not be independently appealable.

Section 141

Withdrawal of Application for Divorce

If an application for divorce is withdrawn the effects of the withdrawal shall extend to the ancillary proceedings. This shall not apply to ancillary proceedings in respect of a transfer of parental custody or a portion of parental custody to one parent, a guardian, or a curator based upon endangerment to the welfare of the child, or to ancillary proceedings with respect to which a participant expressly stated the desire to continue the proceeding prior to the effectiveness of the withdrawal. These shall be continued as independent family matters.

Section 142

Integrated Final Decision; Rejection of Application for Divorce

(1) In the case of divorce a decision shall be made for each of the joined family matters in an integrated order. This shall also apply with respect to a default decision.

(2) If the application for divorce is rejected the ancillary proceedings shall become void. This shall not apply to ancillary proceedings pursuant to section 137 (3) or to ancillary proceedings with respect to which a prior to the decision a participant expressly stated the desire to continue the proceeding. This shall be continued as an independent family matter.

(3) If an order pursuant to subsection (1) contains a decision concerning an equalisation of pension rights reference may be made in this regard to the operative provisions at the pronouncement of the order.

Section 143

Protest

If in a case pursuant to section 142 (1) sentence 2 a protest is entered against the default decision and an appeal was otherwise filed against the order, argument shall first be held and a decision made on the protest and the default decision.

Section 144

Waiver of Cross-Appeal

If the spouses waived appeals against the grant of divorce they may also waive a challenge thereto as part of a cross-appeal in an ancillary proceeding, before such appeal has been submitted.

Section 145

Time limit for Extension of Appeal and Cross-Appeal

(1) If an integrated decision made in accordance with section 142 is appealed in part by filing a complaint on appeal or a complaint on points of law, the portions of the integrated decision that relate to a different family matter shall only be appealable at the latest one month from the disclosure of the grounds for appeal, through an extension of the appeal or through a cross-appeal; in the case of more than one disclosure of the grounds for appeal, the last in time shall be determinative. If there is no statutory requirement for providing the grounds for appeal, instead of the disclosure of the grounds for appeal the time of the submission of the briefs through which the appeal was submitted shall be determinative.

(2) If an extension of the appeal or a cross-appeal takes place within this deadline, the deadline shall increase by one additional month. In the case of renewed extension of the appeal or cross-appeal within the extended deadline, the first sentence shall apply *mutatis mutandis*.

Section 146

Referral Back to a Court of Lower Instance

(1) If a decision rejecting the application for divorce is reversed the appellate court shall refer the matter back to the court of lower instance that had issued the rejection when an ancillary proceeding is pending there. The court shall also use the legal assessment upon which the reversal was based as a basis for its decision.

(2) Upon an application therefor, the court to which the matter is referred back may order that the ancillary proceeding be heard when an appeal has been filed against the reversal decision.

Section 147

Expanded Reversal

If a decision is reversed in part on an appeal on points of law, upon application by a participant the appellate court may also reverse the decision and refer the matter back to the court of lower instance for further argument and decision to the extent it appears necessary to do so based upon the interrelationship with the reversed decision. An application for reversal of the grant of divorce can only be submitted within one month after service of the grounds for the appeal or the order on admissibility of the appeal and in the case of more than one service, up until the expiration of one month after the last service took place.

Section 148

Effectiveness of Decision in Ancillary Proceedings

Decisions in ancillary proceedings shall not be effective prior to the grant of divorce becoming final and binding.

Section 149

Extension of the Approval of Legal Aid

The approval of legal aid for the divorce matter shall extend to ancillary proceedings concerning the equalisation of pension rights insofar as such extension has not been explicitly precluded.

Section 150

Costs in Divorce Proceedings and Ancillary Proceedings

(1) If the divorce is granted, the costs of the divorce proceedings and ancillary proceedings shall be shared.

(2) If the application for divorce is rejected or withdrawn, the applicant shall bear the costs of the divorce proceedings and ancillary proceedings. If applications for divorce of each spouse are withdrawn or rejected or if the proceeding is concluded in the main action, the costs for the divorce proceedings and ancillary proceedings shall be shared.

(3) If in an ancillary matter that is not severed pursuant to section 140 (1) there are additional participants, these persons shall bear their own out-of-court costs.

(4) If in cases under subsections (1) through (3) it appears that the apportionment of costs is inequitable particularly with respect to the reconciliation of the spouses or the result of a maintenance or marital property law matter pursued as an ancillary proceeding, the court may otherwise apportion the costs at its own discretion. In so doing it may also consider whether a participant did not comply with a judicial order to participate in an informational interview in accordance with section 135 to the extent the participant does not have an adequate excuse therefor. If the participants reached an agreement in respect of cost apportionment, the court shall use it as the basis for its decision in whole or in part.

(5) The provisions in subsections (1) through (4) shall also apply to ancillary proceedings concerning which severance is to be separately decided. If ancillary proceedings are

pursued as independent family matters the provisions on costs applicable thereto shall be applied.

Part 3 Proceedings in Parent and Child Matters

Section 151 Parent and Child Matters

Parent and child matters are proceedings allocated to the family court that relate to:

1. parental custody,
2. the right of contact and the right to information concerning the personal circumstances of the child,
3. surrender of the child
4. guardianship,
5. curatorship or the court appointment of another representative for a minor or for a foetus,
6. the approval of involuntary commitment of a minor (sections 1631b, 1800, and 1915 of the Civil Code),
7. an order of involuntary commitment of a minor pursuant to *Land* statutes concerning the involuntary commitment of persons with psychological disorders, or
8. duties pursuant to the Youth Court Act.

Section 152 Local Jurisdiction

- (1) During the pendency of a marital matter the court before which the marriage issue is or was pending in the first instance shall have exclusive jurisdiction for parent and child matters among German courts insofar as the matter concerns common children of the spouses.
- (2) Otherwise the court in the district of which the child has his place of usual residence shall have jurisdiction.
- (3) If the jurisdiction of a German court is not determined by subsections (1) or (2), the court in the district of which the need for care became known shall have jurisdiction.
- (4) As to measures designated in sections 1693 and 1846 of the Civil Code and in article 24 (3) of the Introductory Act to the Civil Code (*Einführungsgesetz zum Bürgerlichen Gesetzbuch*; EGBGB) the court in the district of which the need for care became known shall also have jurisdiction. It shall communicate the ordered measures to the court before which a guardianship or curatorship matter is pending.

Section 153 Relinquishment to Court Where the Marital Matter Is Pending

If a marital matter is pending before a court, while concurrently a parent and child matter concerning a common child of the spouses is pending in the first instance before a different court, this matter shall be relinquished *ex officio* to the court before which the marital matter is pending. Section 281 (2) and (3) sentence 1 of the Code of Civil Procedure shall apply *mutatis mutandis*.

Section 154 Referral upon Unilateral Change of the Child's Place of Residence

The court that has jurisdiction pursuant to sections 152 (2) may refer the proceedings to the court in the district of which the child previously had his place of usual residence if one parent changes the place of residence of the child without the prior agreement of the other parent. This shall not apply when the other parent does not have a right of agreement

concerning the place of residence of the child or if the change in the place of residence was necessary for the protection of the child or the care-giving parent.

Section 155

Principles of Priority and Expediting Proceedings

- (1) Parent and child matters concerning the place of residence of a child, the right of contact, or the surrender of the child, as well as proceedings based upon endangerment to the welfare of the child, shall have priority and the proceedings shall be handled in an expedited manner.
- (2) In proceedings in accordance with subsection (1), the court shall discuss the matter with the participants at a court hearing. The court hearing shall take place at the latest one month after the start of the proceedings. The Youth Office shall be heard at this court hearing. Postponement of the court hearing shall only be permissible based upon compelling reasons. The grounds for postponement shall be credibly demonstrated together with the request for postponement.
- (3) The court shall order the personal appearance of the participants with capacity to participate in proceedings at the court hearing.
- (4) If the court suspended a proceeding designated in subsection (1) for the implementation of a mediation or another proceeding for reaching an out-of-court settlement, as a general rule it shall reopen the proceedings after three months if the participants have not agreed upon a settlement.

Section 155a

Proceedings for the Transfer of Joint Parental Custody

- (1) The following provisions in this Section shall apply to proceedings pursuant to section 1626a (2) of the Civil Code. In the application for the transfer of joint parental custody, the birthdate and birthplace of the child shall be provided.
- (2) Section 155 (1) shall apply *mutatis mutandis*. The court shall serve the application for the transfer of joint parental custody on the other parent in accordance with sections 166 through 195 of the Code of Civil Procedure and shall set a deadline for comments thereupon, which for the mother shall not be earlier than six weeks after the birth of the child.
- (3) In cases subject to section 1626a (2) sentence 2 of the Civil Code the court shall decide based upon written proceedings without hearing the Youth Office and without an in-person hearing with the parents. Section 162 shall not be applicable. The court shall communicate to the competent Youth Office pursuant to section 87c (6) sentence 2 of the Eighth Book of the Social Code (*Sozialgesetzbuch VIII*; SGB VIII) its decision and in so doing shall provide the birthdate and birthplace of the child together with the name given the child on the birth certificate for the purposes set forth in section 58a of the Eighth Book of the Social Code, without any requirement as to form.
- (4) If the court becomes aware from the participants or in some other manner of grounds that could be inconsistent with joint parental custody, section 155 (2) shall apply *mutatis mutandis*, with the proviso that the court hearing pursuant to the second sentence shall take place at the latest one month after the reasons have become known, however, not prior to the expiration of the deadline for providing comments as to the mother in accordance with subsection (2) sentence 2. Section 155 (3) and section 156 (1) shall apply *mutatis mutandis*.
- (5) Declarations of parental custody and agreement by the statutory representative of a parent with limited capacity to contract may also be made orally at the court hearing for discussion for recording by the court. Section 1626d (2) of the Civil Code shall apply *mutatis mutandis*.

Section 156

Facilitation of Agreement

- (1) In parent and child matters concerning parental custody upon separation or divorce, the place of residence of the child, rights of contact, and surrender of the child, the court shall facilitate agreement of the participants at every phase of the proceedings, when this is not

contrary to the best interests of the child. It shall provide information on the possibilities for counselling by the counselling offices and services of the child and youth welfare services, especially for the development of an agreed concept for the exercise of parental custody and parent responsibility. The court may order that the parents individually or jointly participate in a free informational interview concerning mediation or other options for out-of-court conflict resolution with a person or agency named by the court and shall submit confirmation thereof. It may also order that the parents participate in counselling pursuant to the second sentence. Orders pursuant to the third and fourth sentences shall not be independently appealable and shall not be enforced by administrative means of coercion.

(2) If the participants reach agreement regarding contact with or surrender of the child, the agreement shall be recorded as a settlement when it has been approved by the court (court-approved settlement). The court shall approve an agreement regarding contact with the child when it is not contrary to the best interests of the child.

(3) If agreement cannot be reached at a court hearing pursuant to section 155 (2) in parent and child matters concerning the place of residence of the child, rights of contact, or the surrender of the child, the court shall discuss issuance of an interlocutory order with the participants and the Youth Office. If in parent and child matters concerning rights of contact, participation in counselling, a free informational interview concerning mediation and other options for out-of-court conflict resolution, or a written expert opinion is ordered, the court shall provide rules for or exclude contact by way of an interlocutory order. The court shall conduct an in-person hearing with the child prior to issuance of an interlocutory order.

Section 157

Discussion of Endangerment to the Welfare of the Child; Interlocutory Order

(1) In proceedings pursuant to sections 1666 and 1666a of the Civil Code the court should discuss with the parents and in suitable cases with the child as well how endangerment to the welfare of the child can be handled, particularly through public agencies and the possible consequences of not accepting necessary assistance.

(2) The court shall order the personal appearance of the parents at the court hearing pursuant to subsection (1). The court shall conduct the discussion in the absence of one parent when necessary to protect a participant or for other reasons.

(3) In proceedings pursuant to sections 1666 and 1666a of the Civil Code the court shall promptly assess the issuance of an interlocutory order.

Section 158

Guardian ad litem for Minors (*Verfahrensbeistand*)

(1) The court shall appoint a suitable guardian ad litem for minors for minor children in parent and child matters concerning the child to the extent necessary for representing his interests.

(2) As a rule appointment is required

1. when the interests of the child are significantly at odds with those of his legal representative;
2. in proceedings pursuant to sections 1666 and 1666a of the Civil Code, when there is consideration of withdrawal of care of the person of the child in whole or in part;
3. when separation of the child from the person currently caring for him will occur;
4. in proceedings the object of which is the surrender of the child or an order for the child to remain where he currently is; or
5. if exclusion or significant limitation of contact is under consideration.

(3) The guardian ad litem for minors shall be appointed as early as possible. Through his appointment he shall become a participant in the proceedings. If the court, in cases under subsection (2), foregoes the appointment of a guardian ad litem for minors, the grounds for this decision shall be provided in the final decision. The appointment of a guardian ad litem

for minors, revocation of an appointment, and rejection of such a measure shall not be independently appealable.

(4) The guardian ad litem for minors shall determine the interests of the child and shall assert these in the court proceedings. He shall inform the child of the object, course, and potential result of the proceedings in a suitable manner. To the extent the circumstances of the individual matter so require, the court may assign additional duties to the guardian ad litem for minors to conduct interviews with the parents and other persons whom the child trusts and to participate in facilitating an agreed settlement concerning the issues in the case. The court shall specify the form and scope of the appointment and shall provide grounds for the appointment. The guardian ad litem for minors may lodge appeals in the interest of the child. He is not the legal representative of the child.

(5) Appointment shall not be made or shall be rescinded when the interests of the child can be reasonably represented by an attorney or another suitable authorised representative.

(6) The appointment shall expire when not previously rescinded:

1. upon the decision concluding the proceedings becoming final and binding, or
2. upon any other conclusion of the proceedings.

(7) Section 277 (1) shall apply *mutatis mutandis* to the reimbursement of expenditures for a non-professional guardian ad litem for minors. If the guardian ad litem for minors conducts this activity as his professional occupation, the guardian ad litem for minors shall receive compensation for the performance of his duties pursuant to subsection (4) the one-time amount of 350 euro in each instance of the proceedings. In the event the guardian ad litem for minors is appointed duties in accordance with subsection (4) sentence 3, the compensation shall be 550 euro. The compensation shall also compensate him for claims for reimbursement with respect to expenditures accrued from the activities as guardian ad litem for minors and with respect to VAT applicable to the compensation. The reimbursement for expenditures and the compensation shall always be paid from the public treasury. Otherwise section 168 (1) shall apply *mutatis mutandis*.

(8) No costs shall be imposed on the guardian ad litem for minors.

Section 159

In-person hearing of the child

(1) The court shall conduct an in-person hearing with the child when he has reached the age of 14. If the proceedings only concern the property of the child, the in-person hearing may be omitted when such a hearing is not indicated based upon the type of issue.

(2) If the child has not reached the age of 14, he shall be heard in-person when the preferences, relationships, or the desires of the child are significant to the decision or when an in-person hearing is otherwise indicated.

(3) The court may forego an in-person hearing with the child pursuant to subsection (1) or (2) when there are substantial grounds therefor. If a hearing does not take place solely because of imminent danger, it shall be held as soon as possible thereafter.

(4) The child should be informed of the object, course, and potential result of the proceedings in a suitable manner for his age to the extent there is no fear of a negative impact on his development, education, or health. He shall be given the opportunity to make a statement. If the court appointed a guardian ad litem for minors for the child pursuant to section 158, the in-person hearing shall take place in his presence. Otherwise, the form of the in-person hearing may be determined within the discretion of the court.

Section 160

Hearing of the Parents

(1) In proceedings that concern the child the court should conduct an in-person hearing with the parents. In proceedings pursuant to sections 1666 and 1666a of the Civil Code an in-person hearing with the parents shall be conducted.

- (2) In other parent and child matters the court shall hear the parents. This shall not apply to a parent who does not have parental custody to the extent clarification is not to be expected from the hearing.
- (3) A hearing shall only be omitted based upon substantial grounds.
- (4) If the hearing does not take place solely because of imminent danger, it shall promptly be held later in time.

Section 161 Cooperation of Curator

- (1) In proceedings that concern the person of the child, the court may bring in the curator as a participant in the interest of the child when the child has lived for a long time in foster care. The first sentence shall apply *mutatis mutandis* when the child, based upon a decision in accordance with section 1682 of the Civil Code, lives with the spouse, life partner, or person with a right of contact designated therein.
- (2) The persons set forth in subsection (1) shall be heard when the child has lived for a long time in foster care.

Section 162 Cooperation of the Youth Office

- (1) In proceedings that concern the person of the child, the court shall hear the Youth Office. If the hearing does not take place solely because of imminent danger, it shall be held as soon as possible thereafter.
- (2) In proceedings pursuant to sections 1666 and 1666a of the Civil Code the Youth Office shall be included as a participant. Otherwise, the Youth Office shall be allowed to participate in the proceedings upon its submission of an application.
- (3) In proceedings that concern the person of the child the Youth Office shall be informed of court hearings and all decisions by the court shall be announced to it. The Youth Office shall be entitled to file a complaint on appeal against an order.

Section 163 Setting of a Deadline for a Written Expert Opinion; Contents of the Mandate for the Expert Opinion; Examination of the Child

- (1) If a written expert opinion is ordered the court shall concurrently set a deadline for the expert within which the expert report shall be submitted.
- (2) In proceedings that concern the person of the child, the court may order that the expert should also attempt to facilitate an agreement between the participants during the preparation of his report.
- (3) The child shall not be examined as a witness.

Section 164 Notification of the Decision to the Child

The decision, against which the child has the right to file a complaint on appeal, shall be announced directly to the child if he has reached the age of 14 and does not lack capacity to contract. The child shall not be informed of the grounds for the decision when there is a fear that this would be disadvantageous to his development, education, or health. Section 38 (4) no. 2 shall not be applicable.

Section 165 Conciliation Proceedings

- (1) If one parent asserts that the other parent has frustrated or obstructed the implementation of a court decision or a court-approved settlement concerning contact with the common child, upon the application of a parent the court shall mediate between the parents. The court may reject the conciliation when a conciliation proceeding or subsequent out-of-court counselling was previously unsuccessful.
- (2) The court shall promptly summon the parents to a conciliation hearing. The court shall order the personal appearance of the parents at this conciliation hearing. In the summons

the court shall provide information on the potential legal consequences of an unsuccessful conciliation pursuant to subsection (5). In suitable cases the court shall also summon the Youth Office to the conciliation hearing.

(3) During the conciliation hearing the court shall discuss with the parents the effect that lack of contact may have on the child's welfare. It shall reference the legal consequences that may arise if contact is frustrated or obstructed, particularly that administrative measures may be imposed or parental custody may be limited or revoked. It shall inform the parents of the existing options for counselling through the counselling offices and services of the child and youth welfare services.

(4) The court shall facilitate agreement between the parents as to the exercise of contact. If a court-approved agreement is achieved, this shall take the place of the previous plan. If agreement is not reached, the disputed points shall be set forth in a memorandum.

(5) If there is no agreement on a plan for contact or if there is no agreement on participation in out-of-court counselling or if at least one parent does not appear at the conciliation hearing, the court shall establish in an order that shall not be appealable that the conciliation proceeding was unsuccessful. In this case the court shall examine whether administrative measures should be taken, amendment to the contact plan should be made, or measures concerning custody should be taken. If a corresponding proceeding is initiated *ex officio* or is initiated within one month of an application by a parent, the costs of the conciliation proceedings shall be treated as a portion of the costs of the subsequent proceedings.

Section 166

Modification and Review of Decisions and Court-Approved Settlements

(1) The court shall modify a decision or a court-approved settlement pursuant to the standards set forth in section 1696 of the Civil Code.

(2) A measure pursuant to the law on child protection of a long duration shall be reviewed by the court at reasonable intervals.

(3) If the court does not view a measure pursuant to sections 1666 through 1667 of the Civil Code as necessary, it shall review its decision after a reasonable interval, generally after three months.

Section 167

Applicable Provisions upon the Involuntary Commitment of Minors

(1) In proceedings pursuant to section 151 no. 6, the provisions governing involuntary commitment matters pursuant to section 312 no. 1, and in proceedings pursuant to section 151 no. 7, the provisions governing involuntary commitment matters pursuant to section 312 no. 3, shall be applicable. The guardian ad litem for minors (*Verfahrensbeistand*) shall take the place of the guardian ad litem (*Verfahrenspfleger*).

(2) If a different court has jurisdiction over a parent and child matter pursuant to subsection (1) than the court before which a matter in respect of guardianship or curatorship with involuntary commitment for the minor child was commenced, this court shall communicate to the court that has jurisdiction over the proceeding pursuant to subsection (1) the order of revocation of guardianship or curatorship, the discontinuation of involuntary commitment, and a change in guardian or curator; the court that has jurisdiction over the proceeding pursuant to subsection (1) shall communicate to the other court involuntary commitment measures and any changes, extension, or discontinuation thereof.

(3) The person concerned shall have capacity to participate in the proceedings without consideration of his capacity to contract when he has reached the age of 14.

(4) In proceedings referred to in subsection (1) sentence 1 the parents who have care of the person of the child, the legal representative in personal matters, and the foster parents shall be heard in person.

(5) The Youth Office shall support the parents, the guardian, or the curator in conducting the involuntary commitment when they so desire.

(6) In proceedings pursuant to section 151 nos. 6 and 7 the expert shall be a physician for child and youth psychiatry and psychotherapy. In proceedings pursuant to section 151 no. 6,

the expert opinion may also be prepared by a psychotherapist, psychologist, educator, or social worker with proven experience in questions of residential care.

Section 167a

Special Provisions for Proceedings under Section 1686a of the Civil Code

(1) Applications for the grant of contact or information rights pursuant to section 1686a of the Civil Code shall only be permissible when the applicant submits a declaration in lieu of an oath that he engaged in sexual intercourse with the mother during the period of conception.

(2) To the extent clarification of the biological father is necessary in proceedings concerning rights of contact or information pursuant to section 1686a of the Civil Code, each person must acquiesce to examinations, particularly the drawing of blood samples, unless the person cannot reasonably be expected to undergo the examination.

(3) Section 177 (2) sentence 2 and section 178 (2) shall apply *mutatis mutandis*.

Section 168

Order on Payments for the Ward

(1) The court shall establish in an order, when the guardian, supervisory guardian, or ward applies therefor or when the court holds that it is reasonable to do so:

1. advance payments, reimbursement of expenditures, and compensation for costs, to the extent the guardian or supervisory guardian can request this from the public treasury (section 1835 (4) and section 1835a (3) of the Civil Code) or if he has not been given authority for care over the property of the child;
2. compensation or partial compensation payment to be approved for the guardian or supervisory guardian (section 1836 of the Civil Code).

Upon such establishment the court shall set forth the amount and timing of the payment that the ward shall make to the state treasury pursuant to sections 1836c and 1836e of the Civil Code. It may separately establish the payments when appropriate. If there is no establishment pursuant to sentence 1 and if the claims set forth in sentence 1 are made against the public treasury, the provisions for proceedings for the compensation of witnesses concerning their expenses shall apply *mutatis mutandis*.

(2) The application should set forth the personal and financial circumstances of the ward. Section 118 (2) sentences 1 and 2, section 120 (2) and (3), and section 120a (1) sentences 1 – 3 of the Code of Civil Procedure shall apply *mutatis mutandis*. If the court is convinced to its satisfaction that the costs involved in establishing the personal and financial circumstances of the ward would not be in relation to the amount of the claims to be paid from the public treasury or the amount of the payments estimated to be owed by the ward, the court without further scrutiny may establish the claim or reject establishing the amount of payments to be made by the ward.

(3) Upon the death of the ward, the court shall establish the amount and timing of the payments that the heirs of the ward are required to pay into the public treasury pursuant to section 1836e of the Civil Code. The heir has the duty to submit information to the court concerning the status of the estate. Upon request, he shall provide the court with a list of the objects belonging to the estate and shall submit a declaration in lieu of an oath that he has provided complete information to the best of his knowledge and belief.

(4) The ward shall be heard prior to the establishment of payments to be made by him in accordance with subsection (1). Prior to a decision in accordance with subsection (3) the heir shall be heard.

(5) Subsections (1) through (4) shall apply *mutatis mutandis* to the curatorship.

Section 168a

Communication Duties of the Registry Office

(1) If the registry office is notified of the death of a person who left behind a minor child or the birth of a child subsequent to the death of the father or the discovery of a minor whose family status cannot be determined, the registry office shall communicate this to the family court.

(2) If parents who have joint custody of a child do not have a married name and if within one month of the birth of a child the birth name of the child has not been established, the registry office shall communicate this to the family court.

Part 4 **Proceedings in Matters Concerning Parentage**

Section 169 **Matters Concerning Parentage**

Matters concerning parentage are proceedings:

1. for the establishment of the existence or non-existence of a parent-child relationship, particularly the effectiveness or ineffectiveness of an acknowledgement of paternity,
2. for substitution of consent to genetic parentage testing and an order of acquiescence to the taking of a sample,
3. for review or provision of a copy of an expert opinion on parentage, or
4. for contesting paternity.

Section 170 **Local Jurisdiction**

- (1) The court in the district of which the child has his place of usual residence shall have exclusive jurisdiction.
- (2) If no German court has jurisdiction pursuant to subsection (1), the place of usual residence of the mother, otherwise the father, shall be determinative of jurisdiction.
- (3) If there is no jurisdiction pursuant to subsections (1) or (2), the Schöneberg Local Court in Berlin shall have exclusive jurisdiction.

Section 171 **Application**

- (1) The proceedings shall be initiated by the filing of an application.
- (2) The application shall specify the objective of the proceedings and the persons concerned. In a proceeding for contesting paternity pursuant to section 1600 (1) nos. 1 through 4 of the Civil Code, those circumstances should be provided that argue against paternity as well as the point in time at which the circumstances became known. In a proceeding for contesting paternity pursuant to section 1600 no. 5 of the Civil Code those circumstances must be provided that justify the assumption that the prerequisites in section 1600 (3) of the Civil Code are fulfilled as well as the point in time at which the circumstances became known.

