Act V of 2013
on the Civil Code

BOOK ONE

INTRODUCTORY PROVISIONS

Section 1:1 *[Scope of the Act]*

This Act governs the property and personal relations of persons in accordance with the principles of non-subordination and equality.

Section 1:2 *[Principle of interpretation]*

(1) The provisions of this Act shall be interpreted in accordance with the constitutional order of Hungary.

(2) Laws governing civil law relations shall be interpreted in accordance with this Act.

Section 1:3 *[Principle of good faith and fair dealing]*

(1) Parties shall act upon the requirement of good faith and fair dealing when exercising rights and fulfilling obligations.

(2) The requirement of good faith and fair dealing is also breached by the person whose exercise of rights is contrary to his previous conduct upon which the other party could reasonably rely on.

Section 1:4 *[Principle of generally expected standard of conduct. Fault]*

(1) Unless otherwise provided in this Act, in civil law relations, one shall proceed with the care that is generally expected under the given circumstances.

(2) No one can rely on his own fault for gains.

(3) A person who is at fault himself may also rely on the fault of the other party.

Section 1:5 [*Prohibition of abuse of rights*]

(1) Abuse of rights shall be prohibited by an Act.

(2) If the abuse of rights consists of refusing to give a statement required by law, and this conduct harms an overriding public interest or a personal interest requiring special consideration, this statement may be substituted with the judgment of the court, provided that the harm to interests cannot be averted by other means.

Section 1:6 *[Judicial path]*

Unless otherwise provided in an Act, rights guaranteed in this Act shall be enforced using the judicial path.

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BOOK TWO

THE INDIVIDUAL AS SUBJECT OF LAW

PART ONE

LEGAL CAPACITY

TITLE I

BEGINNING AND CESSATION OF LEGAL CAPACITY

Section 2:1 *[Legal capacity]*

(1) Everyone shall have legal capacity: they shall be entitled to rights and may have obligations.

(2) Juridical acts limiting legal capacity shall be null and void.

Section 2:2 *[Beginning of legal capacity]*

(1) Everyone shall have legal capacity from his conception, provided that he is born alive.

(2) The date of conception shall be considered to be the three hundredth day counted backwards from the date of birth; it may be demonstrated that the conception occurred at an earlier or later date. The date of birth shall be included in this period.

Section 2:3 *[Guardian of the human foetus]*

(1) The guardianship authority shall, upon request or *ex officio*, appoint a guardian to the human foetus if it is necessary to protect the rights of the foetus.

(2) The appointment of a guardian may be requested by a parent or grandparent of the foetus, or by the prosecutor or the local government clerk.

Section 2:4 [*Cessation of legal capacity*]

Legal capacity shall cease upon death.

TITLE II

DECLARATION OF PRESUMED DEATH

Section 2:5 [*Declaration of presumed death*]

(1) The court shall, upon request, adopt a decision declaring the presumed death of the missing person if five years have elapsed since his disappearance and no information is available indicating that he could be alive.

(2) Unless proven to the contrary, persons whose presumed death has been declared shall be considered dead.

(3) Declaration of presumed death may be requested by a close relative of the missing person, the prosecutor, the guardianship authority and by anyone whose legal interests are affected by the declaration of presumed death of the missing person.

Section 2:6 *[Determination of the date of death]*

(1) The court shall determine the date of death based on the assessment of the circumstances.

(2) If assessing the circumstances proves to be inconclusive, the date of death shall be the fifteenth day of the month following the month of disappearance.

Section 2:7 [*Changes in the circumstances underlying the declaration of presumed death*]

(1) If the person whose presumed death has been declared is proved to have disappeared at an earlier or later date than the one taken into account in the decision but the conditions of the declaration of presumed death are otherwise fulfilled, the court shall modify the decision declaring the presumed death. Legal consequences shall change according to the modified decision.

(2) If the person whose presumed death has been declared is proved to have disappeared at a later date than the one taken into account in the decision, and the conditions of the declaration of presumed death are therefore not fulfilled, the court shall set aside the decision declaring the presumed death, and the legal consequences ensuing from that decision shall be null and void.

(3) Modifying and setting aside the decision declaring the presumed death may be requested by those entitled to request the declaration of presumed death.

(4) If a person whose presumed death has been declared appears alive, the decision declaring the presumed death shall have no legal effect, and the legal consequences ensuing from that decision shall be null and void.

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PART TWO

CAPACITY TO ACT

TITLE III

GENERAL RULES ON CAPACITY TO ACT

Section 2:8 *[Capacity to act]*

(1) Everyone shall have the capacity to act, unless his capacity is limited by this Act or by court judgment on placement under custodianship.

(2) Persons having capacity to act may enter into contracts or make other juridical acts on their own.

(3) Juridical acts limiting capacity to act shall be null and void.

Section 2:9 *[Incapacity to act]*

(1) Juridical acts by a person who, when making these juridical acts, completely lacks the ability required to take care of his own affairs shall be null and void.

(2) With the exception of testamentary dispositions, juridical acts made by persons who have no capacity to act shall not be null and void on the grounds of incapacity to act, if their content and circumstances imply that making the juridical act would also have been justified if the party did have capacity to act.

TITLE IV

LIMITED CAPACITY AND INCAPACITY TO ACT DUE TO MINORITY

Section 2:10 *[Minority]*

(1) A minor is a person under the age of eighteen. Upon conclusion of marriage, minors shall achieve majority.

(2) If marriage is declared invalid by the court on the grounds of lacking capacity to act or the absence of the guardianship authority permission necessary due to minority, majority achieved through marriage shall cease.

(3) Termination of the marriage shall not affect majority acquired by marriage.

Section 2:11 [*Minors having limited capacity to act*]

Minors shall have limited capacity to act if they have reached the age of fourteen and do not lack the capacity to act.

Section 2:12 [*Juridical acts of a minor having limited capacity to act*]

(1) Unless otherwise provided in this Act, for juridical acts of a minor having limited capacity to act to be valid, the consent of the minor's statutory representative shall be required. If a minor having limited capacity to act obtains full capacity to act, he shall decide on the validity of his pending juridical acts.

(2) Minors having limited capacity to act

a) may make juridical acts of a personal nature to which they are entitled by law;

b) may enter into low-value contracts covering common everyday needs;

c) may dispose of their income earned from working and make commitments to its extent;

d) may enter into contracts by which they obtain only advantages; and

e) may give gifts up to a commonly accepted degree

without the involvement of their statutory representatives.

(3) Statutory representatives may, with the permission of the guardianship authority, refuse benefits free of charge promised or given to a minor having limited capacity to act. If the guardianship authority does not approve the statutory representative's statement on refusal, its decision shall replace the statutory representative's statement on acceptance.

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(4) Statutory representatives may themselves make juridical acts on behalf of minors having limited capacity to act, except where the law requires minors having limited capacity to act to make statements on their own or in the case of statements concerning the income earned from working by the minor having limited capacity to act. Statutory representatives shall, when making juridical acts that affect the minor himself or his property, take the views of the minor having limited capacity to act into account.

Section 2:13 *[Minors having no capacity to act]*

Minors under the age of fourteen shall have no capacity to act.

Section 2:14 *[Juridical acts of a minor having no capacity to act]*

(1) Juridical acts of a minor having no capacity to act shall be null and void; his statutory representative shall act on his behalf.

(2) Contracts of minor importance concluded and performed by a minor having no capacity to act shall not be null and void for the lack of capacity to act, if their conclusion is widely practiced in everyday life and does not require special consideration.

(3) When making juridical acts that affect the minor himself or his property, statutory representatives shall take the views of the minor having no capacity to act but of sound mind into account in accordance with the age and maturity of the minor.

Section 2:15 [*The guardianship authority's approval for juridical acts made by a minor's statutory representative*]

(1) For juridical acts made by a minor's statutory representative to be valid, the guardianship authority's approval shall be required for:

a) the waiver of child maintenance to which a minor is entitled;

b) juridical acts concerning rights or obligations acquired by a minor through an inheritance relationship, and disclaiming the succession of assets which can be refused separately as well;

c) the acquisition by the minor of not unencumbered real estate or the transfer of ownership or the encumbrance of his own real estate;

d) the disposal of the minor's property transferred to the guardianship authority; or

e) the disposal of the minor's assets having a value exceeding an amount specified by law.

(2) The approval of the guardianship authority shall not be required if the real estate of the minor is, at the time of its free-of-charge acquisition, encumbered with the right of usufruct being granted to the person giving the benefit free of charge.

(3) The approval of the guardianship authority shall not be required if the validity of the juridical act has already been adjudicated in court or in a notarial procedure.

Section 2:16 *[Commitment of a minor without consideration]*

Any juridical act of a minor's statutory representative by way of which he, against the assets of the minor, gives gifts, undertakes a commitment without appropriate consideration regarding an obligation of a third party, or waives rights without consideration, shall be null and void. This provision shall apply accordingly to the statutory representative's consent to a juridical act made by a minor having limited capacity to act.

Section 2:17 [*Relative nullity of a minor's juridical acts*]

Nullity based on limited capacity or lack of capacity to act due to minority may only be invoked in the interests of the person who has limited capacity to act or no capacity to act at all.

Section 2:18 [*Limiting the minor's capacity to act by placement under custodianship*]

(1) Minors having reached the age of seventeen may be placed by the court, under the rules applying to adults, under custodianship limiting their capacity to act partially or in full.

(2) Placement under custodianship may also be requested by the minor's statutory representative.

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(3) If a minor is placed by the court under custodianship fully limiting his capacity to act, custodianship shall take effect when majority is reached, but the minor shall no longer have capacity to act after the judgment has become final and binding.

TITLE V

LIMITING ADULTS' CAPACITY TO ACT

Section 2:19 *[Partial limitation of capacity to act]*

(1) An adult shall have partially limited capacity to act if placed by the court under custodianship to that effect.

(2) The court shall place an adult under custodianship partially limiting his capacity to act, if, due to his mental disorder, his ability required to take care of his own affairs is significantly reduced, permanently or in a temporarily recurring manner, and consequently, having regard to his personal circumstances, family ties and social relations, his placement under custodianship is justified with regard to specified categories of affairs.

(3) In the judgment on partial limitation of the capacity to act, the court shall specify those categories of affairs of a personal or property nature in which the capacity to act is to be limited.

(4) Capacity to act may not be limited, not even partially, if protecting the rights of the person concerned can be ensured by other means not affecting his capacity to act.

(5) Persons having partially limited capacity to act shall be able to make valid juridical acts independently in all affairs which do not belong to those categories of affairs in which the court has limited their capacity to act.

Section 2:20 [*Juridical acts of a person having partially limited capacity to act*]

(1) For juridical acts by a person having partially limited capacity to act to be valid in the categories of affairs specified by the court judgment, the consent of his custodian shall be required. If a person having partially limited capacity to act obtains full capacity to act, he shall decide on the validity of his pending juridical acts.

(2) Disputes between a person having partially limited capacity to act and his custodian shall be adjudicated by the guardianship authority.

(3) In the categories of affairs specified by the court judgment, persons having partially limited capacity to act

a) may make juridical acts of a personal nature to which they are entitled by law;

b) may enter into low-value contracts covering common everyday needs;

c) may dispose of their income to a proportion specified by the court and may make commitments to that extent;

d) may enter into contracts by which they obtain only advantages; and

e) may give gifts up to a commonly accepted degree,

without the consent of their custodians.

(4) If the protection of the interests of a person having partially limited capacity to act, or his protection from any damage requires immediate action, the custodian may act independently in matters requiring his consent, and may make juridical acts for the person concerned. The custodian shall inform the person having partially limited capacity to act and the guardianship authority thereof without delay.

Section 2:21 *[Full limitation of the capacity to act]*

(1) An adult shall have no capacity to act if placed by the court under custodianship fully limiting his capacity to act.

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(2) The court shall place an adult under custodianship fully limiting his capacity to act if, due to his mental disorder, he permanently and completely lacks the ability required to take care of his own affairs, and consequently, having regard to his personal circumstances, family ties and social relations, his placement under custodianship is justified.

(3) The court shall be allowed to limit the capacity to act in full if the protection of the rights of the person concerned cannot be ensured by means that do not affect his capacity to act or by partial limitation of his capacity to act.

Section 2:22 [*Juridical acts of an adult having no capacity to act]*

(1) Juridical acts of an adult having no capacity to act shall be null and void; his custodian shall act on his behalf.

(2) Contracts of minor importance concluded and performed by an adult having no capacity to act shall not be null and void for the lack of capacity to act if their conclusion is widely practiced in everyday life and does not require special consideration.

(3) Prior to making a juridical act that affects the adult having no capacity to act, if the adult is able to express his views, the custodian shall hear his requests, and shall take such requests into account if possible.

Section 2:23 [*Requirement of the guardianship authority's approval*]

(1) For juridical acts of a person having partially limited capacity to act, of his custodian and of the custodian of an adult having no capacity to act to be valid, the approval of the guardianship authority shall be required, if the juridical act concerns

a) the maintenance of the adult having partially limited capacity to act or having no capacity to act;

b) the rights or obligations of the adult having partially limited capacity to act or having no capacity to act acquired through an inheritance relationship;

c) the acquisition by the adult having partially limited capacity to act or having no capacity to act of not unencumbered real estate, or the transfer of ownership of real estate or encumbrance in any other way of real estate that belongs to him;

d) the property of the adult having partially limited capacity to act or having no capacity to act transferred to the guardianship authority; or

e) any other asset having a value exceeding the amount specified in the decision appointing the custodian that belongs to the adult having partially limited capacity to act or having no capacity to act.

(2) In exceptional and duly justified cases, the guardianship authority may, at the joint request of the person having limited capacity to act in financial affairs and his custodian, approve the outlays made from the property of the person concerned:

a) for a descendant of the person concerned to establish and maintain his own household or to achieve some other important objective; this support, however, shall not exceed half of the share of the inheritance under intestate succession, in a condition and of a value prevailing at the time when the approval is granted, of the descendant; or

b) for benefits free of charge, waiver of rights without consideration, or offer for public purposes, if the legal transaction does not pose a threat to the subsistence of the person concerned.

(3) In exceptional and duly justified cases, the guardianship authority may, at the request of the custodian of an adult having no capacity to act, approve the outlays made from the property of the person concerned for a descendant of the person concerned to establish and maintain his own household or to achieve some other important objective; this support, however, shall not exceed half of the share of the inheritance under intestate succession, in a condition and of a value prevailing at the time when the approval is granted, of the descendant.

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(4) The approval of the guardianship authority shall not be required if the real estate of the adult having partially limited capacity to act or having no capacity to act is, at the time of its free-of-charge acquisition, encumbered with the right of usufruct being granted to the person giving the benefit free of charge.

(5) The approval of the guardianship authority shall not be required if the validity of the juridical act has already been adjudicated in court or in a notarial procedure.

Section 2:24 [*Relative nullity of juridical acts made by an adult having partially limited capacity or no capacity to act*]

Nullity based on partially limited capacity or the lack of capacity to act may be invoked in the interests of the person whose capacity to act is partially limited or who has no capacity to act.

TITLE VI

MEASURES PRIOR TO THE PROCEDURE TO APPOINT A CUSTODIAN

Section 2:25 [*Impounding and appointment of an impoundment administrator*]

If placement under custodianship affecting capacity to act is considered to be justified, and urgent action is required for the protection of the property of the person concerned, the guardianship authority shall order impounding with respect to the property or parts thereof, and shall, at the same time, appoint an impoundment administrator.

Section 2:26 [*Appointing a temporary custodian*]

(1) When immediate action is required, the guardianship authority shall appoint a temporary custodian for an adult whose placement under custodianship affecting his capacity to act is considered to be justified and who himself or whose property cannot be protected by impounding or by any other means.

(2) The guardianship authority shall, in the decision appointing a temporary custodian, specify the affairs or categories of affairs in which the temporary custodian may make juridical acts.

(3) The activities of temporary custodians shall in other respects be governed by the provisions applied to custodians.

Section 2:27 *[Common provisions relating to impounding and to the appointment of temporary custodian]*

(1) Within eight days from the impounding or the appointment of a temporary custodian, the guardianship authority shall be required to bring an action for placement under custodianship. The court shall, within thirty days from bringing the action at the latest, review *ex officio* the impounding or the appointment of the temporary custodian.

(2) In the decision appointing the custodian at the latest, the termination of impounding and the discharge of the impoundment administrator or the temporary custodian shall be regulated.

TITLE VII

PLACEMENT UNDER CUSTODIANSHIP

Section 2:28 *[Initiation of placement under custodianship]*

(1) Placement under custodianship may be requested from the court by

a) the adult's spouse or cohabitant living with him or the adult's lineal relative or sibling;

b) the statutory representative of the minor;

c) the guardianship authority; and

d) the prosecutor.

(2) Upon becoming aware that it is necessary to place a person under custodianship, the guardianship authority shall open the procedure to appoint a custodian if the procedure is not

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initiated by any of the persons referred to in paragraph (1) *a)* and *b)* within sixty days from receiving notification from the guardianship authority concerning the necessity to bring a legal action.

Section 2:29 *[Statutory review of placement under custodianship]*

(1) The court shall, in the judgment ordering, maintaining or modifying the limitation of capacity to act, specify the date of launching the statutory review of the placement under custodianship; this date

a) shall not exceed five years from the date when the judgment became final and binding, with regard to partial limitation of the capacity to act;

b) shall not exceed ten years from the date when the judgment became final and binding, with regard to full limitation of the capacity to act.

(2) The review procedure shall be initiated by the guardianship authority *ex officio*. The action may aim at terminating the placement under custodianship limiting partially or fully the capacity to act, maintaining its effects, changing custodianship partially limiting capacity to act to custodianship fully limiting capacity to act, changing custodianship fully limiting capacity to act to placement under custodianship partially limiting capacity to act or, with regard to custodianship partially limiting capacity to act, for modifying the categories of affairs covered by the limitation.

Section 2:30 [*Termination and modification of placement under custodianship*]

(1) Custodianship affecting the capacity to act shall be terminated by the court if the grounds for ordering it no longer exist.

(2) Termination of placement under custodianship may be requested from the court by

a) the individual under custodianship;

b) the spouse, cohabitant, lineal relative, sibling of the individual under custodianship if they live with him;

c) the custodian;

d) the guardianship authority; or

e) the prosecutor.

(3) Persons listed in paragraph (2) may also request the modification of the placement under custodianship. In this context, they may request changing the custodianship partially limiting capacity to act to custodianship fully limiting capacity to act, changing the custodianship fully limiting capacity to act to custodianship partially limiting capacity to act, or, with regard to custodianship partially limiting capacity to act, for modifying the categories of affairs in which the individual under custodianship is not allowed to act independently.

(4) The action for the termination or modification of placement under custodianship may also be brought prior to the statutory review of placement under custodianship.

TITLE VIII

APPOINTMENT OF THE CUSTODIAN; RIGHTS AND OBLIGATIONS OF CUSTODIANS

Section 2:31 *[Appointment of the custodian]*

(1) The guardianship authority shall appoint a custodian for the person placed under custodianship by the court. Every person having capacity to act may be a custodian if he accepts the office of custodian.

(2) A person may not be appointed as custodian

a) if he has been, in a prior juridical act of the person placed under custodianship, excluded from persons who may be appointed as custodians, or if the person under custodianship raises by other means explicit objection against him; or

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b) if his appointment as custodian is contrary to the interests of the person placed under custodianship.

(3) A custodian shall be a person who has been indicated in the prior juridical act of the person placed under custodianship, or designated during the procedure for appointing a custodian, provided that his appointment is not contrary to the interests of the person placed under custodianship. If this is not possible, the spouse or cohabitant living with the person placed under custodianship shall be appointed as custodian in the first place. If the person concerned has no such relative, or if the appointment of the spouse or cohabitant would pose a threat to the interests of the person placed under custodianship, the guardianship authority shall appoint as custodian a person who is found to be suitable for the office of custodian after taking all the circumstances of the case into consideration.

(4) When appointing a custodian, preference among the suitable persons shall be given to the parents or to the person designated in a public deed or will by the parents for the event of their deaths, or if there are no such persons, to relatives who are also able to give personal care if necessary.

(5) If the custodian may not be appointed according to paragraphs (3) to (4), a professional custodian shall be appointed for the person placed under custodianship. A professional custodian shall be a person who has no criminal record and satisfies the qualification requirements for a professional custodian. Legal persons caring for persons with a mental disorder may also be appointed as custodians; the legal person shall designate the individual who will personally fulfil the tasks of the custodian. The individual designated shall satisfy the qualification requirements for a professional custodian.

Section 2:32 *[Appointment of multiple custodians or an assistant custodian*]

(1) By way of exception, more than one custodian may be appointed for the person placed under custodianship. More than one custodian may be appointed if

a) both parents of the person placed under custodianship or two of his close relatives accept the office of custodian; or

b) managing the property or a specific part thereof of the person placed under custodianship or administering some of his other affairs requires special expertise.

(2) In the case specified in paragraph (1) *a)*, the guardianship authority shall, at the joint request of the custodians, provide for the allocation of their tasks. In the absence of that allocation, custodians shall have the same powers; they may act jointly and independently as well.

(3) In the case specified in paragraph (1) *b),* the guardianship authority shall provide for the allocation of the tasks of the custodians.

(4) If the custodian is away or hindered for other reasons, the guardianship authority may appoint an assistant custodian for the individual under custodianship if necessary beside the custodian. The assistant custodian shall have powers to proceed only in matters which require immediate action.

Section 2:33 [*Cessation of the office of custodian*]

(1) The guardianship authority shall discharge the custodian from office, if

a) the court has terminated the placement under custodianship;

b) the individual under custodianship has died;

c) the custodian asks for his discharge for an important reason; or

d) grounds for exclusion have arisen later which would have constituted an obstacle to the appointment of the custodian.

(2) The guardianship authority shall remove the custodian from office, if

a) he does not fulfil his obligations;

b) he does not act according to the prior juridical act; or

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c) he commits acts seriously harming or threatening the interests of the individual under custodianship.

(3) If immediate action is required, the guardianship authority shall suspend the custodian from office before ordering his removal.

Section 2:34 *[Activities of custodians]*

(1) If the capacity to act is fully limited or concerning those categories of affairs in which the capacity to act was partially limited by the court, the custodian shall be the statutory representative of the individual under custodianship.

(2) The custodian shall have the powers to manage the property of the individual under custodianship if the capacity to act of the person concerned was limited in full or, concerning his right to avail of his income or property, partially by court.

(3) In duly justified cases, the custodian shall provide care, as he undertakes, to the individual under custodianship.

(4) If the individual under custodianship has specified in a prior juridical act the way his custodian should act in some of his personal or property affairs when his capacity to act is limited, the custodian shall take this into account when fulfilling his tasks.

(5) If the custodian exceeds his powers, his juridical act shall be considered effective in dealings with third parties; however, the custodian shall compensate the individual under custodianship for the damage caused, according to the rules on extra-contractual liability.

Section 2:35 *[Property management by custodians]*

(1) Property management by the custodian shall serve the interests of the individual under custodianship.

(2) If the capacity to act is limited in full, or partially concerning property affairs, the custodian shall, when called upon by the guardianship authority, transfer the assets of the individual under custodianship to the guardianship authority, if he does not need to have them in reserve for running expenses. The guardianship authority's approval shall be required for any transaction concerning assets transferred to the guardianship authority.

Section 2:36 *[Supervision of the activities of custodians]*

(1) The activities of a custodian shall be supervised by the guardianship authority.

(2) Custodians shall, any time when called upon by the guardianship authority, otherwise together with the annual report, report to that authority on their activities and on the condition of the individual under custodianship.

(3) The individual under custodianship shall be entitled to have access to records on the custodian's activities and on his property, and to make copies of such records.

Section 2:37 [*Reporting on custodians' property management activities*]

(1) Each year, custodians shall submit a report to the guardianship authority on the management of property. If the custodian is a close relative of the individual under custodianship, the guardianship authority may exempt him from the general reporting obligation, and may permit a simplified report.

(2) The general reporting obligation or the obligation to submit a simplified report shall not apply to the custodian, except for professional custodians, if the individual under custodianship has no property and his income does not exceed an amount specified by law.

(3) In duly justified cases, the guardianship authority may require the custodian to submit an ad-hoc report. Ad-hoc reports may also be required at the request of the individual under custodianship.

(4) The custodian shall, within fifteen days from the termination of his office, submit a closing report to the guardianship authority on the property managed by him. If the office of custodian ceases because the court has terminated the placement under custodianship or the

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limitation of capacity to act concerning property affairs, the custodian is obliged to present a closing report to the person who is entitled to dispose of the property from then onwards.

(5) Claims against the custodian based on his reporting obligations shall be lapse after a year from the notification on the decision discharging the custodian from his property management obligations. If the interested party becomes aware of the reason underlying a claim at a later point in time, the time limit shall be reckoned from that time, if the claim has not yet lapsed.

TITLE IX

SUPPORTED DECISION-MAKING WITHOUT PREJUDICE TO CAPACITY TO ACT

Section 2:38 [*Appointment of a supporter*]

(1) The guardianship authority shall, at the adult's request and in order to avoid limiting his capacity to act, appoint a supporter for the adult who, due to not being entirely of sound mind, needs help in administering some of his affairs or making his decisions.

(2) If, during the procedure for placement under custodianship affecting capacity to act, the court considers that not even the partial limitation of the capacity to act is justified, but the person concerned needs help in administering some of his affairs, due to not being entirely of sound mind, it shall reject the request for placement under custodianship, and shall notify the guardianship authority of its decision. The supporter shall be appointed by the guardianship authority, based on the court decision, in agreement with the person concerned.

(3) The appointment of a supporter shall be without prejudice to the adult's capacity to act.

TITLE X

ARRANGEMENTS CONCERNING FUTURE LIMITATION OF CAPACITY TO ACT

Section 2:39 *[Prior juridical acts]*

(1) Adults having capacity to act may make a prior juridical act in a public deed, a private deed countersigned by an attorney-at-law, or in person before the guardianship authority, concerning future limitation of their capacity to act, whether full or partial.

(2) In the prior juridical act, the person making the statement

a) may name one or more persons who he proposes to be appointed as his custodians;

b) may exclude one or more persons from being a custodian; and

c) may specify how the custodian should act in certain personal and property affairs.

(3) The prior juridical act shall be registered in the register of prior juridical acts. Failure to register the prior juridical act shall not affect its validity.

(4) Provisions on making prior juridical acts shall apply accordingly to modifying and withdrawing juridical acts. Withdrawn prior juridical acts shall be deleted from the register.

Section 2:40 [*Coming into effect of prior juridical acts*]

(1) The court shall, in its decision on placement under custodianship affecting capacity to act, order the application of the prior juridical act, except if

a) complying with the prior juridical act is explicitly contrary to the interests of the person placed under custodianship; or

b) the person designated as custodian by the adult does not wish to implement the prior juridical act, or there are grounds specified in law for his exclusion.

(2) If one of the provisions of the prior juridical act may not be applied, it shall not affect the application of its other provisions.

(3) The guardianship authority shall, when appointing a custodian and determining his functions, take due account of the provisions set out in the prior juridical act.

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Section 2:41 [*Review of prior juridical acts*]

If, after the limitation of the capacity to act of the person who made a prior juridical act, the circumstances have changed in such a way that the implementation of the provisions of the prior juridical act would be contrary to the interests of the individual under custodianship, then he, the custodian, the guardianship authority or the prosecutor may request the court not to apply that provision.

PART THREE

PERSONALITY RIGHTS

TITLE XI

GENERAL RULES AND CERTAIN PERSONALITY RIGHTS

Section 2:42 *[General protection of personality rights]*

(1) Everyone shall have the right, subject to limitations by law and by the rights of others, to exercise his personality rights freely, in particular the right to respect for his private and family life, his home, and to his communications made by whatever ways or means, and the right to good reputation and not to be hindered by anyone from exercising these rights.

(2) Everyone shall respect human dignity and the personality rights derived from it. Personality rights are protected by this Act.

(3) A conduct to which the person concerned has given his consent shall not violate personality rights.

Section 2:43 *[Specific personality rights]*

Violation of personality rights means in particular

a) harm to life, physical integrity and health;

b) violation of personal liberty and privacy, and trespass;

c) discrimination against a person;

d) defamation or violation of good reputation;

e) violation of the right to keep personal secrets and the right to the protection of personal data;

f) violation of the right to a name;

g) violation of the right to the protection of one's image and recorded voice.

Section 2:44 *[Protection of the personality rights of public figures]*

(1) The exercise of fundamental rights ensuring a free discussion of public affairs may limit the personality rights of public figures to an extent that is necessary and proportionate and is without prejudice to human dignity; however, it shall not violate their private and family life and home.

(2) Public figures shall be entitled to the same protection as non-public figures with regard to communications or conduct falling outside the scope of free discussion of public affairs.

(3) Activities and data in relation to the private or family life of public figures shall not qualify as public affairs.

Section 2:45 *[Right to honour and reputation]*

(1) Defamation means in particular expressing an opinion in a way that is capable of adversely affecting society's perception of another person and is unduly insulting in its formulation.

(2) Violation of good reputation means in particular misrepresenting or reporting untrue facts concerning and offending another person, or misrepresenting true facts.

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Section 2:46 *[Right to personal secrets]*

(1) Protection of the right to personal secrets covers in particular the protection of confidentiality of correspondence and of professional secrets.

(2) Violation of the right to personal secrets means in particular the unlawful acquisition and use of personal secrets and their disclosure or communication to unauthorised persons.

Section 2:47

Section 2:48 *[Right to one's own image and recorded voice]*

(1) Recording a person's image or voice and using such a recording shall require the consent of the person concerned.

(2) The consent of the person concerned shall not be required for recording his image or voice and for the use of such a recording if the recording was made of a crowd or of an appearance in public life.

Section 2:49 *[Right to a name]*

(1) Literary, artistic or scientific activities or activities connected to appearance in public life may be carried out under a pseudonym if it does not harm the substantial legal interests of others.

(2) If the name of a person engaged in literary, artistic or scientific activities or in activities connected to appearance in public life can be confused with the name of another person who has already been engaged in similar activities, that name shall, at the request of the person concerned, be used while engaged in such activities with a distinctive addendum or omission.

Section 2:50 *[Right to respect for the deceased]*

(1) If the memory of the deceased is violated, any relative of the deceased or those who received benefits under his will may bring the matter before the court.

(2) Relinquishing material gain obtained by violating the right to respect for the deceased may be requested by any of the heirs. If there is more than one heir, the material gain thus relinquished shall be distributed among them according to their share in the estate.