Section 172 **Participants**

(1) The participants shall be:

1. the child,
2. the mother,
3. the father.

(2) The Youth Office, upon its filing of an application, shall be included as a participant in cases under section 176 (1) sentence 1.

Section 173 **Representation of a Child by an Adviser**

If the child is represented by the Youth Office as an adviser, representation by the parent with parental custody shall be excluded.

Section 174

Guardian ad litem for Minors The court shall appoint a guardian ad litem for minors for a minor participant in matters concerning parentage to the extent necessary for representing his interests. Section 158 (2) no. 1 and (3) through (8) shall apply *mutatis mutandis*.

Section 175

Court Hearing for Discussion; In-Person Hearing

(1) Prior to the taking of evidence concerning parentage the court shall discuss the matter in a court hearing. It shall order the personal appearance of the participants who have capacity to participate in proceedings.

(2) Prior to a decision in respect of a substitution of consent to a genetic parentage test and an order of acquiescence to the taking of a sample (section 1598a (2) of the Civil Code), the court shall conduct an in-person hearing with the parents and a child who has reached the age of 14. The court may conduct an in-person hearing with a younger child.

Section 176

Hearing of the Youth Office

(1) In the case of a contest to paternity pursuant to section 1600 (1) no. 2 and 5 of the Civil Code as well in a case of a contest to paternity pursuant to section 1600 (1) no. 4 of the Civil Code, the court shall hear the Youth Office when the contestation is made by the legal representative. Otherwise the court may hear the Youth Office when a participant is a minor.

(2) The court shall inform the Youth Office of the decision in cases of contestation pursuant to subsection (1) sentence 1 and of a hearing pursuant to subsection (1) sentence 2. The Youth Office shall have the right to file a complaint on appeal against the order.

Section 177

Limited *ex officio* Investigation; Formal Taking of Evidence

(1) In cases concerning a contestation of paternity, facts not presented by the participants shall only be considered when they are suitable to support the continuity of paternity or when the person contesting paternity does not object to such consideration.

(2) A formal taking of evidence shall occur in respect of parentage in proceedings pursuant to section 169 nos. 1 and 4. An assessment by an expert may be replaced by the use of an expert opinion concerning parentage obtained by a participant upon the agreement of the other participants, when the court does not doubt the correctness and completeness of the facts established in the opinion and the participants agree thereto.

Section 178

Testing for the Establishment of Parentage

(1) Insofar as necessary for the establishment of parentage, each person must acquiesce to testing, particularly the drawing of blood samples, unless the person cannot reasonably be expected to undergo the testing.

(2) Sections 386 through 390 of the Code of Civil Procedure shall apply *mutatis mutandis*. Upon repeated unjustified refusal to be examined direct coercion may also be used, particularly an order for presenting the person for testing.

Section 179

Majority of Proceedings

(1) Matters concerning parentage concerning the same child may be joined together. A matter concerning maintenance pursuant to section 237 may be joined with proceedings for the establishment of paternity.

(2) Otherwise joining several matters concerning parentage or with other proceedings shall be inadmissible.

Section 180

Declarations for Recording by the Court

The acknowledgement of paternity, approval by the mother, and revocation of the acknowledgement may also be made orally during a court hearing discussion for recording by the court. The same shall apply for any necessary agreement by the man who was married to the mother of the child at the time of the birth, by the child, or by a legal representative.

Section 181
Death of a Participant

If a participant dies prior to the final decision becoming final and binding, the court shall inform the remaining participants that the proceeding will only be continued when a participant requests this by a declaration to the court within a one month deadline. If no participant requests continuation of the proceeding within the deadline set by the court, this shall apply as concluded in the main proceedings.

Section 182
Contents of the Order

(1) A final and binding order that establishes the non-existence of paternity pursuant to section 1592 of the Civil Code as the result of contestation in accordance with section 1600 (1) no. 2 of the Civil Code, shall contain the establishment of paternity of the contesting person. This result shall be set forth *ex officio* in the operative provisions of the order.
(2) If the court rejects an application for the establishment of the non-existence of paternity because it has established that the applicant or another participant is the father, it shall set this forth in the operative provisions of the order.

Section 183
Costs of Contesting Paternity

If an application for contesting paternity is successful, the participants, with the exception of the minor child, shall bear the costs equally; the participants shall each bear their own out-of-court costs.

Section 184
**Effectiveness of Order; Exclusion of Modification; Supplementary Provisions
Concerning Complaint on Appeal**

(1) The final decision in matters concerning parentage shall become effective when final and binding. Modification shall be excluded.
(2) To the extent a decision has been reached concerning parentage, the order shall be effective in favour of and against all.
(3) Those persons who were or should have been participants in the proceeding shall also be entitled to submit a complaint on appeal against final decisions in matters concerning parentage.

Section 185
Reopening of Proceedings

(1) An application for retrial of the case against an order that is final and binding in which a decision was made concerning parentage shall also be admissible when a participant submits a new expert opinion concerning parentage which alone or together with the evidence taken in the earlier proceeding would have led to a different decision.
(2) The application for reopening the proceedings may also be submitted by the participant who prevailed in the earlier proceedings.
(3) The court with exclusive jurisdiction regarding the application shall be the court that ruled in the first instance; if the challenged order was issued by the court hearing the complaint on appeal or by the court hearing the appeal on points of law, then the court hearing such appeal shall have jurisdiction. If the application is joined with an application for annulment or an application for retrial of the matter pursuant to section 580 of the Code of Civil Procedure, section 584 of the Code of Civil shall be applicable.
(4) Section 586 of the Code of Civil Procedure shall not be applicable.

Part 5
Proceedings in Adoption Matters

Section 186
Adoption Matters

Adoption matters are proceedings concerning

1. the adoption of a minor,
2. substitution of the consent of a parent to the adoption of a minor,
3. cancellation of the adoption relationship, or
4. exemption from the prohibition on entering into the marriage pursuant to section 1308 (1) of the Civil Code.

Section 187
Local Jurisdiction

(1) For proceedings pursuant to section 186 nos. 1 through 3 the court in the district of which the adopting parents or one of the adopting parents has their place of usual residence shall have exclusive jurisdiction.

(2) If no German court has jurisdiction pursuant to subsection (1), the place of usual residence of the child shall be determinative.

(3) For proceedings pursuant to section 186 no. 4 the court in the district of which one of the betrothed persons has his place of usual residence shall have exclusive jurisdiction.

(4) If rules of substantive foreign law are applicable in proceedings pursuant to section 186, section 5 (1) sentence 1 and (2) of the Act on the Effects of Adoption pursuant to Foreign Law (*Gesetz über Wirkungen der Annahme als Kind nach ausländischem Recht*, AdWirkG) shall apply *mutatis mutandis*.

(5) If there is no jurisdiction pursuant to subsections (1) through (4) the Schöneberg Local Court in Berlin shall have jurisdiction. It may transfer the matter to another court for good cause.

Section 188
Participants

(1) Participants to be included are

1. in proceedings pursuant to section 186 (1)
 - a) the adopting person and the person to be adopted,
 - b) the parents of the adoptive child, when he is a minor and it does not involve a case under section 1747 (2) sentence 2 or (4) of the Civil Code, or in a case under section 1772 of the Civil Code,
 - c) the spouse of the adopting person and the spouse of the person to be adopted to the extent it does not involve a case under section 1749 (3) of the Civil Code;
2. in proceedings pursuant to section 186 no. 2, the person whose consent is to be substituted;
3. in proceedings pursuant to section 186 no. 3
 - a) the adopting person and the person to be adopted,
 - b) the biological parents of the minor to be adopted;
4. in proceedings pursuant to section 186 no. 4, the betrothed persons.

(2) The Youth Office and the *Land* Youth Office shall be included as participants upon their application therefor.

Section 189

Professional Opinion of an Adoption Agency

If a minor child is adopted, the court shall obtain the professional opinion of the adoption agency that was the contact for the child concerning whether the child and the adoptive family are suitable for the adoption. If no adoption agency was involved, the professional opinion of the Youth Office or an adoption agency shall be obtained. The professional opinion shall be provided at no cost.

Section 190

Certificate of the Commencement of Guardianship

If the Youth Office became the guardian pursuant to section 1751 (1) sentences 1 and 2 of the Civil Code, the family court shall promptly provide it with a certificate of the commencement of guardianship; section 1791 of the Civil Code shall not be applicable.

Section 191

Guardian ad litem for Minors The court shall appoint a guardian ad litem for minors for a minor who is a participant in an adoption matter to the extent necessary for representing his interests. Section 158 (2) no. 1 and (3) through (8) shall apply *mutatis mutandis*.

Section 192

Hearing the Participants

- (1) In proceedings concerning the adoption of a child or the cancellation of the adoption relationship the court shall conduct an in-person hearing with the adoptive parent and the child.
- (2) In all other cases the participants shall be given the opportunity to be heard.
- (3) The hearing of a minor participant may be omitted when there is fear of a detriment to his development, education, or health or if based upon his young age no information can be expected from such hearing.

Section 193

Hearing Additional Persons

The court may hear the children of the adoptive parent and of the person to be adopted in cases concerning the adoption. Section 192 (3) shall apply *mutatis mutandis*.

Section 194

Hearing the Youth Office

- (1) In matters concerning adoption the court shall hear the Youth Office to the extent the adoptive parent or the person to be adopted is a minor. This shall not apply when the Youth Office must submit a professional opinion pursuant to section 189.
- (2) The court shall inform the Youth Office of the decision in cases in which it was heard or submitted a professional opinion. The Youth Office shall have the right to file a complaint on appeal against the decision.

Section 195

Hearing the *Land* Youth Office

- (1) In cases under section 11 (1) nos. 2 and 3 of the Adoption Placement Act (*Adoptionsvermittlungsgesetz*; AdVermiG) the court shall also hear the central adoption office of the *Land* Youth Office that is a participant pursuant to section 11 (2) of the Adoption Placement Act prior to the pronouncement of the adoption. If no central adoption office is a participant, in its place shall be the *Land* Youth Office in the district of which the Youth Office is located that provided an opinion pursuant to section 194 or that submitted a professional opinion pursuant to section 189.

(2) The court shall inform the *Land* Youth Office of all decisions regarding which it was examined pursuant to subsection (1). The *Land* Youth Office shall have the right to file a complaint on appeal against the decision.

Section 196
Inadmissibility of Joinder

Joinder of an adoption matter with other proceedings shall be inadmissible.

Section 197
Order Concerning the Adoption

(1) The order in which the court pronounces the adoption shall designate the statutory provisions at the basis of the adoption. If the consent of a parent pursuant to section 1747 (4) of the Civil Code is not viewed as necessary, this shall also be stated in the order.

(2) In cases under subsection (1), the order shall become effective upon service on the adoptive parent and after the death of the adoptive parent, upon service on the child.

(3) The order shall not be appealable. Modification or reopening of proceedings shall be excluded.

Section 198
Order in Ancillary Proceedings

(1) An order on the substitution of consent or agreement to the adoption shall only become effective when final and binding. In a case of imminent danger the court may order the immediate effectiveness of the order. The order shall become effective upon notification to the applicant. Modification or reopening of proceedings shall be excluded.

(2) An order through which the court cancels the adoption relationship shall only become effective when final and binding; modification or reopening of proceedings shall be excluded.

(3) An order releasing the participants from the prohibition on marriage pursuant to section 1308 (1) of the Civil Code shall not be appealable; modification or reopening of proceedings shall be excluded when the marriage has been entered into.

Section 199
Application of the Act on the Effects of Adoption Pursuant to Foreign Law

The provisions of the Act on the Effects of Adoption pursuant to Foreign Law shall remain unaffected.

Part 6
Proceedings in Matters Concerning the Marital Home and Household Objects

Section 200
Marital Home; Household Objects

(1) Matters concerning the marital home are proceedings

1. pursuant to section 1361b of the Civil Code,
2. pursuant to section 1568a of the Civil Code.

(2) Matters concerning household objects are proceedings

1. pursuant to section 1361a of the Civil Code,
2. pursuant to section 1568b of the Civil Code.

Section 201
Local jurisdiction

The exclusive jurisdiction of a court shall take priority as follows:

1. during the pendency of a marital matter, the court before which the marital matter is or was pending in the first instance;
2. the court in the district of which the joint home of the spouses is located;

3. the court in the district of which the respondent has his place of usual residence;
4. the court in the district of which the applicant has his place of usual residence.

Section 202

Transfer to the Court before Which the Marital Matter Is Pending

If a marital matter is pending before a court while at the same time a matter concerning the marital home or household objects is pending before a different court in the first instance, this matter shall be transferred *ex officio* to the court before which the marital matter is pending. Section 281 (2) and (3) sentence 1 of the Code of Civil Procedure shall apply *mutatis mutandis*.

Section 203

Application

- (1) The proceedings shall be initiated by the filing of an application by one of the spouses.
- (2) An application concerning household objects shall set forth the objects that he seeks to have allocated to him. An application pursuant to section 200 (2) no. 2, in addition shall contain a listing of all household objects and a specific description thereof in an attachment.
- (3) The application in marital home matters shall set forth whether children reside in the household of the spouse.

Section 204

Participants

- (1) In matters concerning the marital home pursuant to section 200 (1) no. 2 the lessor, the property owner, third parties (section 1568a (4) of the Civil Code), and persons with a joint holding in the residence with the spouses or with one of them shall be included as participants.
- (2) The Youth Office shall be included as a participant upon its filing of an application therefor when children reside in the household of the spouses.

Section 205

Hearing of the Youth Office in Matters Concerning the Marital Home

- (1) In matters concerning the marital home the court shall hear the Youth Office when children reside in the household of the spouses. If the hearing does not occur solely because of imminent danger, it shall be held as soon as possible thereafter.
- (2) In cases under subsection (1) sentence 1, the court shall inform the Youth Office of the decision. The Youth Office shall have the right to file an appeal against the order.

Section 206

Special Provisions for Matters Concerning Household Objects

- (1) The court in matters concerning household objects may require each spouse:
 1. to set forth the household objects that he seeks to have allocated to him,
 2. to submit a listing of all household objects including a detailed description thereof or to complete a list previously submitted,
 3. to make statements concerning particular circumstances, to expand upon his own information, or to provide comments on the submission of another participant, or
 4. to submit certain documentation or receiptsand may set a reasonable deadline for doing so.
- (2) Circumstances that are presented only after the deadline pursuant to subsection (1) shall only be considered when, at the sole discretion of the court, conclusion of the proceedings will not be delayed or when the spouse sufficiently excuses the delay.

(3) If a spouse does not comply with a condition in accordance with subsection (1) or if circumstances are not to be considered pursuant to subsection (2), the court in this regard shall not be obligated to obtain further clarification of the facts.

Section 207

Court Hearing for Discussion

The court shall discuss the matter with the spouses at a court hearing. It shall order the personal appearance of the spouses.

Section 208

Death of a Spouse

If one of the spouses dies prior to the conclusion of the proceedings, this shall apply as concluded in the main proceeding.

Section 209

Implementation of Decision, Effectiveness

(1) Together with the final decision the court shall issue orders necessary for its implementation.

(2) The final decision in matters concerning the marital home and household goods shall become effective when final and binding. The court shall order immediate effectiveness in matters concerning the marital home pursuant to section 200 (1) no. 1.

(3) Together with the order of immediate effectiveness the court may also order the permissibility of execution prior to service on the respondent to the application. In such a case effectiveness shall take place at the point in time at which the decision is transmitted to the court registry for announcement. This point in time shall be noted on the final decision.

Part 7

Proceedings in Matters Concerning Protection against Violence

Section 210

Matters Concerning Protection against Violence

Matters concerning protection against violence are proceedings pursuant to sections 1 and 2 of the Act on Protection against Violence (*Gewaltschutzgesetz*, *GewSchG*).

Section 211

Local jurisdiction

Based on the choice of the applicant, exclusive jurisdiction shall be with:

1. the court in the district of which the offence was committed,
2. the court in the district of which the joint residence of the applicant and the respondent is located, or
3. the court in the district of which the respondent has his place of usual residence.

Section 212

Participants

In proceedings pursuant to section 2 of the Act on Protection against Violence, the Youth Office shall be included as a participant upon its filing of an application therefor, when a child resides in the household.

Section 213

Hearing of the Youth Office

(1) In proceedings pursuant to section 2 of the Act on Protection against Violence the court shall hear the Youth Office when children reside in the household. If the hearing does not occur solely because of imminent danger, it shall be held as soon as possible thereafter.

(2) In cases under subsection (1) sentence 1, the court shall inform the Youth Office of the decision. The Youth Office shall have the right to file a complaint on appeal against the order.

Section 214
Interlocutory order

(1) Upon an application therefor, the court may establish a temporary provision through an interlocutory order pursuant to section 1 or section 2 of the Act on Protection against Violence. In general, there is urgent need for immediate action when an offence set forth in section 1 of the Act on Protection against violence was committed or when based upon specific circumstances there is a fear that such an offence will be committed.

(2) The application for issuance of the interlocutory order shall be applicable in the case of issuance without an oral hearing both as an order for service by the court bailiff through the court registry and as an order for enforcement; upon request by the applicant service may take place after enforcement.

Section 215
Implementation of the final decision

In proceedings pursuant to section 2 of the Act on Protection against Violence, in its final decision the court shall issue orders necessary for the implementation thereof.

Section 216
Effectiveness; Enforcement Prior to Service

(1) In matters concerning protection against violence the final decision shall become effective when final and binding. The court shall order that it is immediately effective.

(2) Upon ordering immediate effectiveness the court may also order the permissibility of enforcement prior to service on the respondent to the application. In such a case effectiveness shall take place at the point in time at which the decision is transmitted to the court registry for announcement. This point in time shall be noted on the final decision.

Section 216a
Communication of Decisions

The court shall promptly communicate to the competent police authority and other public agencies that are affected by the implementation of the orders issued based upon sections 1 and 2 of the Act on Protection against Violence, as well as any modification or revocation thereof, as long as the interests of a participant that are worthy of protection in excluding such communication do not outweigh the need for protection of the participants or the public interest in communication. The participants shall be informed of the communication.

Part 8
Proceedings in Matters Concerning the Equalisation of Pension Benefits

Section 217
Matters Concerning the Equalisation of Pension Benefits

Matters concerning the equalisation of pension benefits are proceedings that relate to the equalisation of pension benefits.

Section 218
Local Jurisdiction

The exclusive jurisdiction of a court shall take priority as follows:

1. during the pendency of a marital matter, the court before which the marital matter was or is pending in the first instance;
2. the court in the district of which the spouses have or last had their joint place of usual residence when one spouse continues to have his place of usual residence there;

3. the court in the district of which a respondent to the application has his place of usual residence or seat;
4. the court in the district of which an applicant has his place of usual residence or seat;
5. the Schöneberg Local Court in Berlin.

Section 219 Participants

Participants to be included are:

1. the spouses,
2. the pension provider with which the pension claim that is to be equalised exists,
3. the pension provider with which a claim for the purpose of equalisation is to be established, and
4. the surviving dependents and heirs of the spouses.

Section 220 Procedural Law Duty to Provide Information

- (1) The court may obtain information concerning the basis for and the amount of the claims from persons and pension providers that are to be included as participants in accordance with section 219, as well as other agencies that could provide information.
- (2) If the court sends a printed form, it shall be used for providing the information. Sentence 1 shall not apply to information from a pension provider that is automatically generated.
- (3) The court may order that the spouses or their surviving dependents or heirs shall cooperate with the pension provider in regard to actions required for establishing the claims to be included in the equalisation of pension benefits.
- (4) The pension provider shall be under an obligation to provide the values required pursuant to section 5 of the Act on the Equalisation of Pension Rights including a clear and transparent accounting and the rules determinative of the apportionment. The court may require the pension provider *ex officio* or upon the application of a participant to provide details on the calculation of values.
- (5) The persons and agencies set forth in this provision shall be obligated to comply with court requests and orders.

Section 221 Hearing, Suspension

- (1) The court shall discuss the matter with the spouses at a hearing.
- (2) The court shall suspend the proceedings when a legal dispute concerning the existence or amount of the claims to be included in the equalisation of pension benefits is pending.
- (3) If there is a dispute concerning a claim but the conditions set forth in subsection (2) are not met, the court may suspend the proceedings and set a deadline within which one or both spouses must file a lawsuit. If such lawsuit is not filed or is not timely filed the court may disregard the arguments that could have been asserted in the lawsuit.

Section 222 Implementation of External Apportionment

- (1) The options pursuant to section 14 (2) and section 15 (1) of the Act on the Equalisation of Pension Benefits shall be exercised within a deadline to be established by the court.
- (2) If the person entitled to an equalisation of pension benefits exercises his option in accordance with section 15 (1) of the Act on the Equalisation of Pension Benefits, within the deadline set pursuant to subsection (1) he shall also provide evidence that the chosen pension provider is in agreement with the intended apportionment.

(3) In the final decision the court shall set forth the principal amount to be paid pursuant to section 14 (4) of the Act on the Equalisation of Pension Benefits.

(4) In the case of external apportionment pursuant to section 16 of the Act on the Equalisation of Pension Benefits, subsections (1) through (3) shall not be applicable.

Section 223

Requirement of Application as to Claims for Pension Equalisation Subsequent to the Divorce

After the divorce the court shall only decide on claims for pension equalisation pursuant to sections 20 through 26 of the Act on the Equalisation of Pension Benefits on the basis of an application therefor.

Section 224

Decision on Pension Equalisation

(1) Final decisions concerning pension equalisation shall become effective when final and binding.

(2) The grounds upon which the final decision is based shall be provided.

(3) Insofar as an equalisation of value did not take place at the time of the divorce pursuant to section 3 (3), sections 6, 18 (1) or (2), or 27 of the Act on the Equalisation of Pension Benefits, the court shall state this in the operative provision of the order.

(4) If subsequent to the equalisation of values undertaken as part of the divorce claims, an equalisation of pension rights still exist, the court shall set forth these claims in the grounds upon which the final decision is based.

Section 225

Permissibility of Modification of the Equalised Value at the Time of Divorce

(1) Modification of the equalised value at the time of divorce shall only be permissible as to claims within the meaning of section 32 of the Act on the Equalisation of Pension Rights.

(2) Upon legal or factual changes after the dissolution of the marriage that retroactively affect the equalised value of a claim and lead to a significant change in value, upon an application therefor the court shall modify the final decision with respect to this claim.

(3) A change in value is significant in accordance with subsection (2) when it amounts to at least 5 percent of the former equalised value of the claim and when it exceeds, in the case of a pension amount, 1 percent as a reference rate, in all other cases as principal value, 120 percent of the determinative monthly reference rate at the end of the marriage pursuant to section 18 (1) of the Fourth Book of the Social Code (*Sozialgesetzbuch (SGB) Viertes Buch (IV)*).

(4) Modification shall also be permissible when a determinative waiting period that is a prerequisite for the pension of the person entitled to equalisation would be thereby fulfilled.

(5) The modification must have a beneficial effect for one of the spouses or his surviving dependents.

Section 226

Implementation of a Modification of the Equalised Value at the Time of Divorce

(1) Persons entitled to file an application for modification are the spouses, their surviving dependents, and the pension providers affected by a modification.

(2) The application shall be admissible at the earliest six months prior to the point in time at which a spouse intends to obtain regular benefit payments from the claim to be modified or that is expected based upon the modification.

(3) Section 27 of the Act on the Equalisation of Pension Benefits shall apply *mutatis mutandis*.

(4) The modification shall become effective from the first day of the month following the month in which the application was filed.

(5) If the spouse who filed the application for modification dies prior to the final decision becoming final and binding, the court shall inform the remaining participants entitled to file an

application that the proceeding will only be continued when a participant who is entitled to file an application requests this by a declaration to the court within a deadline of one month. If no such participant requests continuation of the proceedings within the deadline, this shall apply in the main proceedings as concluded. If the other spouse dies, the proceedings shall be continued against his heirs.

Section 227
Other Modifications

(1) As to modification of a decision concerning equalisation claims subsequent to the divorce pursuant to sections 20 through 26 of the Act on the Equalisation of Pension Benefits, section 48 (1) shall apply.

(2) Sections 225 and 226 shall apply *mutatis mutandis* to an agreement between the spouses concerning the equalisation of pension benefits when modification is not excluded.

Section 228
Admissibility of Complaint on Appeal

In matters concerning the equalisation of pension benefits, section 61 shall only be applicable to a challenge concerning a decision on costs.

Section 229
Electronic Legal Communications between the Family Court and Pension Providers

(1) The following provisions shall be applicable to the extent the court and a pension provider that is a participant in accordance with section 219 no. 2 or no. 3 use a procedure established for electronic data transmission (transmission procedure) for the exchange of data necessary for the pension equalisation. Third parties may be appointed with respect to the electronic transmission.

(2) The transmission procedure shall:

1. be uniform at the federal level,
2. guarantee the authenticity and integrity of the data, and
3. utilise an encryption procedure that ensures the confidentiality of the transmitted data when using networks that are accessible to the public.

(3) The court shall transmit requests for information pursuant to section 220 to the pension provider, the pension provider shall transmit information pursuant to section 220 and declarations pursuant to section 222 (1) to the court through the transmission procedures. In this regard there shall be no requirement for a statutory instrument pursuant to section 14 (4).

(4) Decisions of the court in matters concerning the equalisation of pension benefits shall be served on the pension provider via transmission procedures.

(5) The electronic transmission of the automatic confirmation receipt to the court that is generated shall be sufficient as verification of the service of a decision on the pension provider. The time stated in the confirmation receipt shall be determinative with respect to the time of service.

Section 230

(repealed)

Part 9
Proceedings in Matters Concerning Maintenance

Chapter 1
Special Procedural Rules

Section 231
Matters Concerning Maintenance

(1) Matters concerning maintenance are proceedings concerning:

1. statutory maintenance obligations based upon kinship,
2. statutory maintenance obligations based upon marriage,
3. claims pursuant to sections 1615l or 1615m of the Civil Code.

(2) Matters concerning maintenance are also proceedings in accordance with section 3 (2) sentence 3 of the Federal Child Benefits Act (*Bundeskindergeldgesetz*, BKGG) and section 64 (2) sentence 3 of the Income Tax Act (*Einkommensteuergesetz*, EStG). Sections 235 through 245 shall not be applicable.

Section 232 Local Jurisdiction

(1) Exclusive jurisdiction shall lie:

1. in matters concerning maintenance as to a support obligation for a common child of the spouses, with the exception of a simplified proceeding concerning support of minor children or in respect of a maintenance obligation based upon marriage, during the pendency of a marital matter with the court before which the marital matter was or is pending in the first instance;
2. in matters concerning maintenance as to a support obligation for a minor child or a child that qualifies as such in accordance with section 1603 (2) sentence 2 of the Civil Code, with the court in the district in which the child or the parent with the authority to act on behalf of the child has his place of usual residence; this shall not apply when the child or the parent has his place of usual residence outside of Germany.

(2) Jurisdiction pursuant to subsection (1) shall have priority over the exclusive jurisdiction of another court.

(3) To the extent there is no jurisdiction under the provisions in subsection (1), jurisdiction shall be determined in accordance with the rules of the Code of Civil Procedure with the proviso that in the provisions concerning general jurisdiction "residence" (*Wohnsitz*) shall be replaced by "place of usual residence" (*gewöhnliche Aufenthalt*). At the choice of the applicant jurisdiction shall also lie:

1. as to an application by a parent against the other parent based upon a claim concerning a statutory maintenance obligation based on the marriage or based upon a claim pursuant to section 1615l of the Civil Code, with the court before which the proceedings concerning child maintenance is pending in the first instance;
2. as to an application by a child through which the claim for fulfilment of the support obligation of both parents is asserted, with the court that has jurisdiction over the application against one parent;
3. with the court in the district of which the applicant has his place of usual residence when there is no domestic jurisdiction over the respondent.

Section 233

Relinquishment to the Court Handling the Marital Matter

If a marital matter is pending at the same time that a matter concerning maintenance pursuant to section 232 (1) no. 1 is pending in the first instance before another court, this matter shall be relinquished to the court before which the marital matter is pending *ex officio*. Section 281 (2) and (3) sentence 1 of the Code of Civil Procedure shall apply *mutatis mutandis*.

Section 234

Representation of the Child by an Adviser

If the child is represented by the Youth Office as an adviser, representation by the parent with parental custody shall be excluded.

Section 235

Procedural Law Information Obligation for Participants

(1) The court may order that the applicant and the respondent shall provide information and submit certain documentation concerning their income, property, and personal and financial circumstances to the extent such information is necessary to assess maintenance. The court may order that the applicant and the respondent shall certify in writing that the information is true and complete; the certification shall not be made by a representative. Together with the orders pursuant to the first sentence or the second sentence the court shall set a reasonable deadline. Concurrently, it shall inform them of the obligation pursuant to subsection (3) and of the potential consequences pursuant to sections 236 and 243 sentence 2 no. 3.

(2) The court shall proceed in accordance with subsection (1) when a participant files an application and the other participant has not complied with an information obligation pursuant to the provisions of civil law despite an order to do so within a reasonable deadline prior to the start of the proceedings.

(3) Applicants and respondents have a duty to inform the court on their own initiative when circumstances that are encompassed by an order pursuant to subsection (1) significantly change during the proceedings.

(4) Orders of the court pursuant to this provision shall not be independently appealable and shall not be enforceable through compulsory measures.

Section 236

Procedural Law Information Obligation of Third Parties

(1) If a participant does not or does not completely perform an obligation pursuant to section 235 (1) within the deadline set therefor, to the extent it is relevant to the assessment of maintenance, the court may request information on the amount of income and certain documentation from:

1. employers,
2. social services providers and the Artists' Social Fund,
3. other persons or agencies that make pension payments based on age, in cases of reduced ability to work, compensation payments, and economic loss payments,
4. insurance companies, or
5. tax offices.

(2) The court shall proceed in accordance with subsection (1) when the prerequisites therein are met and the other participant submits an application therefor.

(3) The participants shall be informed of an order pursuant to subsection (1).

(4) The persons and agencies set forth in subsection (1) shall be obliged to comply with court orders. Section 390 of the Code of Civil Procedure shall apply *mutatis mutandis*, except as concerns a public agency.

(5) The orders of the court pursuant to this provision shall not be independently appealable by the participants.

Section 237

Child Maintenance upon the Establishment of Paternity

(1) An application asserting a claim against a man for the payment of child maintenance when the man's paternity is not established pursuant to section 1592 nos. 1 and 2 or section 1593 of the Civil Code shall only be admissible when the child is a minor and a proceeding for the establishment of paternity pursuant to section 1600d of the Civil Code is pending.

(2) The court before which the proceeding for the establishment of paternity is pending in the first instance shall have exclusive jurisdiction.

(3) In cases under subsection (1), the amount of maintenance that can be applied for shall only be the minimum maintenance amount in accordance with the age groups set forth in section 1612a (1) sentence 3 of the Civil Code and in consideration of payments pursuant to section 1612b or section 1612 of the Civil Code. The child may request a reduced maintenance amount. Otherwise, reduction or increase of maintenance cannot be requested in this proceeding.

(4) Prior to the order establishing paternity becoming final and binding or prior to the effectiveness of the acknowledgement of paternity by the man, an order concerning an obligation to make maintenance payments shall not be effective.

Section 238

Modification of Court Decisions

(1) If a final decision issued by the court in the main proceedings contains an obligation to make recurrent future payments, each party may apply for modification. The application shall be admissible insofar as the applicant presents facts that show there has been a significant change in the actual or legal circumstances upon which the final decision was based.

(2) The application may only be based on grounds that have arisen after the oral arguments on the facts in the preceding proceeding was concluded and as to which it is or was not possible to enter a protest.

(3) The modification shall be permissible for the time following the date on which the application became pending. If the application seeks an increase in maintenance it shall also be permissible for the time as to which a claim can be asserted under the provisions of civil law for past maintenance. If the application seeks a reduction in maintenance it shall also be permissible for the time starting at the first month following the corresponding request for information or renunciation thereof by the applicant. Reduction cannot be requested for a time more than one year prior to the pendency of the matter.

(4) If there is significant change in the actual or legal circumstances, the decision shall be modified while maintaining the grounds upon which it was based.

Section 239

Modification of Settlements and Legal Instruments

(1) If a settlement pursuant to section 794 (1) no. 1 of the Code of Civil Procedure or an enforceable legal instrument contains an obligation to make future recurrent payments, each party may file an application for modification. The application shall be admissible insofar as the applicant presents facts and circumstances that justify the modification.

(2) Additional prerequisites and the scope of the modification shall be in accordance with the provisions of civil law.

Section 240

Modification of Decisions Pursuant to Sections 237 and 253

(1) If a final and binding decision pursuant to section 237 or section 253 contains an obligation to make future recurrent payments, each party may file an application for modification as long as an application for implementation of contentious proceedings pursuant to section 255 is not pending.

(2) If an application for a reduction of maintenance payments is not submitted within one month of it becoming final and binding, modification shall only be permissible from the time that the application was pending. If within the one month deadline an application for an increase in maintenance payments by the other participant is pending the deadline shall not expire prior to the conclusion of this proceeding. An application for reduction filed subsequent to the expiration of the deadline shall also be admissible for the time from the first of the month following a corresponding request for information or renunciation by the applicant. Section 238 (3) sentence 4 shall apply *mutatis mutandis*.

Section 241

Increased Liability

The pendency of an application for modification seeking reduction shall be equivalent to the pendency of a lawsuit for reimbursement of payments made upon the application of section 818 (4) of the Civil Code.

Section 242

Provisional Suspension of Enforcement

If an application for modification seeking reduction is pending or if an application for approval of legal aid is submitted, section 769 of the Code of Civil Procedure shall apply *mutatis mutandis*. The order shall not be appealable.

Section 243

Decision on Payment of Costs

In deviation from the provisions of the Code of Civil Procedure concerning the apportionment of costs, in maintenance matters the court shall decide at its discretion on apportionment of the payment of the costs of the proceedings among the participants. In so doing it should particularly consider:

1. the ratio of those prevailing and those not prevailing as to the participants including the duration of the proceedings on maintenance,
2. the circumstance that prior to the start of the proceedings a participant did not comply in whole or in part with the request of the opposing participant to provide information and present documentary evidence of income, unless there was no obligation to do so,
3. the circumstance that a participant did not comply or did not completely comply with a request by the court pursuant to section 235 (1) within the deadline set forth therefor, and
4. immediate acknowledgement pursuant to section 93 of the Code of Civil Procedure.

Section 244

Inadmissibility of Objection based on Majority

If the obligated participant is to make maintenance payments for a child until he has reached the age of 18, no objection can be lodged against the enforcement of a claim for maintenance established in the order or in another instrument pursuant to section 794 of the Code of Civil Procedure in accordance with the standards of section 1612a of the Civil Code based upon that the child is no longer a minor.

Section 245

Specification of Index-Linked Maintenance Decisions for Compulsory Enforcement in Foreign Countries

- (1) If a maintenance order to be enforced in a foreign country established the maintenance amount as a percentage of the minimum maintenance amount pursuant to section 1612a of the Civil Code, upon application therefor the maintenance owed shall be specified as a sum.
- (2) It shall be incumbent upon those courts, public authorities, or notaries who are under a duty to issue an enforceable copy of the order to specify the amount.
- (3) The provisions concerning challenging decisions in respect of the issuance of a certificate of enforceability shall be applicable *mutatis mutandis* to a challenge to a decision specifying the amount of maintenance.

Chapter 2

Interlocutory Orders

Section 246

Special Provisions for Interlocutory Orders

(1) Upon application, the court may establish rules for the obligation to make maintenance payments or to pay an advance on costs through an interlocutory order in deviation from section 49.

(2) The decision shall be made on the basis of oral argument when this appears necessary to clarify the facts or for an agreed settlement of the proceedings.

Section 247

Interlocutory Order Prior to the Birth of a Child

(1) Rules concerning the obligation to make maintenance payments due for the first three months for the child and the mother pursuant to section 1615l (1) of the Civil Code may be issued by way of interlocutory order even prior to the birth of the child.

(2) With respect to maintenance for the child, the application may also be submitted by the mother. Section 1600d (2) and (3) of the Civil Code shall apply *mutatis mutandis*. In cases under subsection (1) it may also be ordered that the amount shall be deposited at a certain time prior to the birth of the child.

Section 248

Interlocutory Order upon Establishment of Paternity

(1) An application for the issuance of an interlocutory order through which a claim is made against a man for the payment of maintenance for a child or his mother shall only be admissible when the paternity of the man does not exist pursuant to section 1592 nos. 1 and 2 or section 1593 of the Civil Code, if a proceeding for the establishment of paternity pursuant to section 1600d of the Civil Code is pending.

(2) In cases under subsection (1) that court shall have jurisdiction before which the proceeding for the establishment of paternity is pending in the first instance; when the matter is pending before the court handling the complaint on appeal, this court shall have jurisdiction.

(3) Section 1600d (2) and (3) of the Civil Code shall apply *mutatis mutandis*.

(4) The court may also order that the man shall pay a security of a certain amount for the maintenance.

(5) The interlocutory order shall become invalid when the application for the establishment of paternity is withdrawn or is dismissed in a final and binding order. In such a case the person who had obtained the interlocutory order shall reimburse the damages to the man incurred from the execution of the interlocutory order.

Chapter 3

Simplified Proceedings Concerning Maintenance for Minors

Section 249

Admissibility of Simplified Proceedings

(1) Upon application, maintenance for a minor child who does not live together in one household with the parent against whom the claim of maintenance is asserted may be established through a simplified proceeding to the extent the maintenance prior to consideration of payments pursuant to section 1612b or section 1612c of the Civil Code does not exceed 1.2 times the minimum maintenance pursuant to section 1612a (1) of the Civil Code.

(2) Simplified proceedings shall not be admissible when at the time that the application or communication of its contents has been served on the respondent a court had decided on the child's claim for maintenance, a proceeding thereupon is pending, or a certificate of indebtedness suitable for compulsory enforcement has been established.

Section 250

Application

(1) The application shall contain:

1. the designation of the participants, their legal representatives, and the attorneys of record;
 2. the designation of the court to which the application was submitted;
 3. the birthdate of the child;
 4. the point in time as of which maintenance is requested;
 5. in the event that maintenance is requested for the past, when the prerequisites in section 1613 (1) or (2) no. 2 of the Civil Code were fulfilled;
 6. the amount of maintenance requested;
 7. child benefits and other payments to be accounted for (section 1612b or section 1612c of the Civil Code);
 8. a statement that there is a parent-child relationship between the child and the respondent pursuant to sections 1591 through 1593 of the Civil Code;
 9. a statement that the child does not live together with the respondent in one household:
 10. the amount of the child's income;
 11. a statement as to whether the claim is made based upon the applicant's own right, a right acquired by operation of law, or an assigned right;
 12. a statement that maintenance is not requested for time periods during which the child received assistance pursuant to the Twelfth Book of the Social Code, social allowance pursuant to the Second Book of the Social Code, upbringing assistance or integration assistance pursuant to the Eighth Book of the Social Code, payments pursuant to the Maintenance Advance Act (*Unterhaltsvorschussgesetz*; UhVorschG), maintenance in accordance with section 1607 (2) or (3) of the Civil Code, or, to the extent maintenance is requested based upon the operation of law or pursuant to section 94 (4) sentence 2 of the Twelfth Book of the Social Code, section 33 (2) sentence 4 of the Second Book of the Social Code, or section 7 (4) sentence 1 of the Maintenance Advance Act, a statement that the maintenance applied for does not exceed the payments to or for the child;
 13. a statement that establishment through a simplified proceeding is not excluded pursuant to section 249 (2).
- (2) If the application does not comport with the prerequisites set forth in subsection (1) and those in section 249, it shall be dismissed. Prior to the dismissal, the applicant shall be heard. The dismissal shall not be appealable.
- (3) If simplified proceedings concerning other children of the respondent are pending before the court, the court shall join the proceedings for the purpose of a concurrent decision.

Section 251

Measures Taken by the Court

- (1) If simplified proceedings seem admissible pursuant to the submissions by the applicant, the court shall have the application or a communication of its contents served on the respondent. At the same time, the court shall inform him:
1. of the point in time and the amount at which maintenance can be established; in so doing, the following shall be designated:

- a) the time periods based upon the age of the child as to which the establishment of maintenance pursuant to the minimum maintenance for the first, second, and third age levels are possible;
 - b) in the case of section 1612a of the Civil Code, also the percentage of each minimum maintenance at issue;
 - c) the payments to be taken into account in accordance with section 1612b or section 1612c of the Civil Code;
2. that the court has not assessed whether the maintenance requested in the application takes into account the child's income set forth in the application;
 3. that an order establishing maintenance may be issued based upon which the applicant may pursue compulsory enforcement if he does not file objections within one month in the prescribed form;
 4. the objections that can be filed pursuant to section 252 (1) and (2), especially that the objection of limited or no ability to pay can only be asserted when the information pursuant to section 252 (2) sentence 3 is submitted on a completed form and documentary evidence of income is submitted together therewith;
 5. that objections, when there are printed forms, shall be filed on a form of the type attached thereto, which is also available at every local court.

If the application is to be served outside of Germany, the court shall set forth the deadline pursuant to sentence 2 no. 3.

(2) Section 167 of the Code of Civil Procedure shall apply *mutatis mutandis*.

Section 252 **Objections by the Respondent**

(1) The respondent may assert objections against:

1. the admissibility of the simplified proceedings;
2. the timing as of which maintenance shall be paid;
3. the amount of maintenance, to the extent he asserts that:
 - a) the time periods to be determined based upon the age of the child as to whom minimum maintenance is to be established at the first, second, and third age levels or that the minimum maintenance stated is incorrectly calculated,
 - b) the maintenance cannot be established at an amount higher than that requested in the application,
 - c) payments of the type set forth in section 1612b or section 1612c of the Civil Code were not accounted for or were not correctly accounted for.

In addition, when he immediately obligates himself to fulfil the claim for maintenance, with respect to the costs of the proceedings, he may assert that he was not provided an opportunity to be heard. The court shall dismiss unfounded objections pursuant to sentence 1 nos. 1 and 3 in the order establishing maintenance, as well as an objection pursuant to sentence 1 no. 2 when this does not appear well-founded.

(2) The respondent may only assert other objections when he concurrently states the extent to which he is prepared to pay maintenance and that he obligates himself to fulfil the claim for maintenance to this extent. The objection of fulfilment may only be asserted by the respondent when he concurrently states the extent to which he has paid and that he obligates himself to pay maintenance that is owing in an amount above this. The objection of

limited or lack of ability to pay may only be asserted by the respondent when he concurrently uses the formula established therefor to provide information concerning:

1. his income,
2. his assets,
3. his personal and financial circumstances in all other respects,

and provides documentation of his income.

(3) Objections shall only be considered to the extent the order establishing maintenance has not been issued.

Section 253

Order Establishing Maintenance

(1) If no objections are raised or if only those subject to rejection pursuant to section 252 (1) sentence 3 or those that are inadmissible pursuant to section 252 (2) are raised, maintenance shall be established by way of an order after expiration of the deadline set forth pursuant to section 251 (1) sentence 2 no. 3. The order shall state that the respondent shall pay the established maintenance to the person entitled to maintenance. The order shall also establish the reimbursable costs of the proceedings incurred up until then to the extent they can be calculated without anything further; it is sufficient if the applicant communicates to the court the information necessary for the calculation.

(2) The order shall provide information on the objections that can be raised in the complaint on appeal and the prerequisites required for requesting modification.

Section 254

Communication of Objections

If objections are raised that are not to be rejected pursuant to section 252 (1) sentence 3 or that are admissible pursuant to section 252 (2), the court shall communicate this to the applicant. It shall establish maintenance based upon his application through an order to the extent the respondent obligated himself to make maintenance payments pursuant to section 252 (2) sentences 1 and 2. This shall be referred to in the communication pursuant to the first sentence.

Section 255

Contentious Proceedings

(1) In cases under section 254, upon the application of a participant contentious proceedings shall be implemented. This shall be referred to in the communication pursuant to section 254 sentence 1.

(2) If a participant applies for implementation of contentious proceedings, the matter shall proceed as with the filing of an application in a matter concerning maintenance. Objections pursuant to section 252 shall apply as a response.

(3) The proceedings shall apply as pending upon the service of the application for the establishment of maintenance.

(4) If an order establishing maintenance was previously issued pursuant to section 254 sentence 2, as to future recurrent maintenance payments a total amount should be determined and the order establishing maintenance shall be rescinded to this extent.

(5) The costs of simplified proceedings shall be treated as a part of the costs of the contentious proceedings.

(6) If the application for implementation of contentious proceedings is not submitted prior to the expiration of six months after receipt of the communication pursuant to section 254 sentence 1, the application for the establishment of maintenance regarding the order establishing maintenance pursuant to section 254 sentence 2 or the acknowledgement of an obligation by the respondent pursuant to section 252 (2) sentences 1 and 2 shall apply as withdrawn.

Section 256
Complaint on Appeal

In the complaint on appeal only those objections set forth in section 252 (1), the admissibility of objections pursuant to section 252 (2), and the incorrectness of the decision on costs or the establishment of costs may be asserted, to the extent they are appealable pursuant to general principles. The complaint on appeal cannot be based upon objections pursuant to section 252 (2) that were not made prior to the issuance of the order establishing maintenance.

Section 257
Special Procedural Rules

In simplified proceedings, applications and declarations may be submitted to the records clerk of the court registry. To the extent printed forms have been introduced, these shall be filled in; the records clerk shall note, together with the designation of the court and the date, that he recorded the application or declaration.

Section 258
Special Rules for Automatic Processing

- (1) In simplified proceedings automatic processing shall be permissible. Section 690 (3) of the Code of Civil Procedure shall apply *mutatis mutandis*.
- (2) Upon automatic processing, orders, decrees, and copies shall have the court seal affixed to them; signature shall not be required.

Section 259
Printed Forms

- (1) The Federal Ministry of Justice shall be authorised to introduce printed forms to simplify and harmonise proceedings by way of statutory instrument for simplified proceedings with the approval of the Bundesrat. Different printed forms may be introduced for courts that use automatic processing for proceedings and for courts that do not use automatic processing for proceedings.
- (2) To the extent printed forms for applications and declarations by the participants are introduced in accordance with subsection (1) the participants shall be required to use them.

Section 260
Determination of Local Court

- (1) The *Land* governments shall be authorised to allocate simplified proceedings concerning maintenance for minors to one Local Court for the districts of several Local Courts by statutory instrument when this would serve to conclude them more quickly and cost-effectively. The *Land* governments may delegate the authorisation by statutory instrument to the *Land* justice administration department.
- (2) The child may submit or present applications and declarations to the Local Court that would have had jurisdiction if the *Land* government or the *Land* justice administration department had not allocated proceedings in accordance with subsection (1) to one Local Court with the same effect as if made to the other Local Court.

Part 10
Procedures in Marital Property Law Matters

Section 261
Marital Property Law Matters

- (1) Marital property law matters are proceedings concerning claims arising based upon marital property law, even when third parties are participants in the proceedings.
- (2) Marital property law matters are also proceedings in accordance with section 1365 (2), section 1369 (2), sections 1382, 1383, 1426, 1430, and 1452 of the Civil Code, and section 1519 of the Civil Code in conjunction with Article 5.2, Article 12.2 sentence 2, and Article 17 of the Treaty of 4 February 2010 between the Federal Republic of Germany and the

Republic of France on the optional matrimonial property regime of the community of accrued gains (*Abkommen zwischen der Bundesrepublik Deutschland und der Französischen Republik über den Güterstand der Wahl-Zugewinnngemeinschaft*).

Section 262
Local Jurisdiction

(1) During the pendency of a marital matter, that court shall have exclusive jurisdiction before which the marital matter was or is pending in the first instance. This jurisdiction takes priority over the exclusive jurisdiction of another court.

(2) In all other cases jurisdiction is determined pursuant to the Code of Civil Procedure with the proviso that in the provisions on general jurisdiction "residence" (*Wohnsitz*) shall be replaced by "place of usual residence" (*gewöhnliche Aufenthalt*).

Section 263
Relinquishment to the Court before Which the Marital Matter is Pending

If a marital matter is pending while at the same time a matter concerning marital property law is pending before another court in the first instance, this matter shall be relinquished *ex officio* to the court before which the marital matter is pending. Section 281 (2) and (3) sentence 1 of the Code of Civil Procedure shall apply *mutatis mutandis*.

Section 264
Proceedings for Deferment and for the Transfer of Assets

(1) In proceedings pursuant to sections 1382 and 1383 of the Civil Code, as well as pursuant to section 1519 of the Civil Code in conjunction with Article 12 (2) sentence 2 and Article 17 of the Treaty of 4 February 2010 between the Federal Republic of Germany and the Republic of France on the optional matrimonial property regime of the community of accrued gains, the decision of the court shall first become effective when it is final and binding. Modification or reopening proceedings shall be excluded.

(2) In the order in which the decision on the application for deferment of the claim for equalisation is set forth, upon application by the creditor, the court may also state that the debtor is under an obligation to pay the equalisation claim.

Section 265
Uniform Decision

If an application is filed in proceedings on a marital property law equalisation claim pursuant to section 1382 (5) or section 1383 (3) of the Civil Code the decision shall be made in a uniform order.

Part 11
Proceedings in Other Family Matters

Section 266
Other Family Matters

(1) Other family matters are proceedings concerning:

1. claims between persons who are or were engaged to be married to one another in connection with the termination of the engagement as well as in cases under sections 1298 and 1299 of the Civil Code between such a person and a third person,
2. claims stemming from the marriage,
3. claims between persons who are or were married to one another or between such a person and a parent in connection with separation or dissolution or annulment of the marriage,
4. claims stemming from the parent-child relationship, or
5. claims stemming from the right of contact

to the extent the labour courts do not have jurisdiction or that the proceedings do not involve one of the subject areas set forth in section 348 (1) sentence 2 no. 2 a) through k) of the Code of Civil Procedure, residential property law, or inheritance law, and to the extent it does not involve a family matter pursuant to other legal provisions.

(2) Other family matters shall also include proceedings based upon the filing of an application in accordance with section 1357 (2) sentence 1 of the Civil Code.

Section 267 **Local Jurisdiction**

(1) During the pendency of a marital matter that court shall have exclusive jurisdiction before which the marital matter was or is pending in the first instance. This jurisdiction takes priority over the exclusive jurisdiction of another court.

(2) In all other cases jurisdiction shall be determined pursuant to the Code of Civil Procedure with the proviso that in the provisions on general jurisdiction “residence” (*Wohnsitz*) shall be replaced by “place of usual residence” (*gewöhnliche Aufenthalt*).

Section 268 **Relinquishment to the Court before Which the Marital Matter is Pending**

If a marital matter is pending while at the same time a family matter is pending before another court in the first instance, it shall be relinquished *ex officio* to the court before which the marital matter is pending. Section 281 (2) and (3) sentence 1 of the Code of Civil Procedure shall apply *mutatis mutandis*.