TITLE XII

SANCTIONS FOR VIOLATING PERSONALITY RIGHTS

Section 2:51 *[No-fault sanctions]*

(1) Any person whose personality rights have been violated may claim, based on the fact of violation, within the limitation period and according to the circumstances of the case

a) the establishment of the violation by the court;

b) that the violation be ceased and the person committing the violation be forbidden from continuing the violation;

c) that the person committing the violation give appropriate satisfaction, and provide for its publicity at his own expenses;

d) the ending of the injurious situation, the restoration to the situation existing prior to the violation, and the destruction of things produced through the violation or the depriving such things of their unlawful character;

e) that the person committing the violation or his legal successor relinquish the material gain obtained by the violation according to the rules on unjustified enrichment.

(2) If a person acting within his administrative powers violates personality rights, the sanctions referred to in paragraph (1) shall be enforced against the legal person exercising public authority. If the entity exercising public authority is not a legal person, the sanctions shall be enforced against the administrative organ having legal personality under which the administrative organ which has taken the action is functioning.

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(3) If a person acting within judicial or prosecutorial powers violates personality rights, the sanctions referred to in paragraph (1) shall be enforced against the court if the person has acted within his judicial powers, and against the Office of the Prosecutor General, if the person has acted within his prosecutorial powers. If the court which has taken the action is not a legal person, the claim shall be enforced against the court the president of which exercises general employer's rights over the judges of the court having no legal personality.

Section 2:52 *[Grievance award]*

(1) Any person whose personality rights have been violated may claim a grievance award for non-material harm done to him.

(2) Conditions of the obligation to pay grievance award, and in particular the identification of the person who is under the obligation to pay and the ways of exculpating him, shall be governed by the rules on liability for damages, with the proviso that, apart from the fact of the violation, there is no need to prove further loss.

(3) The court shall determine the amount of the grievance award in one sum, taking into account the circumstances of the case, in particular the gravity of the violation, whether it was committed on one or more occasions, the degree of fault, and the impact of the violation on the aggrieved party and his environment.

Section 2:53 *[Liability for damages]*

Any person who suffers any damage from the violation of his personality rights shall have the right to claim compensation from the person committing the violation in accordance with the provisions on liability for damage caused by unlawful actions.

Section 2:54 *[Enforcement of personality rights]*

(1) Personality rights may be enforced in person.

(2) Minors having limited capacity to act and persons having partially limited capacity to act may take action independently to protect their personality rights. The statutory representative of a person having no capacity to act may take action to protect the personality rights of the person having no capacity to act.

(3) The relative or custodian of a person away at an unknown place may take action to protect the personality rights of that person.

(4) If the violation of personality rights harms the public interest, the prosecutor may, with the consent of the person entitled thereto, bring an action, and may enforce the no-fault sanctions connected to the violation. On the basis of the action of the prosecutor, any material gain obtained by the violation of rights shall be relinquished for a purpose of public interest. In the event of the violation of rights mentioned in paragraph (5), this paragraph shall apply subject to the derogation that the prosecutor may bring an action, within the limitation period, even without the consent of the person entitled thereto.

(5) Any member of the community may enforce his personality rights within a thirty-day term of preclusion from the occurrence of a legal injury that was committed with great publicity in relation to some essential trait of his personality, his belonging to the Hungarian nation or some national, ethnic, racial or religious community, and is grossly offensive to the community or unduly insulting in its manner of expression. With the exception of relinquishing the material gain obtained through the violation of rights, any member of the community may enforce any sanctions of the violation of personality rights.

PART FOUR

COPYRIGHT AND INDUSTRIAL PROPERTY RIGHTS

Section 2:55 *[Supplementary rule]*

This Act shall apply to matters falling within its scope which are not governed by laws on copyright and industrial property rights and on the protection of trade secrets.

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BOOK THREE

LEGAL PERSONS

PART ONE

GENERAL RULES ON LEGAL PERSONS

TITLE I

General provisions

Section 3:1 *[Legal capacity of legal persons]*

(1) Legal persons shall have legal capacity: they shall be entitled to rights and may be subject to obligations.

(2) Legal capacity of legal persons shall extend to all those rights and obligations which, by their nature, do not pertain to natural persons only.

(3) Rules on personality rights shall also apply to the personality rights of legal persons, unless protection, by virtue of its nature, applies to natural persons only.

(4) Legal persons may be established and operated in the juridical forms specified by an Act for engaging in activities and attaining objectives not prohibited by an Act; instruments of incorporation violating this provision shall be null and void.

(5) Legal persons shall have their own name, seat and assets distinctly separated from those of their members and founders, as well as an organisation providing for their management and representation.

Section 3:2 *[Liability for the debts of legal persons]*

(1) Legal persons shall be liable for their obligations to the extent of their assets; the members and founders shall not be liable for the debts of the legal person.

(2) If a member or a founder of a legal person has abused his limited liability and thus certain creditor claims remained outstanding upon the termination without succession of the legal person, the member or the founder concerned shall have unlimited liability for those debts.

Section 3:3 *[Application of the general rules on legal persons]*

(1) The general rules on legal persons shall apply unless this Act provides otherwise with respect to specific types of legal persons.

(2) The general rules on legal persons shall apply accordingly to types of legal persons not regulated in this Act.

(3) The general rules on legal persons shall apply accordingly to organisations which are not legal persons but have been conferred by law with the capacity to be subjects of civil law.

TITLE II

ESTABLISHMENT OF LEGAL PERSONS

Chapter I

Freedom of establishment

Section 3:4 *[Freedom of establishing legal persons]*

(1) Persons may freely decide to establish a legal person by means of a contract, a deed of foundation or articles of association (hereinafter jointly "instrument of incorporation") and may determine themselves the organisational structure and operating rules of the legal person.

(2) In the instrument of incorporation, the members and founders of the legal person may derogate from the provisions of this Act relating to legal persons when regulating their

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relations with each other and to the legal person, as well as the organisational structure and operating rules of the legal person, except as provided in paragraph (3).

(3) The members and the founders of a legal person shall not derogate from the provisions of this Act if the derogation

a) is prohibited by this Act; or

b) manifestly violates the rights of the creditors, employees or a minority of members of the legal person, or prevents the effective supervision of the lawful operation of legal persons.

(4) Legal persons shall come into existence upon their registration by the court based on the instrument of incorporation corresponding to their specific type. The court of registration may decline registration of a legal person for reasons specified by law.

(5) Legal persons may be established for a definite or indefinite period. If the legal person does not specify its term of existence, it shall come into existence for an indefinite period.

Chapter II

Instrument of incorporation

Section 3:5 *[Content of the instrument of incorporation]*

Beyond the founders' intention to establish a legal person, the instrument of incorporation of a legal person shall specify

a) the name of the legal person;

b) the seat of the legal person;

c) the objective or main activity pursued by the legal person;

d) the names of the founders of the legal person, and their place of domicile or seat;

e) the monetary or in-kind contributions to be made to the legal person and the value of the contributions, as well as the mode and time of making the assets available; and

f) the first executive officer of the legal person.

Section 3:6 *[The name of the legal person]*

(1) The name of the legal person shall differ from that of other previously registered legal persons to such an extent that they cannot be confused. If registration of several legal persons is requested under names that are identical or confusable, the applicant submitting the application for registration first shall be entitled to use that name.

(2) The name of a legal person may not give an impression contradicting reality. The name of a legal person shall indicate the type or form of that legal person.

(3) The type of legal person and, if the name contains an indication of its activity, the activity of the legal person shall be indicated in Hungarian, according to the rules of Hungarian spelling.

Section 3:7 *[The seat of the legal person]*

The seat of a legal person shall be at its registered office, where the legal person shall ensure that juridical acts addressed to it can be served and shall provide access to the documents specified by law.

Section 3:8 *[Activity of the legal person]*

Legal persons may engage in any activity not prohibited or restricted by law.

Section 3:9 *[Obligation to provide monetary or in-kind contributions]*

(1) The founders and the members of a legal person shall provide monetary or in-kind contributions to the legal person upon the foundation of the legal person or in other instances of acquiring membership rights. Monetary or in-kind contributions provided to a legal person, or their equivalent shall not be reclaimed.

(2) If the founders or members of the legal person are not obliged to provide monetary or in-kind contributions then its members or, with regard to a legal person having no members, the person exercising founders' rights shall be liable for the debts of the legal person. If several

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persons are burdened with the obligation to assume liability, their liability shall be joint and several.

Section 3:10 *[Object and value of monetary or in-kind contributions]*

(1) The assets provided to a legal person by members or founders shall be either monetary or in-kind contributions.

(2) Founders or members may provide in-kind contributions by transferring the ownership of things or rights of pecuniary value to the legal person.

(3) If the value of the in-kind contribution does not reach, at the time of its transfer, the value indicated in the instrument of incorporation, the legal person may demand, within five years from the date of the transfer, the payment of the difference from the person providing the in-kind contribution.

Section 3:11 *[Prohibition of issuing securities representing membership rights]*

No securities representing membership rights shall be issued, except by companies limited by shares.

Chapter III

Register of legal persons

Section 3:12 *[Submitting a request for registration]*

(1) The person appointed to represent the legal person shall be responsible for submitting the application for the registration of the legal person to be established.

(2) The representative shall be liable to the founders according to the provisions on liability for damage caused by breach of contract for any damage caused by his failure to submit the application at all or on time, or by his submitting a deficient or erroneous application.

Section 3:13 *[Fundamental principles of the registration of legal persons]*

(1) Registration of rights, facts or data in the register shall be based on documents specified by law, or on court or authority decisions.

(2) The register is of certified authenticity: the rights, facts and data recorded therein (hereinafter jointly "recorded data") shall be presumed as existing and true. No one may plead ignorance of recorded data. A legal person may not, against parties acting in good faith, plead that certain recorded data submitted by it are not accurate. Unless proven to the contrary, the good faith of a party that, trusting the register, acquires rights for consideration shall be presumed.

(3) Anyone may have access to the register, may make written notes of the recorded data, and may request certified true copies or extracts from it.

Section 3:14 *[Publication of juridical acts]*

If a provision of this Act regarding legal persons imposes an obligation of publication on the legal person, that obligation shall be fulfilled by publication in the official gazette *Cégközlöny*, unless otherwise provided in this Act.

Chapter IV

Invalidity of the establishment of legal persons

Section 3:15 *[Invalidity of the establishment of legal persons]*

(1) Before the decision on the registration of the legal person becomes final and binding, the provisions on the invalidity of contracts shall apply to the invalidity of the instrument of incorporation of legal persons.

(2) After the registration of the legal person becoming final and binding, the invalidity of the instrument of incorporation of the legal person may not be invoked as a ground for deletion. If a provision of the instrument of incorporation is unlawful, measures aiming to ensure lawful operation may be availed of.

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(3) The provisions set out in paragraphs (1) and (2) shall apply accordingly to amendments of the instrument of incorporation.

TITLE III

ORGANISATION AND REPRESENTATION OF LEGAL PERSONS

Chapter V

Decision-making by the members or founders of legal persons

Section 3:16 *[The decision-making body]*

(1) Members and founders shall exercise their decision-making powers conferred upon them by this Act or the instrument of incorporation through a body comprising all members or the delegates elected by the members from among themselves (hereinafter "assembly of delegates"), or through a body comprising all persons exercising founders' rights.

(2) The decision-making body shall make its decisions in meetings or without holding a meeting.

Section 3:17 *[Convening the meetings of decision-making bodies]*

(1) Meetings of the decision-making body shall be convened by invitations sent or published by the executive officer.

(2) The invitation shall contain

a) the name and seat of the legal person;

b) the date and place of the meeting;

c) the agenda of the meeting.

(3) The agenda shall be indicated in the invitation in sufficient detail to enable those entitled to vote to formulate an opinion on the items to be discussed.

(4) The meeting of the decision-making body shall be held at the seat of the legal person.

(5) If the meeting of the decision-making body was not duly convened, the meeting may only be held if all those entitled to attend are present and unanimously consent to the meeting being held.

(6) The meeting of the decision-making body may only adopt resolutions on items included on a duly communicated agenda, except if all those entitled to attend are present and unanimously consent to discussing items not included on the agenda.

Section 3:18 *[Quorum]*

(1) The quorum of a meeting of the decision-making body shall be constituted if those entitled to vote and attending the meeting represent more than half of the votes to be cast. Quorum shall be verified on each decision.

(2) On verification, the member or founder not entitled to vote on a certain issue shall not be counted in the quorum with respect to the resolution on that issue.

Section 3:19 *[Adopting resolutions]*

(1) The members or founders shall adopt their resolutions at the meetings of the decision-making body by voting.

(2) When adopting a resolution, no vote shall be cast by those:

a) who, by the resolution, would be exempted from an obligation or responsibility or would gain certain other kind of advantage to the detriment of the legal person,

b) with whom, according to the resolution, a contract would have to be concluded;

c) against whom, according to the resolution, legal action would have to be brought;

d) whose relative, being neither a member nor a founder of the legal person, has a vested interest in the resolution;

e) who have a relationship based on majority control with an organisation having a vested interest in the resolution; or

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f) who are personally interested in the resolution.

(3) The members or founders shall adopt resolutions by a majority of the votes counted for quorum. If this Act requires a simple or higher majority for adopting a resolution, any provision of the instrument of incorporation requiring a lower voting proportion shall be null and void. If this Act requires unanimity for adopting a resolution, any derogating provision of the instrument of incorporation shall be null and void.

Section 3:20 *[Adopting resolutions without holding a meeting]*

(1) If the instrument of incorporation allows that resolutions be adopted without holding a meeting, the management shall initiate that procedure by sending the draft resolution to the members or founders. Members or founders shall be allowed at least eight days from receipt of the draft to send their votes to the management.

(2) The provisions of this Act on quorum and voting shall apply to the procedure for adopting resolutions without holding a meeting, with the derogation that the decision-making process shall be considered effective if the number of votes sent to the management reaches at least the number of members or founders entitled to vote that would be required to be present for a quorum if a meeting was held.

(3) If so requested by any member or founder, the management shall convene the meeting of the supreme body.

(4) The management shall note the outcome of the vote within three days following the last day of the term open for voting or, if all votes of the members or founders are received earlier than that, within three days from the day of the last vote received, and shall announce in writing to the members or founders the results within an additional three days. The date of adoption of the resolution shall be the last day of the term open for voting or, if all votes of the members or founders are received earlier than that, the day the last vote is received.

Chapter VI

Management of legal persons

Section 3:21 *[Concept of management, mandate of executive officers]*

(1) Decisions related to the management of a legal person that fall outside the powers of the members or founders shall be adopted by an executive officer or executive officers or by a body of executive officers.

(2) Executive officers shall perform their management duties in the interests of the legal person.

(3) The first executive officers of a legal person shall be designated in the instrument of incorporation of the legal person. After the creation of a legal person, executive officers shall be elected, appointed and dismissed by the members of the legal person or, in legal persons having no members, by the founders. The mandate of an executive officer shall come into effect when accepted by the person designated, elected or appointed.

Section 3:22 *[Requirements for executive officers, grounds for exclusion]*

(1) Executive officers shall be adults whose capacity to act has not been limited with respect to their duties to perform.

(2) If the executive officer is a legal person, the legal person shall designate a natural person to perform on its behalf the duties of the executive officer. The rules on executive officers shall also apply to this designated person.

(3) Executive officers shall perform their management duties personally.

(4) No person sentenced by a final and binding decision to imprisonment for a criminal offence shall be an executive officer before his criminal record is expunged.

(5) No person prohibited by a final and binding decision from practising the profession concerned shall be an executive officer. No person prohibited by a final and binding court

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judgment from practising a profession shall be an executive officer of a legal person engaged in the activity specified in the judgment.

(6) No person prohibited from holding an executive office shall be an executive officer for the period specified in the resolution on prohibition.

Section 3:23 *[Duty of confidentiality and obligation to provide information]*

(1) The executive officer shall provide information to the members or, in the case of legal persons having no members, to the founders of the legal person regarding the legal person and shall ensure access for them to the documents and registers relating to the legal person. For providing information or access to persons entitled to it, the executive officer may request their written statement of confidentiality.

(2) The executive officer may refuse to provide information or access to documents if it would violate trade secrets of the legal person, or if the party requesting information exercises this right in an abusive manner or does not make a statement of confidentiality despite having been called upon to do so. If the party requesting information considers the refusal to provide information unjustified, he may request the court of registration to order the legal person to provide the information.

Section 3:24 *[Liability of executive officers]*

(1) The executive officer shall be liable to the legal person for the damage caused to it during his management activities according to the rules on liability for damage caused by breach of contract.

(2) The legal person shall be liable for any damage caused to a third party by the executive officer acting in his competence. The executive officer and the legal person shall be jointly and severally liable if the executive officer caused the damage intentionally.

Section 3:25 *[Termination of the mandate of executive officers]*

(1) The mandate of the executive officer shall terminate

a) upon expiry of the term of office, if the mandate is for a definite term;

b) if the mandate is subject to a terminating condition, upon meeting that condition;

c) upon dismissal;

d) upon resignation;

e) upon the death or termination without succession of the executive officer;

f) if a limitation of the executive officer's capacity to act affects the performance of his duties;

g) upon the occurrence of any grounds for exclusion or conflict of interests.

(2) The members or, in the case of legal persons having no members, the founders may, at any time, dismiss the executive officer without giving justification.

(3) An executive officer may resign at any time by a notice addressed to the legal person and transmitted to another executive officer or the decision-making body of the legal person.

(4) If the functioning of the legal person so requires, resignation shall either take effect upon the designation or election of a new executive officer or, in the absence of such, on the sixtieth day following the announcement.

Chapter VII

Owners' supervision of the legal person

Section 3:26 *[Establishment of a supervisory board and its membership]*

(1) In the instrument of incorporation, the members or founders may provide for the establishment of a supervisory board consisting of three members, with the duty to supervise the management in order to protect the interests of the legal person.

(2) Members of the supervisory board shall be adults whose capacity to act has not been limited with respect to their duties to perform. No person with respect to whom a ground for

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exclusion of executive officers applies, or who himself or whose relative is an executive officer of the legal person, shall be member of the supervisory board.

(3) Supervisory board members shall participate personally in the work of the supervisory board. Supervisory board members shall be independent of the management of the legal person, and shall not be instructed in their activities.

(4) The members of the first supervisory board shall be designated in the instrument of incorporation; subsequent members shall be elected by the decision-making body. Membership of the supervisory board shall be effective upon acceptance.

(5) The provisions on the termination of the mandate of executive officers shall apply to the termination of the membership of the supervisory board, with the proviso that the supervisory board member's notice of resignation shall be delivered to the executive officer of the legal person.

Section 3:27 *[Operation of the supervisory board]*

(1) The supervisory board shall assess all submissions brought before the decision-making body of members or founders and to make its position thereon known at the meeting of the decision-making body.

(2) The supervisory board shall have access to the documents, accounting records and books of the legal person, may request information from the executive officers and employees of the legal person, and may inspect or have an expert inspect the legal person's payment account, petty cash, securities portfolio, inventories and contracts.

(3) The supervisory board shall adopt its resolutions by a majority of its members present. Any provision of the instrument of incorporation requiring a lower voting proportion shall be null and void.

Section 3:28 *[Liability of supervisory board members]*

The supervisory board members shall be liable, in accordance with the provisions on liability for damage caused by breach of contract, for the damage caused to the legal person by their failure to perform their supervising obligation or by performing it in an inadequate manner.

Chapter VIII

Representation of legal persons

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Section 3:29 *[Statutory representation of legal persons]*

(1) The executive officer shall provide for the statutory representation of the legal person.

(2) The executive officer shall exercise his right of representation independently.

(3) The executive officer shall be responsible for reporting to the court of registration the data of the legal person as specified by law.

Section 3:30 *[Representation of the legal person by an organisational unit]*

(1) If the instrument of incorporation of the legal person or its internal rules relating to organisation and operation designate within the organisation a position vested with a right of representation, the person holding that position may represent the legal person independently.

(2) The head of the legal person's organisational unit which is not a legal person itself shall be considered an independent representative of the legal person within the scope of regular operation of the unit.

(3) The management may, for specific groups of matters and in writing, delegate the right of representation to employees of the legal person; the employee may exercise that right of representation only jointly with another person having representation rights specified in the written statement of the management.

Section 3:31*[Restriction of the right of representation]*

Restricting the representation rights conferred upon the registered representative of the legal person, or making such representative's statements conditional on or subject to approval shall

not be effective against third parties unless the third party knew or should have known of the restriction or of the necessity for the fulfilment or approval of a condition and of the lack thereof.

Chapter IX

Capacity of the organisational unit of a legal person to be subject of law

Section 3:32 *[Capacity of the organisational unit of a legal person to be subject of law]*

(1) If allowed so by this Act, the instrument of incorporation may vest certain organisational units of the legal person with legal personality provided that such units have their own organisations and assets distinct from those of the founders and the legal person.

(2) General rules on legal persons shall apply accordingly to the organisational unit vested with the capacity to be subject of law, with the derogation that the legal person shall be liable, during and subsequent to the existence of the legal personality of the organisational unit, for all creditor claims that cannot be satisfied from the assets of this unit.

Section 3:33 *[Provisions on the termination of the capacity of the organisational unit to be subject of law]*

(1) Upon termination of the legal personality of the organisational unit, its rights and obligations shall pass to the legal person.

(2) If the legal person decides to terminate the legal personality of the organisational unit, that decision shall be made public. The creditor whose claim arose before the publication of the decision may claim adequate security from the legal person within a term of preclusion of thirty days following publication if termination of the legal personality of the organisational unit jeopardises the satisfaction of his claim. The organisational unit may only be deleted if the legal person has provided adequate security at the request of the creditor.

(3) The legal personality of the organisational unit shall terminate upon ordering the procedure to terminate the legal person.

TITLE IV

SAFEGUARDS FOR THE LAWFUL OPERATION OF LEGAL PERSONS

Chapter X

Supervision of legality over legal persons

Section 3:34 *[Supervision of legality over legal persons]*

(1) General supervision of legality of legal persons shall be carried out by the court of registration at which the legal person is registered. Supervision of legality shall not extend to matters for which other court or administrative procedures are available. Supervision of legality may not extend to assessing the cost-effectiveness and appropriateness of the decisions of legal persons.

(2) If the measures taken to restore the legality of the operation prove to be ineffective, the court of registration shall dissolve the legal person.

Chapter XI

Judicial review of the resolutions of legal persons

Section 3:35 *[Reasons for review, persons entitled to initiate review]*

Members of the legal person or, in the case of legal persons having no members, those entitled to exercise the rights of founders, the executive officers and members of the supervisory board of the legal person may request the court to set aside the resolutions

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adopted by the members, the founders or the bodies of the legal person if the resolution is unlawful or violates the instrument of incorporation.

Section 3:36 *[Action for the setting aside of a resolution]*

(1) An action may be brought against the legal person for the setting aside of a resolution within thirty days from the date when the person entitled to bring an action has become or could have become aware of the resolution. No action shall be brought after the expiry of the one-year term of preclusion from the date of adoption of the resolution.

(2) Persons who supported the adoption of the resolution with their votes may not bring an action unless they supported the adoption of the resolution by mistake, due to misrepresentation or under unlawful threats.

(3) If a resolution is challenged by the executive officer of the legal person, and the legal person has no other executive officer to represent it, a member of the supervisory board appointed by the supervisory board shall represent the legal person in the procedure. If the legal person has no supervisory board, or all members of the supervisory board are plaintiffs in the procedure, the court shall appoint a guardian *ad litem* to represent the legal person.

(4) Bringing an action for the setting aside of a resolution shall have no suspensory effect on the enforcement of the resolution. If justified, the court may, at the request of the plaintiff, suspend the enforcement of the resolution. No appeal shall lie against the order on stay. No court injunctions shall be issued in such court procedures.

Section 3:37 *[Setting aside resolutions]*

(1) If a resolution is unlawful or violates the instrument of incorporation, the court shall set aside the resolution and order the adoption of a new resolution if necessary.

(2) The effect of a court judgment setting aside a resolution shall extend to all other persons entitled to initiate the review of the resolution even if they have not participated in the procedure.

(3) If the resolution does not violate the law or the instrument of incorporation to a significant degree and does not jeopardise the lawful operation of the legal person, the court shall only establish the violation.

Chapter XII

Standing auditor

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Section 3:38 *[Standing auditor]*

(1) If the legal person employs a standing auditor to audit its books, the standing auditor shall have access to the legal person's documents, accounting records and books, may request information from executive officers, members of the supervisory board and employees of the legal person, and may inspect the legal person's payment account, petty cash, securities portfolio, inventories and contracts.

(2) If the standing auditor detects changes in the legal person's assets that are likely to jeopardise the ability of the legal person to satisfy the claims outstanding against it, or circumstances which would incur the liability of the executive officers or supervisory board members with regard to their activities performed in that capacity, he shall, without delay, request the management to take the measures necessary for decisions to be taken by the members or, in the case of legal persons having no members, the persons exercising founder's rights. If his request has no result, the auditor shall notify the court of registration exercising supervision of legality over the legal person of the circumstances detected.

TITLE V

TRANSFORMATION, MERGER, DIVISION AND TERMINATION WITHOUT SUCCESSION OF LEGAL PERSONS

Chapter XIII

Transformation, merger and division

Section 3:39 *[Transformation]*

(1) In the event of transformation of a legal person into another type, the legal person undergoing transformation shall terminate and its rights and obligations shall pass to the legal person created through transformation as general legal successor.

(2) The provisions on the establishment of legal persons shall apply accordingly to transformation.

Section 3:40 *[Restrictions]*

A legal person shall not undergo transformation if

a) it is subject to a procedure for termination without succession or bankruptcy proceedings;

b) it is subject to criminal proceedings aimed at imposing criminal measures against the legal person, or it is subject to criminal measures that can be imposed against legal persons; or

c) its members or founders failed to provide the monetary or in-kind contribution prescribed by the instrument of incorporation.

Section 3:41 *[Decision on initiating transformation]*

(1) The initiation of the transformation, including determining the mode of transformation and the legal person as legal successor, shall be decided by the members or founders of the legal person.

(2) After the decision referred to in paragraph (1) is made, the management of the legal person shall prepare a transformation plan including draft balance sheet of assets and liabilities of the legal person to be transformed, and shall communicate it to the members or founders.

Section 3:42 *[Members not participating in the transformation]*

(1) The members of a legal person may declare, within thirty days after the draft transformation plan was communicated, that they do not intend to become members of the legal person to be created by transformation.

(2) The membership of the members making a juridical act under paragraph (1) shall terminate upon transformation, and they shall be entitled to a share of the assets of the legal person undergoing transformation equal to what they could claim if the legal person terminated without succession.

(3) Where appropriate, the transformation plan shall be modified according to the juridical acts of the members made under paragraph (1).

Section 3:43 *[Completion of transformation]*

(1) The members or founders shall decide on transformation by adopting the transformation plan; such a resolution shall require at least a three-quarters majority in the decision-making body.

(2) The adopted transformation plan shall be published together with the decision on transformation. The creditor whose claim arose before the publication may claim adequate security from the legal person undergoing transformation within a term of preclusion of thirty days following publication if the transformation jeopardises the satisfaction of his claim.

(3) The legal person terminated by transformation shall be deleted simultaneously with the registration of the legal person created by transformation. The legal person undergoing transformation shall continue to operate in its registered form until the legal successor is registered.

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(4) If the court of registration refuses to register the transformation, the legal person continues to operate in its previous form.

Section 3:44 *[Merger]*

(1) Legal persons may merge with other legal persons through consolidation or merger by absorption. In consolidation, the merging legal persons shall terminate and a new legal person shall be created through general legal succession. In merger by absorption, the absorbed legal person shall terminate, and its general legal successor shall be the other legal person participating in the merger.

(2) If all the legal persons participating in the merger decide to initiate the merger, their managements shall prepare a joint merger plan which complies with the transformation plan and contains the draft balance sheets of the assets and liabilities of all participating legal persons, as well as the opening draft balance sheet of assets and liabilities of the legal person to be created by the merger.

(3) The legal persons participating in the merger shall decide individually on the adoption of the merger plan. The merger plan shall be considered adopted if approved by all the participating legal persons.

Section 3:45 *[Division]*

(1) Legal persons may be divided into two or more legal persons through complete division or partial division. In complete division, the legal person shall terminate and its assets shall pass to two or more legal persons created by the division as legal successors. In partial division, the legal person shall continue to operate and a part of its assets shall pass to another legal person created by the division as a legal successor.

(2) Division of a legal person may also take place in a way that

a) in partial division, the member splitting off from the legal person joins, with its own share of the legal person's assets, an already operating other legal person as a legal successor (partial division by merger);

b) in complete division, the separating members join, with their own share of the legal person's assets, various operating legal persons as legal successors (complete division by merger).

(3) In the case of partial division by merger and complete division by merger, the decision by the decision-making body on the division shall require the consent of the legal person that the members participating in the partial or complete division wish to merge into.

Section 3:46 *[Rights and obligations of legal persons involved in a division]*

(1) The legal successors of the legal person involved in a division, including the remaining legal person on partial division, shall be liable for the obligations of the legal person involved in the division that arose before the division according to the division plan. If such an obligation is not fulfilled by the legal successor named in the division plan, all legal successors shall be jointly and severally liable for the obligation.

(2) If the division plan does not provide for a specific obligation, all legal successors shall be jointly and severally liable for it.

(3) The rights of the legal person involved in a division that were acquired prior to the distribution of assets may be exercised after the division by the legal successor upon which the division plan has vested the right in question. If the division plan does not provide for a specific right, the legal successors shall be entitled to that right in the proportion in which the assets were distributed.

Section 3:47 *[Application of the rules of transformation]*

The rules on transformation shall apply accordingly to the merger and division of legal persons.

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Chapter XIV

Termination without succession of legal persons

Section 3:48 *[Termination without succession of legal persons]*

(1) The legal person shall terminate without succession if

a) it was established for a definite period, and that period of time expires;

b) its termination was subject to a certain condition, and this condition is met;

c) its members or founders declare its termination; or

d) it is terminated by an organ authorised to do so,

provided that in each case the legal person is, after completing the appropriate procedure for settling its financial affairs, deleted by the court from the register.

(2) The assets of the legal person terminated without succession that remain after satisfying the creditors shall benefit the members or, in the case of a legal person having no members, the persons exercising founders' rights, to the extent they or their legal predecessors provided their monetary or in-kind contributions to the legal person.

(3) The members and the founder of the legal person terminated without succession shall be liable for the outstanding debts of the legal person terminated up to their respective shares in the distributed assets.