Part 12 **Proceedings in Matters Concerning Life Partnerships**

Section 269 **Matters Concerning Life Partnerships**

(1) Matters concerning life partnerships are proceedings relating to:

1. the termination of the life partnership on the basis of the Act on Life Partnerships,
2. the establishment of the existence or non-existence of a life partnership,
3. parental custody, right of contact, or surrender with respect to a common child,
4. the adoption of a child and the substitution of agreement as to the adoption of a child,
5. matters concerning the allocation of the home pursuant to section 14 or section 17 of the Act on Life Partnerships,
6. household matters pursuant to section 13 or section 17 of the Act on Life Partnerships,
7. the equalisation of pension benefits of the life partners,
8. statutory maintenance for a common minor child of the life partners,
9. a duty to pay maintenance based upon the establishment of the life partnership,
10. claims based on life partnership property law, including when third persons participate in the proceedings,
11. decisions pursuant to section 6 of the Act on Life Partnerships in conjunction with section 1365 (2), section 1369 (2), and sections 1382 and 1383 of the Civil Code,
12. decisions pursuant to section 7 of the Act on Life Partnerships in conjunction with sections 1426, 1430, and 1452 of the Civil Code or with section 1519 of the Civil

Code and Article 5 (2), Article 12 (2) sentence 2, or Article 17 of the Treaty of 4 February 2010 between the Federal Republic of Germany and the Republic of France on the optional matrimonial property regime of the community of accrued gains.

(2) Other matters concerning life partnerships are proceedings concerning:

1. claims pursuant to section 1 (4) sentence 2 of the Act on Life Partnerships in conjunction with sections 1298 through 1301 of the Civil Code,
2. claims arising from the life partnership,
3. claims between persons who are or were in a life partnership with one another, or between such person and a parent in connection with the separation or termination of the life partnership,

to the extent the labour courts do not have jurisdiction or that the proceedings do not involve one of the subject areas set forth in section 348 (1) sentence 2 no. 2 a) through k) of the Code of Civil Procedure, property ownership law, or inheritance law, and to the extent it does not involve a life partnership matter pursuant to other legal provisions.

(3) Other matters concerning life partnerships are also proceedings based upon the filing of an application pursuant to section 8 (2) of the Act on Life Partnerships in conjunction with section 1357 (2) sentence 1 of the Civil Code.

Section 270 Applicable Provisions

(1) In matters concerning life partnerships pursuant to section 269 (1) no. 1, the proceedings applicable to dissolution of a marriage, and in matters concerning life partnerships pursuant to section 269 (1) no. 2, the proceedings applicable to establishing the existence or non-existence of a marriage between the participants, shall apply *mutatis mutandis*. In matters concerning life partnerships pursuant to section 269 (1) nos. 3 through 12, the provisions applicable to family matters pursuant to section 111 nos. 2, 4, 5, and 7 through 9 shall apply *mutatis mutandis*.

(2) In other life partnership matters pursuant to section 269 (2) and (3) the provisions applicable to other family matters pursuant to section 111 no. 10 shall apply *mutatis mutandis*.

Book 3 Proceedings in Custodianship and Involuntary Commitment Matters

Part 1 Proceedings in Custodianship Matters

Section 271 Custodianship Matters

Custodianship matters are:

1. proceedings for the appointment of a custodian or the revocation of custodianship,
2. proceedings for ordering a reservation of consent, and
3. other proceedings concerning the legal custodianship of a person of full age (sections 1896 through 1908i of the Civil Code) insofar as the matter does not involve involuntary commitment.

Section 272 Local Jurisdiction

(1) The exclusive jurisdiction of a court shall take priority as follows:

1. the court before which the custodianship is pending when a custodian has already been appointed;
2. the court in the district of which the person concerned has his place of usual residence;
3. the court in the district of which the need for care arose;
4. the Schöneberg Local Court in Berlin when the person concerned is a German citizen.

(2) As to interlocutory orders pursuant to section 300 or interlocutory measures that court shall have jurisdiction in the district of which the need for care became known. It shall inform the competent court pursuant to subsection (1) nos. 1, 2, or 4 of measures ordered.

Section 273

Relinquishment upon Change in Place of Usual Abode

Good cause for transfer within the meaning of section 4 sentence 1 generally exists when the place of usual residence of the person concerned has changed and the duties of the custodian are primarily to be fulfilled at the new place of residence of the person concerned. Actual residence for more than one year at another location is the same as a change in place of usual residence.

Section 274

Participants

(1) Those persons to be included as participants are:

1. the person concerned,
2. the custodian, to the extent his area of duties is affected,
3. an authorised person within the meaning of section 1896 (2) sentence 2 of the Civil Code, to the extent his area of duties is affected.

(2) The guardian ad litem shall become a participant in the proceedings through his appointment.

(3) Upon its application, the competent public authority shall be included as a participant in proceedings concerning:

1. the appointment of a custodian or an order of a reservation of consent,
2. the scope, contents, or status of decisions of the type set forth in no. 1.

(4) Other participants may be:

1. in the proceedings set forth in subsection (3) in the interest of the person concerned, his spouse or life partner, when the spouses or life partners are not permanently separated, as well as his parents, foster parents, grandparents, descendants, siblings, and a person who he trusts,
2. the representative of the public treasury, to the extent the interests of the public treasury may be affected by the result of the proceedings.

Section 275

Capacity to Participate in Proceedings

In matters concerning custodianship, the person concerned has the capacity to participate in the proceedings without consideration of his capacity to contract.

Section 276

Guardian ad litem (*Verfahrenspfleger*)

(1) The court shall appoint a guardian ad litem for the person concerned when this is necessary for representing the interests of the person concerned. In general appointment is necessary when:

1. an in-person hearing with the person concerned pursuant to section 278 (4) in conjunction with section 34 (2) shall not take place, or
2. the object of the proceedings is the appointment of a custodian to handle all matters for the person concerned or the expansion of the scope of responsibilities to this extent; this shall also be applicable when the object of the proceedings does not encompass the matters designated in section 1896 (4) and section 1905 of the Civil Code.

(2) Such appointment may be disregarded in cases under subsection (1) sentence 2 when there is no apparent interest of the person concerned in the appointment of the guardian ad litem. Grounds shall be provided in the case appointment is not made.

(3) A person who works as a professional guardian ad litem shall only be appointed as guardian ad litem when no other suitable person is available who is prepared to undertake the role of guardian ad litem on a voluntary basis.

(4) The appointment of a guardian ad litem shall not take place or shall be rescinded when the interests of the person concerned are represented by an attorney or another authorised representative.

(5) The appointment shall terminate, to the extent it has not previously been rescinded, upon the final decision becoming final and binding or upon another conclusion of the proceedings.

(6) The appointment of a guardian ad litem or the rescindment thereof, as well as the rejection of such a measure, shall not be independently appealable.

(7) Costs shall not be imposed on the guardian ad litem.

Section 277

Compensation and Reimbursement of Expenditures of the Guardian ad litem

(1) The guardian ad litem shall be reimbursed for his expenditures in accordance with section 1835 (1) through (2) of the Civil Code. Advance payment shall not be requested. A public agency or an organisation as guardian ad litem shall not receive any reimbursement of expenditures.

(2) Section 1836 (1) and (3) of the Civil Code shall apply *mutatis mutandis*. If the guardian ad litem duties are, as an exception, conducted on a professional basis, in addition to the reimbursement of expenditures pursuant to subsection (1) the guardian ad litem shall receive compensation upon the application *mutatis mutandis* of sections 1, 2, and 3 (1) and (2) of the Guardians and Custodians Payment Act (*Vormünder- und Betreuervergütungsgesetz*; VBVG).

(3) In place of reimbursement for expenditures and compensation pursuant to subsections (1) and (2), the court may approve a fixed monetary amount for the guardian ad litem when the time required for the management of the activities as guardian ad litem is foreseeable and the guardian ad litem ensures that this amount of time will be exhausted. In calculating the monetary amount the foreseeably necessary hours shall be compensated at the hourly rate set forth in section 3 (1) of the Guardians and Custodians Payment Act plus a fixed amount for costs of EUR 3 for each estimated hour or any part thereof. In such a case the guardian ad litem shall not be required to prove the time spent and the expenses paid; he shall not be entitled to additional compensation for time or reimbursement of expenditures.

(4) If an employee of a recognized custodian organisation is appointed as guardian ad litem, the organisation shall be entitled to reimbursement of expenditures and compensation pursuant to subsections (1) through (3). Section 7 (1) sentence 2 and (3) of the Guardians and Custodians Payment Act, as well as section 1835 (5) sentence 2 of the Civil Code, shall apply *mutatis mutandis*. If an employee of a public custodianship agency is appointed as guardian ad litem for the proceedings, the public custodianship agency authority shall not receive compensation or expenditure reimbursement.

(5) Reimbursement of expenditures and compensation for the guardian ad litem shall always be paid from the public treasury. Otherwise section 168 (1) shall apply *mutatis mutandis*.

Section 278

Hearing of the Person Concerned

(1) The court shall conduct an in-person hearing with the person concerned prior to the appointment of a custodian or an order of a reservation of consent. It shall obtain a personal impression of the person concerned. This personal impression shall be obtained by the court in his usual environment when the person concerned requests this or when it serves the clarification of facts and the person concerned does not object.

(2) The court shall instruct the person concerned on the possible course of the proceedings. In suitable cases it shall inform the person concerned of the possibility of a lasting power of attorney, its substance, and the possibility of his registration with the Central Register of Lasting Powers of Attorney (*zentrales Vorsorgeregister*) pursuant to section 78a (1) of the Federal Regulation on Notaries (*Bundesnotarordnung*; BNotO). The court shall discuss with the person concerned the scope of duties and the question of which person or agency should be considered as custodian.

(3) Procedural acts pursuant to subsection (1) shall only take place through mutual legal assistance proceedings when it is to be assumed that the decision can be made without obtaining a personal impression of the person concerned.

(4) If an in-person hearing pursuant to section 34 (2) shall not take place because there is a fear of significant detriment to the health of the person concerned, this decision shall only be made based upon the opinion of a physician.

(5) The court may allow the person concerned to be presented by the competent public authority if he refuses to participate in procedural acts pursuant to subsection (1).

(6) The public authority shall only employ coercion when the court has expressly so ordered. The competent public authority shall be authorised to seek the support of police enforcement bodies when necessary.

(7) The residence of the person concerned shall only be opened by force, entered, and searched against his will when the court has expressly so ordered for his presentation at the hearing. In the case of imminent danger the order pursuant to the first sentence may be made by the competent public authority. This provision is a limitation on the fundamental right to the inviolability of the home arising from Article 13 (1) of the Basic Law (*Grundgesetz*; GG).

Section 279

Hearing Other Participants, the Custodianship Authorities, and the Legal Representative

(1) The court shall hear the other participants prior to the appointment of a custodian or the order of a reservation of consent.

(2) The court shall hear the competent public authority prior to the appointment of a custodian or the order of a reservation of consent if the person concerned so requests or if it serves to clarify the circumstances.

(3) Upon request of the person concerned the court shall hear the person that is closest to him if this is possible without a significant delay.

(4) In the case of the appointment of a custodian or an order of a reservation of consent for a minor (section 1908a of the Civil Code) the court shall hear the legal representative of the person concerned.

Section 280

Obtaining an Expert Opinion

(1) Prior to the appointment of a custodian or an order of a reservation of consent, the formal taking of evidence in the form of obtaining an expert opinion on the necessity of the measure shall take place. The expert shall be a psychiatrist or a physician with experience in the field of psychiatry.

(2) The expert shall examine or question the person concerned in-person prior to drafting the expert opinion.

(3) The expert opinion shall address the following areas:

1. the symptoms including the development of the illness,
2. the examinations undertaken and the knowledge of the research at the basis of this,
3. the physical and psychiatric status of the person concerned,
4. the scope of duties to be undertaken, and
5. the presumed duration of the measure.

Section 281

Medical Certificate; Dispensability of Expert Opinion

(1) Instead of obtaining an expert opinion pursuant to section 280 a medical certificate shall be sufficient when:

1. the person concerned has applied for the appointment of a custodian and waived an expert opinion, and obtaining an expert opinion would be disproportionate particularly with respect to the scope of the duties to be undertaken by the custodian, or
2. a custodian shall be appointed only for asserting the rights of the person concerned in relation to his authorised representative.

(2) Section 280 (2) shall apply *mutatis mutandis*.

Section 282

Existing Expert Opinion of the Health Insurance Medical Service

(1) In proceedings for the appointment of a custodian, the court may choose not to obtain an expert opinion pursuant to section 280 (1), insofar as by the use of an existing physician's opinion of the health insurance medical service in accordance with section 18 of the Eleventh Book of the Social Code the extent to which the fulfilment of the prerequisites for the appointment of a custodian for the person concerned as a result of a psychiatric illness or a mental or psychological disability can be established.

(2) The court may request this expert opinion including all existing findings to avoid the cost of supplementary expert opinions for the long-term nursing care fund. In its request the court shall state the purpose for which the expert opinion and the findings are to be used. The court shall promptly delete the data transmitted when it establishes that it is not suitable for the purpose stated.

(3) If the court is convinced that the expert opinion and the findings obtained in the proceeding for the appointment of a custodian are suitable for replacing a supplementary expert opinion in whole or in part, prior to such use the agreement of the person concerned or the guardian ad litem for the proceedings shall be obtained. If approval is not given the court shall promptly delete the data transmitted to it.

(4) The court may, under the prerequisites set forth in subsections (1) through (3) forego obtaining any expert opinion pursuant to section 280 if the court is convinced that the other prerequisites for the appointment of a custodian exist.

Section 283

Presentation for Examination

(1) The court may order that the person concerned shall be examined for the preparation of the expert opinion and shall be presented by the competent public authority for an examination. The person concerned shall be heard in-person prior to this.

(2) The public authority shall only use force when the court has so ordered. The competent public authority is authorised to seek the assistance of the police enforcement bodies when necessary.

(3) The residence of the person concerned shall only be opened, entered, and searched by force against his will when the court has expressly so ordered for his presentation for the examination. Prior to the order the person concerned shall be heard in-person. In a case of imminent danger the order may be executed by the competent public authority without a prior hearing of the person concerned. This provision is a limitation on the fundamental right to the inviolability of the home arising from Article 13 (1) of the Basic Law.

Section 284

Involuntary Commitment for Expert Assessment

(1) After hearing an expert the court may decide that the person concerned shall be involuntarily committed for observation for a specific amount of time to the extent necessary for the preparation of the expert opinion. The person concerned shall be heard in-person prior to this.

(2) The involuntary commitment for observation shall not exceed six weeks. If this amount of time is insufficient for obtaining the necessary information for the expert opinion, the involuntary commitment may be extended by a court order for a total time period of three months.

(3) Section 283 (2) and (3) shall apply *mutatis mutandis*. A complaint subject to a time limit shall be admissible in accordance with sections 567 through 572 of the Code of Civil Procedure against orders issued pursuant to subsections (1) and (2).

Section 285

Surrender of a Custodianship Authorisation or a Copy of a Lasting Power of Attorney

In cases under section 1901c of the Civil Code, the requirement for the delivery or presentation of the documents set forth therein shall be established by way of an order.

Section 286

Contents of the Order

(1) In the case of the appointment of a custodian the operative provisions of the order shall also contain:

1. the description of the scope of duties of the custodian;
2. upon appointment of a custodian organisation the designation as custodian organisation shall be set forth as well as the designation of the organisation;
3. upon appointment of a public agency custodian the designation as public agency custodian shall be set forth as well as the designation of the public agency;
4. upon appointment of a professional custodian the designation as professional custodian shall be set forth.

(2) In the case of an order of a reservation of consent, the operative provisions of the order shall contain the designation of the scope of the declarations of intent requiring consent.

(3) The point in time at which the court must decide concerning the cancellation or extension of a measure pursuant to subsection (1) or subsection (2) shall be set forth in the operative provisions of the order.

Section 287

Effectiveness of Orders

(1) Orders concerning the scope, contents, or status of an appointment of a custodian, an order of a reservation of consent, or the issuance of an interlocutory order pursuant to section 300 shall become effective upon notification to the custodian.

(2) If notification to the custodian is not possible or in the case of imminent danger, the court may order the immediate effectiveness of the order. In such a case it shall be effective when the order and the order of its immediate effectiveness:

1. are notified to the person concerned or the guardian ad litem or
2. are provided to the court registry for the purpose of notification pursuant to no. 1.

The timing of immediate effectiveness shall be noted on the order.

(3) An order that has as its object an approval in accordance with section 1904 (2) of the Civil Code shall first become effective two weeks after notification to the custodian or the authorised representative as well as to the guardian ad litem.

Section 288

Notification

(1) Notification of the grounds upon which an order is based to the person concerned may be refrained from when this is necessary according to the medical certificate in order to avoid significant detriment to his health.

(2) The court shall always notify the competent public agency of orders concerning the appointment of a custodian or an order of a reservation of consent or order concerning the scope, substance, or status of such a measure. The competent public agency shall be notified of other orders when it was heard prior to their issuance.

Section 289

Acceptance of Obligations by Custodian

(1) The custodian shall verbally accept the obligations and be instructed as to his duties. This shall not apply to custodians organisations, public agency custodians, associations, the competent public agency, persons who perform custodianship duties professionally, or to voluntary custodians who act as custodian for more than one person or who have done so within the past two years.

(2) In suitable cases the court shall conduct an initial meeting between the custodian and the person concerned.

Section 290

Certificate of Appointment

The custodian shall receive a certificate concerning his appointment. The certificate shall contain:

1. the designation of the person concerned and the custodian;
2. upon the appointment of an custodian organisation or public agency custodian this designation shall be set forth together with the designation of the organisation or public agency;
3. the scope of duties of the custodian:
4. in the case of an order of a reservation of consent, the designation of the scope of the declarations of intent requiring consent;
5. upon the appointment of a temporary custodian through an interlocutory order, the end of the temporary measure.

Section 291

Review of Selection of Custodian

The person concerned may request that the person that an organisation or the public agency selected to perform the custodianship be reviewed by a court decision. The court may instruct the organisation or public agency to select another person when a recommendation by the person concerned, against which there is no good cause, was not accepted or the

selection up until that time was contrary to the best interests of the person concerned.
Section 35 shall not be applicable.

Section 292

Payments to the Custodian

- (1) In custodianship matters section 168 shall apply *mutatis mutandis*.
(2) The *Land* governments shall be authorised to introduce by statutory instrument printed forms for applications, declarations as to claims for the reimbursement of expenditures, and for the approval of compensation. To the extent printed forms have been introduced, persons who perform custodianship professionally shall use them and submit them as electronic documents when suitable for automatic processing by the court. Otherwise the assertion shall not be proper within the meaning of section 1836 (1) sentence 2 of the Civil Code in conjunction with section 1 of the Guardians and Custodians Payment Act. The *Land* governments may delegate the authorisation in the first sentence to the *Land* justice administration department by way of statutory instrument.

Section 293

Extension of Custodianship or the Reservation of Consent

- (1) As to the extension of the scope of duties of the custodian and the extension of the scope of the declarations of intent requiring consent, the provisions concerning such measures shall apply *mutatis mutandis*.
(2) An in-person hearing pursuant to section 278 (1) as well as obtaining an expert opinion or a medical certificate (sections 280 and 281) shall not be required:
1. when these procedural actions took place less than six months in the past or
 2. the intended extension pursuant to subsection (1) is not significant.

A significant extension of the scope of duties of the custodian particularly exists when in whole or in part the care of the person or one of the duties set forth in section 1896 (4) or sections 1904 through 1906 of the Civil Code is to be included for the first time.

- (3) If an extension of the scope of duties is connected with the appointment of an additional custodian pursuant to section 1899 of the Civil Code, subsections (1) and (2) shall apply *mutatis mutandis*.

Section 294

Termination and Limitation of the Custodianship or the Reservation of Consent

- (1) Sections 279 and 288 (2) sentence 1 shall apply *mutatis mutandis* to the termination of the custodianship or an order of a reservation of consent, as well as to a limitation on the scope of duties of the custodian or the scope of the declarations of intent requiring consent.
(2) If the court did not obtain an expert opinion in accordance with section 281 (1) no. 1, this shall take place subsequently in cases where an application by the person concerned for termination of the custodianship or a limitation of the scope of duties is to be rejected for the first time.
(3) The court shall decide on the termination of the custodianship or the reservation of consent at the latest seven years after such measures have been ordered.

Section 295

Extension of Duration of Custodianship or the Reservation of Consent

- (1) As to an extension of the duration of a custodianship or an order of a reservation of consent, the provisions concerning the initial order of such measures shall apply *mutatis mutandis*. A new expert opinion does not need to be obtained when the in-person hearing of the person concerned and a medical certificate show that the scope of the need for custodianship has not diminished.
(2) The court shall decide on the extension of the duration of the custodianship or the reservation of consent at the latest seven years after such measures have been ordered.

Section 296

Removal of Custodian and Appointment of New Custodian

- (1) The court shall conduct an in-person hearing with the person concerned and the custodian when the person concerned objects to the removal of the custodian (section 1908b of the Civil Code).
- (2) Prior to the appointment of a new custodian (section 1908c of the Civil Code) the court shall conduct an in-person hearing with the person concerned. This shall not apply when the person concerned stated his agreement with the change in custodian. Section 279 shall apply *mutatis mutandis*.

Section 297

Sterilisation

- (1) The court shall conduct an in-person hearing with the person concerned prior to the approval of consent by the custodian to a sterilisation (section 1905 (2) of the Civil Code) and shall obtain a personal impression of him. It shall inform the person concerned of the possible course of the proceedings.
- (2) The court shall hear the competent public authority when the person concerned so requests or when it would serve clarification of the facts.
- (3) The court shall hear other participants. Upon request of the person concerned the court shall hear a person close to him if this is possible without significant delay.
- (4) Procedural actions pursuant to subsections (1) through (3) shall not be undertaken by the requested judge.
- (5) The appointment of a guardian ad litem is always necessary to the extent the person concerned does not allow himself to be represented by an attorney or another suitable authorised agent.
- (6) The approval shall first be granted only after expert opinions are obtained through the formal taking of evidence that address the medical, psychological, social, special educational, and sexual educational issues. The experts shall personally examine or question the person concerned prior to preparation of the expert opinion. An expert and the acting physician shall not be the same person.
- (7) The approval shall become effective upon the notification of the decision with respect to consent to the sterilisation to the custodian appointed and:
1. to the guardian ad litem or
 2. to the authorised agent, when a guardian ad litem was not appointed.
- (8) A decision approving the sterilisation shall always be announced directly to the person concerned. Provision of the grounds for the decision cannot be excluded. The competent public authority shall always be notified of the decision.

Section 298

Proceedings in Cases under Section 1904 of the Civil Code

- (1) The court shall only approve the consent, rejection, or revocation of consent of a custodian or authorised representative (section 1904 (1), (2), and (5) of the Civil Code) when it has conducted an in-person hearing with the person concerned prior thereto. The court shall hear the other participants. Upon request of the person concerned the court shall hear a person close to him when this is possible without significant delay.
- (2) The appointment of a guardian ad litem is always necessary when the object of the proceedings is an approval pursuant to section 1904 (2) of the Civil Code.
- (3) Prior to the approval an expert opinion shall be obtained. The expert shall not also be the treating physician.

Section 299

Proceedings as to Other Decisions

The court shall conduct an in-person hearing with the person concerned prior to a decision in accordance with section 1908i (1) sentence 1 in conjunction with sections 1821, 1822 nos. 1

through 4 and 6 through 13, as well as sections 1823 and 1825 of the Civil Code. Prior to a decision pursuant to section 1907 (1) and (3) of the Civil Code the court shall conduct an in-person hearing with the person concerned.

Section 300 Interlocutory Order

(1) The court may appoint a temporary custodian or issue a temporary reservation of consent through an interlocutory order, if:

1. there are urgent reasons to assume that the prerequisites for the appointment of a custodian or an order of a reservation of consent are met and there is an urgent need for immediate action,
2. there is a medical certificate concerning the condition of the person concerned,
3. in cases under section 276, a guardian ad litem has been appointed and heard, and
4. the person concerned has been heard in-person.

In deviation from section 278 (3), a hearing of the person concerned through mutual legal assistance proceedings shall be permissible.

(2) The court may remove a custodian through an interlocutory order if there are urgent reasons to assume that the prerequisites for the removal are met and there is an urgent need for immediate action.

Section 301 Interlocutory Orders upon Increased Urgency

(1) In cases of imminent danger the court may issue an interlocutory order pursuant to section 300 prior to hearing the person concerned, as well as prior to hearing and appointment of a guardian ad litem. These procedural acts shall subsequently be promptly undertaken.

(2) In cases of imminent danger the court shall not be bound by section 1897 (4) and (5) of the Civil Code in the selection of the custodian.

Section 302 Duration of the Interlocutory Order

An interlocutory order shall expire after six months when the court has not determined an earlier expiration date. The duration may be extended after a hearing with an expert by a further interlocutory order up to a total duration of one year.

Section 303 Supplementary Provisions Concerning a Complaint on Appeal

(1) The competent public agency shall have the right to file a complaint on appeal against decisions concerning:

1. the appointment of a custodian or an order of a reservation of consent,
2. the scope, substance, or status of a measure set forth in no. 1.

(2) The following shall have a right to file a complaint on appeal against a decision made *ex officio* in the interest of the person concerned:

1. his spouse or life partner when the spouses or life partners are not permanently separated, as well as parents, grandparents, foster parents, descendants, and siblings of the person concerned, along with
2. a person he trusts

if they were a participant in the first instance of the legal proceedings.

(3) The guardian ad litem shall have the right to file a complaint on appeal.

(4) The custodian or the person named in the lasting power of attorney may also file a complaint on appeal on behalf of the person concerned with respect to a decision that concerns the scope of his duties. If more than one custodian or persons named in the lasting power of attorney act jointly, each of them may independently file a complaint on appeal on behalf of the person concerned.

Section 304

Complaint on Appeal by the Public Treasury

(1) The representative of the public treasury shall have the right to file a complaint on appeal to the extent the interests of the public treasury are affected by the order. If the representative of the public treasury asserts that the custodian submitted a false invoice or that instead of a custodian appointed pursuant to section 1897 (6) of the Civil Code the person under custodianship could be cared for by one or more suitable persons who are not professional custodians, he shall have the right to file a complaint on appeal against a rejection of the removal of the custodian.

(2) The deadline for filing a complaint on appeal by the representative of the public treasury shall be three months beginning from the point in time of the communication without a prescribed form (section 15 (3)) to him.

Section 305

Complaint on Appeal by the Person Involuntarily Committed

If the person concerned has been involuntarily committed, he may also file a complaint on appeal with the Local Court in the district of which he is involuntarily committed.

Section 306

Revocation of the Reservation of Consent

If an order through which a reservation of consent was ordered is revoked on the grounds that it is unjustified, the effect of the legal transactions by or vis-à-vis the person concerned shall remain unaffected thereby.

Section 307

Costs in Custodianship Matters

In custodianship matters the court may impose the expenses of the person concerned insofar as they were necessary for the appropriate legal actions in whole or in part on the public treasury if a custodianship measure pursuant to sections 1896 through 1908i of the Civil Code was rejected, revoked as unjustified, limited, or if the proceedings were concluded without a decision concerning such measure.

Section 308

Communication of Decisions

(1) The court shall communicate decisions to other courts, public authorities, or other public agencies, to the extent necessary in consideration of justified interests of the person concerned in order to avert a significant danger to the well-being of the person concerned, third parties, or for public safety.

(2) If during the course of court proceedings, knowledge requiring communication pursuant to subsection (1) arises prior to the conclusion of the proceedings, communication of the knowledge that arose shall be promptly made.

(3) At the same time as the communication the court shall inform the person concerned, his guardian ad litem, and his custodian of the substance and recipients of the communication. The provision of the information to the person concerned shall not be made if:

1. the purpose of the proceedings or the purpose of the communication would be endangered based upon provision of the information,
2. pursuant to a medical certificate there is a concern of significant disadvantage to the health of the person concerned, or

3. it is the impression of the court the person that concerned is apparently not in a condition to understand the substance of the information.

As soon as the reasons set forth in the second sentence are no longer applicable, the information shall be subsequently provided.

(4) The substance of the communication, the type and form of its transmission, its recipients, the provision of information to the person concerned or in the case this is not done the reasons therefor, as well as the provision of information to the guardian ad litem and the custodian shall be placed in the record.

Section 309 Special Communications

(1) If the decision is made that a custodian shall be appointed for a person for the handling of all of his affairs or if the scope of duties is to be enlarged to this extent, the court shall communicate this to the public authority competent for administering the voter lists. This shall also apply when the decision does not encompass those matters set forth in section 1896 (4) and section 1905 of the Civil Code. Communication shall also take place when custodianship in accordance with the first and second sentences is terminated for a reason other than the death of the person concerned or when it is limited.

(2) If a reservation of consent has been ordered that encompasses the agreement of the person concerned concerning his place of residence, the court shall inform the registration authority and provide the name of the custodian. Communication shall also take place when the reservation of consent pursuant to the first sentence is terminated or a change in the person undertaking the custodial duties.

Section 310 Communications During the Period of Involuntary Commitment

For the duration of a measure of involuntary commitment the court shall inform the head of the facility in which the person concerned is involuntarily committed of the appointment of a custodian whose duties encompass consent to the place of residence of the person concerned, removal of such custodianship, and any change in the person undertaking the custodial duties.

Section 311 Communications for Criminal Prosecution

Except for cases set forth in this statute, in section 16 of the Introductory Act to the Court Constitutions Act (*Einführungsgesetz zum Gerichtsverfassungsgesetz*; EGGVG) and in section 70 sentences 2 and 3 of the Youth Courts Act (*Jugendgerichtsgesetz*; JGG), the court may *ex officio* communicate to other courts or public authorities decisions or knowledge gained from the proceedings from which the person concerned is recognisable only for the prosecution of crimes or administrative offenses to the extent there are no prevailing interests of the person concerned worthy of protection that would preclude the transmission. Section 308 (3) and (4) shall apply *mutatis mutandis*.

Part 2 Proceedings in Involuntary Commitment Matters

Section 312 Involuntary Commitment Matters

Involuntary commitment matters are proceedings that concern:

1. the approval of an involuntary commitment associated with a deprivation of liberty and the approval of consent to coercive medical treatment (section 1906 (1) through (3a) of the Civil Code) of a person under custodianship or a person who has authorised a third party to do so (section 1906 (5) of the Civil Code),

2. the approval of a measure associated with a deprivation of liberty pursuant to section 1906 (4) of the Civil Code, or

3. involuntary commitment associated with a deprivation of liberty and coercive medical treatment of a person who has reached the age of majority in accordance with *Land* statutes concerning involuntary commitment of persons with a mental illness.

The provisions in this Part that apply to involuntary commitment shall apply *mutatis mutandis* to coercive medical treatment to the extent no provision provides otherwise. The appointment of a guardian ad litem shall always be required when the approval of consent to coercive medical treatment appointment is at issue.

Section 313 Local Jurisdiction

(1) Exclusive jurisdiction for involuntary commitment matters pursuant to section 312 no. 1 and 2 shall be determined according to the following priority:

1. the court before which a proceeding for the appointment of a custodian was initiated or the custodianship proceeding is pending;

2. the court in the district of which the person concerned has his place of usual residence;

3. the court in the district of which the need for the involuntary commitment measure arose;

4. the Schöneberg Local Court in Berlin when the person concerned has German citizenship.

(2) As to interlocutory orders or interlocutory measures that court also shall have jurisdiction in the district of which the need for the involuntary commitment measure became known. In the case of an interlocutory order or an interlocutory measure, it shall communicate this to the court that would have jurisdiction pursuant to subsection (1) no. 1 or no. 2.

(3) Exclusive jurisdiction for involuntary commitments pursuant to section 312 no. 3 shall be that court in the district of which the need for the involuntary commitment arose. If the person concerned is already involuntarily committed in a facility, that court shall have exclusive jurisdiction in the district of which the facility is located.

(4) If a different court has jurisdiction over the involuntary commitment matter than the court before which a proceeding for the appointment of a custodian that encompasses the involuntary commitment was initiated, this court shall communicate to the court with jurisdiction for the involuntary commitment matter the cancellation of the custodianship, the withdrawal of involuntary commitment from the scope of duties, and a change in the person serving as custodian. The court that has jurisdiction for the involuntary commitment matter shall communicate to the other court the involuntary commitment measure and any modification, extension, or discontinuation thereof.

Section 314 Relinquishment of the Involuntary Commitment Matter

The court may relinquish the involuntary commitment matter when the person concerned resides in the district of the other court and the involuntary commitment measure is to be executed there insofar as that court has stated agreement with accepting the proceedings.

Section 315 Participants

(1) The participants shall be:

1. the person concerned,

2. the custodian,

3. the authorised person within the meaning of section 1896 (2) second sentence of the Civil Code.
- (2) The guardian ad litem shall be included as a participant in the proceedings by appointment.
- (3) The competent public authority shall be included as a participant upon its filing of an application therefor.
- (4) In the interests of the person concerned, the following may also be participants:
 1. his spouse or life partner when the spouses or life partners are not permanently separated, his parents and children when the person concerned lives with them or had lived with them when the proceeding was initiated, his foster parents,
 2. a person named by him who he trusts,
 3. the head of the facility in which the person concerned resides.

The law of a *Land* may provide that additional persons and agencies may be participants.

Section 316 Capacity to Participate in Proceedings

In involuntary commitment matters the person concerned has the capacity to participate in the proceedings without regard to his capacity to contract.

Section 317 Guardian ad litem

- (1) The court shall appoint a guardian ad litem for the person concerned when this is necessary for representing his interests. The appointment is particularly necessary when there will be no hearing of the person concerned.
- (2) If the court does not appoint a guardian ad litem for the person concerned, the grounds therefor shall be provided in the decision in which the involuntary commitment measure is approved or ordered.
- (3) A person who is a professional guardian ad litem shall only be appointed as guardian ad litem when there is no other suitable person available who is prepared to voluntarily perform the duties of guardian ad litem.
- (4) The appointment of a guardian ad litem shall not be made or shall be rescinded when the interests of the person concerned are represented by an attorney or another suitable authorised representative.
- (5) The appointment shall end, insofar as it has not previously been rescinded, upon the final decision becoming final and binding or upon another conclusion of the proceedings.
- (6) The appointment or rescindment of a guardian ad litem as well as the rejection of such a measure shall not be independently appealable.
- (7) No costs shall be imposed on the guardian ad litem.

Section 318 Compensation and Expenditure Reimbursement for the Guardian ad litem

Section 277 shall apply *mutatis mutandis* to compensation and expenditure reimbursement for the guardian ad litem.

Section 319 Hearing the Person Concerned

- (1) The court shall conduct an in-person hearing with the person concerned prior to an involuntary commitment measure and shall obtain a personal impression of him. The court shall obtain the personal impression, to the extent necessary, in the usual environment of the person concerned.
- (2) The court shall instruct the person concerned about the possible course of the proceedings.

(3) If an in-person hearing shall not take place pursuant to section 34 (2) because there is a concern of significant detriment to the health of the person concerned, this decision shall only be made based upon a medical opinion.

(4) Procedural acts pursuant to subsection (1) shall not take place through mutual legal assistance proceedings.

(5) The court may allow the person concerned to be presented by the competent public authority if he refuses to participate in procedural acts pursuant to subsection (1).

(6) The public authority shall only employ coercion when the court has expressly so ordered. The competent public authority shall be authorised to seek the support of police enforcement bodies when necessary.

(7) The residence of the person concerned shall only be opened by force, entered, and searched against his will when the court has expressly so ordered for his presentation at the hearing. In the case of imminent danger the order pursuant to the first sentence may be made by the competent public authority. This provision is a limitation on the fundamental right to the inviolability of the home arising from Article 13 (1) of the Basic Law.

Section 320

Hearing Other Participants and the Competent Public Authority

The court may hear other participants. It shall hear the competent public authority.

Section 321

Obtaining an Expert Opinion

(1) Prior to an involuntary commitment measure there shall be a formal taking of evidence by way of obtaining an expert opinion on the necessity of the measure. Prior to the preparation of the expert opinion the expert shall personally examine or interview the person concerned. The opinion shall address the expected duration of the involuntary commitment. The expert should be a psychiatrist; he shall be a physician with experience in the field of psychiatry. In the case of the approval of consent to coercive medical treatment or upon an order therefor, the expert shall not be the physician providing the coercive medical treatment.

(2) As to a measure pursuant to section 312 no. 2, a medical certificate shall be sufficient.

Section 322

Presentation for Examination; Involuntary Commitment for Expert Assessment

Sections 283 and 284 shall apply *mutatis mutandis* to the presentation for examination and involuntary commitment for expert assessment.

Section 323

Contents of the Operative Provisions of the Order

(1) In the case of an approval or an order of an involuntary commitment measure, the operative provisions of the order shall also contain:

1. a detailed description of the involuntary commitment measure and
2. the time at which the involuntary commitment measure will terminate.

(2) Upon the approval of consent to coercive medical treatment or upon an order therefor the operative provisions of the order shall also contain statements that the implementation and documentation of this measure shall be the responsibility of a physician.

Section 324

Effectiveness of Orders

(1) An order concerning the approval or the order of an involuntary commitment measure shall become effective when it becomes final and binding.

(2) The court may order the immediate effectiveness of orders. In such a case, it shall become effective when the order and the order of its immediate effectiveness:

1. are notified to the person concerned, the guardian ad litem, the custodian, or the person authorised pursuant to section 1896 (2) sentence 2 of the Civil Code,

2. are communicated to a third party for the purpose of execution of the order, or
3. are provided to the court registry for the purpose of notification.

The timing of immediate effectiveness shall be noted on the order.

Section 325 Notification

(1) Notification of the grounds upon which an order is based to the person concerned may be refrained from when this is necessary according to the medical certificate in order to avoid significant detriment to his health.

(2) The director of the institution in which the person concerned is to be involuntarily committed shall also be notified of the order through which an involuntary commitment measure has been approved or ordered. The court shall notify the competent public agency of a decision through which an involuntary commitment measure was approved, ordered, or terminated.

Section 326 Presentation for Involuntary Commitment

(1) The competent public authority shall support the custodian or the person authorised pursuant to section 1896 (2) sentence 2 of the Civil Code at their request in presenting the person concerned for involuntary commitment in accordance with section 312 no. 1.

(2) The public authority shall only employ coercive force when the court has expressly so ordered. The competent public authority shall be authorised to request the assistance of police enforcement bodies when necessary.

(3) The residence of the person concerned shall only be opened, entered, and searched by force against his will when the court has expressly so ordered for his presentation for involuntary commitment. Prior to the order the person concerned shall be heard in-person. In a case of imminent danger the order may be made by the competent public authority without a prior hearing of the person concerned. This provision is a limitation on the fundamental right to the inviolability of the home arising from Article 13 (1) of the Basic Law.

Section 327 Enforcement Issues

(1) The person concerned may apply for a decision by the court against measures regulating individual issues as part of execution of the involuntary commitment pursuant to section 312 no. 3. A requirement to perform rejected or omitted measures may be requested together in the application.

(2) The application shall only be admissible when the person concerned credibly demonstrates that his rights have been violated by the measure, its rejection, or its omission.

(3) The application shall not have suspensive effect. The court may order suspension.

(4) The order shall not be appealable.

Section 328 Suspension of Execution

(1) The court may suspend the execution of the involuntary commitment pursuant to section 312 no. 3. Conditions may be placed upon the suspension. The suspension shall not exceed six months; it may be extended for up to one year.

(2) The court may revoke the suspension when the person concerned does not comply with a condition or when his status so requires.

Section 329 Duration and Extension of Involuntary Commitment

(1) The involuntary commitment shall cease at the latest at the end of one year; in the case of an obvious need for a longer period of involuntary commitment at the latest at the end of two years, when it was not previously extended. The approval of consent to coercive medical

treatment or an order therefor shall not exceed a duration of six weeks when it was not previously extended.

(2) The provisions concerning the initial order or approval shall apply *mutatis mutandis* to the extension of the approval or order of an involuntary commitment measure. In the case of involuntary commitments that exceed a total duration of four years, the court shall not appoint an expert that previously treated the person concerned or prepared an expert opinion regarding the person concerned or who works in the institution to which the person has been involuntarily committed.

(3) As to the approval of consent to coercive medical treatment or an order therefor with a total duration of more than twelve weeks, the court shall not appoint an expert who has previously treated the person concerned or prepared an expert opinion regarding the person concerned or who works in the institution to which the person concerned has been involuntarily committed.

Section 330 Revocation of the Involuntary Commitment

The approval or order of the involuntary commitment measure shall be revoked when the prerequisites therefor are no longer met. Prior to the revocation of an involuntary commitment measure pursuant to section 312 no. 3 the court shall conduct a hearing with the competent public authority unless this would lead to a delay in the proceedings that is not slight.

Section 331 Interlocutory Order

The court may order or approve a provisional involuntary commitment measure through an interlocutory order when:

1. there are urgent grounds for the assumption that the prerequisites for the approval or order of an involuntary commitment measure are met and there is urgent need for immediate action,
2. there is a medical certificate concerning the condition of the person concerned and the necessity of the measure; in cases under section 312 nos. 1 and 3 the physician who prepared the medical certificate must have experience in the field of psychiatry and must be a psychiatrist,
3. in cases under section 317 a guardian ad litem has been appointed and heard, and
4. an in-person hearing has been conducted with the person concerned.

In deviation from section 319 (4) a hearing of the person concerned shall be permissible through mutual legal assistance proceedings.

Section 332 Interlocutory Order upon Increased Urgency

In cases of imminent danger the court may issue an interlocutory order in accordance with section 331 prior to the hearing with the person concerned as well as prior to a hearing with and appointment of the guardian ad litem. These procedural steps shall subsequently be promptly undertaken.

Section 333 Duration of the Interlocutory Order

(1) The interlocutory order shall not exceed a duration of six weeks. If this period is insufficient, after hearing an expert it may be extended by a further interlocutory order. Repeated extension shall be permissible under the conditions set forth in the first and second sentences. It shall not exceed a total duration of three months. Involuntary

commitment for the purpose of preparation of the expert opinion (section 322) shall be included in this total duration.

(2) The interlocutory order shall not exceed a duration of two weeks as to the approval of consent to coercive medical treatment or an order therefor. Upon repeated extensions the maximum duration of six weeks shall not be exceeded.

Section 334 Interlocutory Measures

When an involuntary commitment measure is to be ordered pursuant to section 1846 of the Civil Code, sections 331, 332, and 333 shall apply *mutatis mutandis*.

Section 335 Supplementary Provisions Concerning a Complaint on Appeal

(1) The following shall have the right to file a complaint on appeal in the interests of the person concerned:

1. his spouse or life partner when the spouses or life partners are not permanently separated, as well as his parents and children when the person concerned lives with them or lived with them at the time the proceedings were initiated, foster parents,
2. a person named by the person concerned who he trusts, as well as
3. the director of the institution in which the person concerned resides

when they were participants in the proceedings in the first instance.

(2) The guardian ad litem shall have the right to file a complaint on appeal.

(3) The custodian or the person named in the lasting power of attorney may also file a complaint on appeal against a decision that relates to the scope of his duties, in the name of the person concerned.

(4) The competent public authority shall also have the right to file a complaint on appeal.

Section 336 Filing a Complaint on Appeal by the Person Concerned

The person concerned may also file the complaint on appeal with the Local Court in the district of which he has been involuntarily committed.

Section 337 Costs in Involuntary Commitment Matters

(1) In involuntary commitment matters the court may impose the expenses of the person concerned, insofar as they were necessary for the legal proceedings, on the state treasury in whole or in part, when an involuntary commitment measure pursuant to section 312 nos. 1 and 2 was rejected, revoked on the basis of lack of justification, limited, or when the proceeding was terminated without a decision concerning the measure.

(2) If an application for an involuntary commitment measure pursuant to *Land* statutes concerning the involuntary commitment of psychologically ill persons in accordance with section 312 no. 3 is rejected or withdrawn and if the result of the proceeding is that there was no reasonable basis for the competent administrative authority to submit an application for involuntary commitment, the court shall impose the expenses of the person concerned on the entity to which the administrative authority belongs.

Section 338 Communication of Decisions

Sections 308 and 311 shall apply *mutatis mutandis* to communications. The revocation of an involuntary commitment measure pursuant to section 330 sentence 1 and the suspension of the involuntary commitment pursuant to section 328 (1) sentence 1 shall be communicated to the director of the institution in which the person concerned resides.

Section 339
Informing Relatives

The court shall promptly inform a relative of the person concerned or a person who he trusts of the order or approval of the involuntary commitment and its extension.

Part 3
Proceedings in Matters Concerning Adult Guardianship Court Appointments

Section 340
Matters Concerning Adult Custodianship Court Appointments

Matters concerning adult custodianship court appointments are:

1. proceedings concerning curatorship with the exception of curatorship for minors or for a foetus,
2. proceedings concerning the court appointment of another representative for a person who has reached the age of majority, as well as
3. other proceedings allocated to the custodianship court

to the extent the matter does not involve custodianship matters or involuntary commitment matters.

Section 341
Local Jurisdiction

Court jurisdiction shall be determined for matters concerning adult custodianship court appointments in accordance with section 272.

Book 4
Proceedings in Estate and Property Division Matters

Part 1
Definitions of Terms; Local Jurisdiction

Section 342
Definitions of Terms

(1) Estate matters are proceedings that concern:

1. the special official custody of dispositions mortis causa,
2. securing the estate including curatorship of estates,
3. the opening of the disposition mortis causa,
4. determination of the heirs,
5. the acceptance of declarations that are to be submitted to the probate court pursuant to statutory provisions,
6. certificates of inheritance, certificates of executorship, and other certificates to be issued by the probate court,
7. execution of a will,
8. estate administration, and
9. other duties allocated to the probate court by statute.

(2) Property division matters are:

1. the duties that courts must perform pursuant to this Book concerning the distribution of property of estates and communities of property upon the termination of a marriage, a life partnership, or a continued community of property, and

2. proceedings relating to certificates concerning the distribution of the community of property of a marriage, life partnership, or continued community of property pursuant to sections 36 and 37 of the Real Property Registration Regulation (*Grundbuchordnung*; GBO) and sections 42 and 74 of the Ship Registration Regulation (*Schiffsregisterordnung*; SchRegO).

Section 343 **Local Jurisdiction**

- (1) Local jurisdiction shall be determined based upon the domicile of the testator at the time of the succession; if the domicile was not in Germany, that court shall have jurisdiction in the district of which the testator had his place of residence at the time of the succession.
- (2) If the testator is a German national and at the time of the succession had neither a domicile nor a place of residence in Germany, the Schöneberg Local Court in Berlin shall have jurisdiction. It may refer the matter to another court for good cause.
- (3) If the testator is a foreign national and at the time of the succession had neither domicile nor a place of residence in Germany, each court in which any estate assets are located shall have jurisdiction over all estate assets.

Section 344 **Special Local Jurisdiction**

- (1) Jurisdiction for special official custody of wills:
1. when the will was made before a notary, lies with the court in the district of which the notary has his official seat;
 2. when the will was made before the mayor of a municipality, lies with the court in the district of which the municipality is located;
 3. when the will was made in accordance with section 2247 of the Civil Code, lies with any court.

The testator may at any time request custody at a court that does not have local jurisdiction pursuant to the first sentence.

- (2) The renewed special official custody of joint wills in accordance with section 349 (2) sentence 2 shall take place at the court with jurisdiction for the estate of the first deceased, unless the surviving spouse or life partner requests custody at a different Local Court.
- (3) Subsections (1) and (2) shall apply *mutatis mutandis* to the special official custody of contracts of inheritance.
- (4) As to securing the estate, each court in the district of which a need for the securing of the estate exists shall have jurisdiction.
- (4a) Every notary shall have local jurisdiction to distribute an estate who has his official seat in the district of the Local Court in which the testator has his final domicile. If the testator did not have a domicile within Germany, every notary shall have jurisdiction who has his official seat in the district of the Local Court in the district of which estate assets are located. In cases where more than one notary has local jurisdiction, the notary who first received an application for distribution shall be competent to act. Agreements among those sharing in the distribution shall remain unaffected.
- (5) As to distribution of the joint property of a community of property, if a portion of the joint property is part of an estate, that notary shall have jurisdiction who is competent for the distribution of the estate. Otherwise, every notary shall be competent to act who has his official seat in the district of the competent court pursuant to section 122 nos. 1 through 5. If there is no jurisdiction pursuant thereto, every notary shall be competent to act who has his official seat in the district of a Local Court in which assets are located that belong to the joint property. Subsection (4a) sentences 3 and 4 shall apply *mutatis mutandis*.
- (6) If a court other than the court with jurisdiction pursuant to section 343 has official custody of a disposition mortis causa, this court shall have jurisdiction for opening the disposition.

(7) As to the acceptance of a declaration disclaiming the inheritance (section 1945 (1) of the Civil Code) or by which the disclaimer is avoided (section 1955 of the Civil Code) that probate court shall also have jurisdiction in the district of which the person who states his waiver or avoidance has his domicile. A record of the declaration shall be transmitted from that court to the competent probate court.

Part 2
Proceedings in Estate Matters

Chapter 1
General Provisions

Section 345
Participants

(1) In proceedings concerning the issuance of a certificate of inheritance the applicant is a participant. Further, additional participants who may be included are:

1. statutory heirs,
2. persons who may be heirs based upon an existing disposition mortis causa,
3. the challenger to the applicant when a legal dispute is pending with respect to the right of succession,
4. persons who in the event of the ineffectiveness of the disposition mortis causa would be heirs, and
5. all others whose right to the estate would be directly affected by the proceedings.

They shall be included upon their application therefor.

(2) Subsection (1) shall apply *mutatis mutandis* for the issuance of a certificate pursuant to section 1507 of the Civil Code or pursuant to sections 36 and 37 of the Real Property Registration Regulation (*Grundbuchordnung*; GBO) and sections 42 and 74 of the Ship Registration Regulation (*Schiffsregisterordnung*; SchRegO).

(3) In proceedings for the appointment of an executor and for the issuance of an executor's certificate, the executor shall be a participant. The court may include as participants:

1. the heirs,
2. the co-executor.

They shall be included upon their application therefor.

(4) In other estate proceedings that are commenced by application, participants in proceedings concerning:

1. curatorship of the estate or administration of the estate shall include the curator of the estate or the administrator of the estate;
2. the dismissal of the executor of the estate shall include the executor;
3. the determination of succession law deadlines shall include those persons who must comply with the deadline;
4. the determination or extension of an inventory period shall include the heirs who must comply with the deadline as well in cases under section 2008 of the Civil Code, his spouse or life partner;
5. the making of a declaration in lieu of an oath shall include the person who is to make the declaration in lieu of oath, as well as in cases under section 2008 of the Civil Code, his spouse or life partner.

The court may include as participants all others whose rights would be directly affected by the proceedings. They shall be included upon their application therefor.

Chapter 2 **Custody of Dispositions mortis causa**

Section 346 **Proceedings upon Special Official Custody**

- (1) The acceptance of a disposition mortis causa into special official custody as well as the surrender thereof shall be ordered by the judge and shall be effectuated by him together with the records clerk of the court registry.
- (2) The deposit of a will shall be made under the joint seal of the judge and the records clerk of the court registry.
- (3) The testator shall be issued a certificate of deposit concerning the official custody of the disposition mortis causa; in the case of a joint will each testator shall receive a certificate of deposit and in the case of a contract of inheritance, each contracting participant.