TITLE VI

GROUPS OF COMPANIES

Section 3:49 *[Concept of acknowledged groups of companies]*

(1) An acknowledged group of companies means cooperation based on a uniform business policy defined in a control contract between at least one controlling member obliged to prepare consolidated annual accounts and at least three members controlled by the controlling member.

(2) Companies limited by shares, limited liability companies, groupings and cooperatives may participate as members in groups of companies.

(3) If the controlling member is composed of several legal persons, the person authorised to exercise the rights of the controlling member shall be specified in the control contract.

Section 3:50 *[Control contracts]*

(1) The control contract shall define the uniform business policy of the whole group of companies.

(2) The control contract shall contain

a) the company names and seats of the controlling member and controlled members;

b) the form and most significant elements of cooperation within the group;

c) whether the group of companies is established for a definite or indefinite period.

(3) Autonomy of the controlled members may be limited in the control contract only in the manner and to an extent required for achieving the uniform business objectives of the group. The control contract shall also provide for the protection of the rights of the members and creditors of the controlled members.

(4) The general rules on contracts shall apply accordingly to control contracts.

Section 3:51*[Preparing the formation of a group of companies]*

(1) The draft control contract shall be prepared by the managements of the controlling member and controlled members based on the authorisation granted by the supreme bodies of the participants. Employees' representatives from the participating members shall be duly informed of the preparations for forming the group of companies.

(2) The supreme bodies of the members participating in the group shall decide on the approval of the control contract by not less than a three-quarters majority.

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(3) On two occasions, and leaving an interval of at least thirty days between them, the controlling member shall publish a notice on the formation of the group of companies, within eight days after becoming aware of the last decision approving the control contract.

(4) The notice shall contain

a) the control contract; and

b) a notice addressed to the creditors and shareholders of the controlled members.

(5) The management of the controlling member shall submit an application to the court of registration for the registration of the company group within sixty days after becoming aware of the last approval.

Section 3:52 *[Rights of members and creditors of controlled companies]*

(1) The members of a legal person joining a group of companies as a controlled member may demand, within a term of preclusion of thirty days following the second publication of the notice on the formation of the group, that their shares be purchased by the controlling member at the market value prevailing at the time of the notice being published.

(2) The creditor having, at the time of the first publication of the notice, a claim against a controlled member participating in the group of companies may claim adequate security from that controlled member within a term of preclusion of thirty days following the second publication of the notice. The creditor shall not be entitled to claim security if he has a sufficiently secured claim under a statutory provision or a contract, or if such security is unjustified in the light of the economic standing of the controlled member or the content of the control contract.

(3) A group of companies may be registered only if all rightful claims of the members and creditors of the controlled legal persons have been satisfied, or if in the related legal dispute the court dismissed the action of the members or creditors with a final and binding effect.

Section 3:53 *[Legal effects of the registration of the group of companies]*

After the registration of the group of companies, the rules relating to members with a qualified majority shall not apply to the group of companies and its members.

Section 3:54 *[Single-member companies in the group of companies]*

If the controlling member holds the shares in the controlled member of the group of companies alone then, instead of concluding a control contract, its mandatory components shall be included in the instrument of incorporation of the controlling member and controlled member.

Section 3:55 *[Relationship between the management of the controlling member and that of the controlled member]*

(1) The management of the controlling member may, in accordance with the control contract, instruct the management of the controlled member, and make decisions that are binding on the operation of the controlled member. The provisions of this Act regarding the exclusive competence of the supreme body and the autonomy of the management shall not apply with regard to the controlled member if the actions of the controlling member comply with the control contract.

(2) If the control contract stipulates that the controlling member is granted the power to elect, dismiss and determine the remuneration of the executive officers and supervisory board members of the controlled member, an employee of the controlling member may be appointed as company manager of the controlled company.

(3) The executive officers and supervisory board members of the controlling member may act as executive officers and supervisory board members at the controlled member as well.

(4) Under the supervision of the controlling member, the executive officer of the controlled member shall operate the controlled member in compliance with the control contract, according to the overriding business policy of the whole group of companies. The executive

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officer shall be exempt from the responsibilities of executive officers toward the member if his conduct complies with the law and the provisions of the control contract.

Section 3:56 *[Reporting obligation]*

(1) The management of both the controlling member and the controlled member shall report to their supreme bodies at intervals specified in the control contract, but at least once a year, regarding the fulfilment of the tasks set in the control contract. Any provision of the control contract providing for less frequent reporting shall be null and void.

(2) The creditor of the controlled member having a claim that reaches ten per cent of the registered capital of the controlled member may request the management of the controlling member to provide information on the performance of the control contract, and on the financial standing of the controlled member. If the management of the controlling member fails to comply with the request, or the information provided is insufficient, the creditor may request the court of registration to establish that the controlling member is breaching the control contract.

Section 3:57 *[Safeguards for minority shareholders]*

The members of any controlled member holding at least five per cent of the votes, as well as the executive officers of the controlled member may initiate convening the supreme body of the controlling member if they perceive any substantial or recurring breach of the control contract. If, within fifteen days from the date of receipt of the request, the management of the controlling member does not provide for convening the meeting of the supreme body for a date within not more than thirty days, the court of registration shall convene the meeting of the supreme body at the request of the initiating members or shall authorise these members to convene the meeting by setting an adequate time limit for it. The controlling member shall advance the costs of the meeting; however, if the request proves to be unjustified, it is the initiating members that shall bear these costs.

Section 3:58 *[Employee participation]*

(1) If employee participation in the supervisory board is mandatory in at least three controlled members of the registered group of companies and it is requested so by the works councils concerned, the supreme body of the controlling member may allow representatives of the employees to participate in the supervisory board of the controlling member instead of those of the controlled members. In such a case, if no supervisory board operated at that controlling member yet, the instrument of incorporation of the controlling member shall provide for the formation of a supervisory board. The mode of delegation of employee representatives shall be regulated in such cases in an agreement between the management of the controlling member and the works councils of the controlled members concerned.

(2) The general rules on contracts shall apply accordingly to the agreements concluded under paragraph (1).

Section 3:59 *[Liability of the controlling member]*

In the event of liquidation of a controlled member of the group of companies, the controlling member shall be liable for the claims of creditors not yet satisfied. The controlling member proving that the insolvency of the controlled member was not a result of the uniform business policy of the group of companies shall be exempted of its liability.

Section 3:60 *[Measures of the court of registration]*

In the event of a substantial or recurring breach of the control contract, at the request of any of the parties legally interested, the court of registration shall

a) call on the controlling member to restore operations complying with the control contract;

b) impose supervisory measures; or

c) dissolve the group of companies.

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Section 3:61 *[Termination of the group of companies]*

(1) The group of companies shall terminate if

a) the period set out in the control contract has expired, or the condition for termination is met;

b) the supreme body of the controlling member so resolves by a three-quarters majority of all its members;

c) the controlling member ceases to prepare consolidated annual accounts; or

d) the court of registration dissolves the group of companies.

(2) In the cases provided for in paragraph (1) *a)* to *c)*, upon notification from the controlling member, the court of registration shall delete the entries pertaining to the group of companies from the register. The notification shall be made within thirty days from the date of publication of the relevant circumstance.

(3) The controlling member shall continue to be liable for the obligations assumed during the existence of the acknowledged group of companies, even after the termination of the group.

Section 3:62 *[De facto groups of companies]*

(1) If the conditions for concluding a control contract persist for at least three consecutive years, the court may, at the request of any of the parties legally interested, order the *de facto* controlling member and the controlled members to conclude the control contract and to file for the court registration of the group of companies.

(2) If the group of companies operates for at least three consecutive years as a *de facto* group of companies, the court may, at the request of any of the parties legally interested, apply to the relations between the controlling and the controlled member the provisions governing the relationship between the management of the controlling member and that of the controlled member, even in the absence of a control contract or a court registration as a group of companies.

PART II

ASSOCIATIONS

TITLE VII

CONCEPT, ESTABLISHMENT AND MEMBERSHIP OF ASSOCIATIONS

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Section 3:63 *[Concept of associations]*

(1) Associations shall be legal persons with registered members established for the purpose of continuously achieving the common and ongoing objectives of their members specified in their articles of association.

(2) No association shall be established for economic activities.

(3) Associations may engage in economic activities directly related to the achievement of the objectives of the association.

(4) Associations may use their assets according to their objectives; they may not distribute their assets among or pay dividends to their members.

(5) The articles of association of the association may vest an organisational unit with legal personality.

Section 3:64 *[Establishment]*

The establishment of an association shall require the adoption of its articles of association, which in its turn shall require the concordant declaration of intent of at least ten persons.

Section 3:65 *[Legal status of the members of associations]*

(1) The members of the association may participate in the activities of the association.

(2) The members of the association shall have equal rights and obligations, unless the articles of association provide for special status memberships.

(3) The members shall exercise their membership rights personally. The members may only authorise a representative to exercise their membership rights if the articles of association allow it. Membership rights are non-marketable and cannot be inherited.

(4) The members of the association shall not be required to make monetary or in-kind contributions. The members shall not be liable with their own property for the debts of the association.

Section 3:66 *[Obligations of members]*

(1) The members of the association shall fulfil the obligations prescribed for members in the articles of association.

(2) The members of the association shall not jeopardise the achievement of the objectives or the activities of the association.

Section 3:67*[Commencement of membership]*

(1) Membership of an association being established shall begin upon the registration of the association; after establishment, membership shall begin with the general meeting accepting the application for admission.

(2) The data relating to the person of members shall not be public.

Section 3:68 *[Termination of membership]*

(1) Membership shall terminate

a) upon the resignation of the member;

b) upon its unilateral termination by the association;

c) upon the exclusion of the member;

d) upon the death or termination without succession of the member.

(2) The members may terminate their membership at any time, by means of a written notice addressed to the representative of the association, without justification.

Section 3:69 *[The unilateral termination of membership by the association]*

(1) If membership is subject to certain conditions set out in the articles of association and the member fails to meet them, the association may unilaterally terminate the membership in writing with a notice period of thirty day.

(2) Decisions on unilateral termination of membership shall be made by the general meeting of the association.

Section 3:70 *[Exclusion of members]*

(1) Any conduct of the member that gravely or recurrently infringes the law, the articles of association or any resolution of the general meeting shall result, at the request of any member or body of the association, in an exclusion procedure against the member if the articles of association determined the body in charge of conducting the procedure and the safeguards ensuring a fair procedure.

(2) The resolution declaring the exclusion of the member shall be reasoned and put in writing; the reasoning shall indicate the facts and evidence underlying the exclusion together with the information on legal remedies. The resolution on exclusion shall be communicated to the member concerned.

(3) The articles of association may allow an appeal against the resolution on exclusion, in which case it shall also provide for the appeal procedure and specify the body of the association to adjudicate the appeal.

(4) Any provision of the articles of association derogating from the rules set out in paragraphs (1) to (3) shall be null and void.

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TITLE VIII

BODIES OF ASSOCIATIONS

Section 3:71 *[General meeting, powers of the general meeting. Assembly of delegates]*

(1) The decision-making body of the association shall be the general meeting.

(2) The members may attend the general meeting, exercise their voting rights and, according to the order of the general meeting, address the meeting, ask questions and make proposals and comments.

(3) The general meeting shall have the power to amend the articles of association; any provision of the articles of association that derogates from this rule shall be null and void.

(4) If the articles of association provide for the operation of an assembly of delegates, they shall also specify the procedure for the election of delegates. On other issues, the provisions on general meetings shall apply accordingly to the assembly of delegates.

Section 3:72 *[Convening the general meeting and its agenda]*

(1) The general meeting shall convene at least once a year. Any provision of the articles of association that provides for convening less frequently than every four years shall be null and void. There shall be an interval of at least fifteen days between the date of sending the invitation to the general meeting and the day of the meeting.

(2) In addition to the general elements of information, the invitation to the general meeting shall include

a) the date and place of the reconvened general meeting due to the absence of a quorum, as well as calling attention to the different rules applicable to quorum; and

b) a reference to the meeting of the assembly of delegates being held, if applicable.

(3) The venue of the general meeting, even if different from the seat of the association, shall suffice to be indicated in the invitation.

(4) The management shall, at the request of the member, provide information about the items on the agenda of the general meeting.

Section 3:73 *[Additions to the agenda]*

(1) The members and bodies of the association may make justified requests to the body or person convening the general meeting to make additions to the agenda, within the time limit provided for in the articles of association, calculated from serving or publishing the invitation to the general meeting.

(2) Decision on additions to the agenda shall be made by the body or person convening the general meeting. If the body or person convening the general meeting makes no decision on or rejects the request for additions, the general meeting shall make, before adopting the resolution on the agenda, a separate decision on the additions to the agenda.

Section 3:74 *[Sessions of the general meeting]*

(1) General meetings shall not be open to the public; they may be attended, along with the members and the management, by persons invited by those entitled to convene the general meeting as well as by persons in an advisory capacity under the articles of association or based on the resolution of the general meeting.

(2) Members may exercise their rights by means of electronic communications instead of personal attendance at the general meeting, if the articles of association specify the electronic communications equipment permitted to be used, as well as the condition and the mode of their use, in a manner that ensures the identification of members and their mutual and unrestricted communication.

(3) If the general meeting was improperly convened, the meeting shall be held only if at least three quarters of the persons entitled to attend the meeting are present and give their unanimous consent to holding the meeting.

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(4) The general meeting may adopt resolutions on the items included in a duly communicated agenda, unless at least three quarters of the persons entitled to attend the meeting are present and unanimously consent to discussing items that have not been included in the agenda.

(5) Any resolution, other than those set out in paragraphs (3) and (4), adopted at an improperly convened or held general meeting that is therefore invalid shall become valid retroactively to the date when it was adopted, if unanimously declared valid by all members within thirty days of the date of the meeting. Any provision of the articles of association derogating from the requirement of unanimity shall be null and void.

Section 3:75 *[Attendance sheet. Minutes]*

(1) Members attending the general meeting shall be recorded on an attendance sheet containing the name and place of domicile or seat of the members and, if the articles of association allow participation through a representative, of their representatives, and the number of votes to which the members are entitled, unless equal. Attendance sheets shall be authenticated by the signatures of the chair presiding over the general meeting and the keeper of the minutes.

(2) The events of general meetings shall be recorded in minutes, containing

a) the name and seat of the association;

b) the place and time of the general meeting;

c) the names of the chair presiding over the general meeting, the keeper of the minutes and the person appointed to authenticate the minutes;

d) the key events occurred and proposals made at the general meeting;

e) the proposals for resolution, number of votes cast for and against resolutions, and number of persons abstaining from voting.

(3) The minutes shall be signed by the keeper of the minutes and the chair presiding over the general meeting, and authenticated by an appointed member who is present and appointed to do so.

(4) The management of the association shall archive and preserve the minutes of the general meetings and the attendance sheets among the documents of the association.

(5) Any member may request a copy of the minutes of general meetings or an extract of a part of the minutes from the management.

Section 3:76 *[Adopting resolutions, reconvened general meetings]*

(1) The amendment of the articles of association, merger and division of the association shall require a resolution adopted by a majority of at least three-quarters of the general meeting.

(2) The amendment of the objectives of the association and the decision on the termination of the association shall require a resolution adopted by a majority of at least three-quarters of the members having a voting right.

(3) If the general meeting has no quorum, the reconvened general meeting shall have a quorum in respect of the items on the original agenda, irrespective of the number of members present if the reconvened meeting is scheduled for a date between three and fifteen days from the original date.

Section 3:77 *[Performing management functions]*

Associations shall be managed by the managing director or the presidium. The managing director or the members of the presidium shall be the executive officers of associations.

Section 3:78 *[Presidium]*

(1) The presidium shall comprise three members. Any provision of the articles of association that prescribes the formation of a presidium with less than three members shall be null and void.

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(2) The members of the presidium shall be required to attend the general meeting and answer questions related to the association and to give account of the activities and financial standing of the association at the general meetings.

(3) The presidium shall adopt its resolutions by a simple majority of the members present. Any provision of the articles of association requiring a lower voting proportion shall be null and void.

Section 3:79 *[Mandate of executive officers]*

(1) If the members do not provide for the term of office of an executive officer in the articles of association or upon his election, the term of office of the executive officer shall be two years.

(2) If the term of office of an executive officer is determined for over five years, its part exceeding the five-year period shall be null and void.

(3) Executive officers shall be elected from among the members of the association; under the authorisation of the articles of association, not more than one-third of the executive officers may be elected from among persons other than the members of the association.

Section 3:80 *[Functions of the management]*

The management shall be responsible for

a) running the everyday operation of the association and making the decisions that fall within the powers of management;

b) preparing accounts and submitting them to the general meeting;

c) preparing the annual budget and submitting it to the general meeting;

d) managing the assets of the association, making decisions other than those to be taken by the general meeting on the utilisation and investment of assets, and implementing such decisions;

e) making preparations for the formation of bodies prescribed by law and the articles of association, and for the election of office-holders;

f) convening general meetings and notifying members and the bodies of the association;

g) drawing up the agenda for the general meetings convened by the managing body;

h) attending the general meeting and providing answers to questions concerning the association;

i) keeping records of the members;

j) keeping records of the resolutions, organisational documents and other books of the association;

k) preserving the documents pertaining to the operation of the association;

l) assessing the relevant causes that lead to the termination of the association, and taking the measures prescribed by this Act on their occurrence; and

m) making decisions concerning the admission of new members based on the authorisation of the articles of association.

Section 3:81 *[Convening the general meeting]*

(1) The managing body shall convene the general meeting for taking the necessary measures if

a) the assets of the association fail to cover its outstanding debts;

b) the association is expected to fail to meet its liabilities when due; or

c) achieving the goals of the association has been jeopardised.

(2) At the general meeting convened under paragraph (1), members shall take measures to eliminate the cause that made the meeting necessary or make a decision on the termination of the association.

(3) Any provision of the articles of association that prescribes more lenient requirements for the association than the rules set out in paragraphs (1) and (2) shall be null and void.

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Section 3:82 *[Cases where establishment of a supervisory board is mandatory]*

(1) A supervisory board shall have to be established in all cases where more than half of the members are not natural persons, or the number of members exceeds one hundred. Any provision of the articles of association that derogates from this rule shall be null and void.

(2) The supervisory board shall be responsible for supervising the bodies of the association and for complying with and enforcing the law, the articles of association and the resolutions of the association.

TITLE IX

TERMINATION OF ASSOCIATIONS

Section 3:83 *[Termination with succession]*

The association shall not undergo transformation, it may only merge with other associations and may only be divided into associations.

Section 3:84 *[Causes for termination without succession]*

In addition to the general cases of the termination without succession of legal persons, associations shall terminate without succession if

a) the association has achieved its objective, or achieving its objective is frustrated, and a new objective has not been defined; or

b) the number of members of the association remains under ten for six consecutive months.

Section 3:85 *[Provisions on the remaining assets]*

(1) If the association terminates without succession, the assets remaining after the satisfaction of the creditors' claims shall be transferred to a public benefit purpose organisation established for an objective that is identical or similar to that of the association as laid down in the articles of association. If the articles of association does not provide for the assets of the terminating association, or the public benefit purpose organisation specified in the articles of association does not accept or is not entitled to acquire the assets, the court of registration shall allocate the assets to an organisation specified by law.

(2) The court of registration shall decide on the destination of the remaining assets of the association in its decision on deletion, and shall appoint a guardian *ad litem* for the transfer of assets, if necessary. The right of disposal over the assets shall pass to the new beneficiary upon the deletion of the association.

Section 3:86 *[Liability of executive officers in the case of termination without succession]*

(1) After the termination without succession of the association, those who were members at the time of deleting the association from the register, or those who the remaining assets had to be transferred to or, if there had been any assets, should have been transferred to, may enforce their claim for damages with respect to any damage caused to the association by the executive officers acting in that capacity within one year from the deletion with final and binding effect by the court.

(2) I If the association terminates without succession, creditors may enforce claims for damages up to the amount of their outstanding claims against the executive officers of the association according to the rules on extra-contractual liability if the executive officer concerned failed to take the interests of the creditors into consideration following a condition threatening to cause insolvency in the association emerged. This provision shall not apply to termination by winding up.

Section 3:87 *[Arbitration clause]*

The articles of association of the association or an agreement between the parties involved in the legal dispute may prescribe that legal disputes arising from membership or from the relationship between the bodies and members of the association are to be settled through institutional or *ad hoc* arbitration.

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PART III

COMPANIES

TITLE X

COMMON RULES ON COMPANIES

Chapter XV

General provisions

Section 3:88 *[Concept of companies]*

(1) Companies shall be legal persons established by the monetary or in-kind contributions of their members for the pursuit of their common businesslike economic activities, where members are jointly entitled to a share in the profit and obliged to bear the losses.

(2) The members shall be entitled to profit of the company according to the proportion of their monetary or in-kind contributions and they shall bear losses in the same proportion. Companies may make disbursements or provide services of pecuniary value to their members from their available retained earnings of the previous business year and supplemented with the taxed profit. Any provision of the instrument of incorporation excluding members from the profits or bearing of losses shall be null and void.

(3) Members shall cooperate with each other and with the bodies of the business organisation, and they shall not engage in activities that jeopardise the achievement of the objectives of the company.

Section 3:89 *[Prescribed forms]*

(1) A company may be established in the form of a general partnership, limited partnership, limited liability company or company limited by shares.

(2) The name of the company shall contain a designation referring to the form of the company or the abbreviation thereof specified in this Act.

Section 3:90 *[Members of the company]*

(1) A natural person may hold an unlimited liability membership of only one company at a time. A minor person shall not be an unlimited liability member of a company.

(2) General partnerships, limited partnerships and individual firms shall not hold unlimited liability membership of a company.

(3) Persons under prohibition shall not be members in a company other than a public company limited by shares.

(4) The members of the company limited by shares shall be its shareholders.

Section 3:91 *[Mode and date of making juridical acts]*

(1) Juridical acts relating to the company shall be made in writing. This provision shall apply to the resolutions of companies as well as to the communication of juridical acts and resolutions to their recipients.

(2) A juridical act relating to the company may be made or communicated by electronic means if the instrument of incorporation of the company allows it and determines the requirements and the mode of it.

(3) If making a juridical act or performing an act relating to the company is mandatory then such an obligation shall be fulfilled without delay.

(4) If a juridical act made in writing is served by post, it shall be deemed received at its address in Hungary on the date indicated on the acknowledgement of receipt or, if sent by registered mail, on the fifth working day following the dispatch unless proven to the contrary.

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Section 3:92 *[Arbitration]*

(1) The instrument of incorporation or an agreement between the parties involved in the legal dispute may prescribe that legal disputes related to company law are to be settled in arbitral proceedings.

(2) The following shall qualify as legal disputes under company law:

a) disputes between the company and its members or former members in connection with their legal relationship to the company, including the initiation of a judicial review of the resolutions adopted by the bodies of the company;

b) disputes between the members in connection with their legal relationship to the company; and

c) disputes between the company and its executive officers or supervisory board members, in connection with their office held.

Section 3:93 *[Application of the common rules on companies]*

The common rules on companies shall apply unless otherwise provided by this Act in connection with particular forms of companies.

Chapter XVI

Foundation of companies

Section 3:94 *[Instrument of incorporation of companies]*

With the exception of companies limited by shares and single-member limited liability companies, the instrument of incorporation of a company shall be the memorandum of association. The instrument of incorporation of a company limited by shares shall be the articles of association, and that of a single-member limited liability company the deed of foundation.

Section 3:95 *[Form-related requirements of instruments of incorporation]*

(1) The instrument of incorporation shall be signed by all founding members. The memorandum of association may be signed on behalf of the member by his representative holding an authorisation drawn up in in a public deed or a private deed of full probative value.

(2) The instrument of incorporation shall be drawn up in a notarial deed or in a private deed countersigned by an attorney-at-law or the registered in-house legal counsel of a founder.

Section 3:96 *[Place of activities of the company]*

(1) If the company's seat and place of central administration are not identical, the instrument of incorporation shall indicate the place of central administration as well.

(2) If the company requests their registration, the establishments and the branches of the company shall be indicated in the instrument of incorporation.

Section 3:97 *[Provisions on the activities of the company]*

(1) If the pursuit of an economic activity is, by virtue of law, conditional on a permit issued by an authority, the company may engage in that activity when in possession of that permit having administrative finality.

(2) The company may engage in an activity, the pursuit of which is conditional by virtue of law on a qualification, if a member of the company undertaking personal assistance in this activity or at least one person employed by the company under an employment-related relationship of civil law or labour law meets those qualification requirements.

Section 3:98 *[Failure to provide a monetary or in-kind contribution]*

(1) If a member does not provide the monetary or in-kind contribution undertaken in the instrument of incorporation by the prescribed date, the management shall call upon him to perform his obligation within thirty days, indicating the legal consequences of non-compliance.

(2) The membership of the member failing to provide the monetary or in-kind contribution within the time limit of thirty days shall terminate on the day following the expiry of this time

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limit. The management shall notify the former member of the termination of his membership. The former member shall be liable for the damage caused to the company by his failure to make the monetary or in-kind contribution according to the provisions on liability for damage caused by breach of contract.

(3) Any provision of the instrument of incorporation that prescribes more lenient consequences than those provided by this Act against members failing to make monetary or in-kind contributions shall be null and void.

Section 3:99*[In-kind contributions]*

(1) In-kind contributions may also be made in the form of receivables if the debt is acknowledged by the debtor or is based on a final and binding court decision. The commitment of a member to perform work, provide personal assistance or provide services shall not qualify as in-kind contribution.

(2) Members who, despite being aware of it, accepted an in-kind contribution of a member at a value higher than the value prevailing at the time when the in-kind contribution was made, shall be liable for the arising damage jointly and severally with the member making the in-kind contribution to the company according to the provisions on liability for damage caused by breach of contract.

(3) Any provision of the instrument of incorporation contrary to the rules contained in paragraphs (1) and (2) shall be null and void.

Section 3:100 *[Notification to the court of the foundation of a company]*

(1) The court of registration shall be notified of the foundation of a company within thirty days from the date when the instrument of incorporation is drawn up in a notarial deed or is countersigned by an attorney-at-law or a registered in-house legal counsel.

(2) If the foundation of a company is conditional on a permit issued by an authority, the notification shall be made within fifteen days from the receipt of the permit having administrative finality.

Section 3:101 *[Companies under registration]*

(1) The company may operate as a company under registration from the date when the instrument of incorporation is drawn up in a notarial deed or is countersigned by an attorney-at-law or a registered in-house legal counsel. The company under registration may only engage in businesslike economic activities after having filed an application for registration. The status of being a company under registration shall be indicated in the documents and juridical acts of the company; failing that, if the court of registration refuses to register the company, any juridical act made by the company under registration shall qualify as a juridical act made jointly by the founders.

(2) The rules that apply to the company to be established shall also apply to the company under registration, with the derogation that

a) changes concerning the members may only take place if permitted by law;

b) no amendments to the instrument of incorporation may take place, except those made in order to comply with the notice of the court of registration or the authority entitled to issue the permit;

c) the company under registration may not found another company, nor may be a member of one;

d) legal procedures for the exclusion of a member shall not be initiated; and

e) no resolution on transformation, merger, division or termination without succession shall be adopted.

(3) After the court has registered the company with final and binding effect, the status of the company under registration shall cease to exist, and all legal transactions concluded by the company under registration shall qualify as legal transactions of the company.

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(4) If the registration of the company is rejected in a final and binding decision, the company under registration shall terminate its operation without delay after becoming aware of the decision. For any damage caused by the breach of this obligation, the executive officers of the company under registration shall be liable according to the provisions on liability for damage caused by breach of contract.

(5) If operation of the company under registration is terminated pursuant to paragraph (4), the obligations undertaken until that time shall be satisfied from the assets made available to the company to be established. The founders shall have joint and several liability against third parties for the claims that cannot be covered from such assets. If the liability of the members of the company to be established for the obligations of the company was limited, and certain claims have remained unsatisfied despite members assuming responsibility for their liabilities, with respect to these claims the executive officers of the company to be established shall have unlimited, joint and several liability against third parties.

(6) The provisions set out in paragraphs (4) to (5) shall also apply if the company withdraws its application for registration.

Chapter XVII

Amendment of the instrument of incorporation

Section 3:102 *[Amending the instrument of incorporation]*

(1) The supreme body of the company shall decide on amendments to the instrument of incorporation by at least a three-quarters majority, unless the amendment is made in a contract.

(2) Resolutions on changing the company name, seat, establishments and branches of the company or its activities other than its main activity shall be made by the supreme body by a simple majority.

(3) Any amendment adversely affecting the rights of certain members or rendering their status more burdensome shall require a unanimous vote of all members. Members having no right to vote may also vote on this issue.

(4) The provisions on the foundation of companies shall apply accordingly to the amendment of the instrument of incorporation in any other matters, with the proviso that the instrument containing the amendment needs not to be signed by the members and it may also be countersigned by the registered in-house legal counsel of the company.

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Chapter XVIII

Protection of minority stakeholders

Section 3:103 *[Initiating the convening of the supreme body]*

(1) The member or members of the company holding jointly at least five per cent of the voting rights may, at any time, indicating the reason and the purpose, request that the supreme body of the company be convened or that the supreme body take a decision without holding a meeting. If, within eight days of receiving the request, the management does not take action to convene the meeting of the supreme body at the earliest possible date and does not initiate a decision-making procedure without any meeting being held, the court of registration shall, at the request of the parties requesting the meeting, convene the meeting of the supreme body or it shall authorise the requesting parties to convene the meeting or to conduct decision-making without holding a meeting.

(2) The requesting parties shall advance the expected costs. The supreme body of the company shall decide at the meeting convened at the request of minority stakeholders or in the course of the decision-making without holding a meeting whether the costs incurred should be borne by the requesting parties or the company.

Section 3:104 *[Initiating ad hoc audits]*

(1) If the supreme body of the company rejected or did not submit for adoption the proposal on the basis of which an auditor specifically entrusted with this task will audit the last account or any economic event or any commitment in connection with the activities of the management in the past two years, such an audit shall be ordered and the auditor shall be appointed, at the expense of the company, by the court of registration, at the request of any member or members holding at least five per cent of the voting rights, the request being submitted within a term of preclusion of thirty days following the meeting of the supreme body.

(2) The court of registration shall reject the request if the requesting members abuse their rights as minority shareholders.

(3) The auditor of the company shall not be entrusted with this audit.

(4) The costs of the audit shall be advanced and borne by the company. If it is obvious that the request was unfounded, the company may charge the costs to the requesting member.

Section 3:105 *[Initiating the enforcement of claims]*

If the supreme body of the company rejected or did not submit for adoption the proposal to enforce a claim of the company against a member, executive officer, supervisory board member or the auditor, the claim may be enforced on behalf and to the benefit of the company by members holding at least five per cent of the voting rights, within a term of preclusion of thirty days following the meeting of the supreme body.

Section 3:106 *[Prohibition of derogating provisions]*

Any provision of the instrument of incorporation derogating from the provisions of this Chapter to the detriment of minority stakeholders shall be null and void.

Chapter XIX

Exclusion of members

Section 3:107*[Conditions and legal effects of exclusion]*

(1) The member of a company may be excluded from the company by a court decision based on an action brought by the company against the member concerned if his remaining in the company seriously jeopardised the objectives of the company.

(2) No action for exclusion shall be brought in the case of two-member companies. The shareholder of a public company limited by shares and the member holding three-quarters or more of the votes at the meetings of the supreme body shall not be excluded.

(3) Membership shall terminate upon the member's exclusion.

Section 3:108 *[Exclusion procedure]*

(1) For an action for the exclusion of a member to be brought before the court, the supreme body of the company shall be required to adopt a resolution indicating the reasons for exclusion by at least a three-quarters majority of all members. The member concerned shall not have a vote on that issue.

(2) The action based on the resolution referred to in paragraph (1) shall be brought within a term of preclusion of fifteen days following the date when the resolution of the supreme body was adopted.

(3) If requested so, the court may suspend the membership rights of the member concerned until the final and binding judgment of the court is delivered if the exercise of membership rights would seriously harm the interests of the company. Suspension shall not affect the member's claim to a share in the profit.

(4) As far as the relationship between the members is concerned, no obligation arising during suspension shall bind the member being suspended even if this member is liable for the debts of the company against third parties.

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(5) During suspension of membership rights, the instrument of incorporation shall not be amended, nor shall the exclusion of another member be initiated or a decision on the transformation, merger or division of the company or its termination without succession be taken.

Chapter XX

Organisation of companies

1. Supreme body of companies

Section 3:109 *[Responsibilities and powers of the supreme body]*

(1) The decision-making body of the company's members shall be the supreme body of the company.

(2) The supreme body of the company shall be responsible for making decisions on fundamental issues concerning the business and personnel of the company. The supreme body shall be empowered to approve the account referred to in the Act on accounting (hereinafter "account"), and to decide on the distribution of profits.

(3) The decision on enforcing claims for damages against the members, executive officers, supervisory board members and the auditor of the company shall be made by the supreme body of the company.

(4) With respect to single-member companies, the powers of the supreme body shall be exercised by the founder or the sole member. The founder or the sole member shall adopt resolutions in writing on matters falling within the powers of the supreme body, and such decisions shall take effect upon their communication to the management.

Section 3:110 *[Participation in the decision-making process of the supreme body]*

(1) Every member of the company may participate in person or through a representative in the activities of the supreme body. Unless otherwise provided in this Act, each member may authorise one representative, and a representative may represent more than one member. The authorisation for representation shall be drawn up in a public deed or a private deed of full probative value.

(2) The proportion of the voting rights held by a member in the supreme body shall correspond to his monetary or in-kind contribution.

Section 3:111 *[Meetings of the supreme body]*

(1) Meetings of the supreme body shall not be open to the public. The executive officers and supervisory board members of the company may attend the meetings of the supreme body in an advisory capacity.

(2) Members may exercise their rights by means of electronic communications instead of personal attendance at the meeting of the supreme body, if the instrument of incorporation specifies the electronic communications equipment allowed to be used, as well as the condition and the mode of their use, in a manner that ensures the identification of members and their mutual and unrestricted communication.

(3) Any resolution adopted at an improperly convened or held meeting that is therefore invalid shall become valid retroactively to the date when it was adopted, if unanimously declared valid by all members within thirty days of the date of the meeting.

2. Management and representation

Section 3:112 *[Autonomy of executive officers]*

(1) The executive officer shall manage the operations of the company under an agency contract or an employment contract, according to his agreement with the company.

(2) Then executive officer shall manage the operations of the company autonomously, complying with the overruling priority of the interests of the company. In this capacity, the

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executive officer shall be bound by law, by the instrument of incorporation and the resolution of the supreme body of the company. The executive officer shall not be instructed by the members of the company and the supreme body shall not deprive him of his powers.

(3) The sole member of a single-member company may instruct the management, and the executive officer shall carry out these instructions.

Section 3:113 *[Company managers]*

(1) The supreme body of the company may appoint one or more company managers to assist the executive officers in their work. Company managers shall perform their functions under an employment contract. Company managers shall be employees who direct the continuous operation of the company according to the instructions of the executive officer.

(2) The grounds for exclusion and conflict of interests regarding executive officers shall apply accordingly to company managers.

(3) In addition to the company manager having general powers, the supreme body of the company or, based on the authorisation of the supreme body, the management may appoint company managers with limited powers acting at establishments and branches of the company.

Section 3:114 *[Term of office of executive officers]*

The term of office of executive officers shall be five years or, if the company is established for a shorter term, that period.

Section 3:115 *[Conflict of interests]*

(1) Except for shares in public companies limited by shares, executive officers shall not acquire shares and shall not be executive officers in companies which are engaged in an economic activity as their main activity that is identical to that of the company in which they hold an executive office. If the executive officer takes on a new mandate for another executive office, he shall notify, within fifteen days of taking on the new office, all the companies in which he already serves as an executive officer or a supervisory board member.

(2) With the exception of transactions covering common everyday needs, executive officers and their relatives shall not conclude, in their own name and on their own behalf, contracts falling within the scope of the main activity of the company.

Section 3:116 *[Representation of the company. Signatory right]*

(1) The company shall be represented by its executive officers and its employees authorised to represent it in writing, by their signatory right.

(2) The management of the company may confer general powers of representation upon the company manager.

(3) The company manager and the employee authorised to represent the company shall not validly transfer their right of representation to others.

Section 3:117 *[Liability for damages of executive officers to the company]*

(1) If, at the request of the executive officer, the supreme body of the company gives, simultaneously with approving the account, a discharge certifying the compliance of management activities during the previous business year, the company may only enforce its claim for damages against the executive officer for the violation of management obligations if the facts and information underlying the waiver were false or incomplete.

(2) If the mandate of the executive officer at the company terminates between two consecutive meetings dealing with the account, the executive officer may request the supreme body to discharge him at the following meeting.

(3) After the termination without succession of the company, those who were members at the date of the deletion of the company may enforce their claim for damages against the executive officers within a term of preclusion of one year following the deletion of the company. Upon the termination of the company, members may claim damages to the extent of their rightful share in the assets distributed.

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Section 3:118 *[Liability of executive officers to third parties]*

If the company terminates without succession, creditors may enforce their claim for damages up to the amount of their outstanding claims against the executive officers of the company according to the rules on extra-contractual liability if the executive officer concerned failed to take the interests of the creditors into consideration when a condition threatening to cause insolvency in the company emerged. This provision shall not apply in the event of termination by winding up.

3. Supervisory boards

Section 3:119 *[Mandatory establishment of the supervisory board]*

A supervisory board shall be established where the annual average number of full-time employees employed by the company exceeds two hundred, and the works council did not waive employee participation in the supervisory board.

Section 3:120 *[Powers of the supervisory board]*

(1) If the supervisory board requests the involvement of experts for its supervisory activities, the management shall be obliged to grant the request of the supervisory board.

(2) If the company has a supervisory board, the supreme body of the company shall decide on the account after obtaining the written report of the supervisory board.

(3) If the supervisory board considers that the activity of the management is in violation of the law, the instrument of incorporation or the resolutions of the supreme body of the company, or infringes its interests otherwise, the supervisory board may convene a meeting of the supreme body of the company for discussing that issue and taking the resolutions required.

(4) Any provision of the instrument of incorporation derogating from the rules set out in paragraphs (1) to (3) shall be null and void.

Section 3:121 *[Membership of the supervisory board]*

(1) The supervisory board shall comprise three members. If the company is required to establish a supervisory board or it has a supervisory board with ultimate decision-making powers, any provision of the instrument of incorporation allowing the supervisory board to consist of less than three members shall be null and void. The supervisory board shall function as a collegial body; it may assign its supervisory tasks to any of its members or share the supervisory tasks among its members.

(2) The term of office of supervisory board members shall be five years or, if the company is established for a shorter term, that term.

(3) The rules on agency contracts shall apply accordingly to the membership of supervisory board members.

(4) Except where based on the rules of employee participation, employees of the company shall not be members of the supervisory board.

Section 3:122 *[Operation of the supervisory board]*

(1) The supervisory board shall elect a chair from among its members.

(2) The meeting of the supervisory board shall have a quorum if at least two-thirds of its members but at least three persons are present at the meeting.

(3) The supervisory board shall establish its own rules of procedure, and these rules shall be subject to the approval of the supreme body of the company.

(4) If the number of supervisory board members falls under the number determined in the instrument of incorporation, the management shall, in order to restore the intended operation of the supervisory board, convene the supreme body, or initiate the adoption of resolution without holding a meeting.

Section 3:123 *[Supervisory board with ultimate decision-making powers]*

(1) If the instrument of incorporation confers powers to make or approve certain decisions that fall under the power of the supreme body or management on the supervisory board, the

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members of the supervisory board shall be liable for any damage caused to the company while exercising such powers according to the rules on liability for damage caused by breach of contract.

(2) If the instrument of incorporation makes certain decisions that fall under the power of the management conditional on the prior approval of the supervisory board, and the supervisory board does not approve the proposal for resolution of the management, the management, if still upholding the proposal, may request the supreme body of the business organisation to decide on the matter. If the supervisory board approved the proposal of the management, the executive officers and supervisory board members who voted for the proposal shall be jointly and severally liable for any damage arising from the resolution to the company according to the rules on liability for damage caused by breach of contract.

(3) Rules pertaining to those vested, under this Act, with decision-making powers with respect to the issue at hand shall apply accordingly to members of the supervisory board when exercising their ultimate decision-making power.

Section 3:124 *[Conditions of employee participation]*

(1) If the annual average number of full-time employees at the company exceeds two hundred, employee representatives shall make up one-third of the supervisory board.

(2) If employee representatives are entitled to participate in the supervisory board, the instrument of incorporation may only preclude employee participation in the supervisory board for no longer than five years and subject to the consent of the works council. Any provision of the instrument of incorporation derogating from this provision shall be null and void.

(3) Employee representatives shall initially be elected, when the supreme body of the company is discussing the accounts of the business year in which the annual average number of employees reached two hundred.

(4) In a company created through legal succession, employee participation in the supervisory board shall be ensured from the date of registration of the company if the number of employees employed by the company exceeds two hundred and the conditions of employee participation were met at the predecessor company or at any of several predecessor companies.

Section 3:125 *[Election and recall of employee representatives]*

(1) Employee representatives are nominated by the works council from among employees, taking the opinion of the trade unions operating at the company into account. Termination of the employment of an employee representative shall terminate his membership of the supervisory board.

(2) Persons nominated by the works council shall be elected supervisory board members by the supreme body of the company at its first meeting following nomination, with the exception of those to whom a ground for exclusion applies. If all other statutory requirements are met, the failure to nominate shall not hinder the operation of the supervisory board. In such a case, the positions of employee representatives shall not be filled; however, the supreme body shall elect at least three members for the supervisory board.

(3) The supreme body shall recall employee representatives upon the recommendation of the works council.

(4) If at the time of approving the accounts of the company it is found that the number of employees declined below two hundred during the previous business year, the right of employee representatives to participate in the supervisory board shall cease.

Section 3:126 *[Rights and obligations of employee representatives]*

(1) Employee representatives shall have the same rights and obligations as other members of the supervisory board. If the unanimous opinion of the employee representatives deviates

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from the majority standpoint of the supervisory board, the minority opinion of the employees shall be presented at the next meeting of the supreme body of the company.

(2) Employee representatives shall inform the employees of the activities of the supervisory board.

Section 3:127*[Prohibition of derogation]*

Any provision of the instrument of incorporation prescribing rules more detrimental for employee representatives than those set out in this Act on employee participation shall be null and void.

Section 3:128 *[Employee participation prescribed by the instrument of incorporation]*

The provisions of this Act on employee participation shall apply accordingly to employee participation in the supervisory board prescribed by the instrument of incorporation.

4. Standing auditor

Section 3:129 *[Responsibilities of the standing auditor]*

(1) The standing auditor appointed by the supreme body shall be responsible for conducting audits according to the law and presenting his opinion in an independent auditor's report on whether the accounts of the company comply with the law and whether they provide a true and fair view of the assets and liabilities, financial status and income situation, as well as of the economic performance of the company.

(2) The standing auditor shall be an individual auditor or an auditing firm registered in the register of auditors. If auditing services are provided by an auditing firm, it shall designate the person performing the audits personally.

(3) No member, executive officer or supervisory board member of the company or their relatives shall serve as a standing auditor. No employee of the company shall serve as a standing auditor during and three years after his employment.

Section 3:130 *[Commencement and term of the mandate of standing auditors]*

(1) The first standing auditor shall be designated in the instrument of incorporation; subsequent standing auditors shall be elected by the supreme body of the company. Under the conditions and with the remuneration specified by the supreme body, the contract shall be concluded between the auditor and the management within ninety days from the date of designation or election. The supreme body shall elect a new auditor if the contract is not concluded within this time limit.

(2) The standing auditor shall be elected for a definite term of not more than five years. The term of office of the standing auditor shall not be shorter than the period between his election by the supreme body and the meeting approving the next accounts.

(3) Any provision of the instrument of incorporation derogating from the rules set out in paragraph (2) shall be null and void.

Section 3:131 *[Performing the duties of the standing auditor]*

(1) The standing auditor shall not provide any such service to the company, nor shall he cooperate with the management in a way that jeopardises the independent and objective performance of his auditing duties.

(2) The standing auditor shall be invited to participate in the meeting of the supreme body discussing the accounts of the company. The auditor shall be obliged to attend this meeting; however, his absence shall not prevent the meeting from being held.

(3) If the company has a supervisory board, the auditor may attend its meetings in an advisory capacity, and, if so requested by the supervisory board, he shall attend its meeting. The supervisory board shall put the items proposed by the auditor for discussion on the agenda.

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5. Other bodies of companies

Section 3:132 *[Other bodies of companies]*

If the instrument of incorporation or, based on the authorisation in it, the supreme body of the company prescribes bodies and offices other than those specified by this Act to be set up, such a provision shall be without prejudice to the powers and responsibilities of the bodies and officers specified by this Act.

Chapter XXI

Transformation and merger of companies

Section 3:133 *[Cases and conditions of transformation]*

(1) Companies may transform into other forms of companies or groupings or cooperatives.

(2) If the equity of a company is for two consecutive business years lower than the registered capital prescribed for the given form of company, and the members do not provide the necessary equity within three months from the date of the approval of the accounts of the second year, the company shall be required to decide on its transformation within sixty days from that time limit. The company may opt for termination without succession or a merger instead of transformation.

Section 3:134 *[Completion of transformation]*

(1) Prior to the completion of transformation, the share in the envisaged registered capital of the members of the successor company shall be determined, as well as the share in assets of members not wishing to participate in the successor company, and the mode of its disbursement.

(2) The share in assets of members who have decided to leave the company shall be disbursed within sixty days from the date of the registration of the legal successor, unless otherwise agreed by the legal successor and those concerned.

Section 3:135 *[Liability rules upon transformation]*

(1) Upon transformation, members who have decided to leave the company shall be liable, according to the rules applicable in the case of termination without succession, for the liabilities of the company undergoing transformation that are not covered by the legal person created by transformation.

(2) The member with unlimited liability who becomes a member with limited liability upon transformation shall be liable, within a term of preclusion of five years following the legal successor's date of registration, for the debts of the predecessor company jointly and severally with other unlimited liability members of the legal person created by transformation.

Section 3:136 *[Merger of companies]*

Companies may merge with other companies, cooperatives or groupings.

Chapter XXII

Termination without succession of companies

Section 3:137 *[Obligation to assume liability of members upon termination without succession]*

(1) Upon termination without succession of a company, the claims arising from the obligations of the terminating company may be enforced against the former members of the company within a term of preclusion of five years following the deletion of the company.

(2) If a member's obligation to assume liability for the obligations of the company was unlimited during the company's existence, his obligation to assume liability for the obligations of the terminated company shall be unlimited, and joint and several with other members having unlimited liability. As far as the relationship between the members is

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concerned, they shall be liable for the debts in proportion to their share of the distributed assets of the company.

TITLE XI

GENERAL PARTNERSHIPS

Section 3:138 *[Concept of general partnerships]*

By concluding a memorandum of association for the establishment of a general partnership ("kkt."), members of the partnership shall undertake to make monetary or in-kind contributions to the partnership for the purposes of its economic activities, and to bear unlimited, and joint and several liability for the obligations of the partnership not covered by its assets.

Section 3:139 *[Liability of members for the obligations of the partnership]*

(1) The members of a general partnership shall have joint and several liability for the obligations of the partnership not covered by its assets.

(2) The court may find against and enforcement may be conducted against members of the partnership on the basis of their obligation to assume liability under paragraph (1) if sued in court.

(3) Members may be sued in court together with the partnership. Enforcement of the judgment imposing an obligation delivered against the members may only be ordered by the court if the enforcement of the claim against the partnership was unsuccessful.

(4) The member joining the partnership shall be liable for obligations of the partnership incurred before his joining in the same way as other members. Agreements between members to the contrary shall be null and void against third parties.

Section 3:140 *[Right of unilateral termination vested on the creditors of the members]*

Creditors of the members may not satisfy their claims from the assets of the partnership. The claims of the creditors shall be satisfied from the share in the asset that the member would be entitled to upon termination of his membership. Creditors filing for the judicial enforcement of this share may exercise the right of unilateral termination to which the member is entitled, and thus shall be entitled to satisfaction from the share to be disbursed to the member.

Section 3:141 *[Partnership share acquired through matrimonial community of property]*

If the spouse of a member becomes a member in the partnership on the grounds of matrimonial community of property or division of matrimonial common property, the memorandum of association shall be amended.

Section 3:142 *[Powers of the meeting of members]*

(1) The supreme body of the general partnership shall be the meeting of members.

(2) By a resolution adopted by at least a three-quarters majority, the meeting of members may assume decision-making powers on any matter.

(3) The members may adopt resolutions on matters falling within the powers of the meeting of members without holding a meeting.

Section 3:143 *[Rules for adopting resolutions by the meeting of members]*

(1) Each member shall have an equal vote when adopting resolutions. Any provision of the memorandum of association depriving a member of his voting right shall be null and void.

(2) The meeting of the members shall adopt its resolutions by a majority of all votes that can be cast. Any provision of the memorandum of association derogating from this shall be null and void.

(3) Resolutions shall be adopted by a majority of votes.

(4) A resolution adopted by at least a three-quarters majority shall be required to dismiss executive officers. Resolutions amending the memorandum of association, and resolutions on transformation, merger, division or termination without succession shall require a decision adopted by the unanimous vote of all members.

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(5) The signature of all members shall be required for the memorandum of association to be amended.

Section 3:144 *[Management and representation]*

(1) Management of general partnerships shall be performed by one or more managing directors appointed or elected from among the members. In the absence of appointment or election, all members shall act as managing directors.

(2) Any provision of the memorandum of association appointing or allowing for the appointment of a person who is not a member to act as managing director shall be null and void.

Section 3:145 *[Actions of managing directors]*

(1) Each managing director may act independently. Managing directors may object to the measures planned or taken by other managing directors. In such cases, the meeting of the members may overrule the measure concerned. With the exception of urgent measures, planned measures shall only be taken if approved by the meeting of members.

(2) Where, according to the memorandum of association, more than one managing director shall act jointly and they cannot reach consensus, any of them may request the meeting of the members to adopt a decision on that particular issue. Managing directors may take urgent measures on their own. All the other managing directors shall be informed without delay of such measures.

Section 3:146 *[Cases of termination of membership]*

In addition to the cases determined among the common rules on companies, membership shall cease

a) upon the mutual agreement of the members;

b) upon its unilateral termination by the member;

c) upon the transfer of the partnership share;

d) upon the death or termination of the member;

e) upon the occurrence of any grounds for exclusion or conflict of interests.

Section 3:147 *[Unilateral termination of membership]*

(1) Members may unilaterally terminate their membership in writing, with a notice period of at least three months. With respect to partnerships founded for an indefinite period, the exclusion or restriction of this right shall be null and void.

(2) Members may unilaterally terminate their membership in writing, indicating its reason if any other member of the partnership seriously breaches the memorandum of association or engages in a conduct that seriously jeopardises further cooperation between him and the other members or the achievement of the objectives of the partnership.

(3) The partnership may bring an action for the establishment of invalidity of the unilateral termination within a term of preclusion of fifteen days following the date the termination becomes effective.

Section 3:148 *[Transfer of partnership shares]*

Members of a partnership may transfer their share, consisting of rights and obligations arising from their membership, or parts of that share to other members or to third parties. The contract of transfer shall be drawn up in writing. The contract of transfer shall become effective subject to the amendment of the memorandum of association in accordance with the transfer.

Section 3:149 *[Death or termination of a member]*

The heir of the deceased member or the legal successor of the terminated member may join the partnership as a member if agreed so with the other members. The heir or legal successor becoming a member shall not be required to provide monetary or in-kind contribution.

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Section 3:150 *[Financial settlement upon the termination of membership]*

(1) The partnership shall settle accounts with the former member or his heir or legal successor upon his membership being terminated, unless his partnership share has been transferred or his heir or legal successor has joined the partnership.

(2) In the course of settling accounts, the commercial value of the assets of the partnership effective at the time of the termination of membership shall be determined, and the proportion corresponding to the monetary or in-kind contribution of the former member shall be disbursed to him or his heir or legal successor in cash, within three months from the date of termination of the membership.

(3) Any provision of the memorandum of association excluding or restricting the obligation of financial settlement or providing for rules on financial settlement that are more detrimental to members than those specified in this Act shall be null and void.

Section 3:151 *[Liability for debts of partnerships upon termination of membership]*

(1) The former member of the partnership and the legal successor of the terminated member, that did not join the partnership, shall be liable, within a term of preclusion of five years following termination, for the debts of the partnership incurred prior to termination of membership in the same manner as the member during his membership.

(2) The heir of the deceased member who did not join the partnership shall be liable, within a term of preclusion of five years following termination, for the debts of the partnership incurred prior to the date of death of the member according to the rules on the debts of the estate.

Section 3:152 *[Fall of the number of the members of a partnership to one]*

(1) If the number of the members of a general partnership falls to one, the partnership shall be required to notify the court of registration of a new member's joining the partnership, or to decide on the transformation, merger or termination without succession of the partnership, within a time limit of six months following that date.

(2) Until a new member joins the partnership or until its transformation, merger or termination without succession, or, failing that, until the appointment of a liquidator, the remaining sole member shall be entitled to make decisions on matters falling within the competence of the meeting of the members and shall be considered the executive officer of the partnership, provided that he meets the statutory requirements for executive officers.

Section 3:153 *[Transformation of general partnerships into limited partnerships and of limited partnerships into general partnerships]*

(1) The transformation of a general partnership into a limited partnership and of a limited partnership into a general partnership shall only require, without applying the provisions on the transformation of companies, the amendment of the memorandum of association.

(2) Upon a general partnership transforming into a limited partnership, the member becoming the limited partner shall have unlimited liability, within a term of preclusion of five years following transformation, for the debts of the partnership incurred before the transformation.

(3) When settling accounts with members not participating in the partnership in its new form, the rules on the termination of membership shall apply accordingly.

TITLE XII

LIMITED PARTNERSHIPS

Section 3:154 *[Concept of limited partnerships]*

By concluding a memorandum of association for the establishment of a limited partnership ("bt."), members of the partnership shall undertake to make monetary or in-kind contributions to the partnership for its economic activities, and at least one of the partners (hereinafter "general partner") shall assume joint and several liability together with the other general

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partners for the obligations of the partnership not covered by the assets of the partnership, while there shall be at least one other partner (hereinafter "limited partner") who is not liable for the obligations of the partnership unless otherwise provided in this Act.

Section 3:155 *[Rules applicable to limited partnerships]*

With the derogations under this Title, the rules on general partnerships shall apply accordingly to limited partnerships.

Section 3:156 *[Management]*

A limited partner shall not be an executive officer of a limited partnership.

Section 3:157 *[Changes in member's liability]*

(1) If the status of a general partner changes into that of a limited partner, he shall be liable, within a term of preclusion of five years following he becomes a limited partner, for the debts of the partnership incurred before the change according to the rules on general partners.

(2) If the partnership no longer has a general partner, the limited partner shall be liable for the debts incurred following that date but before the conditions for operation as a limited partnership are restored or the transformation, merger, or the termination without succession, of the partnership is decided according to the rules on general partners.

Section 3:158 *[Termination of the membership of all general partners or all limited partners]*

(1) If the membership of all general partners or all limited partners terminates, the partnership shall be required to notify within a time limit of six months following that date the court of registration that the memorandum of association was amended in order to restore the conditions for operation as a limited partnership, or the limited partnership was transformed into a general partnership, or the transformation, merger, or the termination without succession, of the partnership was decided.

(2) If the partnership no longer has an executive officer, the member who meets the statutory requirements for executive officers shall be considered the executive officer until the memorandum of association is amended, or until the transformation, merger, or the termination without succession, of the partnership, or, failing that, until the appointment of a liquidator. In such a case, a limited partner may also be the executive officer of the partnership, even in the absence of appointment and election.

TITLE XIII

LIMITED LIABILITY COMPANY

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Section 3:159 *[Concept of limited liability companies]*

A limited liability company ("kft.") shall be a company formed through the provision of an initial capital made up of capital contributions of predetermined amount, and the liability of the members against the company shall be limited to the provision of their capital contributions and other contributions of pecuniary value specified in the memorandum of association. Unless otherwise provided in this Act, members of the company shall not be liable for the obligations of the company.

Chapter XXIII

Foundation of the company

Section 3:160 *[Prohibition of public offers]*

Members shall not be recruited by public offer.

Section 3:161 *[Concept and amount of initial capital and capital contribution]*

(1) Capital contribution shall be the contribution of financial value provided by the member. Capital contributions may be of various amounts; the amount of a single capital contribution shall not be less than one hundred thousand forints.

(2) Every member shall have a single capital contribution.

(3) If more than one person undertakes to provide the same capital contribution, they shall bear joint and several liability for providing it.

(4) The total of capital contributions shall be the initial capital of the company, which shall not be less than three million forints.

Section 3:162 *[Monetary contribution]*

(1) If the memorandum of association provides that a member must provide less than the half of his monetary contribution before the application for registration of the company is filed, or it sets a time limit longer than one year from the date of the registration of the company for providing the monetary contribution not paid before the application for registration is filed, the company shall not be allowed to pay dividends to its members until unpaid profit calculated according to the rules on payment of dividends broken down to the monetary or in-kind contribution of each member, along with the amount of monetary contributions already provided by the members, do not reach the required amount of initial capital.

(2) In those cases defined in paragraph (1), members shall be liable for the debts of the company to the extent of the unpaid part of their monetary contribution.

Section 3:163 *[Provision of in-kind contributions]*

(1) If the value of in-kind contributions reaches or exceeds half of the initial capital of the company at the time of foundation, all in-kind contributions shall be made available to the company before the application for registration is filed.

(2) If the in-kind contributions were not made available to the company in their entirety at the time of foundation, the remaining in-kind contributions shall be provided by the date specified in the memorandum of association. Any provision of the memorandum of association setting a time limit longer than three years from the date of registration shall be null and void with regard to the period that exceeds three years.

Chapter XXIV

Business share

Section 3:164 *[Concept of business share]*

(1) A business share shall be the totality of the rights and obligations related to capital contributions. Business shares shall come into existence upon the registration of the company.

(2) The business shares of members shall be in line with their capital contributions. Identical business shares shall grant identical corporate rights.

Section 3:165*[Co-ownership of business shares]*

(1) A business share may be held by more than one person. These persons shall count as one member with respect to the company; they may exercise their rights through their joint representative and shall have joint and several liability for the obligations of such member. The holders of a business share shall elect their joint representative from among themselves by exercising their voting rights corresponding to their ownership share.

(2) The joint representative shall notify the company of any changes in the person or ownership proportion of the holders. A change in the person of the representative shall be notified to the company by the new joint representative.

Section 3:166 *[Transfer of the business share between members]*

(1) Business shares shall be transferrable between the members of the company without restriction.

(2) If, in the memorandum of association, the members of the company ensure mutual priority to each other over third parties to acquire business shares when business shares are transferred for consideration in money, provisions on the right of pre-emption shall apply accordingly. Members shall be entitled to this right proportionately, in accordance with their respective business shares.

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Section 3:167*[Transfer of business shares to third parties]*

(1) The member may transfer his business share to a third party if he has provided his capital contribution in full, unless the transfer is due to the termination of his membership for failure to provide his monetary or in-kind contribution or additional monetary contribution or for exclusion.

(2) The other members, the company or the person appointed by the company shall be entitled, in that order, to the right of acquiring the business share to be transferred for consideration in money with priority over others according to the provisions on the right of pre-emption. The transfer of this right shall be null and void. Members shall be entitled to this priority of acquisition over others proportionately, in accordance with their respective business shares.

(3) The members' meeting shall make the decision on the company exercising the right of acquiring the business share with priority over others and on the appointment of a third party to exercise this right.

(4) An action for declaring the ineffectiveness of a contract concluded in violation of the right of acquiring the business share with priority over others may be brought within a term of preclusion of one year following the date of its conclusion.

(5) The member not responding to the offer within fifteen days from the communication of the offer or the company or the person appointed by the company not responding to the offer within thirty days from the communication of the offer shall be considered as not intending to exercise their right.

(6) If the transfer of a business share to a third party is, according to the memorandum of association, conditional on the consent of the company, the members' meeting shall decide on granting this consent. If the company does not respond within thirty days from the notification of the envisaged transfer, the consent shall be considered to have been granted. Any provision of the memorandum of association setting a longer time limit shall be null and void.

(7) The memorandum of association shall not validly exclude the transfer of business shares to third parties for consideration.

(8) The provisions of paragraphs (2) to (6) shall apply accordingly to the transfer of business shares in enforcement procedures.

Section 3:168 *[Common rules on the transfer of business shares]*

(1) The transfer of business shares shall be drawn up in writing. The transfer of business shares shall not require the amendment of the memorandum of association.