Section 347 **Communication of Custody**

- (1) If the court takes a holographic will or an emergency will into special official custody, it shall promptly electronically transmit the details of the custody within the meaning of section 78b (2) sentence 2 of the Federal Regulations for Notaries to the public authority that maintains the Central Register of Wills. The first sentence shall apply *mutatis mutandis* to joint holographic wills and contracts of inheritance that have not been taken into special official custody when they are opened after the death of the first testator and do not exclusively contain rules relating to the succession occurring upon the death of the first testator.
- (2) If a joint will or a contract of inheritance pursuant to section 349 (2) sentence 2 and (4) is again deposited into special official custody, the court with jurisdiction pursuant to section 344 (2) or (3) shall transmit the details of the custody to the public authority that maintains the Central Register of Wills, with reference to the previous registration to the extent available.
- (3) If a will deposited into special official custody is withdrawn from such special official custody, the custodial court shall communicate this to the public registration authority.
- (4) The registers at the civil registry offices and at the Schöneberg Local Court in Berlin concerning the dispositions mortis causa in official custody shall continue to be maintained by these in accordance with the Wills Register Transfer Act (*Testamentsverzeichnis-Überführungsgesetz*; TVÜG) until they are transferred to the Central Register of Wills. If the office that maintains the Register of Wills receives a communication of the death of the testator it shall communicate this to the office from which the notice of custody originated, insofar as the public authority that maintains the Central Register of Wills does not process notifications of death pursuant to section 4 (1) of the Wills Register Transfer Act. The *Land* governments shall issue rules by way of statutory instrument governing the form and scope of communications pursuant to the second sentence, concerning the contents of wills registers, and the deletion of data stored in the wills registers. The use of the data shall be limited to that absolutely necessary for retrieving the disposition mortis causa. The deadline for deletion of the data shall not exceed a period of five years from the death of the testator; if there is a declaration of death of the testator or if the time of death is established by the court, the data shall be deleted at the latest after thirty years.
- (5) Communications pursuant to subsection (4) sentence 2 may be made electronically. The *Land* governments shall determine through statutory instrument the time from which communications in their area may be issued and filed electronically, as well as the suitable form for the processing of documents.
- (6) The *Land* governments may delegate the authority set forth in subsection (4) sentence 3 and subsection (5) sentence 2 by ordinance to the *Land* justice administration departments.

Chapter 3 **Opening of Dispositions mortis causa**

Section 348

Opening of Dispositions mortis causa by the Probate Court

(1) As soon as the court has received knowledge of the death of the testator it shall open the disposition mortis causa in its custody. A record shall be kept of the opening. If the disposition mortis causa was sealed, it shall be noted in the record whether the seal was undamaged.

(2) The court may set a hearing date for the opening of the disposition mortis causa and summon the statutory heirs as well as other participants to the hearing. The contents of the disposition mortis causa shall be notified orally to those appearing. It may also be presented to those appearing; upon request it shall be presented.

(3) The court shall notify a participant of the substance of the disposition mortis causa that relates to him in writing. This shall not apply to participants who were present at a hearing pursuant to subsection (2).

Section 349

Particular Circumstances as to the Opening of Joint Wills and Contracts of Inheritance

(1) Upon the opening of a joint will, the dispositions of the surviving spouse or life partner shall not be notified to the extent they are separable.

(2) If the joint will was in special official custody a certified copy of the dispositions of the deceased spouse or life partner shall be prepared. The will shall again be closed and placed in special official custody with the competent court pursuant to section 344 (2).

(3) Subsection (2) shall not be applicable when the will only contains rules relating to succession of the first deceased spouse or life partner, especially if the will is limited to the statement that the spouses or life partners establish a mutual and reciprocal disposition.

(4) Subsections (1) through (3) shall apply *mutatis mutandis* to contracts of inheritance.

Section 350

Opening of Disposition mortis causa by Another Court

If a court with jurisdiction pursuant to section 344 (6) opens the disposition mortis causa, it shall transmit this and a certified copy of the record of the opening record to the probate court; a certified copy of the disposition mortis causa shall be retained.

Section 351

Deadline for Opening Disposition mortis causa

If a will, a joint will, or a contract of inheritance was in official custody for more than thirty years, the custodial office shall investigate *ex officio* whether the testator is still alive. If the custodial office cannot determine whether the testator is still alive, it shall open the disposition mortis causa. Sections 348 through 350 shall apply *mutatis mutandis*.

Chapter 4

Proceedings on a Certificate of Inheritance; Execution of the Will

Section 352

Decision on Application for Certificate of Inheritance

(1) The decision that the facts necessary to substantiate the issuance of the certificate of inheritance are considered established shall be made by way of an order. The order shall become effective upon its issuance. There is no requirement for notification of the order.

(2) If the order is contrary to the stated wishes of a participant, the order shall be notified to the participants. In this case the court shall suspend the immediate effectiveness of the order and postpone the issuance of the certificate of inheritance until the order becomes final and binding.

(3) If the certificate of inheritance has already been issued, a complaint on appeal against the order shall only be admissible to the extent there is an application for the revocation of the certificate of inheritance.

Section 353

Revocation or Declaration of Invalidity of Certificates of Inheritance

(1) In proceedings concerning the withdrawal or declaration of invalidity of certificates of inheritance the court shall reach a decision on the costs of the proceedings. The decision on costs shall be issued at the same time as the final decision.

(2) If the certificate of inheritance has already been revoked a complaint on appeal against the order of revocation shall only be admissible when there is an application for the issuance of a new identical certificate of inheritance. The complaint on appeal shall apply in the case of doubt as an application for a new identical certificate of inheritance.

(3) An order through which a certificate of inheritance is declared invalid shall not be appealable after the order was publicly announced (section 2361 (2) sentence 2 of the Civil Code).

Section 354

Other Certificates

Sections 352 and 353 shall apply *mutatis mutandis* to the issuance of certificates pursuant to sections 1507 and 2368 of the Civil Code, sections 36 and 37 of the Real Property Registration Regulation and sections 42 and 74 of the Ship Registration Regulation.

Section 355

Execution of the Will

(1) An order through which the probate court specifies a deadline for a declaration by a third party pursuant to section 2198 (2) of the Civil Code or a deadline for the acceptance of the office of executor by a person named as executor shall be challengeable by a complaint subject to a time limit upon application *mutatis mutandis* of sections 567 through 572 of the Code of Civil Procedure.

(2) Section 40 (3) shall apply *mutatis mutandis* to an order through which the court decides in the case of a difference of opinion among more than one executor with respect to undertaking a legal transaction; the complaint on appeal shall be filed within a deadline of two weeks.

(3) If two or more persons hold the office of executor jointly, each executor independently shall have the right to file a complaint on appeal against an order through which the court suspended instructions of the testator for the administration of the estate, as well as against an order in which the court decided in a matter of a difference of opinion among the executors.

Chapter 5

Other Procedural Law Rules

Section 356

Duties of Communication

(1) If the court becomes aware that a child has acquired property through a disposition mortis causa that is to be inventoried pursuant to section 1640 (1) sentence 1 and (2) of the Civil Code, it shall communicate the acquisition of property to the family court.

(2) If a court pursuant to section 344 (4) orders measures for securing the estate it shall accordingly inform the court with jurisdiction pursuant to section 343.

Section 357

Inspection of an Opened Disposition mortis causa; Copy of a Certificate of Inheritance or Another Certificate

(1) Whosoever credibly demonstrates a legal interest therein is entitled to inspect an opened disposition mortis causa.

(2) Whosoever credibly demonstrates a legal interest therein may request to receive a copy of the certificate of inheritance. The same shall apply to court certificates issued pursuant to section 354 as well as to orders that relate to the appointment or termination of an executor.

Section 358

Coercion for the Delivery of a Will

In cases under section 2259 (1) of the Civil Code, an order for the delivery of the will shall be made by way of an order.

Section 359

Administration of Estates

(1) The order through which the application of the heirs for an order for administration of the estate was granted, shall not be appealable.

(2) The filing of a complaint on appeal against an order that approved an application by a creditor of the estate for an order for administration of the estate shall only be available to the heirs and in the case of joint heirs, each heir as well as the executor of the estate who is authorised to administer the estate.

Section 360

Determination of an Inventory Deadline

(1) The deadline for submitting a complaint on appeal against the order that determined a deadline for the submission of the inventory shall begin for each creditor of the estate at that point in time at which the order was announced to the creditor of the estate who had submitted an application for the determination of such inventory deadline.

(2) Subsection (1) shall apply *mutatis mutandis* to a complaint on appeal against an order setting forth a decision with respect to the determination of a new deadline for the submission of the inventory or with respect to an application by an heir to extend the deadline for the submission of the inventory.

Section 361

Declaration in Lieu of an Oath

If a creditor of the estate requests the submission of a declaration in lieu of an oath from the heirs in accordance with section 2006 of the Civil Code, an application for the determination of a date for the court hearing for the submission of the declaration in lieu of an oath may be submitted by the creditor of the estate as well as by the heir. Both parties shall be summoned to the court hearing. The appearance of the creditor shall not be mandatory. Sections 478 through 480 and 483 of the Code of Civil Procedure shall apply *mutatis mutandis*.

Section 362

Deferment as to Claim for Compulsory Share

Section 264 shall apply *mutatis mutandis* to a proceeding on deferment as to a claim for the compulsory share (section 2331a in conjunction with section 1382 of the Civil Code).

Part 3

Proceedings in Property Distribution Matters

Section 363

Application

(1) In cases where there is more than one heir, the notary shall facilitate the distribution of the estate among the participants upon the filing of an application therefor; this shall not be applicable when there is an executor who is authorised to distribute the assets of the estate.

(2) Each joint heir, the purchaser of a portion of the inheritance, as well as any person who has a lien or usufruct in a portion of the estate shall be entitled to submit an application.

(3) The application should set forth the participants and the property to be distributed.

Section 364

(repealed)

Section 365 Summons

- (1) The notary shall summon the applicant and the other participants to a hearing for oral argument. A summons by way of public service shall not be permissible.
- (2) The summons shall contain the information that even in the absence of a participant the oral argument on the distribution of the estate will proceed and that the summons for a new court hearing may not be made in the event the court hearing is postponed or a new court hearing date for the continuation of the oral argument is to be scheduled. If there is written documentation concerning the distribution of the estate, reference shall be made in the summons that the documents may be inspected in the office of the notary.

Section 366 Out-of-Court Agreement

- (1) If the participants who appear reach an agreement prior to the distribution of the estate, in particular, as concerns the form of the division of property, the notary shall record the agreement. The same shall apply to the recommendations of a participant when he is the only person to appear.
- (2) If all participants appear, the notary shall confirm the agreement they reached. The same shall apply when those participants who did not appear submit their agreement by way of a recording by the court or an officially authenticated certificate.
- (3) If a participant does not appear the notary, when the participant did not agree in accordance with subsection (2) sentence 2, shall notify him of the substance of the document that relates to him and concurrently inform him that the document may be inspected in the offices of the notary and a copy of the document may be requested. The notification shall contain the information that his acceptance of the substance of the document is presumed when he does not submit an application for the scheduling of a new hearing within the deadline therefor established by the notary or when he does not appear at the new hearing.
- (4) If the participant timely applies for the scheduling of a new court hearing and if he appears at the new court hearing, the oral argument shall be continued; in all other cases the notary shall confirm the agreement.

Section 367 Restoration of the Status Quo Ante

If in a case under section 366 the participant was hindered through no fault of his own in timely submitting an application for the scheduling of a new hearing or in appearing at the new hearing, the provisions governing restoration of the status quo ante (sections 17, 18, and 19 (1)) shall apply *mutatis mutandis*.

Section 368 Property Distribution Plan; Confirmation

- (1) As soon as the circumstances of the situation allow the distribution of property to take place the notary shall prepare a property distribution plan. If the participants who appear are in agreement with the substance of the plan, the notary shall record it. If all participants appear, the notary shall confirm the distribution of the property; the same shall apply when those participants who did not appear submit their agreement by way of a recording by the court or an officially authenticated instrument.
- (2) If a participant did not appear, the notary shall proceed in accordance with sections 366 (3) and (4). Section 367 shall apply *mutatis mutandis*.
- (3) (repealed)

Section 369 Distribution by Drawing Lots

If there is an agreement for distribution of the property by drawing lots when there has been no other agreement, the lot for any participant who does not appear shall be drawn by a substitute appointed by the notary.

Section 370

Suspension in the Event of a Dispute

If disputed issues arise during the oral argument, a record thereof shall be made and the proceeding shall be suspended until the disputed issues are concluded. Insofar as undisputed issues can be recorded and certified, the notary shall proceed in accordance with sections 366 and 368 (1) and (2).

Section 371

Effect of Confirmed Agreement and Distribution of Property; Execution

(1) Agreements in accordance with section 366 (1) as well as distributions of property in accordance with section 368 shall become effective when the confirmation order is final and binding and shall be as binding upon all participants as a contractual agreement or property distribution.

(2) Execution shall take place upon the effectiveness of the agreement pursuant to section 366 (1) as well as upon distribution of property. Sections 795 and 797 of the Code of Civil Procedure shall apply *mutatis mutandis*.

Section 372

Legal Remedy

(1) An order setting forth a deadline in accordance with section 366 (3) and an order concerning restoration of the status quo ante shall be challengeable by a complaint subject to a time limit upon application *mutatis mutandis* of sections 567 through 572 of the Code of Civil Procedure.

(2) A complaint on appeal against an order of confirmation may only be based upon the grounds that the provisions regarding the proceedings were not complied with.

Section 373

Distribution of a Community of Property

(1) Upon the termination of a marriage, a life partnership, or a continued community of property, the provisions of this Part shall apply *mutatis mutandis* to the distribution of the community of property.

(2) Section 345 (1) and sections 352, 353, and 357 shall apply *mutatis mutandis* to proceedings for the issuance, withdrawal, or declaration of ineffectiveness of certificates concerning the distribution of the community of property of a marriage, life partnership, or continued community of property pursuant to sections 36 and 37 of the Real Property Registration Regulation and sections 42 and 74 of the Ship Registration Regulation.

Book 5

Proceedings in Registry Matters, Commercial Law Proceedings

Part 1

Definitions of Terms

Section 374

Registry Matters

Registry matters are:

1. matters concerning the Commercial Register (*Handelsregister*),
2. matters concerning the Register of Cooperatives (*Genossenschaftsregister*),
3. matters concerning the Partnership Register (*Partnerschaftsregister*),
4. matters concerning the Register of Associations (*Vereinsregister*),

5. matters concerning the Joint Property Register (*Güterrechtsregister*).

Section 375
Commercial Law Proceedings

Commercial law proceedings are those matters to be dealt with by the court in accordance with:

1. section 146 (2), sections 147, 157 (2), section 166 (3), section 233 (3), and section 318 (3) through (5) of the Commercial Code (*Handelsgesetzbuch*; HGB),
2. section 11 of the German Inland Waterways Act (*Binnenschiffahrtsgesetz*, BinSchG) in accordance with the provisions of this act that concern average adjustments, as well as in accordance with section 595 (2) of the Commercial Code, in conjunction with section 78 of the German Inland Waterways Act as well,
3. section 33 (3), sections 35 und 73 (1), sections 85 und 103 (3), sections 104 and 122 (3), section 147 (2), section 183a (3), section 264 (2), section 265 (3) and (4), section 270 (3), section 273 (2) through (4), as well as section 290 (3) of the Stock Corporation Act (*Aktiengesetz*, AktG),
4. Article 55 (3) of Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European Company (SE) (OJ L294/1), as well as section 29 (3), section 30 (1), (2), and (4), and section 45 of the Act Implementing the SE Regulation (*SE-Ausführungsgesetz*, SEAG),
5. section 26 (1) and (4) as well as section 206 sentences 2 and 3 of the Transformation Act (*Umwandlungsgesetz*, UmwG),
6. section 66 (2), (3), and (5), section 71 (3), as well as section 74 (2) and (3) of the Limited Liability Companies Act (*Gesetz betreffend die Gesellschaften mit beschränkter Haftung*, GmbHG),
7. section 45 (3), sections 64b, 83 (3), (4), and (5), as well as section 93 of the Act on Cooperatives (*Genossenschaftsgesetz*, GenG),
8. Article 54 (2) Council Regulation (EC) No 1435/2003 of 22 July 2003 on the Statute for a European Cooperative Society (SCE) (OJ L207/1),
9. section 2 (3) and section 12 (3) of the Disclosure Act (*Publizitätsgesetz*, PublG),
10. section 11 (3) of the Act on Co-Determination in the Coal, Iron, and Steel Industry (*Gesetz über die Mitbestimmung der Arbeitnehmer in den Aufsichtsräten und Vorständen der Unternehmen des Bergbaus und der Eisen und Stahl erzeugenden Industrie*; MontanMitbestG),
11. section 2c (2) sentences 2 through 7, Sections 22o, 36 (3) sentence 2, section 28 (2), section 38 (2) sentence 2, and section 45a (2) sentences 1, 3, 4 and 6 of the Banking Act (*Kreditwesengesetz*, KWG),
- 11a. section 2a (4) sentences 2 and 3 of the Investment Act (*Investmentgesetz*, InvG),
12. (repealed),
13. section 47 (2) and section 104 (2) sentences 3 through 8 of the Insurance Supervision Act (*Versicherungsaufsichtsgesetz*; VAG) and section 28 (2) sentences 1 through 5 of the Financial Conglomerate Supervision Act (*Finanzkonglomerate-Aufsichtsgesetz*, FKAG),

14. section 6 (4) sentences 4 through 7 of the Stock Exchange Act (*Börsengesetz*, BörsG),

15. section 10 of the Limited Liability Partnership Act (*Partnerschaftsgesellschaftsgesetz*, PartGG) in conjunction with section 146 (2) and sections 147 and 157 (2) of the Commercial Code,

16. section 9 (2) and (3) sentence 2 and section 18 (2) sentences 2 and 3 of the Act on Debt Securities (*Schuldverschreibungsgesetz*, SchVG).

Part 2 Jurisdiction

Section 376 Special Jurisdiction Rules

(1) As to proceedings in accordance with section 374 nos. 1 and 2 as well as section 375 nos. 1, 3 through 14, and 16, that court in the district of which the seat of a Regional Court is located shall have jurisdiction for the district of such Regional Court.

(2) The *Land* governments shall be authorised to delegate by way of statutory instrument the duties set forth in section 374 nos. 1 through 3 as well as section 375 nos. 1, 3 through 14, and 16 to other or additional Local Courts and to otherwise establish the districts of the courts in deviation from subsection (1). They may delegate the authorisations pursuant to the first sentence by way of statutory instrument to the *Land* justice administration department. Two or more *Länder* may together agree upon the jurisdiction of one court beyond their border for proceedings in accordance with section 374 nos. 1 through 3.

Section 377 Local Jurisdiction

(1) The court in the district of which the place of business of a sole proprietorship, the seat of a company, the insurance association, the cooperative, the partnership, or the association is located shall have exclusive jurisdiction, insofar as there is no conflicting provision in the applicable statute.

(2) As to matters allocated to the courts in relation to average adjustments to be made in accordance with the Commercial Code or in accordance with the German Inland Waterways Act, that court located in the place where the average adjustment will be prepared shall have jurisdiction.

(3) Entries into the Joint Property Register may be undertaken at any court in the district of which even only one of the spouses or life partners has his place of usual residence.

(4) Section 2 (1) shall not be applicable.

Part 3 Register Matters

Chapter 1 Proceedings

Section 378 Right of a Notary to Apply for Register Entries

(1) As to declarations required to be made in conjunction with an application for an entry into a register and that are submitted in an official or officially certified form, the participants may also be represented by persons who are not entitled to represent others pursuant to section 10 (2). This shall also apply to the acceptance of notifications of registration entries and decrees of the Register.

(2) If a declaration necessary for an application for an entry into the register is certified or notarised by a notary he shall be considered authorised to apply for the entry into the register in the name of the person entitled to do so.

Section 379

Duties of Communication of Public Authorities

(1) The courts, the public prosecution authorities, the police and municipality authorities, as well as notaries, shall communicate to the register court official knowledge obtained as a result of cases of incorrect, incomplete, or omitted registrations to the commercial register, register of cooperatives, register of associations, or partnership register.

(2) The finance authorities shall provide information to the register courts pertaining to the tax circumstances of merchants or companies, especially in the area of commercial and value-added taxes, to the extent this information would be necessary for the avoidance of improper entries into the commercial or partnership registers, as well as for the correction, completion, or deletion of entries in the register. The information is not subject to the right to inspect files (section 13).

Section 380

Involvement of Professional Organisations; Right to Lodge an Appeal

(1) The register courts shall be supported in the prevention of incorrect registrations, the correction and completion of the commercial and partnership registers, the deletion of registrations in these registers, and upon intervention against trade name infringement or the unlawful use of a partnership name by:

1. the bodies of commercial merchants,
2. the bodies of craft and trade professions, insofar as the registration involves craft and trade professionals,
3. the bodies of agricultural and forestry professions, insofar as the registration involves agricultural and forestry professionals,
4. the professional bodies of the liberal professions, insofar as the registration involves members of these professions

(professional bodies).

(2) In cases of doubt the court may hear the professional bodies to the extent this is necessary for the performance of the statutorily prescribed registrations as well as for the avoidance of incorrect registrations in the register. Upon their filing of an application therefor, the professional bodies shall be included as participants.

(3) In matters pertaining to the register of cooperatives, the hearing pursuant to subsection (2) shall be limited to the question of the lawfulness of the use of the trade name.

(4) To the extent professional bodies are heard, they shall be notified of the court's decision.

(5) Professional bodies shall have the right to file a complaint on appeal against the order.

Section 381

Suspension of Proceedings

The register court may also suspend the proceedings when the other prerequisites in accordance with section 21 (1) are fulfilled but there is no legal dispute pending. In such a case the court shall establish a deadline for the filing of a lawsuit by one of the participants.

Section 382

Decision on Application for an Entry in the Register

(1) The register court accepts the application for an entry in the register by the entry into the register. Upon implementation of the entry into the register it shall be legally effective.

(2) The register entry shall state the date on which it was implemented; the signature or electronic signature of the competent judge or official shall be noted thereupon.

(3) A decision rejecting an application for an entry into the register shall be made by way of an order.

(4) If the application for entry into one of the registers set forth in section 374 nos. 1 through 4 is incomplete or if any other hindrance to entry in the register exists that could be remedied

by the applicant, the register court shall establish a reasonable deadline within which the applicant must eliminate the hindrance. The decision shall be appealable by way of a complaint on appeal.

Section 383

Notification; Appealability

- (1) The entry into the register is to be notified to the participants without a particular form therefor; notification may be omitted.
- (2) The provisions pertaining to the publication of the entries in the register shall remain unaffected.
- (3) The entry shall not be appealable.

Section 384

Entries to be Implemented *ex officio*

- (1) Section 382 (1) sentence 2 and (2) as well as section 383 shall apply *mutatis mutandis* to entries implemented *ex officio*.
- (2) If a fact entered into the register *ex officio* causes other facts entered in this register to become incorrect, this shall be so identified *ex officio* in a suitable form.

Section 385

Inspection of the Register

Inspection of the registers set forth in section 374 as well as of the documents submitted to the respective register shall be done in accordance with the particular register law provisions as well as on the basis of any statutory instruments enacted pursuant to section 387.

Section 386

Written Confirmations

Upon request the register court shall issue a written confirmation that, in regard to the object of an entry in the register, there are no other entries in the register or that a certain entry in the register has not been implemented.

Section 387

Authorisations

- (1) The *Land* governments shall be authorised to determine by way of legal instrument that the data in commercial, cooperatives, partnership, or association registers maintained by a court shall also be accessible for inspection by other Local Courts and for the issuance of copies. The *Land* governments may delegate this authority by way of statutory instrument to the *Land* justice administration department. Two or more *Länder* may also agree that the register data maintained by the courts of one *Land* shall also be accessible to the Local Courts of the other *Land* for inspection and for the issuance of copies.
- (2) The Federal Ministry of Justice shall be authorised to enact more specific provisions by way of legal instrument in agreement with the Bundesrat pertaining to the establishment and maintenance of the commercial, cooperatives, and partnership registers, the transmission of data to the company register, the management of files in appellate proceedings, inspection of the register, the details of electronic transmission pursuant to section 9 of the Commercial Code, and proceedings upon applications, entries, and announcement. In so doing, it may also be specified that the birthdate of persons to be entered into the register shall be provided as well as that the address of the business and branch offices to be entered into the register shall be submitted to the court; to the extent such details are provided for in the statutory instrument, section 14 of the Commercial Code shall apply *mutatis mutandis*.
- (3) Further provisions concerning the cooperation of the bodies set forth in section 380 in proceedings before the register courts may also be enacted by way of statutory instrument in accordance with subsection (2). In this regard it may in particular be established that the bodies will be notified continuously or at regular intervals of the data from the commercial or partnership register necessary for the fulfilment of their statutory duties and the documents submitted to this register. The data to be notified shall be set forth in the statutory instrument.

The recipient shall only be permitted to use the transmitted personal data for fulfilment of the purpose for which it was transmitted.

(4) In addition, further requirements may be established by legal instrument enacted in accordance with subsection (2) regarding the establishment and maintenance of the register of associations, particularly including proceedings for applications, entries into the register, announcement, inspection of the register, and the maintenance of files in appellate cases.

(5) Electronic data processing for the maintenance of the commercial, cooperatives, partnership, or association registers may be performed by the equipment of another official agency or the equipment of a third party on behalf of the competent court if the proper performance of the register matters is ensured.

Chapter 2 Proceedings Concerning Fines

Section 388 Warning

(1) As soon as the register court obtains credible information regarding circumstances that justifies its involvement pursuant to sections 14, 37a (4), and 125a (2) of the Commercial Code, also in conjunction with section 5 (2) of the Limited Liability Partnership Act, sections 407 and 408 of the Stock Corporation Act, section 79 (1) of the Limited Liability Companies Act, section 316 of the Transformation Act, or section 12 of the Act Implementing the European Economic Interest Grouping (EEIG) (*EWIV-Ausführungsgesetz*, EWIVAG), it shall set a specific deadline accompanied by a warning of the imposition of a fine within which the person concerned must comply with his statutory obligations or justify the omission by way of filing a protest.

(2) In the same manner the register court may proceed against the members of the board of an association or its liquidators in order to compel them to comply with the provisions set forth in section 78 of the Civil Code.

Section 389 Establishing the Amount of the Fine

(1) If within the deadline set neither sufficient compliance with the statutory obligation nor the filing of a protest has occurred, the fine warned of shall be established by way of an order and concurrently the demand made in accordance with section 388 shall be renewed with another warning of the imposition of a fine.

(2) At the time of the establishment of the fine the costs of the proceeding shall also be imposed upon the participants.