(2) Within eight days from acquisition, the person acquiring the business share shall notify the company of the change of owners and its date in order that those be registered in the register of members. The notification shall be drawn up in a public deed or a private deed of full probative value, and the contract for the business share transfer shall be attached to it. The notification, beyond the fact of the acquisition, shall contain a statement as well, declaring that the person acquiring the business share acknowledges the provisions of the memorandum of association as binding on him.

Section 3:169 *[Legal effect of the transfer of business shares]*

(1) Through the transfer of business shares, the rights and obligations of the transferor attached to his membership shall pass to the person acquiring the business shares.

(2) A change in the person of a member due to the transfer of business share shall be effective in respect of the company from the date of its notification, and the new holder of the business share shall be entitled to the rights and have the obligations arising from membership from that date on, regardless of registration.

Section 3:170 *[Inheritance of business shares and their passing to legal successors]*

(1) Upon the death of a member, the heir, or if the member was a legal person, upon its transformation, merger or division or upon succession in respect of the business share by

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virtue of law, the legal successor, if his status of an heir or the succession is verified, may request to be registered in the register of members by the managing director.

(2) The managing director may refuse to register the heir or the legal successor if the persons authorised by the memorandum of association make a statement on their intent to acquire the business share according to the conditions laid down in the memorandum of association within a term of preclusion of thirty days following the date of the heir's or successor's application for registration becoming effective, and pay the commercial value of the business share to the heir or successor. Any provision of the memorandum of association setting a time limit longer than thirty days shall be null and void.

Section 3:171 *[Effect of the termination without succession of a legal person member on its business share]*

If the legal person member terminates without succession, and neither the procedure before the deletion of the member from the register nor the procedure on the settlement of assets carried out in relation to the business shares resulted in determining a new beneficiary for its business shares, the company shall decide either to cancel the business shares or to distribute them among the members in proportion to their capital contributions.

Section 3:172 *[Business shares being matrimonial property]*

(1) If a business share was acquired from matrimonial common property then, in a matrimonial property action, the court may, at the request of the non-member spouse, award a business share or part of a business share to the requesting spouse by applying the provisions of this Act and the memorandum of association on the transfer of business shares accordingly; in this case, the right of acquiring the business share with priority over others and the requirement to provide the full amount of the capital contribution shall not apply.

(2) The provisions set out in paragraph (1) shall apply accordingly if the spouses have agreed on the distribution of matrimonial common property with respect to the business share.

Section 3:173 *[Division of business shares]*

(1) Business shares may be divided

a) upon transfer;

b) upon succession in respect of a business share of a legal person member due to the division of the legal person;

c) upon inheritance;

d) upon distribution of matrimonial common property;

e) upon termination without succession of the member in the absence of a new holder of the business share.

(2) The division of business shares shall require the consent of the members' meeting.

(3) Provisions of the memorandum of association derogating from the rules under paragraphs (1) and (2) shall be null and void.

Section 3:174 *[Conditions for the company acquiring its own business shares]*

(1) Limited liability companies may acquire their own business shares by transfer subject to the resolution of the members' meeting.

(2) Limited liability companies may use their assets in excess of their initial capital for the acquisition for consideration of their own business shares. Limited liability companies shall not be allowed to acquire their own business shares for consideration if they are not allowed to decide on the disbursement of dividends either. When determining the assets covering the consideration payable for the own business share, only data contained in an account or interim balance sheet with a balance sheet date not earlier than six months shall be taken into account.

(3) Limited liability companies may acquire only those business shares for which the corresponding capital contributions have been provided in full.

(4) The total of capital contributions corresponding to the company's own business shares shall not exceed fifty per cent of the initial capital of the company.

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Section 3:175 *[Rights of the company arising from the possession of own business shares]*

(1) Limited liability companies shall not be entitled to exercise membership rights arising from their own business shares; such business shares shall be disregarded when a quorum is established.

(2) The company shall not be entitled to receive a dividend for its own business shares. Dividends on the company's own business shares shall be distributed among the members entitled to dividends proportionately with their capital contributions.

(3) Within one year after the purchase, the company shall either alienate the business shares acquired for consideration or convey them to the members, free of compensation, proportionately with their capital contributions or cancel them according to the rules on decreasing the initial capital.

Section 3:176 *[Cancellation of business shares]*

(1) Decision on cancelling business shares shall be made by the supreme body and it shall result in the termination of the rights and obligations attached to them as well as the membership of their holder.

(2) Upon the cancellation of a business share, the initial capital of the company shall be decreased by the amount of the capital contribution corresponding to that particular business share.

Section 3:177 *[Sale of business shares]*

(1) The business share of a former member excluded from the company by court or whose membership terminated due to his failure to provide his monetary or in-kind contribution or additional monetary contribution shall be sold.

(2) The former member and the company shall reach an agreement on the conditions and on the mode of sale within fifteen days from the date of termination of the membership. The agreement shall determine a time limit for the sale not longer than three months, and a minimum sale price not lower than the total of the monetary or in-kind contribution or additional monetary contribution that the former member failed to provide. If no agreement is reached or the business share is not sold within the time limit set in the agreement, the company shall sell the particular business share at a public auction within forty-five days following the time limit prescribed for the agreement or the sale.

(3) The company may take the measures and make the statements required for the sale to carry out the sale.

Section 3:178 *[Auction notice]*

(1) If the business share is to be sold at an auction, the company shall publish an auction notice at least eight days before the date of the auction.

(2) The auction notice shall contain

a) the name and seat of the company;

b) the place and time of the auction;

c) the relevant details of the business share on sale;

d) the initial minimum bid; and

e) the time limit and form of payment of the purchase price.

(3) The initial minimum bid shall not be lower than the claim the company has against the former member due to his failure to provide the capital contribution or the additional monetary contribution.

Section 3:179 *[Carrying out the auction]*

(1) Auctions shall be held in the presence of a notary who shall draw up the record of auction in a public deed.

(2) Except for the former member, anyone may bid to purchase the business share at the auction. The bid price shall not be lower than the initial minimum bid. The bid price shall bind

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the highest bidder for the period in which, under normal circumstances and in view of the rights of pre-emption regarding the business share, he could expect its acceptance.

(3) Members of the company, the company itself and the third person designated by the company may exercise the right of acquiring the business share with priority over others to purchase the business share at the highest bid, applying the rules on transferring business shares to third persons accordingly. If those entitled to do not exercise their right, the highest bid made at the auction shall be accepted.

(4) Upon the sale of a business share at auction, the buyer shall pay the purchase price to the company, which shall settle with the former member subsequently.

Section 3:180 *[Accounting for the purchase price received]*

(1) The company shall be entitled to receive from the purchase price the amount of the monetary or in-kind contribution or additional monetary contribution that was not provided by the former member. If the purchase price is higher than this amount, the company shall be entitled to an amount covering its expenses of the selling process and the former member shall be entitled to the remaining part.

(2) If, taking paragraph (1) into account, the purchase price does not cover the expenses of the selling process, the former member shall be obliged to reimburse the company with the sum not recovered from the purchase price.

Section 3:181 *[Unsuccessful auction]*

(1) The auction shall be considered unsuccessful if no bid reaching the initial minimum bid is made at the auction.

(2) The business share may be offered for sale at an auction on any number of occasions within six months from the date of the exclusion of a member or the termination of his membership.

(3) The company may cancel the business share within thirty days from the date of any unsuccessful auction.

(4) The company shall cancel the business share of a former member if the business share is not sold within six months from the date of the exclusion of the former member or the termination of his membership. Upon cancelling his business share, the former member shall be entitled to claim his share of the equity of the company according to the rules on accounting for the purchase price received from the sale of business shares.

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Chapter XXV

Secondary services and additional monetary contributions

Section 3:182 *[Secondary services]*

(1) The member personally assisting in the activities of the company without holding a specific contract for that shall be entitled to consideration for doing so according to the provisions of the memorandum of association. The company, if the memorandum of association permits so, shall be entitled to enforce a claim against a member who failed to provide personal assistance.

(2) The obligation to perform secondary services shall terminate upon the transfer of the business share unless the party acquiring the business share undertakes that obligation with the consent of the company.

Section 3:183 *[Additional monetary contributions]*

(1) If the memorandum of association authorises the members' meeting to impose the obligation to provide additional monetary contributions upon members to cover losses, the maximum amount payable that may be prescribed for members, as well as the frequency of prescribing additional monetary contributions, shall also be specified.

(2) The resolution of the members' meeting imposing the payment of additional monetary contribution shall determine the mode, scheduling and time limit for providing such additional

monetary contributions. Additional monetary contributions shall not cause an increase in the capital contributions of members. Additional monetary contributions may also be provided through other forms of contributions meeting the requirements for in-kind contributions.

(3) The obligation to provide additional monetary contributions shall be determined and fulfilled proportionately with the capital contributions.

(4) The provisions on failure to provide monetary or in-kind contributions shall apply accordingly to the late performance of or failure to provide additional monetary contributions.

(5) Additional monetary contributions exceeding the losses shall be repaid to the members listed in the register of members at the date of repayment. Repayment may only be carried out after all capital contributions have been provided in full. Additional monetary contributions pertaining to the own business shares need not be repaid.

Chapter XXVI

Disbursements made by the company

Section 3:184 *[Payments to members]*

(1) During its operation, the company may use its equity to make disbursements to its members on account of their membership in the cases specified in this Act only and, with the exception of decreasing the initial capital, from its retained earnings available and supplemented with the previous business year's taxed profit only. No disbursement shall be made if the adjusted equity of the company is lower or, as a result of the disbursement, would be lower than the initial capital or if disbursement would jeopardise the solvency of the company.

(2) Monetary and in-kind allowances shall both qualify as disbursements.

(3) Disbursement violating the provisions under paragraph (1) shall be repaid to the company.

(4) The provisions set out in paragraphs (1) to (3) shall apply accordingly to cases in which members receive disbursements based on some other title than membership.

Section 3:185 *[Dividends]*

(1) Members shall be entitled to sums of money disbursed from the equity of the company allocated by the members' meeting for the purposes of disbursement to members proportionately with their capital contributions (hereinafter "dividends"). Members having valid membership rights in the company at the date of the decision on the payment of dividends shall be entitled to dividends. Members shall be entitled to dividends proportionately with the monetary or in-kind contributions they already provided.

(2) The members' meeting shall decide on the payment of dividends when approving the accounts.

Section 3:186 *[Interim dividends]*

(1) The members' meeting may decide on the payment of interim dividends at any time between the approval of two consecutive accounts if

a) according to the interim balance sheet, the company has sufficient funds to disburse interim dividends;

b) the amount to be disbursed does not exceed the amount of the retained earnings available and supplemented with the taxed profit as stated in the interim balance sheet; and

c) the disbursement of interim dividends does not lead to the decrease of the adjusted equity under the initial capital of the company.

(2) The proposal for the disbursement of interim dividends shall be submitted by the managing director. If a supervisory board operates in the company, the proposal of the managing director shall require the consent of the supervisory board.

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(3) If the data of the annual account prepared after the distribution of interim dividends shows that disbursement of dividends is not possible, the members shall repay the interim dividends received to the company.

Section 3:187*[Prohibition of derogating provisions]*

Any clause in the memorandum of association that sets rules on disbursements by the company that are more favourable to members than those in this Chapter shall be null and void.

Chapter XXVII

Organisation of limited liability companies

Section 3:188 *[Members' meeting]*

(1) The supreme body of the limited liability company shall be the members' meeting.

(2) The members' meeting shall have exclusive competence to approve contracts between the company and its members, managing director, supervisory board member, elected company auditor or their close relatives.

Section 3:189 *[Cases where the convocation of the members' meeting is mandatory]*

(1) The managing director shall, without delay, convene the members' meeting or initiate its decision-making without holding a meeting for taking the necessary measures if he learns that

a) the equity of the company decreased to half of its original value due to losses;

b) the equity of the company decreased under the minimum limit of initial capital determined by an Act;

c) the company is threatened with insolvency or has stopped making payments; or

d) the assets of the company do not cover its debts.

(2) In the cases under paragraph (1), members shall decide on prescribing additional monetary contributions, on ensuring otherwise that equity reaches the level of the initial capital or on decreasing the initial capital; in the absence of all these, members shall decide on the transformation, merger, division or termination without succession of the company. The resolutions of the members' meeting on these issues shall be carried out within three months.

(3) If the condition giving rise to the convocation of the members' meeting as referred to under paragraph (1) a) persist for three months after the end of the members' meeting, the equity of the company shall be reduced.

Section 3:190 *[Agenda]*

(1) Members shall be invited to the members' meeting by the communication of the agenda. There shall be an interval of at least fifteen days between the mailing date of the invitation to the members' meeting and the day of the meeting. Provisions of the memorandum of association shall not validly stipulate an interval shorter than three days.

(2) If a member makes a proposal for supplementing the agenda according to the rules on detailed presentation of the agenda, the issue indicated by him shall be considered an item put on the agenda if the proposal is communicated to the members and the managing director at least three days prior to the members' meeting.

Section 3:191 *[Reconvened members' meeting]*

(1) If the members' meeting failed to have a quorum, the reconvened members' meeting shall have a quorum in respect of the items on the original agenda, irrespective of the number of voting rights represented by those present, if the reconvened meeting is scheduled for a date between three and fifteen days following the original date. Any provision of the memorandum of association setting a time limit for convocation shorter than three days shall be null and void.

(2) Members' meetings reconvened due to the lack of a quorum may be convened subject to the same conditions as indicated in the invitation to the original members' meeting.

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Section 3:192 *[Use of electronic means of communication in members' meetings]*

Discussions and resolutions adopted at a members' meeting held via electronic means of communications shall be recorded in a manner ensuring subsequent verification. If the resolution adopted at the members' meeting is to be submitted to the court of registration, minutes shall be drawn up which shall be authenticated by the managing director.

Section 3:193 *[Minutes of the members' meeting]*

(1) The managing director shall ensure that minutes are taken at the members' meetings, except for members' meetings held via electronic means of communication. The minutes shall indicate the place and date of the meeting, the persons present and the extent of the voting rights represented, the significant events that occurred, the statements made and the resolutions adopted in the meeting, the number of votes for and against the resolutions, and the persons abstaining from or not taking part in the vote.

(2) The managing director and a member being present at the members' meeting and elected for authentication shall sign the minutes.

Section 3:194 *[Book of resolutions]*

The managing director shall record all resolutions adopted by the members in the book of resolutions. Following their adoption, the resolutions adopted by members shall be recorded in the book of resolutions without delay.

Section 3:195 *[Members' right of access to files]*

(1) All members shall have access to the minutes of members' meetings, the recording of members' meetings held via electronic means of communication and the book of resolutions, and may request copies of them. Any provision of the memorandum of association derogating from this shall be null and void.

(2) Copies provided in writing shall be authenticated by the signature of the managing director.

Section 3:196 *[Management]*

(1) The company shall be managed by one or more managing directors. Restrictions on or division of the managing directors' right of representation, or their declarations being made subject to condition or approval shall not be effective against any third party.

(2) In the event that a company is managed by more than one managing director, the managing directors may act independently in management issues, with the proviso that they may object to the measures planned or taken by other managing directors. In such cases, the members' meeting shall decide on the objection and the planned measure shall not be carried out before the decision of the members' meeting is adopted.

(3) If, under the memorandum of association, all members are entitled to manage and represent the company, the members complying with the rules on executive officers shall qualify as managing directors.

(4) If a company no longer has an executive officer, any member shall be entitled to convene the members' meeting or initiate decision-making without holding a meeting. If members fail to meet this provision within thirty days following the change then, at the request of a member or creditor, the court of registration shall convene a members' meeting or delegate the requesting member to convene it or carry out decision-making without holding a meeting.

Section 3:197 *[Register of members]*

(1) The managing director shall keep a register of the members of the company.

(2) The register of members shall indicate

a) the name, place of domicile or seat, and the capital contribution of each member;

b) if business shares are in co-ownership, the name and place of domicile or seat of the owners and of their joint representative, as well as the amount of their joint capital contribution;

c) the amount of the initial capital;

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d) all provisions of the memorandum of association referring to the provision of additional monetary contributions and secondary services as well as the restrictions or prohibitions on the transfer of business shares.

(3) The managing director shall record all changes in the data of the register of members, and also submit the updated register of members to the court of registration.

Chapter XXVIII

Increasing and decreasing the initial capital

Section 3:198 *[Resolution on increasing the initial capital through new capital contributions]*

(1) Once all capital contributions of the members have been provided, members may decide, by a resolution adopted by a majority of at least three quarters, to increase the initial capital through the provision of further monetary or in-kind contributions.

(2) The resolution shall specify

a) the amount of increase of the initial capital;

b) the composition and the value of the monetary or in-kind contributions to be made to increase the initial capital;

c) in the case of an in-kind contribution, its object and value, also indicating the person entitled to provide the contribution;

d) the persons entitled to provide monetary contributions in the case that the holders of preferential rights do not undertake to provide the full amount of monetary contributions, including the participation ratio of such designated persons in increasing the initial capital; and

e) the date for the provision of monetary or in-kind contributions.

(3) When increasing the initial capital through the provision of monetary or in-kind contributions, the rules on the mode of providing monetary or in-kind contributions, the applicable time limits, the legal consequences of delay, and liability for the value of in-kind contributions shall apply accordingly.

Section 3:199 *[Provision of monetary or in-kind contributions and exercising preferential rights]*

(1) In the case of the initial capital being increased through monetary or in-kind contributions, within a period of fifteen days following the date of deciding on the capital increase, members shall have preferential rights to participate in the capital increase.

(2) If a member does not exercise his preferential rights within the time limit given, such rights may be exercised in place of him by other members within an additional period of fifteen days. If the members did not exercise their preferential rights, the persons designated by the members' meeting to do so shall be entitled to provide the monetary or in-kind contributions.

(3) Members shall be entitled to exercise preferential rights in proportion to their capital contributions.

Section 3:200 *[Recording the increase of initial capital in the memorandum of association]*

(1) If, in the resolution on the capital increase, the parties entitled to do so have undertaken to provide monetary or in-kind contributions of a specific amount and composition, the company shall amend its memorandum of association according to the increased initial capital. If it does not prejudice the preferential rights of members, the resolution on the increase of the initial capital and amendment of the memorandum of association may be adopted in a single meeting of the members.

(2) New members participating in the capital increase shall make a statement drawn up in a public deed or a private deed of full probative value to acknowledge the provisions of the memorandum of association as binding on them.

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Section 3:201 *[Increasing the initial capital from the assets exceeding the initial capital]*

(1) The initial capital may be increased upon a resolution adopted by a majority of at least three-quarters from the assets in excess of the initial capital of the company if the increased initial capital does not exceed the equity of the company, and, based on the balance sheet of the accounts prepared for the previous business year, or based on the interim balance sheet for the current year, the company has assets in excess of the initial capital that are available for increasing the initial capital of the company. The assets available for increasing the initial capital shall be verified on the basis of the company's account or interim balance sheet with a balance sheet date not earlier than six months.

(2) Any increase of the initial capital from assets in excess of the initial capital shall increase the capital contributions of members in proportion to their previous capital contributions.

Section 3:202 *[Resolution on decreasing the initial capital]*

(1) For the purpose of disinvestment, consolidating losses or increasing other components of the equity, the company may decide, by a resolution adopted by a majority of at least three quarters, to decrease the initial capital. In cases where decreasing the initial capital is mandatory, the members' meeting shall adopt such a resolution within thirty days after becoming aware of the occurrence of the cause specified in this Act.

(2) The resolution shall specify

a) the amount of the decreased initial capital;

b) the amount of the capital contribution of each member after the decrease of the initial capital; and

c) the reason for decreasing the initial capital.

(3) The amount of the decrease of the initial capital shall reduce the capital contributions of the members in proportion to their capital contributions.

(4) The company may decide to decrease its initial capital to below the minimum amount specified in this Act if an initial capital increase decided simultaneously with the decrease of initial capital is implemented, and thus the amount of the initial capital reaches at least the minimum amount prescribed in this Act for initial capitals.

Section 3:203 *[Publication of the resolution on decreasing the initial capital]*

(1) The managing director shall notify the resolution on decreasing the initial capital to the court of registration within thirty days of the adoption of the resolution, and shall arrange for the publication of the resolution in a public notice on at least two occasions. The two publications shall be made at least thirty days apart.

(2) The public notice shall set out the content of the decision on decreasing the initial capital, and if the company's creditors are likely to request security, a notice to the company's creditors to submit their request for security.

(3) The company shall also send a copy of the public notice directly to its known creditors simultaneously with the publication of the first public notice.

Section 3:204 *[Security to creditors]*

(1) The holder of a claim against the company that arose before the first publication of the public notice on decreasing the initial capital may claim adequate security from the company unless

a) the creditor already holds security proportionate to the risk related to the decrease of the initial capital;

b) it is unjustified in the light of the assets, liabilities and financial position of the company after the decrease of the initial capital;

c) decrease of the initial capital is carried out for the purpose of re-allocation to fixed reserves exceeding the initial capital of the company, and the company did not perform such a decrease for the purpose of provisioning within five years prior to the adoption of that resolution; or

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d) the decrease of the initial capital is mandatory.

(2) In the cases under paragraph (1) *c)*, the reserve set aside from the initial capital may not exceed ten per cent of the initial capital of the company. The fixed reserve thus created may be used to cover the losses of the company or later to increase its initial capital but no payments to members shall be made from this reserve.

(3) The creditors of the company shall file their claims for adequate security in connection with the decrease of the initial capital of the company within a term of preclusion of thirty days after the second publication of the public notice

(4) Within eight days following the time limit for filing the claim, the company shall provide adequate security or, if the request is rejected, send the resolution containing a justification of the rejection, to the creditor. Within a term of preclusion of eight days following receipt of the resolution on rejection or granting inadequate security, the creditor concerned may apply to the court of registration for a review of the resolution.

(5) The decrease of the initial capital may not be registered until adequate security is provided to the creditor entitled to it, or until the court decision rejecting the creditor's application becomes final and binding.

Section 3:205 *[Frustration of initial capital decrease]*

(1) The initial capital decrease shall be considered frustrated if the company does not provide adequate security within the prescribed time limit to the creditors entitled to it. The frustration of the initial capital decrease shall be notified to the court of registration.

(2) If it is not possible to carry out the mandatory decrease of initial capital and the company does not eliminate the ground for mandatory decrease within thirty days from the date of frustration, the company shall adopt a resolution on its transformation, merger, division or termination without succession.

Section 3:206 *[Amendment of the memorandum of association and registration of the decrease of the initial capital]*

(1) The company may decide to amend its memorandum of association in line with the decreased initial capital if no creditors' claims were filed within the prescribed time limit for doing so or if the company has satisfied the creditors' claims for adequate security. The memorandum of association may be amended by the resolution on decreasing the initial capital if the company satisfies the claims of the entitled creditors for adequate security.

(2) The decrease of initial capital may only be registered if the company verifies that its creditors were notified and the creditors entitled to it received adequate security.

(3) Payments to members resulting from the decrease of initial capital may only be made after the registration of the decrease of initial capital.

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Chapter XXIX

Termination without succession of a company

Section 3:207 *[Division of assets]*

(1) In the event of termination without succession, the assets remaining after the satisfaction of creditors shall be used first to repay additional monetary contributions and the remaining assets shall be distributed subsequently among members of the company in proportion to their capital contributions.

(2) If the terminating company holds own business shares, the corresponding part of its assets shall be distributed among the members of the company in proportion to their capital contributions.

(3) If, at the start of the winding-up proceedings, or at the time the liquidation is ordered, the initial capital of the company has not yet been paid up in full, the administrator or the liquidator may render outstanding contributions due with immediate effect, and require the

members to make their contributions if this is necessary for the satisfaction of the debts of the company.

Chapter XXX

Single-member companies

Section 3:208 *[Creation of single-member companies]*

(1) The sole founder of a limited liability company shall make his full in-kind contribution available to the company before the application for registration is filed. Any provision of the deed of foundation contrary to this shall be null and void.

(2) A single-member company shall also be created if a single member of a multi-member company acquires all the business shares of the company. From the date of becoming a single-member company, it shall operate according to the rules on single-member companies its memorandum of association being only replaced with a deed of foundation if no new member is registered within one year from this date.

(3) The provisions on qualified majority control shall apply accordingly to the liability of the sole member of a limited liability company.

Section 3:209 *[Operation of single-member companies]*

(1) The contract between a single-member company and its member shall be drawn up in a public deed or private deed of full probative value.

(2) A single-member company shall not acquire its own business share.

(3) If, due to the division of business shares or the increase of initial capital, new members join a single-member company which thus becomes a multi-member company, the members shall convert the deed of foundation into a memorandum of association.

TITLE XIV

COMPANIES LIMITED BY SHARES

Chapter XXXI

General provisions

Section 3:210 *[Concept of companies limited by shares]*

A company limited by shares ("rt.") is a company, the operations of which is based on share capital consisting of shares of a predetermined number and nominal value, where the obligation of shareholders against the company limited by shares is limited to the provision of the nominal value or issue price of the shares. Unless otherwise provided in this Act, shareholders shall not bear liability for the obligations of companies limited by shares.

Section 3:211 *[Corporate forms of companies limited by shares]*

(1) A company limited by shares whose shares are listed on a stock exchange shall be a public company limited by shares ("nyrt.").

(2) A company limited by shares whose shares are not listed on a stock exchange shall be a private company limited by shares ("zrt.").

(3) The general meeting shall be entitled to adopt a resolution by a majority of at least three-quarters on changing the corporate form of a company limited by shares; such a resolution shall become effective, in the case of a private company limited by shares transforming into a public company limited by shares, upon the listing of the shares of the company on a stock exchange and, in the case of a public company limited by shares transforming into a private company limited by shares, upon the delisting of the shares from the stock exchange.

Section 3:212 *[Share capital]*

(1) The share capital of a company limited by shares shall be made up of the total amount of the nominal values of all shares.

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(2) The share capital of a private company limited by shares shall not be less than five million forints. The share capital of a public company limited by shares shall not be less than twenty million forints.

(3) At the time of foundation, the amount of monetary contributions shall not be less than thirty per cent of the share capital.

(4) The issue of shares for less than their nominal value shall be null and void. Liability for damage caused to third parties by issuing shares below their nominal value shall be borne according to the rules on extra-contractual on liability; by the founders in the case of an issue before the company has been registered, and by the company in the case of an issue after the registration of the company. If there are several founders, their liability shall be joint and several.

(5) The nominal value of the shares may be defined as a fraction of the effective amount of the share capital (capital proportional share). If so, the share shall only indicate the proportion that the share represents and the amount of share capital does not need to be specified on the share.

Chapter XXXII

Shares

1. General rules, manner of presenting shares

Section 3:213 *[Shares]*

(1) Shares are registered negotiable securities with a nominal value, representing membership rights in the issuing company limited by shares.

(2) If a share has more than one owner, these owners shall count as a single shareholder of the company; they shall be entitled to exercise their rights through their appointed representative, and shall have joint and several liability for that shareholder's obligations.

Section 3:214 *[Manner of producing shares]*

(1) The shares of private companies limited by shares shall be produced either as printed papers or as dematerialised shares; printed shares may be converted into dematerialised shares and dematerialised shares may be converted into printed shares.

(2) The shares of public companies limited by shares shall only be produced in the form of dematerialised shares.

Section 3:215 *[Concept of printed and dematerialised shares]*

(1) Printed shares shall be produced by duly authorised printing houses and shall contain at least

a) the company name and seat of the issuing company limited by shares;

b) the serial number, series and nominal value of the share;

c) the name of the first shareholder;

d) the date of the articles of association, or date of its amendment, on which the issue is based;

e) the amount of the share capital or the proportion the share represents of the share capital, and the number of shares issued;

f) authorised signatures of the representatives of the issuing company limited by shares; and

g) the securities code.

(2) Printed shares shall contain, where necessary,

a) the rights attached to the type of shares and class of shares or series of shares, as provided for in the articles of association;

b) the restriction of voting rights, if any;

c) the content of the restriction or the consent of the company if the transfer of shares is restricted or made conditional upon the consent of the company.

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(3) Dematerialised shares shall mean dematerialised securities embodying the elements contained in printed shares except that

a) the shareholder's name and other data required for identification are indicated on the securities account maintained by a securities account provider on behalf of the shareholder,

b) they do not have a serial number; and

c) they do not have the authorised signatures of the representatives of the issuing company limited by shares.

(4) The company shall replace or over-stamp the printed shares affected by any change to the data contained therein, according to the rules on capital increase, or shall amend the content of the dematerialised shares accordingly.

Section 3:216 *[Conditions of delivering or crediting shares]*

(1) After the company limited by shares has been registered and the share capital or, if the nominal value and the issue price of the shares differ, the issue price is fully paid, shareholders may demand that the printed shares to which they are entitled are delivered to them or their dematerialised shares are credited to their securities account.

(2) Within thirty days from the completion of those set out in paragraph (1), a company limited by shares shall take measures to produce the shares without delay regardless of whether such a shareholder request was made.

(3) Shares issued and the full payment of the share capital or issue price of the shares prior to the registration of the company limited by shares shall be null and void.

Section 3:217 *[Shares of consolidated denomination]*

(1) If, based on the articles of association or at the request of a shareholder, printed shares are produced in the form of a single instrument embodying several shares of the same series, the rights attached to the shares contained in the single instrument shall pertain to each share individually.

(2) At the request and expense of the shareholder, single instrument shares of consolidated denomination shall be split into several single instruments of smaller denomination or into shares with the nominal value specified in the articles of association for the series of shares concerned.

Section 3:218 *[Offering of shares]*

(1) Shares shall be offered privately or publicly.

(2) Unless the offer is due to a change in the corporate form of the company limited by shares, the shares of a private company limited by shares may only be offered in a way that does not entail the obligation to draw up a prospectus or minimum information according to the rules on capital market, and does not mean admission to stock exchange, either.

Section 3:219 *[Restrictions on the transfer of shares]*

(1) If a company limited by shares restricts the transfer of shares in its articles of association or makes the transfer of shares conditional on the consent of the company, such restrictions shall apply to dealings with third parties if the restrictions and their content are apparent from the share or, in the case of dematerialised shares, from the securities account.

(2) The right of pre-emption, repurchase right, put option or call option on a share established by contract are attached to shares shall apply against the company limited by shares or third parties if such rights and options are apparent from the share or, in the case of dematerialised shares, from the securities account.

Section 3:220 *[Transfer of shares with the consent of the company]*

(1) If the articles of association make the transfer of shares conditional on the consent of the company limited by shares, they shall also indicate the reasons for which the consent may be refused. The decision on consent falls within the competence of the board of directors.

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(2) In the event the board of directors fails to respond within thirty days from the announcement of the intention to transfer the share, consent shall be considered to have been granted.

Section 3:221 *[Identification of the rightful holder of a share]*

(1) If the ownership of a printed share passes by means other than transfer, the board of directors shall, at the new owner's request, record the change in ownership on the reverse side of or as an allonge to the share, based on the documents evidencing the acquisition of ownership and indicating the documents verifying the change in ownership. Registering the changes of ownership by the board of directors shall qualify as part of the endorsement chain.

(2) In the event that dematerialised shares are acquired by means other than transfer, the securities account provider shall, at the request of the new shareholder, debit the securities account of the previous shareholder and credit the transferred shares to the securities account of the new shareholder based on the documents evidencing the acquisition of ownership.

2. Own shares

Section 3:222 *[Own shares]*

(1) Companies limited by shares shall be entitled to acquire their own shares not exceeding twenty-five per cent of their share capital. When determining the proportion of own shares of a company limited by shares, the shares held by legal persons under the majority control of the company limited by shares, including companies having their seat abroad and qualifying as limited liability companies or companies limited by shares under the law governing them, shall also be treated as the property of the company limited by shares. Shares acquired or held by their owners for the benefit of a company limited by shares shall also qualify as shares in the ownership of the company limited by shares, as well as the own shares of the company which the company limited by shares accepts as collateral securing a claim.

(2) Upon their foundation or when increasing the initial capital, companies limited by shares shall not acquire their own shares.

(3) Shares shall not be acquired as own shares if their nominal value or issue price has not been paid up or made available in full.

(4) A company limited by shares shall only acquire its own shares for consideration if the conditions for the payment of dividends are met. The value of its own shares shall only be paid from the assets available for the payment of dividends.

Section 3:223 *[Decision on the acquisition of own shares]*

(1) A company limited by shares shall acquire its own shares with the condition that the general meeting, specifying the type, class, number and nominal value of the shares that might be acquired and, if acquisition is made for consideration, the minimum and maximum price payable, and give prior authorisation to the board of directors to carry out the acquisition. Such authorisation may be granted for eighteen months.

(2) The prior authorisation of the general meeting hall not be required if the acquisition of shares is needed to prevent imminent serious harm threatening the company limited by shares. This provision shall not apply to public take-over bids for the acquisition of the shares of a public company limited by shares.

(3) No prior authorisation from the general meeting shall be required for the acquisition of the own shares of the company limited by shares if they are acquired in court proceedings initiated for the settlement of a claim by the company, or in the process of transformation.

(4) At the next general meeting, the board of directors shall report on the reasons for the acquisition of its own shares, the number and aggregate nominal value of the shares and the proportion of the share capital of the company limited by shares they represent, as well as the price paid for the shares.

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Section 3:224 *[Unlawful acquisition of own shares]*

If a company limited by shares has acquired its own shares unlawfully, it shall cancel the shares acquired so or, if their quantity cannot be determined, all of its own shares, by decreasing the share capital within one year from the date of acquisition

Section 3:225 *[Exercising shareholder rights enshrined in own shares]*

(1) Companies limited by shares shall not exercise the shareholder rights enshrined in its own shares.

(2) When determining the quorum of the general meeting or when exercising preferential subscription (takeover) rights, own shares shall not be taken into consideration.

(3) Dividends payable on the company's own shares shall be taken into account as a benefit of shareholders entitled to dividends in proportion to the nominal value of their shares.

Section 3:226 *[Prohibition of derogation]*

Any provision of the articles of association that, with respect to the acquisition of the own shares or the rights that may be exercised through the own shares, prescribes more lenient requirements for the company than the provisions of this Act shall be null and void.

3. Financial assistance for the acquisition of shares

Section 3:227 *[Restrictions on financial assistance]*

(1) Public companies limited by shares shall be allowed to provide financial assistance to third parties only under market conditions for the acquisition of shares issued by the public company limited by shares, on account of its assets available for dividend payments, provided that the general meeting approved it in a resolution by a majority of at least three-quarters, based on the proposal of the board of directors submitted earlier. The proposal shall specify the reason for providing financial assistance, the risks involved, the conditions of implementation, the price of the shares and the advantages the company will gain from providing financial assistance. The board of directors shall submit the proposal to the court of registration.

4. Types, classes and series of shares

Section 3:228 *[Types, classes and series of shares]*

(1) Companies limited by shares may issue

a) ordinary shares;

b) preference shares;

c) employee shares;

d) interest-bearing shares;

e) redeemable shares.

(2) Within preference shares, shares may be divided into different classes of shares according to the preferential rights of shareholders, and shares representing different membership rights may be issued within the same class of shares.

(3) Within the same category or class of shares, several series of shares may be issued.

Section 3:229 *[Ordinary shares]*

(1) Ordinary shares are shares other than preference shares, employee shares, interest-bearing shares or redeemable shares, or any other types of shares specified in the articles of association.

(2) The total nominal value of all the ordinary shares issued by a company limited by shares shall at all times be higher than half of its share capital.

Section 3:230 *[Preference shares]*

(1) The articles of association of a company limited by shares may, by determining its conditions, provide for the issue of shares granting certain advantages to their holders compared to other types of shares.

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(2) Within the category of preference shares, the articles of association may specify classes of shares that grant

a) current dividend preference;

b) priority to receive a portion of the assets to be distributed upon the termination without succession of the company limited by shares;

c) priority related to voting rights;

d) priority in appointing executive officers or supervisory board members;

e) right of pre-emption; and

f) any combination of the preferential rights referred to in points *a)* to *e)*.

(3) When determining these conditions, the articles of association may, provide for the issue of a series of shares within a class of preference shares which the company shall, at the request of the shareholder, change into shares of another class of preference shares or into ordinary shares, or shares which, at its discretion, the company limited by shares may change into shares of another class of preference shares or for ordinary shares.

Section 3:231 *[Current dividend preference shares]*

(1) Current dividend preference shares shall entitle their holders to benefit to a larger extent than holders of shares of other categories and classes of shares from dividends from the taxed profit which are be distributed among shareholders.

(2) If the voting rights attached to current dividend preference shares are limited or precluded by the articles of association, and the company limited by shares does not pay dividends to holders of current dividend preference shares in a business year, or the dividend paid is less than the one that should have been paid based on the current dividend preference shares, the voting rights attached to current dividend preference shares may be exercised without restriction until the annual accounts for the following business year are approved.

Section 3:232 *[Voting preference shares]*

(1) Holders of voting preference shares may exercise multiple voting rights to an extent specified by the articles of association. The volume of voting rights attached to a single share of a public limited company shall not exceed ten times the voting rights corresponding to the nominal value of the share; any provision of the articles of association to the contrary shall be null and void.

(2) In the case of voting preference shares with a veto right, general meetings shall adopt resolutions by a simple majority vote of holders of such shares attending and being in favour of the resolution at hand or, if there is only one voting preference share, resolutions shall only be adopted if supported by the holder of this share.

Section 3:233 *[Preference shares entitling holders to appoint executive officers or supervisory board members]*

(1) Holders of preference shares entitled to appoint executive officers shall, in the manner and procedure specified by the articles of association, appoint one or more members of the board of directors, who become members of the board of directors when they formally accept the appointment.

(2) If the holders of preference shares fail to appoint an executive officer in the procedure and within the time limit specified in the articles of association, the right to appoint the executive officer passes to the corporate body entitled to do so in accordance with the general rules.

(3) The holders of preference shares shall be entitled to dismiss the members of the board of directors they have appointed. If the conditions laid down in the articles of association are met, the holders of preference shares shall recall the members of the board of directors they have appointed. If the holders of preference shares fail to comply with this obligation by the time limit defined in the articles of association, their right to recall the executive officer

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passes to the corporate body entitled to do so. The holders of preference shares shall be entitled to appoint a new executive officer instead of the recalled executive officer.

(4) Preference shares granting the right to appoint executive officers shall not be issued if the powers of the board of directors of the company limited by shares are exercised by a chief executive officer.

(5) In the case of preference shares granting the right to appoint supervisory board members, the provisions of paragraphs (1) to (3) shall apply accordingly to the appointment and revocation of supervisory board members.

(6) Public companies limited by shares shall not issue shares granting the right to appoint executive officers or supervisory board members.

Section 3:234 *[Shares granting right of pre-emption]*

(1) The articles of association of private companies limited by shares may provide for the issue of a class of shares that grants the holders of such shares a right of pre-emption in respect of shares issued and to be transferred for consideration by the company limited by shares.

(2) In the event that the shareholder fails to respond within fifteen days from the announcement of the intention of transfer and the conditions of the sales offer, the shareholder shall be considered not to intend to exercise his right of pre-emption.

Section 3:235 *[Preference shares of public companies limited by shares]*

When a private company limited by shares makes a decision on transformation into a public company limited by shares, the company's preference shares granting the right to appoint executive officers or supervisory board members, and its preference shares granting right of pre-emption, as well as any preference shares collectively representing preferential rights other than current dividend preference and a preferential right to any liquidation surplus, shall be converted, before the stock exchange listing, into preference shares or ordinary shares that public companies limited by shares are entitled to issue.

Section 3:236 *[Issue of employee shares]*

(1) Companies limited by shares may issue, free of charge or at a reduced price below the nominal value of the share, employee shares for its full-time and part-time employees.

(2) In the event the articles of association attaches current dividend preference rights to employee shares, employees may exercise such rights following the holders of shares belonging to a class of shares granting current dividend preference rights.

(3) Employee shares may be offered on the occasion of the increase of the share capital of a company limited by shares and for up to fifteen per cent of the increased share capital only.

Section 3:237 *[Transfer and inheritance of employee shares]*

(1) Employee shares may be transferred validly only to other employees of the company limited by shares or to persons to whom this right is granted by the articles of association with regard to their earlier employment relationship with the company.

(2) If the employment of an employee is terminated, and thus the employee also loses his right to acquire employee shares, the employee may transfer his employee shares before the first general meeting held more than six months following the date of ng his employment.

(3) In the event of the death of the holder of employee shares, the heir of the employee may transfer such employee shares before the first general meeting held after a period of six months

a) from the date of death of the testator if no probate procedure is held;

b) from the date on which the estate distribution order with full effect adopted in a probate procedure becomes final and binding;

c) from the date the judgment of the court becomes final and binding in the event of an inheritance procedure.

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(4) If the former employee, according to paragraph (2), or the heir, within the time limit prescribed, fails to transfer the employee share, the company limited by shares may adopt a resolution in the general meeting held upon the expiry of the time limit to cancel the employee share, or to sell it converted into another type of share. In that case, the former employee or his heirs are entitled to the nominal value of the share, payable within thirty days from the date of the cancellation or transfer of the share.

Section 3:238 *[Interest-bearing shares]*

(1) The articles of association may provide for the issue of shares, not exceeding ten per cent of the share capital, entitling their holders to receive interest at a pre-determined rate.

(2) Holders of interest-bearing shares shall be entitled, in addition to the other rights attached to the shares, to interest due on the nominal value of their shares calculated according to the articles of associations, from the retained earnings of the previous business year available and supplemented with the taxed profit. No interest shall be paid to shareholders if, as a consequence, the equity of the company limited by shares fell below the share capital of the company.

Section 3:239 *[Redeemable shares]*

(1) The articles of association may provide for the issue of shares in a value not exceeding twenty per cent of the share capital that grant

a) the company limited by shares a call option;

b) shareholders a put option; or

c) the company limited by shares a call option and the shareholders a put option.

(2) A company limited by shares may exercise its rights arising from the call option or fulfil its obligations arising from a shareholder's put option only in respect of shares for which the shareholder have paid the nominal value or issue price in full, and made his in-kind contribution available to the company limited by shares.

(3) A company limited by shares may not exercise its rights arising from the call option or fulfil its obligations arising from the put option if it is not allowed to adopt a resolution on paying dividends either. When calculating the funds available for exercising a call option or a put option, only data contained in an account or interim balance sheet with a balance sheet date not earlier than six months may be taken into account.

(4) A Company shall cancel the shares redeemed in accordance with the rules on the mandatory decrease of share capital.

Section 3:240 *[Other share types]*

A company limited by shares may adopt a resolution to issue types or classes of shares other than those specified in this Act if it specifies in the articles of association the content and the extent of membership rights attached to the shares to be issued.

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5. Share warrants and interim shares

Section 3:241 *[Share warrants]*

At the request of a person who has provided a monetary or in-kind contribution, the company limited by shares shall issue, prior to its registration or increase of its share capital, a warrant, which contains the person's name and the amount of the monetary or in-kind contribution provided, and, unless proven to the contrary, verifies the rights and obligations of the person indicated therein with regard to the company limited by shares.

Section 3:242 *[Concept of interim shares]*

(1) After the registration of a company limited by shares or the registration of the increase of its share capital by the court of registration and until the share capital, increased share capital or issue price of the shares is paid in full, the company shall issue interim shares, indicating the amount of the contribution provided in respect of the shares subscribed or intended to be taken over by shareholders. Interim shares issued prior to the registration of a company

limited by shares or in a value exceeding the amount of the monetary or in-kind contributions effectively provided shall be null and void.

(2) Interim shares are securities governed by the rules applicable to shares with the proviso that the transfer of interim shares against the company shall become valid upon the registration of the holder of such shares in the shareholder register.

Section 3:243 *[Production and content of interim shares]*

(1) Subject to the provisions of the articles of association, interim shares may be printed or dematerialised regardless of the form in which the shares shall be produced. If interim shares are produced in a dematerialised form, they shall be credited to the securities account of the shareholder only when he provides his monetary or in-kind contribution, or the first instalment of it, according to the articles of association.

(3) The amount that the shareholder has paid up until the interim share is issued shall be indicated on printed interim shares or in the securities account if the interim shares are dematerialised shares. Any further monetary or in-kind contribution by the shareholder after the issue of the interim shares shall be indicated, at the shareholder's request, on the interim shares or else new interim shares shall be issued along with the invalidation of the previous interim shares.

Section 3:244 *[Exercising the rights arising from interim shares]*

(1) Interim shares shall entitle their holders to exercise shareholders' rights in proportion to the amount of the monetary or in-kind contribution already provided. Holders of preference shares shall not be entitled to preferential rights before their monetary or in-kind contribution is paid in full. In such cases, holders of preference shares shall exercise the shareholders' rights granted to holders of ordinary shares.

(2) If a shareholder transfers his interim shares to another party, he shall be liable against the company limited by shares for the debts arising from the monetary or in-kind contributions assumed to be taken over or from unpaid contributions of subscribed shares as a first-loss guarantor. In the event of a multiple transfer of interim shares, all former shareholders shall have joint and several liability as first-loss guarantors.

(3) When shares are produced, the board of directors shall call upon the shareholders to hand over their printed interim shares by the prescribed time limit, and collect their printed shares. The company shall declare interim shares not handed over in due time invalid by means of a resolution adopted by the board of directors. Printed shares shall be released and dematerialised shares shall be credited to the shareholder's securities account only after the interim shares are handed over or deemed invalid.

(4) Upon the production of shares, the management shall take action to have the interim shares produced in a dematerialised form deleted from the central securities account and the securities accounts.

6. Shareholder register

Section 3:245 *[Concept of the shareholder register]*

(1) Companies limited by shares shall operate a shareholder register of shareholders, including holders of interim shares, recording the name and the place of domicile or seat of shareholders, or that of their joint representative in the case of shares in co-ownership, the number of shares or interim shares and ownership ratio of shareholders in each series of shares.

(2) In the event of any change in the data of an issued share which is recorded in the shareholder register, the management shall update the shareholder register accordingly.

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(3) The shareholder register is operated by the board of directors of the company limited by shares. The board of directors may subcontract the operation of the shareholder register; in the case of public companies limited by shares the fact of such subcontracting the personal data of the subcontractor shall be made public.

Section 3:246 *[Entries and deletions in the shareholder register, and their legal effects]*

(1) Shareholders shall only exercise shareholder rights in respect of the company limited by shares if they are registered in the shareholder register. Failure to be registered into the shareholder register shall not affect shareholders' title to their shares.

(2) At their request made to the operator of the register, formally identified shareholders shall be registered into the shareholder register. Registered shareholders shall be deleted from the shareholder register at their request.

(3) The operator of the shareholder register shall be entitled to refuse the request of a formally identified shareholder if that shareholder acquired his shares by breaching the law or of the rules on the transfer of shares set out by the articles of association.

(4) All data deleted from the shareholder register shall be kept identifiable.

(5) The resolutions adopted in the course of operating the shareholder register shall qualify as corporate resolutions.

Section 3:247*[Transparency of data recorded in the shareholder register]*

(1) Shareholder registers are open to public access. Companies limited by shares or the appointed operators of shareholder registers shall, during business hours, provide continuous access at their seat.

(2) All persons having a registered or deleted data in the shareholder register shall be entitled to request from the operator of the shareholder register a copy of the section pertaining to them. Copies shall be supplied to the requesting person, within five days and free of charge.

Section 3:248 *[Shareholder identification procedure in the shareholder register]*

In the event of an identification procedure carried out at the initiative of the public company limited by shares, the operator of the shareholder register shall delete all data of the shareholder register effective at the time of the identification procedure, and register the data obtained from the identification procedure in the shareholder register.

Chapter XXXIII

Foundation of companies limited by shares

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Section 3:249 *[Private character of founding a company limited by shares]*

On founding a company limited by shares, no shareholders shall be recruited and no share capital shall be raised by means of public offer.

Section 3:250 *[Content of the articles of association]*

(1) In addition to the common mandatory elements, articles of association shall contain

a) a declaration by the founders on their commitment to subscribe all shares, and on the distribution of the shares among the founders;

b) the amount of the share capital, number, nominal value or issue price of the shares to be issued upon foundation, and the manner of producing the shares;

c) the mode of convening general meetings, the conditions and mode of exercising voting rights; and

d) the first auditor.

(2) In the articles of association, founders may provide for:

a) the objects, value and mode and time of providing the in-kind contribution, the number and nominal value of shares to be provided in exchange for the in-kind contribution and the name and place of domicile or seat of the party providing the contribution, as well as the

name and place of domicile or seat of the auditor responsible for the preliminary audit of compliance of the value of the in-kind contribution with the articles of association;

b) the rights attached to the individual types, classes and series of shares, and the restrictions on certain rights attached to shares; the rules on the conversion of shares into shares belonging to other types, classes or series of shares, as well as the number and nominal value or issue price of shares belonging to certain types or classes of shares, broken down to each series of shares;

c) the series, quantity and nominal value of convertible bonds, bonds with subscription rights or converting bonds, and the rules pertaining to such bonds;

d) restrictions on the transfer of shares, or making transfers conditional upon the consent of the company limited by shares;

e) the provisions required for the mandatory cancellation of shares;

f) the authorisation conferred upon the board of directors to approve the interim balance sheet prepared on the occasion of the exercise of rights attached to redeemable shares, of the acquisition of own shares, of the payment of interim dividends, and of the increase of the share capital financed from assets exceeding the share capital.

Section 3:251 *[In-kind contributions]*

(1) When in-kind contributions are provided, a report by an auditor or expert qualified to appraise the asset in question shall be attached to the articles of association, containing the description, value and appraisal of the in-kind contribution, the adopted appraisal method and a statement that no new circumstance affecting the appraisal has occurred. In the report, the auditor or the expert shall provide a statement on whether the value of the in-kind contribution preliminarily determined by the founders is in balance with the quantity and nominal value of the shares to be distributed in exchange.

(2) No auditor or expert report shall be required if the shareholder providing the in-kind contribution holds an audited account prepared no earlier than three months before the date when the contribution was provided containing the value of the asset contributed, nor if the in-kind contribution comprises assets having a price listed on the stock exchange.

Section 3:252 *[Conditions for registration]*

(1) A company limited by shares shall only be registered if, prior to filing for registration,

a) the founders undertaking to provide monetary contributions have paid at least twenty-five per cent of the nominal value or issue price of the shares they have committed to subscribe in the articles of association; and

b) the in-kind contributions have been made available to the company, unless the value of the in-kind contribution is less than twenty-five per cent of the share capital.

(2) Shareholders shall pay up the nominal value or issue price of the shares to the company limited by shares within one year from the date of the registration of the company limited by shares and shall provide their in-kind contributions to the company limited by shares in full within three years from the date of registration.

(3) Provisions of the articles of association providing for a later time limit for in-kind contributions shall be null and void.

Chapter XXXIV

Rights and obligations of shareholders

Section 3:253 *[Equality of shareholders]*

Holders of shares belonging to the same series shall not be discriminated against in connection with the exercise of their shareholder rights.

Section 3:254 *[Verification of the shareholder status]*

(1) Shareholders may exercise shareholder rights after their registration in the shareholder register, in possession of their shares, or the depository receipt or ownership certificate.

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(2) In the case of printed shares placed in securities deposit, the depositary shall, at the shareholder's request, issue a depository receipt for the shares placed in his custody.

(3) In the case of dematerialised shares, the securities account provider shall, at the shareholder's request, issue an ownership certificate of the shares held on the account.

(4) A depository receipt and an ownership certificate shall indicate the company name of the company limited by shares, the type and number of shares and the company name and authorised signature of the provider of the securities deposit account or securities account, as well as the name and place of domicile or seat of the shareholder. A depository receipt and an ownership certificate issued to entitle its holder to attend the general meeting shall remain effective until the date of the general meeting or reconvened meeting.

(5) After an ownership certificate has been issued, the provider of the securities account may register changes pertaining to the shares in the securities account only if the ownership certificate is simultaneously revoked. The operator of the securities deposit shall revoke the depository receipt issued when the shares to which it pertains are released to the shareholder or his representative.

(6) The exercise of shareholder rights in public companies limited by shares shall not require ownership certificates if such entitlement is verified by means of a shareholder identification procedure.

Section 3:255 *[Shareholder representation]*

(1) Shareholders may exercise shareholder rights through representatives. Executive officers, supervisory board members and the auditor may not represent shareholders.

(2) In the case of a shareholder represented by more than one representative, if the votes or statements of the representatives differ, those votes and statements shall be null and void.

Section 3:256 *[Shareholder's agent]*

A shareholder may appoint an agent to exercise his shareholder rights, who, after being registered in the shareholder register, shall act in his own name and for the benefit of the shareholder.

Section 3:257 *[Right to attend the general meeting]*

Shareholders shall be entitled to attend, request information and make observations and proposals at the general meeting and, if in possession of shares with a voting right, cast their votes.

Section 3:258 *[Right to information]*

(1) At the shareholders' written request submitted at least eight days before the date set for the general meeting, the board of directors shall, at least three days before the date of the general meeting, provide all shareholders with information that may be necessary for the discussions of the items on the agenda of the general meeting.

(2) At least fifteen days before the general meeting, the board of directors shall inform the shareholders of the key data in the account, as well as the report of the board of directors and the supervisory board.

(3) Provisions of the articles of association restricting or excluding the right of shareholders to information shall be null and void.

Section 3:259 *[Right to make additions to the agenda]*

(1) If shareholders holding jointly at least five per cent of the votes in a private company limited by shares propose certain additions to the agenda according to the rules on the details of an item on agenda, the item proposed shall be deemed to have been put on the agenda if the proposal is communicated to the members and the board of directors within eight days from the receipt of the invitation to the general meeting.

(2) If shareholders holding jointly at least one per cent of the votes in a public company limited by shares propose certain additions to or draft resolutions regarding certain items on or to be put on the agenda according to the rules on the details of an agenda item, the item

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proposed shall be deemed to have been put on the agenda if the proposal is communicated to the board of directors within eight days from the date of the publication of the notice convening the general meeting, and the board of directors shall, after receiving the proposal, publish a notice on the supplemented agenda or the draft resolutions presented by the shareholders. The item published in such notice shall be deemed to have been put on the agenda.

(3) Provisions of the articles of association which make putting additional items on the agenda conditional upon a larger proportion of voting rights, or which provide for a shorter time limit for exercising such rights compared with that set out in this Act shall be null and void.

Section 3:260 *[Voting right]*

(1) Shares shall grant voting rights in proportion to their nominal value. Except for the cases specified in this Act, provisions of the articles of association attaching extra rights to certain shares shall be null and void.

(2) Shareholders shall not exercise their voting rights before they have provided their monetary or in-kind contributions.

Section 3:261 *[Conditions of making payments to shareholders]*

(1) During its operation, the company may use its equity capital to make disbursements to its members on account of their membership in the cases defined in this Act only and, with the exception of decreasing the share capital, from its retained earnings available supplemented with the previous business year's taxed profit only. No disbursement shall be made if the equity of the company limited by shares does not reach or would fall below its share capital as a result of the payment or if the payment would jeopardise the company's solvency.

(2) For the purposes of paragraph (1), disbursements made in cash or in the form of non-monetary asset allowances shall qualify as disbursements, with the exception of employee shares provided for no consideration or at a discounted price, as well as shares provided for no consideration from the share capital increased by the conversion of assets exceeding the share capital into share capital.

(3) With the exception of interest-bearing shares, companies limited by shares shall not pay interest on their shares.

(4) Shareholders jointly holding at least five per cent of the voting rights in a private company limited by shares or shareholders jointly holding at least one per cent of the votes in a public company limited by shares, as well as creditors of a company limited by shares holding claims that have not matured by the date of the disbursement concerned that reach ten per cent of the share capital shall be entitled to request the court of registration to appoint an independent auditor to examine the legality of the disbursement within a term of preclusion of one year from the date of the disbursement if they advance the costs.

(5) Payments breaching the provisions under paragraph (1) shall be repaid to the company limited by shares upon its notice if the company can prove that the shareholders concerned were or should have been aware that the conditions for the disbursement were not met.

(6) The provisions of this section shall also apply to disbursements made to shareholders for reasons other than membership if they are incompatible with the principle of responsible business management.

Section 3:262 *[Dividends]*

(1) Shareholders shall be entitled to an available portion of the taxed profit of the company limited by shares which has been ordered by the general meeting to be distributed among shareholders in proportion to the nominal value of their shares. Shareholders shall be entitled to dividends if they are listed in the shareholder register at the date of the general meeting adopting a resolution on the disbursement of dividends. Dividends shall only be paid in a form other than cash if so permitted by the articles of association. Shareholders shall be

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entitled to receive dividends in proportion to the monetary or in-kind contributions already provided.

(2) When applying the provisions under paragraph (1), the specific rights determined in the articles of association for each class of shares shall be taken into account.

Section 3:263 *[Interim dividends]*

(1) Upon the authorisation granted by the general meeting or the articles of association, the board of directors may adopt a resolution on the payment of interim dividends in the period between the approval of two consecutive accounts if

a) according to the interim balance sheet, the company has sufficient funds to disburse interim dividends;

b) the amount to be distributed does not exceed the amount of the available profit reserves supplemented with the taxed profit as stated in the interim balance sheet; and

c) the disbursement of interim dividends does not lead to the decrease of the adjusted equity of the company to below its share capital.

(2) Resolutions on the disbursement of interim dividends shall be adopted upon the proposal of the board of directors. If a supervisory board operates in the company, the prior consent of the supervisory board shall be required for the proposals of the board of directors.

(3) If, according to the annual accounts prepared after the disbursement of interim dividends, it is found that it is not possible to pay dividends, the interim dividends already paid shall be returned by the members at the company's request.

Section 3:264 *[Conditions for the acquisition of assets]*

(1) For contracts on the transfer of assets between the company and its shareholders to be concluded within two years from the registration of a public company limited by shares, the resolution of the general meeting on its prior consent to the transfer shall be required if the value of the consideration to be paid by the company reached one-tenth of its share capital. In such procedures the rules on in-kind contributions shall apply accordingly, with the proviso that the report of the auditor or expert shall be published.

(2) The prior consent of the general meeting shall also be needed if the contract is concluded between the company and a shareholder or his close relative, or any entity over which the shareholder has majority control.

(3) No prior consent by the general meeting shall be required for contracts related to the activities of the company of ordinary scale, for the acquisition of ownership by a decision of an authority or by official auction, or for stock exchange transactions.

(4) For the purposes of this section, the term shareholder shall mean persons holding shares in a company at the date when a resolution on the transformation of the company into a public company limited by shares is adopted, and any shareholder who holds at least ten per cent of the voting rights after the subsequent registration of the public limited company.

Section 3:265 *[Prohibition of derogation]*

Provisions of the articles of association prescribing rules on payments made by the company that are more favourable to shareholders than those set out in this Chapter shall be null and void.

Section 3:266 *[Exercising minority shareholder rights]*

Shareholders jointly holding at least one per cent of the votes in a public company limited by shares shall be entitled to exercise minority shareholder rights.

Section 3:267 *[Obligations of shareholders]*

(1) Shareholders shall provide the company limited by shares with the monetary or in-kind contributions corresponding to the nominal value or issue price of the shares received or subscribed. Except in the event of decreasing the share capital, shareholders shall not be exempted from this obligation.

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(2) Shareholders shall pay the nominal value or issue price of their shares within the time limit set out in the articles of association when called upon to do so by the board of directors according to the conditions laid down in the articles of association. Shareholders may fulfil their payment obligations prior to being called upon to do so.

(3) If a person's status as a shareholder terminated due to his failure to provide the monetary or in-kind contribution undertaken by the prescribed time limit, and no other person assumes the obligation to provide the contribution for the shares subscribed or deemed to be subscribed to by the shareholder, the share capital shall be decreased by the amount corresponding to the contribution undertaken to be provided by the former shareholder.

(4) Shareholders in default with their monetary or in-kind contribution to be provided shall be entitled to the value of the contribution provided after the decrease of the share capital or upon another shareholder making the contribution in his place to the company limited by shares.

Chapter XXXV

Organisation of companies limited by shares

1. The general meeting

Section 3:268 *[General meeting]*

(1) The supreme body of the company limited by shares shall be the general meeting.

(2) Advisory vote on remuneration policy shall fall within the exclusive competence of the general meeting of public companies limited by shares. The remuneration policy shall be put on the agenda of the general meeting if there is a substantial change to it, but at least once every four years.

(3) In public companies limited by shares, the remuneration report for the previous business year shall be put on the agenda of the general meeting for advisory vote.

(4) In public companies limited by shares, issues falling within the competence of the general meeting shall not be decided on without holding a meeting.

Section 3:269 *[General rules on the convocation of a general meeting]*

In addition to the common mandatory elements, the invitation to the general meeting shall contain

a) the mode of holding the general meeting;

b) the conditions provided for in the articles of association for exercising voting rights;

c) the place and date of the reconvened general meeting in the event of the first general having no quorum.