(3) This process shall be repeated in the same manner until the statutory obligation has been complied with or a protest has been filed.

Section 390 Proceedings upon the Filing of a Protest

(1) If a protest is timely filed, the court shall summon the participants to a hearing on the matter when the protest does not appear well-founded in the absence of further information.

(2) The court may, even when the participant does not appear at the hearing, reach a decision in the matter.

(3) If the protest is held to be well-founded, the decision reached shall be overruled.

(4) In all other cases the court shall overrule the protest by way of an order and shall establish the fine warned of. The court may, when circumstances so justify, refrain from the establishment of the fine or establish a fine in a smaller amount than that warned of.

(5) In the case of the overruling of the protest the court shall concurrently issue a renewed demand in accordance with section 388. The deadline set forth in this decision shall begin when the overruling of the protest becomes final and binding.

(6) If in cases under section 389 a protest is filed against the renewed warning of the imposition of a fine and if this is held to be well-founded, the court may, when the

circumstances so justify, suspend an earlier establishment of a fine or instead of this may establish a fine in a smaller amount.

Section 391
Complaint on Appeal

- (1) The order through which a fine is established or a protest is rejected shall be appealable by way of a complaint on appeal.
- (2) If the fine is established in accordance with section 389 the complaint on appeal shall not be based on the fact that the warning of the imposition of a fine was not justified.

Section 392
Proceedings upon Unauthorised Use of a Company Name

- (1) If there is a need for intervention against a person in accordance with section 37 (1) of the Commercial Code for the unauthorised use of a company name, sections 388 through 391 shall be applicable, whereby:
 1. the participants, together with a warning of the imposition of an administrative fine, shall be required to refrain from using the company name or within a specified deadline shall justify the use of the company name through the filing of a protest;
 2. the administrative fine shall be established in the event no protest is filed or a protest that was filed is rejected, the rejection has become final and binding, and the participant has contravened the order after its announcement.
- (2) Subsection (1) shall apply *mutatis mutandis* in cases of the unauthorised use of the name of a partnership.

Chapter 3
Dissolution and Liquidation Proceedings

Section 393
Dissolution of a Company

- (1) Pursuant to section 31 (2) of the Commercial Code the dissolution of a company shall be entered into the commercial register *ex officio* or upon the application of a professional body. The court shall inform the registered owner of the company or his legal successor of the intended dissolution and concurrently set a reasonable deadline for the lodging of an objection.
- (2) If the persons named or their place of residence is unknown, the notification and the setting of the deadline shall be announced in the electronic information and communications system designated for the announcement of entries in the commercial register in accordance with section 10 of the Commercial Code.
- (3) The court shall decide by way of an order when it does not grant an application for the commencement of dissolution proceedings or when an objection to the dissolution was lodged. The order shall be appealable by way of a complaint on appeal.
- (4) Together with the dismissal of the objection the costs of the proceedings on the objection shall be imposed on the participants insofar as this is not inequitable.
- (5) Dissolution shall only occur when no objection has been lodged or when the order dismissing the objection becomes final and binding.
- (6) Subsections (1) through (5) shall apply *mutatis mutandis* when the dissolution of the name of a partnership is to be entered into the register.

Section 394
Dissolution of Companies and Cooperatives Without Assets

- (1) A stock corporation, partnership limited by shares, a limited liability company, or cooperative that has no assets may be dissolved *ex officio* or upon an application therefor by the finance authorities or the professional bodies. It shall be dissolved *ex officio* when a

bankruptcy proceeding concerning the assets of the company is implemented and there is no indication that the company still possesses any assets.

(2) The court shall announce to the legal representatives of the company or cooperative the intent to dissolve it insofar as such representatives exist and they or their domestic place of residence is known; at the same time they shall be given a reasonable deadline for the lodging of an objection. Even when there is no duty for announcement or the setting of the deadline in accordance with the first sentence, the court may order that the announcement and setting of the deadline shall take place by way of publication in the electronic information and communications system designated for the announcement of entries in the commercial register in accordance with section 10 of the Commercial Code. In this case, any person who has a justified interest in preventing the dissolution from occurring shall be entitled to lodge an objection thereto. Prior to the dissolution the organisations and in the case of a cooperative, the auditing body, set forth in section 380 shall be heard.

(3) As to further proceedings, section 393 (3) through (5) shall apply *mutatis mutandis*.

(4) Subsection (1) through (3) shall apply *mutatis mutandis* to general partnerships and partnerships limited by shares, in which none of the personally liable partners is a natural person. Such a company, however, may only be dissolved when the prerequisites related to a lack of assets is fulfilled by both the company as well as by the personally liable partners. The first and second sentences shall not be applicable when a personally liable partner is another general partnership or partnership limited by shares in which a natural person is a personally liable partner.

Section 395

Removal of Impermissible Register Entries

(1) If an entry in the register is impermissible based upon non-fulfilment of a significant prerequisite, the register court may *ex officio* or upon the application of a professional body remove it. Removal shall take place by way of the entry of a notice.

(2) The court shall notify the persons concerned of the intended removal and at the same time set a reasonable deadline for the lodging of an objection. Section 394 (2) sentences 1 and 2 shall apply *mutatis mutandis*.

(3) As to further proceedings, section 393 (3) through (5) shall apply *mutatis mutandis*.

Section 396

(repealed)

Section 397

Dissolution of Companies and Cooperatives that are Invalid

A stock corporation or partnership limited by shares that is entered into the commercial register may be dissolved as invalid pursuant to section 395 when the prerequisites set forth in sections 275 and 276 of the Stock Corporation Act are met so that a lawsuit for a declaration of invalidity could be filed. The same shall apply to a limited liability company entered into the commercial register when the prerequisites set forth in sections 75 and 76 of the Act on Limited Liability Companies are met so that a lawsuit for a declaration of invalidity could be filed as well as to a cooperative entered into the register of cooperatives when the prerequisites set forth in sections 94 and 95 of the Act on Cooperatives are met so that a lawsuit for a declaration of invalidity could be filed.

Section 398

Removal of Invalid Resolutions

A resolution of the general meeting or the meeting of shareholders entered into the commercial register by one of the companies set forth in section 397 as well as a resolution of the general meeting of a cooperative entered into the register of cooperatives may be removed as invalid in accordance with section 395 when by its contents it violates compulsory statutory provisions and the correction of which does not appear to be necessary in the public interest.

Section 399

Liquidation Based Upon Deficiencies in the Articles of Association

(1) If the articles of association of a stock corporation or a partnership limited by shares does not contain one of the significant provisions set forth in section 23 (3) nos. 1, 4, 5, or 6 of the Stock Corporation Act or if one of these provisions or the provision set forth in section 23 (3) no. 3 of the Stock Corporation Act is invalid, the register court *ex officio* or upon the application of the professional body shall order the company to submit for entry into the commercial register an amendment of the articles of association within a certain deadline that corrects the deficiency or to justify the omission by way of the lodging of an objection against the order. The court shall concurrently provide notice that in all other cases a deficiency that is not corrected shall be established within the meaning of subsection (2) and that the company thereupon shall be liquidated in accordance with section 262 (1) no. 5 or section 289 (2) no. 2 of the Stock Corporation Act.

(2) If within the deadline determined pursuant to subsection (1) the order is not complied with or an objection is not lodged or is dismissed, the court shall establish a deficiency in the articles of association. The establishment may be connected with a dismissal of the objection. Upon the dismissal of the objection the costs of the proceedings on the objection shall be imposed upon the company insofar as to do so is not inequitable.

(3) The order by way of which an establishment pursuant to subsection (2) is made or an application or objection is dismissed shall be appealable by a complaint on appeal.

(4) Subsections (1) through (3) shall apply *mutatis mutandis* when the partnership agreement of a limited liability company does not contain one of the significant provisions in section 3 (1) no. 1 or no. 4 of the Act on Limited Liability Companies or if one of these provisions or a provision set forth in section 3 (1) no. 3 of the Act on Limited Liability Companies is invalid.

Chapter 4

Supplementary Provisions Regarding the Register of Associations

Section 400

Communication Duties

The court shall communicate to the competent administrative authority an entry into the register or an amendment to the articles of association when there are indications that a foreign association or an organisational unit of a foreign association pursuant to sections 14 and 15 of the Act on Associations is at issue.

Section 401

Withdrawal of Legal Capacity

An order through which legal capacity is withdrawn from an association in accordance with section 73 of the Civil Code shall become effective when it is final and binding.

Part 4

Commercial Law Proceedings

Section 402

Appealability

(1) An order of the court deciding on applications pursuant to section 375 shall be appealable through a complaint on appeal.

(2) A challenge to an order through which an application pursuant to section 11 of the German Inland Waterways Act or section 595 (2) of the Commercial Code, also in conjunction with section 78 of the German Inland Waterways Act, is approved, shall be excluded.

(3) The provisions of the Commercial Code, the Stock Corporation Act, and the Disclosure Act concerning complaints on appeal shall remain unaffected.

Section 403

Refusal by the Average Adjuster

- (1) If the average adjuster rejects an assignment by an interested participant to draw up the statement of general average based upon the grounds that there has been no case of a general average the court shall reach a decision concerning the obligation of the average adjuster upon application of the interested participant.
- (2) The decision shall be appealable through a complaint on appeal.

Section 404

Delivery of Written Documents; Right to Inspect Documents

- (1) Upon application of the average adjuster the court may impose an obligation on an interested participant to deliver written documents in his possession as to which he has a statutory obligation regarding communication.
- (2) The average adjuster shall be obligated to grant each interested participant an inspection of the documents and upon request to provide copies thereof upon reimbursement of the costs thereof.

Section 405

Hearing; Summons

- (1) Each interested participant shall be authorised to apply for an oral argument with the court regarding the statement of general average by the average adjuster. The application shall contain a designation of those interested participants who should be included in the proceeding.
 - (2) If an application for oral argument is submitted, the court shall obtain the statement of general average and the supporting documentation from the average adjuster and, when it is not apparent that the prerequisites of a general average are not fulfilled, the court shall summon the applicant as well as those interested participants designated by him to a court hearing.
 - (3) The summons shall contain the information that if the person summoned neither appears at the court hearing nor lodges an objection to the statement of general average with the court prior to the court hearing, his agreement with the statement of general average shall be presumed. It shall be noted in the summons that the statement of general average and the documentation related thereto may be inspected at the offices of the court registry.
 - (4) The period between the time of the summons and the court hearing shall be at least two weeks.
 - (5) If the court determines that it is necessary to complete the documentation relating to the statement of general average, it shall order the production of the required documentation.
- Section 404 (1) shall apply *mutatis mutandis*.

Section 406

Proceedings at the Court Hearing

- (1) If during the court hearing no objection to the statement of general average is lodged and if none was previously raised, the court shall confirm the statement of general average vis-à-vis the participants in the proceedings.
- (2) If an objection has been lodged, the participants whose rights are affected thereby shall make a statement. If the objection is acknowledged as well-founded or if agreement is reached in another way, the statement of general average shall be amended accordingly. If the objection is not resolved, the statement of general average shall be confirmed to the extent that the objection is not involved.
- (3) If the rights of a participant who did not appear at the court hearing are affected by the objection it shall be presumed that he does not acknowledge the objection as well-founded.

Section 407

Pursuit of the Objection

(1) Insofar as an objection has not been resolved in accordance with section 406 (2), the person raising the objection shall pursue his rights in the objection by the filing of a lawsuit against those participants in the proceedings whose rights are affected by the objection. Sections 878 and 879 of the Code of Civil Procedure shall apply *mutatis mutandis* with the proviso that upon the application of a participant, when significant grounds therefor are credibly demonstrated, the court may extend the deadline for filing the lawsuit and that confirmation of the statement of general average shall take the place of execution of the allocation plan.

(2) If the objection is resolved through a final and binding judgment or in any other way, the statement of general average shall be confirmed after it has been amended if necessary by the Local Court in accordance with the provisions for the conclusion of the objections.

Section 408 **Complaint on Appeal**

(1) The order through which an application for a court argument pursuant to section 405 has been dismissed, a decision on the confirmation of the statement of general average has been made, or a participant pursuant to section 404 has been obligated to produce written documents, shall be appealable by way of a complaint on appeal.

(2) Objections to the statement of general average that are to be asserted by the lodging of an objection cannot be asserted in the complaint on appeal.

Section 409 **Effectiveness; Enforcement**

(1) The confirmation of the statement of general average shall only become effective in regard to the participants in the proceedings vis-à-vis one another.

(2) The order on confirmation shall first become effective when it is final and binding.

(3) As to lawsuits concerning the issuance of the court certificate of enforceability as well as for lawsuits through which objections to the claims established in the statement of general average will be asserted or through which the legal succession is disputed that was assumed to have happened at the time of the issuance of the court certificate of enforceability, that court shall have jurisdiction that confirmed the statement of general average. If the claim is not properly before the Local Court, the lawsuits shall be filed with the competent Regional Court.

Book 6 **Proceedings in Other Matters of Non-Contentious Jurisdiction**

Section 410 **Other Matters of Non-Contentious Jurisdiction**

Other matters of non-contentious jurisdiction are:

1. the submission of a declaration in lieu of an oath that is not to be declared before the enforcement court in accordance with sections 259, 260, 2028, and 2057 of the Civil Code,
2. the designation, administration of oath, and examination of the expert witness in cases in which a person may cause the status or value of an object to be established by an expert in accordance with the provisions of civil law,
3. the appointment of a depository in cases under sections 432, 1217, 1281, and 2039 of the Civil Code and the establishment of the compensation claimed by him and his expenditures,
4. a deviation in the form of a sale of the pledged item than in the case of section 1246 (2) of the Civil Code.

Section 411
Local Jurisdiction

(1) In proceedings in accordance with section 410 no. 1, that court shall have jurisdiction in the district of which the obligation to provide information, to perform an accounting, or to present the index shall be fulfilled. If the obligated person has his domicile or his place of residence in Germany, he may make his oath before the Local Court of his domicile or place of residence.

(2) In proceedings pursuant to section 410 no. 2, that court shall have jurisdiction in the district of which the object is located. An express agreement by the persons whose issues are the subject matter of the case may provide the basis for the jurisdiction of another court.

(3) In proceedings in accordance with section 410 no. 3, that court shall have jurisdiction in the district of which the object is located.

(4) In proceedings in accordance with section 410 no. 4, that court shall have jurisdiction in the district of which the pledged item is deposited.

Section 412
Participants

Those persons to be included as participants are:

1. in proceedings in accordance with section 410 no. 1 the person under an obligation to submit an oath in lieu of a declaration and the beneficiary;
2. in proceedings in accordance with section 410 no. 2 the person who is to be designated as the expert and the person and the opponent to the extent there is one;
3. in proceedings in accordance with section 410 no. 3 the person who is to be appointed as the depositary and additionally, in cases under sections 432, 1281, and 2039 of the Civil Code the co-beneficiary, in cases under section 1217 of the Civil Code the pledgee, and in a case concerning the establishment of the compensation and the expenses of the depositary, the depositary and the creditor;
4. in proceedings in accordance with section 410 no. 4 the owner, the pledgee, and every other person whose right would be extinguished by a sale of the pledged item.

Section 413
Declaration in Lieu of an Oath

In proceedings in accordance with section 410 no. 1, both the obligor as well as the obligee may apply for the submission of a declaration in lieu of an oath. The court shall order the personal appearance of the obligor. Sections 478 through 480 and 483 of the Code of Civil Procedure shall apply *mutatis mutandis*.

Section 414
Non-Appealability

The decision through which an application is approved in a proceeding in accordance with section 410 no. 2 shall not be subject to appeal.

Book 7
Proceedings in Matters Involving a Deprivation of Liberty

Section 415
Matters Involving a Deprivation of Liberty

(1) Matters involving a deprivation of liberty are matters that concern a deprivation of liberty based upon federal law insofar as the proceeding is not otherwise governed pursuant to federal law.

(2) A deprivation of liberty exists when a person against their will or under circumstances of a lack of will has their liberty withdrawn particularly in a locked facility such as a detention cell or the locked section of a hospital.

Section 416
Local Jurisdiction

That court shall have jurisdiction in the district of which the person who is to be subject to the deprivation of liberty has his place of usual residence, otherwise the court in the district of which the need for the deprivation of liberty arose. If the person is already in custody in a locked facility, that court shall have jurisdiction in the district of which the facility is located.

Section 417
Application

(1) The court shall only order a deprivation of liberty upon an application by the competent public authority.

(2) The application shall contain the grounds therefor. The statement of grounds shall contain:

1. the identity of the person concerned,
2. the place of usual residence of the person concerned,
3. the necessity for the deprivation of liberty,
4. the required duration of the deprivation of liberty, and
5. in proceedings concerning the detention relating to deportation, removal, refusal of entry, the obligation of the person concerned to leave the federal territory, as well as the prerequisites and the feasibility of deportation, removal, and refusal of entry.

In proceedings concerning detention prior to deportation the public authority shall submit the file of the person concerned together with the application.

Section 418
Participants

(1) Participants to be included are the persons who will be deprived of their liberty (persons concerned) and the administrative authority that submitted the application for the deprivation of liberty.

(2) The guardian ad litem shall be included as a participant in the proceedings through his appointment.

(3) In the interests of the person concerned, the following may also participate:

1. his spouse or life partner when the spouses or life partners are not permanently separated, and his parents and children when the person concerned lives with them or upon the commencement of the proceedings had lived with them, foster parents, and
2. a person designated by him who he trusts.

Section 419
Guardian ad litem

(1) The court shall appoint a guardian ad litem for the person concerned when this is necessary for the assertion of his interests. The appointment is particularly necessary when there is no intent to conduct a hearing with the person concerned.

(2) The appointment of a guardian ad litem shall not be made or shall be cancelled when the interests of the person concerned are represented by an attorney or another suitable authorised agent.

(3) The appointment shall cease when it has not previously been cancelled when the order on the deprivation of liberty becomes final and binding or upon another conclusion of the proceedings.

(4) The appointment of the guardian ad litem, the cancellation thereof, as well as the rejection of such a measure shall not be independently appealable.

(5) Section 277 shall apply *mutatis mutandis* to the compensation and reimbursement of expenditures of the guardian ad litem. No costs shall be imposed on the guardian ad litem.

Section 420

Hearing; Presentation

(1) The court shall conduct an in-person hearing with the person concerned prior to issuance of an order of a deprivation of liberty. If the person concerned does not appear at the hearing, in deviation from section 33 (3) his immediate presentation may be ordered. The court shall decide hereupon by way of an order that shall not be appealable.

(2) An in-person hearing with the person concerned may be refrained from when pursuant to a medical report there is a concern of significant detriment to his health therefrom or when he suffers from a communicable disease within the meaning of the Federal Law on Communicable Diseases (*Infektionsschutzgesetz*; IfSG)

(3) The court shall hear the other participants. A hearing may be refrained from when it is not possible to conduct without significant delay or disproportionate cost.

(4) A deprivation of liberty in a locked section of a hospital shall only be ordered after a hearing with a medical expert. The administrative authority that had submitted the application for the deprivation of liberty shall submit a medical expert report together with the application.

Section 421

Contents of the Operative Provisions of the Order

The operative provisions of the order of a deprivation of liberty shall also contain:

1. a detailed description of the deprivation of liberty as well as
2. the time at which the deprivation of liberty shall end.

Section 422

Effectiveness of Orders

(1) The order, through which a deprivation of liberty is mandated, shall first become effective when it is final and binding.

(2) The court may order the immediate effectiveness of the order. In such a case the order shall become effective when it and the order of immediate effectiveness:

1. have been notified to the person concerned, the competent administrative authority, or the guardian ad litem, or
2. have been transmitted to the offices of the court registry for the purpose of notification.

The timing of immediate effectiveness shall be noted on the order.

(3) The order by way of which the deprivation of liberty was mandated shall be executed by the competent administrative authority.

(4) If detention prior to removal (section 15 of the Residence Act (*Aufenthaltsgesetz*; AufenthG) or detention prior to deportation (section 62 of the Residence Act) is executed in a prison facility as part of mutual legal assistance, sections 171, 173 through 175, and 178 (3) of the Prison Act (*Strafvollzugsgesetz*; StVollzG) shall apply *mutatis mutandis* to the extent section 62a of the Residence Act does not provide otherwise concerning detention prior to deportation.

Section 423

Refraining from Notification

Notification of the grounds upon which the order is based to the person concerned may be refrained from when this is necessary in accordance with a medical certificate to avoid significant damage to his health.

Section 424
Suspension of Execution

- (1) The court may suspend the execution of the deprivation of liberty. Prior thereto it shall hear the administrative authority and the head of the facility. For suspensions of up to one week there is no requirement for a court decision. The suspension may have conditions attached.
- (2) The court may revoke the suspension when the person concerned does not fulfil a condition or his status so requires.

Section 425
Duration and Extension of the Deprivation of Liberty

- (1) In the order for the deprivation of liberty a deadline of a maximum of up to one year for the deprivation of liberty shall be set insofar as there is no other statutory provision that sets a shorter maximum duration for the deprivation of liberty.
- (2) If there has been no extension of the duration of the deprivation of liberty within the deadline by way of a judicial order, the person concerned shall be released. The court shall be notified of the release.
- (3) The provisions regarding the initial order shall apply *mutatis mutandis* to the extension of the deprivation of liberty.

Section 426
Revocation

- (1) The order for the deprivation of liberty shall be revoked prior to the expiration of the deadline established in accordance with section 425 (1) *ex officio* when the grounds upon which the deprivation of liberty was based no longer exist. Prior to the revocation the court shall hear the competent administrative authority.
- (2) The participants may apply for the revocation of the deprivation of liberty. The court shall decide on the application by way of an order.

Section 427
Interlocutory Order

- (1) The court may order a temporary deprivation of liberty by way of an interlocutory order when there are reasonable grounds for the assumption that the prerequisites for an order of a deprivation of liberty are fulfilled and there is an urgent need for immediate action. The temporary deprivation of liberty shall not exceed a duration of six weeks.
- (2) In cases of imminent danger the court may issue an interlocutory order prior to conducting an in-person hearing with the person concerned as well as prior to the appointment and hearing of a guardian ad litem; these procedural acts shall subsequently be promptly undertaken.

Section 428
Administrative Measures; Judicial Evaluation

- (1) As to each administrative measure associated with a deprivation of liberty that is not based upon a judicial order, the competent administrative authority shall promptly seek a judicial decision regarding the measure. If a deprivation of liberty has not been ordered through a judicial decision by the end of the following day, the person concerned shall be released.
- (2) If a measure by the administrative authority in accordance with subsection (1) sentence 1 is challenged a decision shall also be made through court proceedings in accordance with the provisions of this Book.

Section 429
Supplementary Provisions Regarding a Complaint on Appeal

- (1) The competent public authority shall have the right to file a complaint on appeal.
- (2) The following shall have a right to file a complaint on appeal in the interest of the person concerned:

1. his spouse or life partner when the spouses or life partners are not permanently separated, as well as his parents and children, when the person concerned lived with them at the time of the commencement of the proceedings, foster parents, and

2. a person who he trusts

if they were a participant in the proceedings in the first instance.

(3) The guardian ad litem shall have the right to file a complaint on appeal.

(4) If the person concerned is already in a locked facility the complaint on appeal may also be submitted to the court in the district of which the facility is located.

Section 430

Reimbursement of Expenses

If an application by the administrative authority for a deprivation of liberty is rejected or withdrawn and if the result of the proceeding is that there was no reasonable basis for the competent administrative authority to submit the application, the court shall impose the expenses incurred by the person concerned, to the extent they were necessary for the appropriate pursuit of the legal proceedings, upon the entity to which the administrative authority belongs.

Section 431

Notification of Decisions

Sections 308 and 311 shall apply *mutatis mutandis* to notifications of decisions, whereby the administrative authority (*Verwaltungsbehörde*) shall take the place of the custodian (*Betreuer*). The cancellation of a deprivation of liberty measure in accordance with section 426 sentence 1 and the suspension of its execution in accordance with section 424 (1) sentence 1 shall be notified to the head of the locked facility in which the person concerned is located.

Section 432

Information to Relatives

The court shall promptly inform a relative of the person concerned or a person who he trusts of an order of a deprivation of liberty and an extension of the duration thereof.

Book 8

Proceedings in Matters Concerning Judicial Public Notice

Part 1

General Procedural Provisions

Section 433

Matters Concerning Judicial Public Notice

Matters concerning judicial public notice are proceedings in which the court publishes a call for the registration of claims or rights, the consequence of non-compliance with which bears a legal penalty; it shall be undertaken only in cases provided for by statute.

Section 434

Application; Contents of the Judicial Public Notice

(1) Judicial public notice proceedings shall only be initiated upon the filing of an application therefor.

(2) If the application is admissible, the court shall issue the public notice. The public notice shall particularly contain:

1. the designation of the applicant;

2. the call for the registration of claims and rights by a certain deadline with the court (registration deadline);

3. the description of the legal penalties that will take effect if registration does not occur.

Section 435
Public Announcement

(1) Public announcement shall be made by way of posting the public notice on the court public notice board and through publication one time in the *Bundesanzeiger* (Federal Gazette), when the statute applicable to the matter at issue does not prescribe otherwise. In place of posting on the court public notice board the public announcement may be made on an electronic information and communications system that is publicly accessible at the court.

(2) The court may order that in addition the public notice is to be published in other forms as well.

Section 436
Validity of the Public Announcement

Should the written notice be removed from the court public notice board or the document be deleted from the information and communications system prior to the deadline or if in the case of a repeated publication the prescribed interim deadline between announcements was not adhered to, it shall have no effect on the validity of the public announcement.

Section 437
Public Notice Deadline Period

Between the day on which the public notice was published for the first time in an information and communications system or in the *Bundesanzeiger* and the day of the registration deadline there shall be a minimum time period (public notice deadline period) of at least six weeks when no statute prescribes otherwise.

Section 438
Registration Subsequent to the Public Notice Period

A registration made after the public notice period has expired but prior to the issuance of the exclusion order, shall be accepted as timely.