Section 3:270 *[Cases where the convocation of the general meeting is mandatory]*

(1) The board of directors shall, along with the simultaneous notification of the supervisory board, convene a general meeting for taking the necessary measures, or initiate the adoption of a resolution without holding a meeting within eight days if a member becomes aware that

a) the equity of the company limited by shares fell to two-thirds of its share capital due to losses;

b) the equity of the company limited by shares fell below the limit for share capital as determined by law;

c) the company limited by shares is on the brink of insolvency or has stopped making payments; or

d) the assets of the company limited by shares do not cover its debts.

(2) In the cases specified in paragraph (1), shareholders shall adopt a resolution in a general meeting or without holding one to determine the means of eliminating the causes referred to in paragraph (1), or adopt a resolution on the transformation, merger or division, or in the

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absence of these, on the termination of the company. The resolutions of the general meeting on these issues shall be implemented within three months.

(3) If the condition giving rise to the convocation of the general meeting as referred to in paragraph (1) *a)* persists for three months after the end of the general meeting, the share capital shall be decreased.

Section 3:271 *[Special rules for convening the general meeting of private companies limited by shares]*

(1) In the case of private companies limited by shares, the general meeting shall be convened by means of an invitation sent to the shareholders at least fifteen days prior to the first day of the general meeting.

(2) Shareholders who specifically request it shall be sent their invitation electronically.

Section 3:272 *[Special rules for convening the general meeting of public companies limited by shares]*

(1) In the case of public companies limited by shares, the invitation for the general meeting shall be published on the company's website at least thirty days prior to the first day of the general meeting. The invitation to the general meeting shall also contain the conditions for exercising the right to propose additions to the agenda and shall specify the location where the original full text of the draft resolutions and the documents to be submitted to the general meeting are available.

(2) If an extraordinary general meeting is convened either to have the shareholders' position on a public takeover bid for the shares of the public company limited by shares or at the request of the person holding majority control after a successful public takeover bid, the general meeting shall be convened at least fifteen days before its starting date.

(3) Public companies limited by shares shall publish on their website, at least twenty-one days before the general meeting:

a) the aggregated data of the number of the shares existing as at the date of the convocation of the general meeting and proportion of voting rights, including separate aggregations for the individual classes of shares;

b) the proposals submitted to the items on the agenda, the related reports of the supervisory board together with the proposals for resolution;

c) the forms to be used for voting by proxy or by mail, unless they have been sent directly to the shareholders.

(4) The documents of the general meeting to be published shall be sent electronically to the shareholders specifically requesting so simultaneously with their publication.

Section 3:273 *[Participation in the general meeting]*

(1) Shareholders and shareholder's agents may participate in the general meeting of the private company limited by shares only if they have been registered in the shareholder register before the beginning of the general meeting. If the articles of association stipulate the day by which the above registration has to be made, that date shall not be earlier than the second working day before the general meeting; any provision of the articles of association derogating from this shall be null and void.

(2) Shareholders and shareholder's agents may participate in the general meeting of the public company limited by shares only if they have been registered in the shareholder register on the second working day before the beginning of the general meeting at the latest. Any provision of the articles of association derogating from this shall be null and void.

(3) Only those persons shall be entitled to exercise shareholder rights in the general meeting whose names are contained in the shareholder register at the time of its closing. Participation and voting rights of a registered shareholder Transferring shares before the starting date of the general meeting shall be without prejudice to the right of the person registered in the shareholder register to participate and exercise his shareholder rights in the general meeting.

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(4) If the articles of association of a public company limited by shares allow for exercising voting rights by mail before the general meeting, the exercise of that right may only be made subject to the establishment of the identity of shareholders.

(5) At the request of the shareholder, the board of directors shall be obliged to provide confirmation to the shareholder or to the person specified by the shareholder that the shareholder's vote was recorded properly at the general meeting and that it was taken into account, unless the necessary information is already available to the shareholder.

Section 3:274 *[Attendance sheet]*

(1) An attendance sheet indicating the name and place of domicile or seat of the attending shareholders or their representatives, the number of their shares, the number of the votes they are entitled to and the changes in the person of those present in the general meeting shall be drawn up.

(2) Attendance sheets shall be authenticated by the signature of the chair of the general meeting and of the keeper of the minutes.

Section 3:275 *[Quorum]*

(1) If the general meeting fails to have a quorum, the reconvened general meeting shall have a quorum in respect of the items on the original agenda irrespective of the number of the voting rights represented by those present if the reconvened meeting is scheduled for a date between three and twenty-one days at most from the original date in the case of a private company limited by shares and between ten and twenty-one days at most in the case of a public company limited by shares. Provisions of the articles of association providing for a convocation time limit shorter than three or ten days and longer than twenty-one days shall be null and void.

(2) The general meeting may adjourn its meeting on one occasion, for thirty days at most.

(3) When the adjourned meeting reconvenes, the conditions for a quorum shall be assessed again. In the case of public companies limited by shares, provisions of the articles of association derogating from this shall be null and void.

(4) Provisions on convening the general meeting and the election of the officers of the general meeting shall not be applied to the adjourned meeting reconvened.

Section 3:276 *[Majority required for resolutions]*

(1) A majority of votes of at least three-quarters shall be required for resolutions of the general meeting on the amendment of the articles of association, changing the corporate form, transformation, merger, division and termination without succession of the company and decreasing its share capital.

(2) If the articles of association are amended in order to determine the volume of the share capital, in connection with the implementation of the resolution of the general meeting on the increase or decrease of the share capital, the resolution consenting to the increase or decrease of capital shall qualify as consent to the amendment of the articles of association.

(3) In the case of public companies limited by shares, the provisions on the requirement of unanimous vote for the amendment of the instrument of incorporation shall not apply.

Section 3:277 *[Consent to resolutions of the general meeting]*

(1) Resolutions of the general meeting modifying adversely the rights attached to certain series of shares shall only be adopted if the shareholders concerned grant their explicit consent in the manner specified in the articles of association. In such an event, the provisions on possible restriction or exclusion of the voting rights attached to such shares shall not apply, except for the prohibition on exercising voting rights attached to own shares.

(2) Provisions of the articles of association of a public company limited by shares derogating from those under paragraph (1) shall be null and void.

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Section 3:278 *[Minutes]*

(1) The events of general meetings shall be recorded in minutes containing

a) the company name and seat of the company limited by shares;

b) the mode, place and date of the general meeting;

c) the name of the chair of the general meeting, the keeper of the minutes, the person appointed to authenticate the minutes and the official vote counters;

d) the key events that occurred and the proposals presented at the general meeting;

e) the proposals for resolution, the number of the shares casting valid votes for each resolution, the proportion represented by these shares in the share capital of the company, the number of votes cast for and against proposals, and the number of those who abstained from voting.

(2) The minutes shall be signed by the keeper of the minutes and the chair of the general meeting, and authenticated by a shareholder present at the meeting and elected for authentication.

(3) The board of directors of the company limited by shares shall deposit and preserve the minutes of the general meeting and the attendance sheet among its own documents.

(4) Within thirty days after the end of the general meeting, the board of directors of the public company limited by shares shall submit the minutes of the general meeting and the attendance sheet to the court of registration.

(5) Any shareholder shall be entitled to request a copy or an extract of the minutes of general meetings from the board of directors.

Section 3:279 *[Making resolutions public]*

(1) Public companies limited by shares shall publish on their website the resolutions adopted at their general meetings.

(2) Public companies limited by shares shall publish on their website their remuneration policy and remuneration report.

Section 3:280 *[Conditions for holding general meetings by conferencing]*

(1) If the articles of association allow shareholders to participate in the general meeting by means of electronic communications equipment instead of appearing in person, shareholders shall be free to decide on the mode of their participation. Shareholders intending to participate in person in the general meeting shall notify the company limited by shares of their intention at least five days before the date of the general meeting. Shareholders failing to notify the company limited by shares of their intention to participate in person in due time shall be considered to be participating in the general meeting via electronic communications equipment.

(2) The costs incurred by the use of electronic communications equipment at the company shall be borne by the company limited by shares, and shall not be charged to shareholders.

(3) Upon a written reasoned protest by a group of shareholders jointly holding at least five per cent of the total number of votes submitted within five days after the date of receipt of the invitation or from the date of publication of the public notice, requesting that a conventional general meeting be held, no general meeting shall be carried out by conferencing.

Section 3:281 *[Carrying out a general meeting by conferencing]*

(1) The entitlement of shareholders intending to participate in person shall be assessed using the data of the shareholder register before opening a general meeting held by conferencing. The articles of association or a resolution of the general meeting adopted by authorisation of the articles of association shall provide for the procedure identifying shareholders participating via telecommunication means, for the voting procedure and the authentic determination of results and the procedure for the election of general meeting officers, as well as the conditions for shareholders to voice their opinions and exercise their right to make proposals.

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(2) Discussions and resolutions adopted at a general meeting held by conferencing shall be recorded in a manner that ensures subsequent verification. If the discussions of the meeting have been recorded, minutes shall be drawn up based on the recording and authenticated by the board of directors.

(3) If at a general meeting held by conferencing voting takes place by means of electronic communication, it shall be ensured that the shareholder voting by means of electronic communications receive electronic confirmation of having cast the vote.

2. Management

Section 3:282 *[Composition and procedures of the board of directors]*

(1) Companies limited by shares shall be managed by boards of directors. The board of directors shall be made up of three natural persons. Provisions of the articles of association prescribing formation of a board of directors with fewer than three members shall be null and void.

(2) The board of directors shall elect its chair from among its members.

(3) The board of directors shall exercise its rights and perform its duties as a body. No limitation or division of the right of representation of the members of the board of directors or making their declarations subject to any condition or consent shall be valid against third parties.

(4) The board of directors shall adopt its resolutions by a simple majority of the members present. Any provision of the articles of association requiring a lower proportion of votes shall be null and void.

Section 3:283 *[Chief executive officer exercising the rights of the board of directors]*

If so provided for by the articles of association of private companies limited by shares, the powers of the board of directors shall be exercised by the chief executive officer as a senior officer.

Section 3:284 *[Filing reports]*

(1) The board of directors shall draft a report on the management, financial situation and business policy of the company at least once a year for the general meeting, and at least once every three months for the supervisory board if the company limited by shares has one.

(2) Provisions of the articles of association excluding or restricting the reporting obligation of the board of directors shall be null and void.

Section 3:285 *[A uniform management system of public companies limited by shares]*

(1) If the articles of association of a public limited company so provide, a management board shall operate instead of the board of directors and supervisory board, implementing a uniform management system. The management board shall carry out the duties of the board of directors and supervisory board prescribed by law.

(2) The provisions of this Act on the board of directors shall apply accordingly to the management board.

Section 3:286 *[Composition of the management board]*

(1) A management board shall be made up of three natural persons. The management board shall elect its chair from among its members. Provisions of the articles of association prescribing the formation of a management board having fewer than five members shall be null and void.

(2) With the exception set out in paragraph (3), the majority of the members of the management board shall be independent. Provisions of the articles of association prescribing a lower proportion of independent members shall be null and void.

(3) If a company limited by shares is controlled by an acknowledged group of companies, the requirement for the majority of the management board to be independent shall not apply.

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Section 3:287 *[Independence of the member of the management board]*

(1) A member of the management board shall qualify as independent if he, apart from his membership in the management board and apart from the transactions conducted as part of the company's usual activities and aimed at satisfying the personal needs of the member serving on the management board, holds no other office in the company limited by shares.

(2) A member of a management board shall not qualify as independent if he

a) is a current or former employee of the company limited by shares, for five years following the termination of such employment;

b) provides services to the company limited by shares or its executive officers for consideration under a contract for experts or another agency relationship;

c) is a shareholder of the company limited by shares, holding at least thirty per cent of the votes directly or indirectly, or is a close relative or cohabitant of such a shareholder;

d) is a close relative or cohabitant of a non-independent executive officer or executive employee of the company limited by shares;

e) is entitled, upon the profitable operation of the company limited by shares, to receive financial benefits due to his membership in the management board, or receives, beyond his fee for his membership of the management board, some other form of remuneration from the company limited by shares or an undertaking affiliated to it;

f) is engaged in a relationship with a non-independent member of the management board in another company, on the grounds of which the non-independent member has managing and controlling right;

g) is or was an auditor, member or employee of the auditing company of the company limited by shares, for three years following the termination of that relationship;

h) is an executive officer or an executive employee of a company whose independent member of the management board also holds an executive office in the public company limited by shares.

(3) Any provision of the articles of association that prescribes more lenient requirements for independence than those set out in paragraphs (1) to (2) shall be null and void.

Section 3:288 *[Employee participation in the management board]*

(1) If a public company limited by shares has a management board, the procedural rules for exercising the rights for employee participation shall be laid down in agreement with the works council.

(2) General rules on contracts shall apply accordingly to the agreements concluded under paragraph (1).

Section 3:289 *[Report on responsible corporate governance]*

(1) The board of directors of a public company limited by shares shall present at the annual general meeting a report on the corporate governance policy of the company in compliance with the rules of the given stock exchange for its actors.

(2) The report shall be approved by the general meeting. The resolution of the general meeting and the approved report shall be published on the website of the company limited by shares.

(3) Provisions of the articles of association derogating from the provisions set out in this section shall be null and void.

3. Supervisory board, audit committee, auditor

Section 3:290 *[Supervisory board of companies limited by shares]*

(1) Public companies limited by shares shall establish, beyond the cases specified in the common rules on companies, a supervisory board even if they do not operate in a unified system. In such cases, the provisions pertaining to the proportion of independent members of the management board and their independence shall apply to the supervisory board.

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(2) No supervisory board with ultimate decision-making powers shall operate in public companies limited by shares.

(3) In private companies limited by shares, a supervisory board shall be established at the request of a group of shareholders jointly holding at least five per cent of the voting rights.

(4) Any provision of the articles of association being in conflict with this section shall be null and void.

Section 3:291 *[Audit committee]*

(1) Public companies limited by shares shall be required to set up audit committees to assist the supervisory board or management board in the supervision of the financial reporting regime, selection of the auditor and in its cooperation with the auditor.

(2) The general meeting shall elect the audit committee from among the independent members of the supervisory board or management board. At least one member of the audit committee shall be required to have vocational qualification in accounting or auditing.

(3) Any provision of the articles of association derogating from the rules set out in paragraphs (1) and (2) shall be null and void.

(4) The audit committee shall be made up of three members. Provisions of the articles of association prescribing the establishment of an audit committee comprising fewer than three members shall be null and void.

Section 3:292 *[Auditor]*

All companies limited by shares shall employ an auditor; provisions of the articles of association of a public company limited by shares to the contrary shall be null and void.

Chapter XXXVI

Increase of share capital

1. Common rules on the increase of share capital

Section 3:293 *[Resolution on the increase of share capital]*

(1) The resolution on the increase of share capital of a company limited by shares shall be adopted by the general meeting. The general meeting may adopt resolutions, on the same occasion, on various methods for increasing the share capital.

(2) The resolution of the general meeting on the increase of share capital shall only be valid with the express consent of the holders of the types or classes of shares affected by the capital increase, given in the mode prescribed by the articles of association. Upon such events, provisions on the restriction or exclusion of the voting rights attached to such shares, except the prohibition on exercising voting rights attached to own shares, shall not apply.

(3) Provisions of the articles of association of a public company limited by shares contrary to paragraph (2) shall be null and void.

Section 3:294 *[Authorisation of the board of directors to increase share capital]*

(1) The general meeting of a company limited by shares may authorise the board of directors to increase the share capital. The authorisation shall specify the highest amount by which the board of directors is allowed to increase the share capital of the company limited by shares and the period of up to five years during which the increase of capital may be implemented.

(2) The board of directors authorised to increase the share capital shall also be entitled to make the decisions related to the increase of share capital which otherwise fall within the competence of the general meeting by law or according to the articles of association.

2. Share capital increase through the offering of new shares

Section 3:295 *[Precondition for increasing share capital]*

Companies limited by shares shall be entitled to increase their share capital through the offering of new shares only if the nominal value or the issue price of all previously offered

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shares has been paid up in full, and all in-kind contributions have been made available to the company.

Section 3:296 *[Resolution of the general meeting]*

(1) The resolution of the general meeting on the increase of the share capital through the offering of new shares shall determine

a) the method of increasing the share capital;

b) the amount of the increase of the share capital or the lowest amount envisaged;

c) a draft amendment of the articles of association regarding the increase of the share capital, including the number and the series of the new shares to be issued, the rights attached to the types, classes and series of shares belonging to such series, the method of production of shares and the nominal value and issue price of the shares, as well as the terms of payment of the nominal value or issue price of the shares;

d) the objects and value of in-kind contributions, the number and other characteristics of the shares to be provided in exchange, the name (company name), place of domicile or seat of the person providing such a contribution, and the name, seat (place of domicile) of the auditor conducting a preliminary appraisal, and the date when contributions are to be made available;

e) the period open for making a statement on taking the shares over or the subscription time limit.

(2) The resolution containing the decision of the general meeting on increasing the share capital through the private offering of new shares shall indicate the persons who the general meeting has authorised to take the shares over on condition that the persons otherwise eligible do not exercise their pre-emptive subscription rights. The resolution of the general meeting shall also specify the number of shares each person may take over.

(3) Only persons who made preliminary statements of commitment on taking over and paying consideration for the shares shall be designated to take shares over. The company limited by shares shall adhere to the statement of commitment.

(4) The rules on the mode of and the time limit for making monetary or in-kind contributions, the legal consequences of delay, the appraisal of in-kind contributions and the liability for their value shall apply accordingly.

(5) In the case of public companies limited by shares, the report of the auditor or expert on the appraisal of in-kind contributions shall be published.

Section 3:297 *[Exercise of preferential rights]*

(1) The general meeting shall be entitled to decide, according to the conditions set out in the articles of association, on the issue of bonds with subscription rights that grant preference to their holders for subscribing and taking over such shares when the share capital is increased through the offering of new shares.

(2) Shareholders and holders of convertible bonds and bonds with subscription rights to shares shall have preferential rights for the taking over of shares when share capital is increased by means of monetary contributions. The articles of association shall specify the order of priority of those entitled to and the time limit for exercising preferential rights.

(3) The company limited by shares shall ensure a period of at least fifteen days for the exercise of preferential rights.

(4) The company limited by shares shall, in the manner determined in the articles of association, inform the shareholders, the holders of convertible bonds and bonds with subscription rights of the nominal value or issue price of the shares which may be acquired and the first and last day of the period ensured for exercising subscription rights, as well as the mode of exercising such rights.

(5) A converting bond shall convert into a share subject to a pre-determined, objective condition, consequently it grants no preferential right to its holder.

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Section 3:298 *[Amendment of the articles of association]*

(1) If the general meeting adopting a resolution on increasing the share capital amends the articles of association in connection with the share capital increase, conditional on the outcome of the commitments to subscribe and take over the shares, with effect from the expiry of the time limit for making the statements of commitment, or from the closing day of the subscription, no new meeting of the general meeting shall be required in relation to the increase of share capital.

(2) If no conditional amendment of the articles of association has been made or if, in connection with the increase of the share capital, the general meeting is required to make a decision on an issue in respect of which the conditional amendment to the articles of association contains no provisions at all or only inadequate ones, the general meeting shall adopt a resolution on the amendment of the articles of association within sixty days after the expiry of the time limit for making the statement of commitment or after the successful conclusion of the share subscription.

(3) Dividends on the shares offered upon the increase of share capital shall be first due in the business year following the registration of the increase of share capital.

Section 3:299 *[Frustration of share capital increase]*

(1) The share capital increase shall be considered frustrated if the shares with a nominal value or issue price corresponding to the envisaged or lowest amount increase of the share capital have not been committed to be taken over or if the shares have not been subscribed by those entitled.

(2) The frustration of the share capital increase shall be notified to the court of registration within thirty days after the expiry of the time limit set for making the commitments for taking over of the shares (hereinafter "the subscription time limit").

3. Share capital increase from the assets exceeding the share capital

Section 3:300 *[Preconditions for increasing share capital]*

A company limited by shares may use all or part of its assets in excess of its share capital to increase its share capital if, according to the balance sheet of the accounts for the previous business year or the interim balance sheet of the current year, it owns sufficient assets in excess of its share capital available for the capital increase, and if the share capital does not exceed its adjusted equity after the increase of share capital. The account or the interim balance sheet shall verify the amount of assets in excess of the share capital for a six-month period following the balance sheet date.

Section 3:301 *[Implementation of the increase of the share capital]*

(1) The resolution of the general meeting on the increase of the share capital shall provide for the amendment of the articles of association and specify whether the increase of the share capital is carried out through the issue of new shares, or by overstamping or exchange of shares.

(2) The shares representing the increased share capital shall be allocated to the shareholders of the company free of charge, in proportion to the nominal value of their shares.

4. Share capital increase through the offering of employee shares

Section 3:302 *[Rules of issuing employee shares]*

(1) In the event that employee shares are issued, the consideration to be paid by the company limited by shares shall be funded from the assets exceeding the share capital of the company limited by shares.

(2) The provisions on the private offering of new shares and on the increase of share capital from assets exceeding the share capital shall apply accordingly to the increase of share capital through the offering of employee shares.

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5. Share capital increase through the conversion of convertible bonds into shares

Section 3:303 *[Conditional increase of the share capital]*

(1) The company limited by shares may adopt a resolution on the conditional increase of share capital through the offering of convertible bonds or converting bonds.

(2) The total nominal value of the convertible bonds or converting bonds offered shall not exceed half of the share capital of the company limited by shares.

(3) At the bond holder's request, convertible bonds shall be converted into shares under the conditions set out in the articles of association. Converting bonds shall convert into shares when the pre-determined condition set out in the bond is met.

(4) The resolution of the general meeting on the conditional share capital increase shall determine

a) whether the bonds are offered privately or publicly;

b) the number and nominal value or issue price of the bonds to be issued, the series of the bonds, and the place and date of subscription;

c) the conditions for and the date of converting bonds into shares;

d) the maturity of the bonds and the conditions for paying interest or other yield on such bonds;

e) if the bonds are issued privately, the persons entitled to receive them and the number, nominal value, issue price and series of the bonds they are entitled to subscribe.

Section 3:304 *[Consequences of the issue of bonds]*

(1) If the bond issue is successful, the general meeting shall amend the articles of association within sixty days following the expiry of the time limit prescribed for the subscription of bonds.

(2) If the subscription of bonds is frustrated, the board of directors shall notify the court of registration thereof within thirty days following the closure of the bond subscription process.

Section 3:305 *[Requesting shares for bonds and the conversion of bonds into shares]*

(1) During the maturity of the convertible bonds, bond holders may, within the period set forth by the general meeting, request in writing to be given shares in exchange for their bonds along with the delivery of their printed bonds.

(2) Upon making a statement on the conversion of convertible bonds and upon the occurrence of the condition prescribed for the converting bond to convert, bond holders shall be entitled to receive bond certificates.

(3) Subsequent to the expiry of the period open for making the announcement under paragraph (1) or the occurrence of the condition for the conversion of converting bonds, the board of directors shall, beyond establishing the fact that the condition for converting the converting bond has occurred, proceed without delay to have the share capital increase registered, with the qualification that the articles of association need not be amended. In the course of the share capital increase, the provisions on registration, delivery and crediting of shares shall apply accordingly.

6. Producing shares consistent with the increased share capital

Section 3:306 *[Share capital increase with printed shares]*

(1) In the case of printed shares, within sixty days after the registration of the increase of the share capital, the board of directors shall inform the shareholders, via a written notice complying with the articles of association, of the place and the opening and closing date of the delivery of shares to be exchanged, and of the provision of new, exchanged or overstamped share certificates respectively, according to the mode of the capital increase.

(2) At least thirty days shall be ensured for the delivery of the shares to the company limited by shares. After the expiry of the prescribed time limit, the board of directors shall annul the shares deposited to be exchanged, in compliance with the rules on securities.

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(3) The board of directors shall declare the shares undelivered within the time limit specified in the notice for being revoked, overstamped or exchanged as annulled. The resolution on the annulment of the shares shall be made public. Shareholders' rights attached to annulled shares shall not be exercised as of the date of the resolution on this.

(4) To replace the annulled shares, the company limited by shares shall issue new shares that are allocated to the holders of the annulled shares.

(5) The shares held by the company limited by shares due to the implementation of the increase of share capital shall not qualify as own shares and shall not entitle the company to exercise shareholders' rights using such shares.

(6) Claims of shareholders for new, exchanged or overstamped shares issued under this section shall not lapse.

Section 3:307 *[Share capital increase with dematerialised shares]*

In the case of dematerialised shares, within fifteen days after the registration of the share capital increase, the board of directors shall notify the central depository and the provider of the shareholder's securities account of the changes that occurred to the shares held by shareholders due to the increase in the share capital.

Chapter XXXVII

Decreasing the share capital

Section 3:308 *[Cases of and restrictions on capital decrease]*

(1) Companies limited by shares may decrease their share capital and, in the cases laid down in this Act, decrease of the share capital shall be mandatory.

(2) Except in the case regulated under paragraph (3), the share capital of the company limited by shares shall not be decreased to below the minimum amount specified by law.

(3) The company may adopt a resolution on the decrease of its share capital to below the minimum amount specified in this Act if an increase of the share capital, decided simultaneously with the decrease of the share capital, is implemented and thus the amount of the share capital reaches at least the minimum amount prescribed in this Act for share capital.

Section 3:309 *[Resolution of the general meeting]*

(1) Resolution on the decrease of the share capital shall be adopted by the general meeting. No resolution of the general meeting shall be required for the decrease of share capital if the articles of association of the company limited by shares prescribed the mandatory cancellation of shares and the decrease of share capital to precede, upon the occurrence of certain specific conditions, the issue of the series of shares concerned.

(2) In addition to the common mandatory elements, the invitation to a general meeting convened to adopt a resolution on the decrease of the share capital shall contain information about the volume, the reason for and the mode of implementing the capital decrease, and the fact of conditional decrease of share capital if applicable.

(3) The resolution of the general meeting on the decrease of the share capital shall specify

a) whether the share capital is decreased for the purpose of disinvestment, consolidating losses or for increasing other components of the equity of the company;

b) the amount by which the share capital is being reduced, and the shares affected by the share capital decrease; and

c) the mode of implementing the share capital decrease.

(4) The resolution on share capital decrease shall also provide for the amendment of the articles of association required by the share capital decrease. The resolution of the general meeting shall become effective upon the conditions for share capital decrease being met. If no resolution of the general meeting is required for the share capital decrease, the amendment of the articles of association required due to the share capital decrease shall fall within the competence of the board of directors.

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(5) For a resolution of the general meeting on the decrease of share capital to be valid, the explicit consent of the holders of the particular types or classes of shares affected by the share capital decrease according to the articles of association shall be required, given in the form specified in the articles of association. In such an event, the provisions on the restriction or exclusion of the voting rights attached to such shares shall not be applied, except for the prohibition on exercising voting rights attached to own shares.

(6) If the share capital is decreased through disinvestment, the amount due to the shareholders shall be determined by taking the assets exceeding the share capital into account, proportionate with the decrease of the share capital. If the equity is lower than the share capital of the company, a resolution on the decrease of the share capital to cover losses shall be adopted before decreasing the share capital through disinvestment.

Section 3:310 *[Mode of decreasing share capital]*

(1) When decreasing share capital, the company's own shares shall be cancelled first.

(2) Share capital may be decreased by lowering the number or the nominal value of the shares, or by using these two methods in combination.

Section 3:311 *[Mandatory decrease of share capital]*

(1) If share capital decrease is mandatory under this Act, the general meeting of the company shall adopt a resolution on share capital decrease within sixty days following the event giving rise to that obligation.

(2) If the share capital is to be decreased below the minimum amount specified by law, and if the shareholders fail to provide the share capital within three months following the event giving rise to the obligation, the general meeting of the company limited by shares shall adopt a resolution on the transformation, merger with another company, division or termination without succession of the company.

Section 3:312 *[Publication of the decrease of share capital]*

(1) Within thirty days of the adoption of the resolution on the decrease of the share capital, the board of directors shall arrange for the publication of the resolution in a public notice on at least two occasions. An interval of at least thirty days shall be required between the two publications.

(2) The public notice shall set out the content of the decision on the decrease of the share capital, and if the company's creditors are likely to request security, a notice to the company's creditors to submit their request for security.

(3) The company shall send a copy of the public notice directly to the company's known creditors simultaneously with the first publication of the public notice.

Section 3:313 *[Security to be requested by creditors]*

(1) The holder of a claim against the company that arose before the first publication of a public notice on the decrease of the share capital may demand adequate security from the company unless

a) the creditor already holds security proportionate to the risk related to the decrease of the share capital;

b) it is unjustified in the light of the company's assets and liabilities and financial position after the decrease of the share capital;

c) the decrease of the share capital is carried out for the purpose of re-allocation to fixed reserves exceeding the share capital of the company limited by shares, and the company did not perform such a share capital decrease for the purpose of provisioning within five years prior to the adoption of that resolution; or

d) the decrease of the share capital is mandatory.

(2) Under paragraph (1) *c)*, the reserve set aside from the share capital may not exceed ten per cent of the share capital of the company limited by shares. The fixed reserve thus created

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may be used to cover the losses of the company or later to increase its share capital, but no payments to shareholders shall be made from this reserve.

(3) The company's creditors may file their request for adequate security in connection with the decrease of the company's share capital within a term of preclusion of thirty days following the second publication of the notice.

(4) The company shall provide adequate security within eight days following the time limit for filing the request or, if the request is rejected, send the resolution on the rejection, along with the related justification, to the creditor concerned. The creditor concerned may apply to the court of registration for a review of the resolution rejecting the request or not providing adequate security, within a term of preclusion of eight days following receipt of the resolution.

(5) The share capital decrease shall not be registered until adequate security is provided to the eligible creditor, or until the court decision on the refusal of the creditor's request becomes final and binding.

Section 3:314 *[Frustration of the share capital decrease]*

(1) The board of directors shall notify the court of registration of the frustration of the share capital decrease within thirty days.

(2) If the mandatory decrease of the share capital has been frustrated and the company limited by shares does not eliminate the grounds for mandatory decrease within ninety days from the date of frustration, the company limited by shares shall adopt a resolution on its transformation, merger, division or termination without succession.

Section 3:315 *[Decrease of the share capital in the case of printed shares]*

(1) In the case of printed shares, the number of shares may be reduced by cancelling shares, whereas the nominal value may be reduced through the exchange of shares for newly issued ones with a lower nominal value, or by changing the nominal value of existing shares by overstamping them.