Section 439
Issuance of the Exclusion Order; Complaint on Appeal; Restoration of the Status Quo Ante, and Reopening of Proceeding

(1) Prior to the issuance of the exclusion order a more detailed investigation, particularly a declaration in lieu of an oath concerning the veracity of an assertion by the applicant, may be ordered.

(2) The final decision in a matter concerning a judicial public notice shall first become effective when it is final and binding.

(3) Section 61 (1) shall not be applicable.

(4) The provisions regarding restoration of the status quo ante shall apply with the proviso that the deadline subsequent to which restoration of the status quo ante may no longer be applied for or approved shall be five years in deviation from section 18 (3). The provisions concerning the restoration of the status quo ante shall be applicable with the proviso that the filing of a lawsuit after the expiration of ten years determined from the day the exclusion order becomes final and binding shall be inadmissible.

Section 440
Effect of a Registration

Upon a registration through which the right asserted by the applicant as the basis for the application is disputed, either the proceedings on judicial public notice shall be suspended until the final decision on the registered right or the registered right shall be reserved in the exclusion order.

Section 441
Public Notification of the Exclusion Order

The exclusion order shall be publicly notified. Sections 186, 187, and 188 of the Code of Civil Procedure shall apply *mutatis mutandis* to the implementation of the public notification.

Part 2

Public Notice as to Unknown Owners of Real Property, Ships, and Ships Under Construction

Section 442

Public Notice as to Unknown Owners of Real Property; Local Jurisdiction

- (1) The following special provisions shall be applicable to the public notice proceedings for the exclusion of an unknown owner of real property in accordance with section 927 of the Civil Code.
- (2) That court in the district of which the property is located shall have local jurisdiction.

Section 443

Person Entitled to File an Application

That person who has had proprietary possession of the real property for the amount of time set forth in section 927 of the Civil Code shall be entitled to file an application.

Section 444

Credible Demonstration of the Claim

The applicant shall credibly demonstrate the necessary facts and circumstances at the basis of the application prior to the commencement of the proceedings.

Section 445

Contents of the Public Notice

In the public notice the unknown owner shall be called upon to register his rights at the latest by the registration deadline and in the absence thereof his exclusion will occur.

Section 446

Public Notice as to Unknown Ship Owners

- (1) As to public notice proceedings concerning the exclusion of the unknown owner of a registered ship or a ship under construction pursuant to section 6 of the Act concerning Rights in Registered Ships and Ships under Construction (*Gesetz über Rechte an eingetragenen Schiffen und Schiffsbauwerken*; SchRG) (Federal Gazette III pp. 403-404) sections 443 through 445 shall apply *mutatis mutandis*.
- (2) The court where the register for the ship or the ship under construction is maintained shall have local jurisdiction.

Part 3

Public Notice as to Unknown Creditors Regarding Mortgages, Ship Liens, and Those Entitled to Other Property Rights

Section 447

Public Notice as to Unknown Creditors Regarding Mortgages; Local Jurisdiction

- (1) The following special provisions shall be applicable to public notice proceedings for the exclusion of an unknown creditor regarding a mortgage, realty charge, or annuity realty charge on the basis of sections 1170 and 1171 of the Civil Code.
- (2) That court in the district of which the encumbered real property is located shall have local jurisdiction.

Section 448

Persons Entitled to File an Application

- (1) The owner of the encumbered real property shall be entitled to file an application.
- (2) In a case under section 1170 of the Civil Code, a creditor who has a right equal to or inferior in priority and for the benefit of whom a priority notice pursuant to section 1179 of the Civil Code has been registered or who has a claim pursuant to section 1179a of the Civil Code shall be entitled to file an application.

Code, shall be entitled to file an application. In addition, in cases of a consolidated mortgage, a joint and several realty charge, or a joint and several annuity realty charge, that person who has a right equal to or inferior in priority to demand satisfaction from any of the encumbered pieces of property shall also be entitled to file an application. The entitlement to file an application shall only exist when the creditor or other entitled person has obtained an enforceable debt instrument.

Section 449

Credible Demonstration of Assertions

Prior to the commencement of the proceedings the applicant shall demonstrate the credibility of his assertion that the creditor is unknown.

Section 450

Special Credible Demonstration of Assertions

(1) In cases under section 1170 of the Civil Code prior to the commencement of the proceedings the applicant shall also credibly demonstrate that no public notice proceeding to exclude the right of the creditor has occurred.

(2) If the mortgage is based upon a claim relating to a bearer bond or if the realty charge certificate or the annuity realty charge certificate is based upon bearer certificates, the applicant shall credibly demonstrate that the bearer bond or the certificate has not been presented prior to the expiration of the deadline set forth in section 801 of the Civil Code and that the claim has not been asserted in court. If presentation has previously taken place or the claim has previously been asserted in court, the demonstration of credibility required in subsection (1) shall be made.

(3) In cases under subsections (1) and (2) a declaration by the applicant in lieu of an oath shall be sufficient to demonstrate the credibility of the assertions. The right of the court to order additional inquiries *ex officio* shall not be affected hereby.

(4) In the public notice warning shall be given that the legal penalty to the creditor will be exclusion from his rights.

(5) If the public notice is issued based upon an application in accordance with section 448 (2) by a person entitled to file an application, the owner of the real property shall be notified thereof *ex officio*.

Section 451

Proceedings upon Exclusion by Way of Deposit

(1) In cases under section 1171 of the Civil Code, the applicant shall offer to deposit the sum payable to the creditor prior to the commencement of the proceedings.

(2) In the public notice warning shall be given that subsequent to the deposit of the sum payable to the creditor he shall only be entitled to request satisfaction from the amount deposited rather than from the real property and that his right thereto shall be extinguished if he does not register his claim with the depository institution prior to the expiration of 30 years after the issuance of the exclusion order.

(3) If the deadline for the registration of a claim is dependent upon a termination, the public notice deadline period shall be extended by the deadline for the termination.

(4) The exclusion order shall only first be issued when the deposit has taken place.

Section 452

Public Notice as to Unknown Creditors Regarding Ship Mortgages; Local Jurisdiction

(1) Sections 448 through 451 shall apply *mutatis mutandis* to the public notice proceedings for the exclusion of an unknown creditor regarding a ship mortgage on the basis of sections 66 and 67 of the Act concerning the Rights of Registered Ships and Ships under Construction (Federal Gazette III pp. 403-404). In place of sections 1170, 1171, and 1179 of the Civil Code, sections 66, 67, and 58 of the aforementioned statute shall apply.

(2) That court where the register for the ship or the ship under construction is maintained shall have local jurisdiction.

Section 453

Public Notice as to Unknown Persons Entitled to Priority Notices, Rights of Pre-emption, and Realty Charges

- (1) The provisions in sections 447 (2), 448 (1), 449, 450 (1) through (4), 451, and 452 shall apply *mutatis mutandis* to public notice proceedings concerning the exclusion of entitled persons as determined by sections 887, 1104, and 1112 of the Civil Code and section 13 of the Act concerning Rights in Registered Ships and Ships under Construction (Federal Gazette III pp. 403-404) as to priority notices, rights of pre-emption, and realty charges.
- (2) A person shall also be entitled to file an application when based upon a right that is equal to or lower in priority he can demand satisfaction from the real property or the ship or the ship under construction, when he has obtained an enforceable debt instrument. The public notice shall be notified to the owner of the real property or the ship or the ship under construction *ex officio*.

Part 4

Public Notice as to Unknown Creditors of Estates

Section 454

Public Notice as to Unknown Creditors of Estates; Local Jurisdiction

- (1) As to public notice proceedings for the exclusion of unknown creditors of estates based upon section 1970 of the Civil Code the following special provision shall apply.
- (2) Local jurisdiction shall lie with the Local Court responsible for matters relating to the probate court. If these matters have been delegated to a different public authority other than a Local Court, that Local Court shall have local jurisdiction in the district of which the probate authority has its seat.

Section 455

Persons Entitled to File an Application

- (1) Each heir who does not have unlimited liability as regards the obligations of the estate shall be entitled to file an application.
- (2) Also entitled to file an application are the curator of the estate, the administrator of the estate, and the executor when he may administer the estate.
- (3) The heirs and the executor may only file an application after the acceptance of the inheritance has occurred.

Section 456

List of Creditors of the Estate

A list of the known creditors of the estate indicating their place of residence shall accompany the application.

Section 457

Estate Insolvency Proceedings

- (1) The public notice shall not be issued when there has been an application for the opening of estate insolvency proceedings.
- (2) The public notice proceedings shall be terminated by the opening of estate insolvency proceedings.

Section 458

Contents of the Public Notice; Public Notice Deadline Period

- (1) The public notice shall contain a warning to creditors of the estate who do not register their claim that the legal penalty therefor shall be that they may only seek satisfaction from the heirs to the extent that there are assets remaining after the non-excluded creditors have been satisfied; the right to be considered prior to obligations arising from compulsory share rights, bequests, and conditions shall remain unaffected.
- (2) The public notice deadline period shall have a maximum duration of six months.

Section 459
Registration of Claim

- (1) The registration of a claim shall contain the object and the basis of the claim. Documentary support in the form of originals or copies shall be submitted therewith.
- (2) The court shall allow each person who credibly demonstrates a justifiable interest to inspect the registered claims.

Section 460
Majority of Heirs

- (1) If there is more than one heir, an application filed by one heir and the exclusion order obtained thereby shall benefit all other heirs; the provisions of the Civil Code in respect of unlimited liability shall remain unaffected. Creditors of the estate who do not register a claim shall also be warned of the legal penalty that subsequent to the distribution of the estate each heir shall be liable for obligations corresponding to his portion of the estate.
- (2) The public notice with the warning specified in subsection (1) sentence 2 of the specific legal penalty may also be applied for by any heir who is subject to unlimited liability for the obligations of the estate.

Section 461
Subsequent Succession

In cases of subsequent succession section 460 (1) sentence 1 shall apply *mutatis mutandis* to prior heirs and subsequent heirs.

Section 462
Community of Property

- (1) If an estate is part of the marital property of a community of property, both the spouse who is the heir as well as the spouse who is not the heir but who administers the marital property alone or together with his spouse may submit an application for a public notice without any requirement of agreement by the other spouse. The spouses shall retain this authority when the community of property ceases.
- (2) The application filed by one spouse and the exclusion order effectuated thereby shall benefit the other spouse.
- (3) Subsections (1) and (2) shall apply *mutatis mutandis* to life partners.

Section 463
Purchaser of Inheritance

- (1) If the heir sold the inheritance both the purchaser as well as the heir may apply for a public notice. The application filed in regard to one portion of the estate and the exclusion order obtained thereby shall, irrespective of the provisions of the Civil Code on unlimited liability, also benefit the other portion of the estate.
- (2) These provisions shall apply *mutatis mutandis* when a person sells an inheritance acquired by contract or when he has obligated himself to sell an inheritance accrued or otherwise acquired by him.

Section 464
Public Notice as to Unknown Creditors of Marital Property

Section 454 (2) and sections 455 through 459, 462, and 463 shall in cases of the continuation of community of property apply *mutatis mutandis* to the public notice proceedings for the exclusion of unknown creditors of community property in accordance with section 1489 (2) and section 1970 of the Civil Code.

Part 5
Public Notice as to Unknown Creditors Regarding Ships

Section 465
Public Notice as to Unknown Creditors regarding Ships

- (1) The following provisions shall apply to public notice proceedings for the exclusion of unknown creditors regarding ships based upon section 110 of the German Inland Waterways Act.
- (2) Local jurisdiction shall lie with the court in the district of which the ship's port of registry or the ship's place of origin is located.
- (3) If the ship is subject to registration in the ship register, the application may only be filed subsequent to the registration of the sale of the ship.
- (4) The applicant shall provide the claims of creditors regarding the ship known to him.
- (5) The public notice deadline period shall have a duration of at least three months.
- (6) The public notice shall contain the warning to creditors regarding ships who do not register that the legal penalty therefor shall be cancellation of their liens when their claim is not known to the applicant.

Part 6

Public Notice as to Declarations of Invalidity of Legal Instruments

Section 466 Local Jurisdiction

- (1) For public notice proceedings that court shall have local jurisdiction in the district of which the place of fulfilment designated in the legal instrument is located. If the legal instrument does not contain such a designation, that court shall have local jurisdiction in the district of which the issuer has his place of general jurisdiction, and in the event of a lack of such a court, that court where the issuer had his place of general jurisdiction at the time of its issuance.
- (2) If the legal instrument concerns a right registered in the *Land* Register the court where the property is situated shall have exclusive local jurisdiction.
- (3) If the public notice is issued by a court other than one set forth in this provision as having local jurisdiction, the public notice shall be publicly announced by posting on the court notice board or by input into the information system of the last court.

Section 467 Persons Entitled to File an Application

- (1) In regard to negotiable instruments made out to the bearer or those that can be transferred by endorsement and contain a blank endorsement, the bearer up until then of the lost or destroyed negotiable instrument shall be entitled to file an application for the commencement of public notice proceedings.
- (2) As to other negotiable instruments, that person shall be entitled to file an application who can assert a right arising from such instrument.

Section 468 Demonstration of Grounds for the Application

To demonstrate the grounds for the application the applicant shall:

1. present a copy of the negotiable instrument or provide the material contents thereof and provide all information necessary for its complete identification,
2. credibly demonstrate the loss of the negotiable instrument as well as those circumstances supporting his entitlement to apply for the public notice proceedings, and
3. offer to provide a declaration in lieu of an oath as to the veracity of the information he has provided.

Section 469 Contents of the Public Notice

In the public notice the unknown bearer of the negotiable instrument shall be ordered to register his rights with the court by the registration deadline and to present the negotiable

instrument. The warning that the legal penalty is that the negotiable instrument will be declared invalid shall be included.

Section 470

Supplementary Announcement in Special Cases

If the public notice concerns a negotiable instrument made out to the bearer and if there is a requirement according to a notation on the negotiable instrument or in the provisions by which the necessary state approval was granted that the public announcement shall be effected through other publications, then the announcement shall also be effected by publication as prescribed. The same shall apply to debt obligations issued by a German *Land* or by a former federal state if public announcement in a particular publication is prescribed by *Land* statute. In addition, the public announcement may take place through input into an electronic information and communications system designated therefor by the court.

Section 471

Securities with Interest Coupons

(1) As to securities for which interest, annuity, or dividend payment coupons are periodically provided, the registration deadline shall be determined in such a way that between the date the first interest, annuity, or dividend payment coupon to become due since the time the loss was credibly demonstrated and its maturity date a minimum of six months have passed.

(2) Prior to the issuance of the exclusion order the applicant shall present a certificate prepared after the expiration of the six month period that is issued by the relevant public agency, public treasury, or institution and that states that since the time the loss was credibly demonstrated they have not been presented with the negotiable instrument for the issuance of new coupons and that no new coupons have been issued to any other person than the applicant.

Section 472

Interest Coupons Older Than Four Years

(1) As to securities regarding which no interest, annuity, or dividend payment coupons have been issued for longer than four years in the past, it shall be sufficient if the registration period is determined so that up until the time the loss was credibly demonstrated the coupon last issued was due over four years ago and since the maturity thereof six months have passed. Coupons for time periods during which no interest, annuity, or dividends were paid shall not be considered.

(2) Prior to the issuance of the exclusion order the applicant shall present a certificate prepared after the expiration of the six month time period that is issued by the relevant public agency, public treasury, or institution and that states that the coupons from the designated four year time period that subsequently matured have not been presented to them by any other person than the applicant. If subsequent to the issuance of the public notice a new issuance of coupons took place, the certificate shall also contain the information required by section 471 (2).

Section 473

Presentation of Interest Coupons

Sections 470 and 471 shall not be applicable to the extent the interest, annuity, or dividend payment coupons, the maturity date of which must already have occurred pursuant to these provisions, are presented by the applicant. When the certificate issued by the relevant public agency, public treasury, or institution states that the matured coupons were presented to it by the applicant, this shall have the same effect as the presentation of the coupons.

Section 474

Expired Issuance of Interest Coupons

As to securities regarding which interest, annuity, or dividend payment coupons have been issued but as to which such coupons will no longer be issued, the registration deadline shall

be determined so that there is a six month period between such deadline and the maturity date of the last coupon issued; this shall not apply when the prerequisites of sections 471 and 472 are fulfilled.

Section 475

Registration Deadline in Cases of Specific Maturity Dates

If a debt instrument contains a specific maturity date that has not yet been reached at the time of the first publication of the public notice in the Federal Gazette, and if the prerequisites set forth in sections 471 through 474 have not been met, the registration deadline shall be set to occur at least six months after the maturity date.

Section 476

Public Notice Deadline Period

The public notice deadline period shall be a maximum of one year.

Section 477

Registration of Rights

If the owner of a legal instrument registers his rights upon presentation of the legal instrument prior to the issuance of the exclusion order, the court shall inform the applicant thereof and grant him the possibility to inspect the legal instrument within a certain deadline and to present comments thereupon.

Section 478

Exclusion Order

- (1) The exclusion order shall declare the legal instrument null and void.
- (2) The significant portions of the exclusion order shall be announced through publication in the Federal Gazette. Section 470 shall apply *mutatis mutandis*.
- (3) In the same way, a decision made based upon a complaint on appeal shall be announced to the extent the invalidity of the legal instrument is rescinded by the decision.

Section 479

Effect of the Exclusion Order

- (1) The person who obtained the exclusion order shall be entitled to assert the rights arising from the legal instrument against those obligated by the legal instrument.
- (2) If the exclusion order is rescinded through the proceedings on a complaint on appeal, the payments made by the obligor based upon the exclusion order shall be valid in regard to third parties and especially as regards the appellant, unless the obligor was aware of the rescindment of the exclusion order at the time of the payment.

Section 480

Payment Stoppage

- (1) If the public notice proceedings result in the invalidity of a bearer instrument, upon an application therefor the court shall issue a prohibition to the issuer as well as the paying agent set forth in the instrument and as designated by the applicant against making any payments to the bearer of the instrument, especially against providing any new interest, annuity, or dividend payment coupons or a renewal coupon (stoppage of payments). Notification of the commencement of the public notice proceedings shall be linked with the prohibition. The prohibition shall be publicly announced in the same way as the public notice.
- (2) An order by way of which the application for issuance of a payment stoppage is dismissed shall be challengeable by a complaint subject to a time limit upon application *mutatis mutandis* of sections 567 through 572 of the Code of Civil Procedure.
- (3) The prohibition issued to the issuer shall also be effective against paying agents that are not designated in the instrument.
- (4) The redemption of interest, annuity, or dividend payment coupons issued prior to the prohibition shall not be affected by the prohibition.

Section 481

Dispensability of Certificate Pursuant to Section 471 (2)

If a payment stoppage is ordered before interest, annuity, or dividend payment coupons were issued since the time the loss was credibly demonstrated, presentation of the certificate specified in section 471 (2) shall not be required.

Section 482

Revocation of the Payment Stoppage

(1) If the instrument that was lost is presented to the court or if the public notice proceedings are concluded without the issuance of an exclusion order, the payment stoppage shall be revoked *ex officio*. The same shall apply when the payment stoppage was ordered prior to the commencement of the public notice proceedings and there was no application filed for the commencement within six months of the removal of the hindrance thereto. If the public notice proceeding or the payment stoppage is publicly announced, the conclusion of the proceedings or the revocation of the payment stoppage shall be publicly announced in the Federal Gazette *ex officio*.

(2) If the instrument is presented, the payment stoppage shall first be revoked after the applicant has been granted inspection in accordance with the provisions set forth in section 477.

(3) The order through which the payment stoppage will be revoked shall be challengeable by a complaint subject to a time limit upon application *mutatis mutandis* of sections 467 through 572 of the Code of Civil Procedure.

Section 483

Qualified Bearer Certificate

If the public notice proceeding results in the declaration of invalidity of an instrument of the type set forth in section 808 of the Civil Code, section 466 (3), sections 470 and 478 (2) sentence 2, and sections 480 through 482 shall apply *mutatis mutandis*. *Land* statutes may provide for contradictory provisions concerning publication of the public notice, the announcements prescribed in section 478 (2) and (3) and sections 480 and 482, and the public notice deadline period.

Section 484

Reservation as to *Land* Legislation

(1) As to public notices based upon sections 887, 927, 1104, 1112, 1162, 1170, and 1171 of the Civil Code, section 110 of the German Inland Waterway Act, section 6, 13, 66, and 67 of the Act concerning Rights to Registered Ships and Ships under Constructions (Federal Gazette III pp. 403-404), and sections 13, 66, and 67 of the Act concerning Rights to Aircraft (*Gesetz über Rechte an Luftfahrzeugen*; LuftFzG), *Land* statutes may provide for contradictory provisions regarding the form of publication of the public notice, the exclusion order, and the public notice deadline period than those set forth in sections 435, 437, and 441.

(2) As to public notices issued based upon section 1162 of the Civil Code, *Land* statutes may also provide for contradictory provisions as to the form of the publication of the public notice, the exclusion order, the orders set forth in section 478 (2) and (3), and the public notice deadline period than those set forth in sections 470, 475, 476, and 478.

Book 9

Final Provisions

Section 485

Relationship to Other Statutes

Article 1 (2) and Articles 2 and 50 of the Introductory Act to the Civil Code (*Einführungsgesetz zum Bürgerlichen Gesetzbuch*; EGBGB) shall apply *mutatis mutandis*.

Section 486

Land Statute Reservations; Supplementary Provisions and Implementing Regulations

- (1) Insofar as the Introductory Act to the Civil Code reserves legal areas to *Land* legislation, such reservation shall also apply to the corresponding procedural provisions to the extent they are an object of this Act.
- (2) Provisions for supplementing and implementing this Act, including the necessary transitional measures, may be issued by *Land* statute. This shall also apply when there is no reservation for *Land* legislation.

Section 487

Distribution of an Estate; Distribution of a Community of Property

- (1) *Land* law provisions shall remain unaffected:
1. in accordance with which the probate court is to handle the distribution of the estate *ex officio* when this has not been done within a certain time period;
 2. in accordance with which other entities than judicial authorities are competent for handling the matters incumbent upon the Local Courts pursuant to section 373 (2);
 3. in accordance with which in Baden-Württemberg in cases under section 363 in place of or in addition to notaries other agencies may handle the distribution;
 4. that concern proceedings in cases pursuant to no. 3.
- (2) Sections 365 through 372 shall apply to distributions in accordance with subsection 1 no. 1.

Section 488

Proceedings before Public Agencies Allowed by Land Statute

- (1) If pursuant to *Land* statute other public agencies are competent in regard to matters in sections 1 and 363, the provisions of book 1 with the exception of section 6, 15 (2), 25, 41 (1), and 46 shall also apply to these public agencies.
- (2) That court that is the related court of the next higher level of jurisdiction for the Local Court in the district of which the public agency has its seat shall be considered the related court of the next higher level of jurisdiction pursuant to section 5. It may be determined by *Land* statute that, when public agencies have their seat in the same district as the Local Court, this shall be competent as the related court of the next higher level of jurisdiction.
- (3) The provisions of the Courts Constitution Act (*Gerichtsverfassungsgesetz*; GVG) regarding the language of the court, communication with the court, and mutual legal assistance shall apply *mutatis mutandis*. The duty of the courts to provide mutual legal assistance shall remain unaffected.

Section 489

Appellate Remedies

- (1) If pursuant to *Land* statute public agencies rather than courts are competent in regard to the matters set forth in section 1, it may be determined by *Land* statute that as to modifications of a decision by such public agency that Local Court in the district of which the public agency has its seat shall have jurisdiction. Sections 59 through 69 shall apply *mutatis mutandis* to the proceedings.
- (2) A decision by the Local Court shall be subject to the filing of a complaint on appeal.

Section 490

Public Notice Proceedings under Land Law

As to public notices the permissibility of which is related to *Land* statutes, *Land* statutes may exclude the applicability of provisions regarding public notice proceedings or replace such provisions with other provisions.

Section 491

Land Law Reservations in Proceedings on the Invalidity of Certificates

Land law provisions that declare that a specific Local Court has exclusive jurisdiction in cases regarding public notice proceedings for the purpose of a declaration of invalidity of bearer debt securities issued by a German *Land* or former federal state or a body, foundation, or institution belonging to it, or for the payment of which a German *Land* or former federal state assumed the liability, shall remain unaffected. If the public notice results in the declaration of invalidity of a type of certificate set forth in section 808 of the Civil Code, the first sentence shall apply *mutatis mutandis*.

Section 492

Applicable Provisions as to the Competence of Notaries

(1) If in proceedings in accordance with section 342 (2) no. 1 a notary acts rather than the Local Court, the provisions applicable to the Local Court shall apply *mutatis mutandis* to the notary. The notary shall perform the duties of judge, senior judicial officer, and records clerk of the court registry. The court registry shall be the offices of the notary. In place of judicial staff, the bailiff shall act. The performance of public service approved by the notary shall take place upon his request by the Local Court in the district of which the official seat of the notary is located.

(2) If there is no appellate remedy provided for against a decision by the notary pursuant to general procedural law provisions, reminder as a legal remedy shall take place, which shall be submitted to the notary within the deadline applicable to a complaint on appeal. The notary may redress the reminder. He shall submit reminders that he does not redress to the Local Court in the district of which his official seat is located. Otherwise, the provisions applicable to complaints on appeal shall apply by analogy to the reminder as a legal remedy.

(3) Decrees, orders, and certificates of the notary that have become effective in accordance with the provisions of this Act and can no longer be amended, shall not be appealable by way of reminder as a legal remedy.

(4) (repealed)

Section 493

Transitional Provisions

Until the effectiveness of the Act on the Transfer of Duties in the Area of Non-Contentious Jurisdiction to Notaries dated 26 June 2013 (Federal Gazette I p. 1800) on 1 September 2013 distributions applied for pursuant to sections 363 through 373,5 the Act on Proceedings in Family Matters and in Matters of Non-Contentious Jurisdiction shall be applicable in the then-current version.