(2) Within sixty days after the registration of the decrease of the share capital, the board of directors shall inform the shareholders, by means of a notice in accordance with the articles of association, of the place and the opening and closing date of the delivery of shares to be cancelled, overstamped or exchanged, and of the place and date of the delivery of the new shares produced for the purpose of the exchange, or of the overstamped shares. An interval of at least thirty days shall be ensured for the delivery of the shares. The board of directors shall cancel the shares deposited for the purpose of cancellation or exchange in accordance with the rules on securities, following the expiry of the prescribed time limit.

(3) If a shareholder fails to deliver the shares to be cancelled, overstamped or exchanged to the board of directors within the time limit specified in the notice, the board of directors shall declare these shares invalid. The resolution on the invalidation of the shares shall be published. Shareholders' rights attached to shares declared invalid shall not be exercised as of the date of the resolution.

(4) In place of the shares declared invalid, with the exception of the cancelled ones, the company limited by shares shall issue new shares which shall be allocated to the holders of the invalidated shares.

(5) Shares held by the company limited by shares due to the decrease of share capital shall not qualify as its own shares and the limited company shall not exercise shareholders' rights with such shares.

(6) Any claims of shareholders for new, exchanged or overstamped shares issued under this section shall not lapse.

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Section 3:316 *[Decrease of the share capital in the case of dematerialised shares]*

In the case of dematerialised shares, within fifteen days after the registration of the decrease of the share capital, the board of directors shall notify the central depository and the provider of the shareholder's securities account of the changes that occurred to the shares held by shareholders due to the decrease in the share capital.

Section 3:317 *[Payments to shareholders]*

Payments to shareholders shall only be made and unpaid monetary contributions related to shares or in-kind contributions not yet provided shall only be waived after the decrease of the share capital has been registered.

Chapter XXXVIII

Special rules on transformation, merger and division of companies limited by shares

Section 3:318 *[Transformation]*

(1) Following the transformation of a company limited by shares, its shares become invalid upon the registration of the legal person established by transformation.

(2) Within thirty days after receipt of the order on registration, the executive officers of the legal successor shall take measures to have the invalid printed shares transferred to the successor, or have the dematerialised shares deregistered from the central securities account and the securities accounts. The legal successor shall destroy the delivered printed shares delivered. These measures shall be governed accordingly by the rules on the decrease of share capital.

Section 3:319 *[Merger]*

The company limited by shares established by merger shall grant the holders of convertible bonds or converting bonds entitlements at least equivalent to those held in the predecessor company, unless each shareholder consents to the decrease of his entitlement. Holders shall also be entitled to claim from the successor company limited by shares the redemption of their convertible bonds, converting bonds or bonds with subscription rights issued by the merging companies. The provisions of this paragraph need not be applied if, upon the issue of the particular securities, the position of bond holders under a merger scenario was specified.

Section 3:320 *[General meetings held on the merger]*

The rules on the approval of the resolutions of the general meeting shall be applied accordingly to the adoption of the resolution on the merger if there are different types or classes of shares.

Section 3:321 *[Division of a company limited by shares]*

(1) Public companies limited by shares shall not undergo division.

(2) The rules on the merger of companies limited by shares shall also apply to the division of companies limited by shares.

Chapter XXXIX

Termination without succession of a company limited by shares

Section 3:322 *[Consequences of termination]*

(1) Upon the distribution of the assets of the company left after settling its debts, the privileges carried by preference shares issued with respect to liquidation shall be taken into account.

(2) If, at the start of the winding-up proceedings, or at the time the liquidation is ordered, the share capital of the company limited by shares has not yet been paid up in full, the administrator or the liquidator may render outstanding contributions due with immediate effect, and require the shareholders to make their monetary or in-kind contributions if this is necessary for the satisfaction of the debts of the company limited by shares.

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Chapter XL

Single-member companies limited by shares

Section 3:323 *[Derogating rules on single-member companies limited by shares]*

(1) If a company limited by shares is established by a sole person undertaking in the articles of association to take over all shares, that founder shall make his full in-kind contribution available to the company before the application for registration is filed. Any provision of the articles of association contrary to this shall be null and void.

(2) A single-member company shall also be created if a sole person acquires all the shares of a multi-member company limited by shares.

(3) A single-member company limited by shares shall not acquire its own shares.

(4) All contracts between a single-member company limited by shares and its sole member shall be drawn up in writing.

(5) The rules on qualified majority control shall apply accordingly to the liability of the single shareholder of a single-member company limited by shares.

TITLE XV

ACQUISITIONS

Section 3:324 *[Additional obligations of members having a qualified majority]*

(1) The court of registration shall be notified of members of a limited liability company or a shareholder of a private company limited by shares acquiring, directly or indirectly, at least three-quarters of the votes, for the purposes of registration and publication, within fifteen days from the time of acquiring qualified majority.

(2) Within a term of preclusion of sixty days following the date of notification of acquiring qualified majority, any member of the company may request that the member having qualified majority purchase his shares. Due to his purchase obligation, the member having qualified majority shall purchase such shares at the market value prevailing at the time when the request was submitted, or at least at the value corresponding to the value the shares offered for sale represent in the equity of the company.

(3) Upon the termination without succession of a company, the owner having qualified majority shall, at the request of the creditors, be liable for the outstanding claims against the company if the termination without succession is due to the detrimental business policy of the owner having qualified majority. This provision shall not apply to companies being wound up.

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PART FOUR

COOPERATIVES

TITLE XVI

GENERAL PROVISIONS

Section 3:325 *[Concept and principal activities of cooperatives]*

(1) A cooperative is a legal person established upon capital consisting of the monetary or in-kind contributions of the members, operating on the principle of open membership and variable capital and with the objective of assisting its members in satisfying their economic and social needs, the obligation of its members toward the cooperative being the provision of monetary or in-kind contribution and personal assistance as specified in its articles of association. Members shall not be liable for the obligations of the cooperative.

(2) Cooperatives may engage in sales, purchasing, production and providing services.

Section 3:326 *[General provisions on members of cooperatives]*

(1) The number of members other than natural persons in a cooperative shall not exceed twenty per cent of the total membership; the number of legal person members operating as cooperatives shall not be counted in the number of members other than natural persons.

(2) The number of members of the cooperative refusing to undertake personal assistance shall not exceed one-quarter of the membership.

(3) The individual monetary or in-kind contributions provided by members in a cooperative shall not exceed fifteen per cent of the capital each; the monetary or in-kind contributions of the members other than natural persons shall not exceed one-third of the capital.

(4) Members shall not be recruited by public offer.

Section 3:327 *[General provisions on the operation of cooperatives]*

(1) If the pursuit of an economic activity is, by virtue of law, conditional on a permit issued by an authority, the cooperative may engage in or pursue that activity when in possession of that permit.

(2) Cooperative shall perform activities that are subject to qualifications only if there is at least one person among its personally assisting members, employees, or among the persons working for the benefit of the cooperative under a long-term civil law contract who meets the qualification requirements set out by law.

Section 3:328 *[Making juridical acts]*

(1) Juridical acts related to the cooperative shall be made in writing. This provision shall apply accordingly to the resolutions of the cooperative as well as to the communication of juridical acts and resolutions to the recipients.

(2) All mandatory juridical acts or acts relating to the cooperative shall be made or taken without delay.

(3) Written juridical acts sent by mail shall be deemed received by the recipient having his address in Hungary on the date indicated on the acknowledgement of receipt, and on the fifth working day following their dispatch if sent by registered mail, unless proven to the contrary.

(4) The juridical act relating to the cooperative may only be made or communicated by electronic communications equipment if the articles of association permit it and specifies its condition and the mode.

Section 3:329 *[Registration of cooperatives]*

(1) The court of registration shall be notified of the formation of a cooperative within thirty days from the date when the articles of association are drawn up in a notarial deed or countersigned by an attorney-at-law or a registered in-house legal counsel. If the establishment of a cooperative is conditional on a permit issued by an authority, the notification shall be made within fifteen days from the receipt of the permit having administrative finality.

(2) The provisions on companies under registration shall apply accordingly to cooperatives.

(3)

Section 3:330 *[Arbitration]*

(1) The articles of association or an agreement between the parties involved in the legal dispute may prescribe that legal disputes related to cooperatives are to be settled in arbitral proceedings.

(2) The following shall qualify as legal disputes related to cooperatives:

a) disputes between the cooperative and its members or former members in connection with the cooperative membership, including the initiation of a judicial review of the resolutions adopted by the bodies of the cooperative;

b) disputes between the members relating to the articles of association or the operation of the cooperative; and

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c) disputes between the cooperative and its executive officers or supervisory board members in connection with their office held.

Section 3:331 *[Instrument of incorporation of cooperatives]*

(1) The instrument of incorporation of a cooperative shall be the articles of association. The concordant declaration of intent of at least seven persons shall be required for the adoption of the articles of association.

(2) The adopted articles of association shall be signed by all founding members. The articles of association may be signed on behalf of the member by his representative holding an authorisation drawn up in a public deed or a private deed of full probative value.

(3) The articles of association shall be drawn up in a notarial deed or in a private deed countersigned by an attorney-at-law or the registered in-house legal counsel of a founder. This provision shall apply to amendments of the articles of association and to amendments included in the minutes as well, with the proviso that they may be countersigned by the registered in-house legal counsel of the member or of the cooperative.

(4) In addition to the common mandatory elements, the articles of association of the cooperative shall specify

a) the amount of monetary or in-kind contribution to be provided by each member;

b) potential modes of personal assistance by the members;

c) the definition of economic cooperation between the cooperative and its members;

d) regulations on the community fund;

e) the forms of services to be provided to natural person members and their relatives, as well as the conditions and procedures for granting these services;

f) the bodies of the cooperative and their competences;

g) the grounds for exclusion of executive officers and members, and the causes of conflict of interests; and

h) the mode of convening general meetings and the conditions for and method of exercising voting rights.

(5) The amount of the monetary or in-kind contribution to be provided by each member to the cooperative, as one common mandatory content element, shall be specified in the articles of association upon foundation.

Section 3:332 *[Monetary or in-kind contributions of members]*

(1) In-kind contributions may also be made in the form of receivables if the debt is acknowledged by the debtor or is based on a final and binding court decision. The commitment of a member to perform work, provide personal assistance or provide services shall not qualify as in-kind contribution.

(2) Members shall be required to make at least thirty per cent of their monetary contributions and all their in-kind contributions available before the application for registration is filed. Members of the cooperative not undertaking personal assistance in the operation of the cooperative shall make their monetary contributions available in full before the application for registration is filed.

(3) Members shall be required to provide their monetary contributions not provided before filing their application for registration within one year from the date of registration.

(4) Members may transfer, in part or in full, their quota made up of rights and obligations in the cooperative to other members or to third parties wishing to join the cooperative. The contract on transfer shall be drawn up in writing.

Section 3:333 *[Failure to provide a monetary or in-kind contribution]*

(1) If a member fails to provide the monetary or in-kind contribution undertaken in the articles of association or in the application for admission by the prescribed date, the management shall call upon him to perform his obligation within thirty days, indicating the legal consequences of non-compliance.

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(2) The membership of the member failing to provide the monetary or in-kind contribution within the time limit of thirty days shall terminate on the day following the expiry of this time limit. The management shall notify the former member of the termination of his membership. The former member shall be liable for the damage caused to the cooperative by his failure to make the monetary or in-kind contribution according to the provisions on liability for damage caused by breach of contract.

(3) Any provision of the articles of association that prescribes more lenient consequences against members failing to make monetary or in-kind contributions than those provided by this Act shall be null and void.

Section 3:334 *[Community fund]*

(1) The assets placed by the general meeting in the community fund to provide benefits to members and their relatives shall not be distributed among members.

(2) Upon the transformation into a company or termination without succession of the cooperative and after the settlement of the creditor claims, the community fund shall be transferred to an organisation specified by the articles of association.

(3) Services provided on the account of the community fund shall not qualify as share from the profits and shall not be counted in the settlement upon the termination of membership.

TITLE XVII

ORGANISATION OF COOPERATIVES

Chapter XLI

The general meeting

Section 3:335 *[Powers of the general meeting]*

(1) The decision-making body of the cooperative shall be the general meeting made up of all the members.

(2) The powers of the general meeting shall include the power to

a) amend the articles of association;

b) elect and recall executive officers and supervisory board members, establish their remuneration;

c) elect and recall the auditor and establish his remuneration;

d) qualify certain parts of the cooperative assets as community fund, and decide on the general principles for the utilisation of the community fund;

e) approve the account, decide on the use of taxed profits;

f) decide on the merger or division of the cooperative, transformation into a company or termination without succession;

g) decide on filing for bankruptcy and approving a composition with creditors;

h) decide on initiating the winding-up of the cooperative and on approving a composition agreement reached during the liquidation proceedings;

i) decide on ordering additional monetary contributions.

Section 3:336 [Convocation and agenda of the general meeting]

(1) The general meeting shall be convened at least once a year. Provisions of the articles of association providing for less frequent sessions shall be null and void.

(2) In addition to the common mandatory elements, the invitation to the general meeting shall contain

a) an indication whether a meeting of the assembly of delegates or a section meeting is to be held; and

b) the date and place of the reconvened general meeting because of the absence of a quorum, as well as a warning on the different rules on quorum.

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(3) The board of directors shall, at the request of the members, provide information on the items on the agenda of the general meeting.

(4) Proposed items shall be included in the agenda upon the written initiative of at least ten per cent of all members. The request shall be submitted to the board of directors at least eight days prior to the scheduled date of the general meeting. The amended agenda shall be sent to members at least three days before the scheduled date of the general meeting.

(5) Any resolution adopted at an improperly convened or held general meeting that is therefore invalid shall become valid retroactively to the date when it was adopted if unanimously declared valid by all members within thirty days of the date of the general meeting.

Section 3:337*[Members' rights at general meetings]*

(1) Members may make proposals related to items on the agenda and to exercise their voting rights. Irrespective of his monetary or in-kind contribution, each member shall have one vote at the general meeting.

(2) Members in default with the provision of their prescribed monetary or in-kind contributions due shall not exercise their voting rights.

(3) Members may exercise their membership rights through representatives. The chair or a member of the board of directors or supervisory board or the auditor shall not serve as a representative. Authorisation shall only be valid if drawn up in a public deed or a private deed of full probative value. One representative may represent several members at the general meeting, with the maximum number of members represented not exceeding ten per cent of all members of the cooperative.

Section 3:338 *[Quorum, decision-making]*

(1) If the general meeting fails to have a quorum, the reconvened general meeting shall have a quorum in respect of the items of the original agenda, irrespective of the number of members present, if the reconvened meeting is scheduled for a date between three and fifteen days from the original date. Any provision of the articles of association setting a shorter time limit for convocation than three days shall be null and void.

(2) The amendment of the articles of association shall require the affirmative votes of two-thirds of the members present and half of all members.

(3) The resolution on the merger, division, transformation into a company or termination without succession of a cooperative shall require the affirmative votes of at least two-thirds of all the members.

(4) The general meeting shall adopt its resolutions by open vote and adopt its decisions on the election and dismissal of executive officers and members of the supervisory board by a secret ballot.

Section 3:339 *[Reconvened, adjourned general meetings]*

(1) The reconvened general meeting may adopt resolutions on the items of the original agenda.

(2) If so indicated in the invitation, the general meeting may resolve to adjourn the general meeting with respect to certain items on the agenda to be continued at a later date. No other items shall be put on the agenda of such general meetings held.

Section 3:340 *[Minutes]*

(1) The management shall ensure that minutes are taken at general meetings. The minutes shall indicate the place and date of the general meeting, the persons present, the significant events occurred, the statements made and the resolutions adopted in the meeting, the number of votes for and against the resolutions, and the persons abstaining from or not taking part in the vote.

(2) The attendance sheet and the authorisation given for representation shall be annexed to the minutes.

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(3) The minutes shall be signed by the presiding chair, the keeper of the minutes and the two cooperative members appointed to authenticate the minutes.

(4) All members shall have access to the minutes and may request, at their own expense, extracts or copies of the minutes from the board of directors.

Section 3:341 *[Section meetings]*

(1) In the event that the articles of association provides for section meetings to be held instead of general meetings, the districts of section meetings and the venues of section meetings shall be specified in the articles of association.

(2) Section meetings shall be held with identical agenda; the board of directors shall establish the decisions of the general meeting by adding up the votes cast at section meetings.

(3) The resolutions adopted by section meetings shall be communicated to the members within fifteen days from the count of votes.

(4) Other aspects of section meetings shall be governed by the rules on general meetings.

Section 3:342 *[Assembly of delegates]*

(1) If the articles of association provide for the operation of an assembly of delegates, it shall also specify the number of delegates required in proportion to the number of members, the procedure for their election and their term of office.

(2) If section meetings are to be held systematically, the delegates to the meetings of the assembly of delegates shall be elected for each section meeting individually.

(3) Members of the cooperative who are not delegated may attend the meeting of the assembly of delegates in an advisory capacity.

(4) In other matters, the provisions on general meetings shall apply to the powers and procedures of the assembly of delegates, except that the quorum of assemblies of delegates and that of reconvened assemblies of delegates shall require at least two-thirds of all delegates.

Chapter XLII

Management of cooperatives

Section 3:343 *[Board of directors]*

(1) Cooperatives shall be managed by a board of directors made up of three members. Provisions of the articles of association prescribing the formation of a board of directors with fewer than three members shall be null and void.

(2) The chair and the members of the board of directors shall be elected by the general meeting for a term of five years, or if the cooperative is established for a shorter period, for that term.

Section 3:344 *[Operation of the board of directors]*

(1) The board of directors shall exercise its rights and perform its duties as a body.

(2) The board of directors shall have a quorum if at least two-thirds of its members are present. The board of directors shall adopt its resolutions by a simple majority of the members present. Any provision of the articles of association requiring a lower voting proportion shall be null and void. The meetings of the board of directors shall be convened by the chair or a member of the board of directors appointed by him. The board of directors shall establish its own rules of procedure.

(3) The powers of the board of directors shall include all the matters that do not fall within the powers of the general meeting or supervisory board under the law or the articles of association.

(4) The board of directors shall ensure the convening of the general meeting, inclusive of the preparation and implementation of its resolutions.

(5) The board of directors shall prepare a report on the management, the financial situation and the business policy of the cooperative at least once a year for the general meeting, and at

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least once every three months for the supervisory board. Any provision of the articles of association providing for less frequent reporting shall be null and void.

Section 3:345 *[Director of operations]*

The articles of association of cooperatives with less than fifteen members may establish the office of a director of operations instead of the board of directors, acting in the competence of the board of directors.

Section 3:346 *[Executive officers of cooperatives, grounds for exclusion and the reasons for conflicts of interests]*

(1) Executive officers of cooperatives shall be the chair and the members of the board of directors or the director of operations.

(2) Executive officers of cooperatives shall be elected from among the members of the cooperative. The legal person member of the cooperative shall appoint a natural person to perform management on its behalf.

(3) Apart from the grounds for exclusion applicable to the executive officers of legal persons, a close relative or cohabitant of an executive officer or supervisory board member of the cooperative shall not serve as executive officer of that cooperative.

(4) Except for the shares of public companies limited by shares, executive officers of cooperatives shall not acquire share in the capital of cooperatives or companies engaged in a similar economic activity, as main activity to that of the cooperative in which they hold an executive office. An executive officer accepting a mandate for a new executive office shall notify, within fifteen days from accepting the new office, the cooperatives and companies in which he already serves as an executive officer or supervisory board member.

(5) With the exception of transactions covering common everyday needs, executive officers and their relatives shall not be entitled to conclude, in their own name and on their own behalf, any transactions falling within the scope of the main activity of the cooperative.

(6) Within one year from the occurrence of the damage, the cooperative may enforce its claim for compensation for any damage caused by an executive officer by infringing the rules on conflict of interests.

Section 3:347 *[Acts of executive officers]*

(1) Executive officers shall manage the operations of cooperatives autonomously, complying with the overriding priority of the interests of the cooperative. In this capacity, the executive officer shall be bound by the law, the articles of association and the resolutions of the general meeting. Executive officers shall not be instructed by the members of the cooperative and the general meeting shall not relieve him of his powers.

(2) After the termination without succession of the cooperative, those who were members at the time of deleting the cooperative from the register ma enforce their claim for damages with respect to any damage caused to the cooperative by the executive officers acting in that capacity within a term of preclusion of one year from the deletion. Members may assert their claim for damages in proportion to their rightful share of the assets distributed upon termination of the cooperative.

(3) In the event of a cooperative terminating without succession, creditors may bring action for damages up to the amount of their outstanding claims against the executive officer of the cooperative according to the rules on extra-contractual liability if the executive officer concerned failed to take the interests of the creditors into account when a condition threatening to cause insolvency in the cooperative emerged. This provision shall not apply to termination by winding up.

Section 3:348 *[Termination of the mandate of executive officers]*

Apart from the grounds for termination of the mandate of executive officers set out under the general rules on legal persons, the mandate of the executive officer of a cooperative shall also terminate upon the termination of his membership.

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Chapter XLIII

Supervisory board

Section 3:349 *[Supervisory board]*

(1) The supervisory board of a cooperative shall be made up of three members. Provisions of the articles of association prescribing the forming of a supervisory board of fewer than three members shall be null and void.

(2) Supervisory board members shall be elected for a term of five years, or if the cooperative was established for a shorter term, for that term.

(3) The rules on agency contracts shall apply accordingly to the contracts of supervisory board members.

Section 3:350 *[Operation of the supervisory board]*

(1) The supervisory board shall have a quorum if at least two-thirds of its members are present.

(2) Meetings of the supervisory board shall be convened by the chair.

(3) The supervisory board shall establish its own rules of procedure.

(4) The supervisory board shall give account of its activities to the general meeting at least once a year. Provisions of the articles of association prescribing less frequent reporting shall be null and void.

Chapter XLIV

The auditor

Section 3:351 *[Responsibilities of the auditor]*

(1) The auditor shall be responsible for conducting audits according to the applicable rules and, based on such audits, presenting his opinion in an independent auditor's report on whether the accounts of the cooperative comply with the law and whether they provide a true and fair view of the assets and liabilities, financial status and income situation, as well as of the economic performance of the cooperative.

(2) The auditor of the cooperative shall be an individual auditor or an auditing organisation registered in the register of auditors. If auditing services are provided by an organisation, it shall designate the person performing the audits personally.

(3) No member, executive officer or supervisory board member of the cooperative, or their relatives shall serve as the auditor of the cooperative. No employee of the cooperative shall serve as an auditor of the cooperative during and three years after his employment.

Section 3:352 *[Commencement and term of the mandate of auditors]*

(1) The first auditor of the cooperative shall be designated in the articles of association; subsequent auditors shall be elected by the general meeting. Under the conditions and with the remuneration specified by the general meeting, the contract shall be concluded between the auditor and the management within ninety days from the date of designation or election. The general meeting shall elect a new auditor if the contract is not concluded within this time limit.

(2) The term of office of the auditor shall be five years or, if the cooperative is established for a shorter term, that period. The term of office of the auditor shall not be shorter than the period between his election by the general meeting and the meeting of the general meeting approving the next accounts; any provision of the articles of association derogating from this shall be null and void.

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Section 3:353 *[Performing the duties of the auditor]*

(1) The auditor shall not provide any such service to the cooperative, nor shall he cooperate with the management in a way that jeopardises the independent and objective performance of his auditing duties.

(2) The auditor shall keep all secrets of the cooperative confidential.

(3) The auditor shall be invited to participate in the meeting of the general meeting discussing the accounts of the cooperative. The auditor shall be obliged to attend this meeting; however, his absence shall not prevent the meeting from being held. The general meeting shall not decide on the accounts without hearing the auditor's opinion.

(4) The auditor may attend the meetings of the management and, if the cooperative has a supervisory board, those of the supervisory board, in an advisory capacity, and, if so requested by the supervisory board, he shall attend its meeting. The supervisory board shall put the items proposed by the auditor for discussion on the agenda.

TITLE XVIII

MEMBERSHIP OF COOPERATIVES

Section 3:354 *[Creation of membership]*

(1) Membership of a cooperative shall commence upon the foundation of the cooperative or upon admission following application.

(2) In his application for admission, the applicant shall make a statement on acknowledging the terms of the articles of association and on the amount of monetary or in-kind contribution undertaken. The applicant undertaking to provide personal assistance shall specify in detail the content of such assistance in his application.

(3) The rules on the foundation of cooperatives shall apply to the provision of monetary or in-kind contributions, with the proviso that the submission of the application for registration and registration shall be understood as the date of member admission.

(4) A persons wishing to join the cooperative as a member shall not be required to provide monetary or in-kind contribution to the extent that another member transfers his share in the cooperative or a portion of it to that person.

Section 3:355 *[Register of members]*

Cooperatives shall keep a register of their members containing the member's name and address, or the seat for a member other than a natural person, the amount of the member's monetary or in-kind contribution, and the date of commencement and termination of membership. The register shall be accessible to everyone who proves his legal interest.

Section 3:356 *[Fundamental rights of members]*

(1) Members shall have equal rights regarding the operation and supervision of the cooperative, regardless of the amount of their monetary or in-kind contributions.

(2) The profits of a cooperative may be distributed among its members. Half of the profits of the cooperative shall be distributed among members in proportion to their personal assistance; any provision of the articles of association providing for a lower part of the profit to be distributed in proportion to personal assistance shall be null and void.

Section 3:357 *[Additional monetary contributions]*

(1) If the articles of association authorise the general meeting to prescribe additional monetary contribution to cover losses of the cooperative, members may be required to pay an additional monetary contribution once a year at most, and in proportion to their monetary or in-kind contribution, with the proviso that the individual amounts of additional monetary contributions shall not exceed thirty per cent of the member's monetary or in-kind contribution.

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(2) Additional monetary contributions not required for covering the losses shall be refunded to the members, but only after their full monetary or in-kind contributions undertaken have been paid.

(3) The rules on default on monetary or in-kind contributions shall apply accordingly to the default on providing additional monetary contributions.

Section 3:358 *[Termination of membership]*

Membership shall terminate

a) upon the member leaving the cooperative;

b) if the member failed to fulfil his obligation to make a monetary or in-kind contribution or additional monetary contribution within the time limit set in the articles of association or resolution of the general meeting;

c) upon the member's death or termination;

d) upon the member being excluded by court;

e) upon the cooperative being terminated through transformation, merger, division or without succession.

Section 3:359 *[Members leaving the cooperative]*

The board of directors shall be notified in writing of the intention to leave. Membership shall be terminated after three months from the date of the notification; provisions of the articles of association providing for a time limit longer than three months shall be null and void in respect of the part exceeding the three-month period.

Section 3:360 *[Exclusion of members]*

(1) A member of a cooperative may be excluded from the cooperative by a court decision based on an action brought by the cooperative against the member concerned if his remaining in the cooperative jeopardised the objectives of the cooperative. Membership shall terminate upon the member's exclusion.

(2) For a procedure for the exclusion of a member to be initiated, a resolution indicating the reasons for exclusion must be adopted by the general meeting by a majority of at least three-quarters of all members. The member concerned shall not have a vote on that issue.

(3) The action, indicating the reasons of exclusion, shall be brought within a term of preclusion of fifteen days from the date of the general meeting's resolution.

(4) If requested so, the court may suspend the membership rights of the member concerned until the final and binding decision of the court is delivered if the exercise of the membership rights would seriously harm the interests of the cooperative. Suspension shall not affect the member's claim to a share in the profit.

(5) Under the suspension of membership rights, the articles of association shall not be amended, no exclusion of another member shall be initiated and no resolution on the transformation, merger, division or termination without succession of the cooperative shall be adopted.

Section 3:361 *[Financial settlement upon the termination of membership]*

(1) Upon the termination of his membership, the member or his legal successor shall be entitled to the amount of his monetary or in-kind contribution, as well as to an amount equal to that accrued in the equity during his membership, decreased by the proportionate amount of fixed reserves, unless such amount has been used to cover losses. Such an amount shall be disbursed within three months from the termination of membership; provisions of the articles of association providing for a time limit of over three months shall be null and void in respect of the part exceeding eight years.

(2) At the request of the member whose membership terminated, all the assets he provided to the cooperative for common use shall be returned to the member or his legal successor not joining the cooperative as a member, provided that the particular assets are still available to the cooperative. The assets shall be returned simultaneously with the financial settlement

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referred to in paragraph (1). If the asset provided for common use is no longer in the possession of the cooperative due to normal wear and tear, the cooperative shall not be liable to pay consideration for it. In the event that the asset is being used on after the termination of membership, a fee shall be paid to the former member or his legal successor not joining the cooperative as a member until the asset is returned.

TITLE XIX

PROTECTION OF MINORITY STAKEHOLDERS

Section 3:362 *[Initiating the convocation of the general meeting]*

(1) The member or members of a cooperative holding jointly at least five per cent of the voting rights may, at any time, request that a general meeting be convened, indicating the reason for it and its purpose, or that the general meeting take a decision without holding a meeting. If the management fails to convene the general meeting at the earliest possible date within eight days of receiving the request, or fails to initiate decision-making without holding a meeting, the court of registration shall, at the request of the members filing the motion, convene the general meeting or empower the members requesting the meeting to convene it, or to make decisions without holding a meeting.

(2) The members requesting the meeting shall advance its expected costs. The general meeting shall decide, at the meeting convened at the request of minority stakeholders or without holding a meeting, whether the costs incurred should be borne by the cooperative or the parties requesting the meeting.

Section 3:363 *[Initiating ad hoc audits]*

(1) If the general meeting rejects or does not put to vote the proposal according to which an auditor specifically entrusted with this task should audit the last accounts or a certain economic event or commitment of the past two years in connection with the activities of the management, such an audit shall be ordered and the auditor shall be appointed at the expense of the cooperative by the court of registration, at the request of any member or members holding at least five per cent of the votes submitted within a term of preclusion of thirty days calculated from the date of the meeting of the general meeting.

(2) The court of registration shall refuse to grant the request if the members making the request would abuse their rights as minority shareholders.

(3) The auditor of the cooperative shall not be entrusted with this audit.

(4) The costs of the audit shall be advanced and borne by the cooperative. The cooperative may pass on the costs to the member if the request for the audit was obviously unfounded.

Section 3:364 *[Initiating the enforcement of claims]*

If the general meeting rejects or does not put to vote the proposal to enforce a claim of the cooperative against a member, executive officer, supervisory board member or the auditor, the claim may be enforced on behalf and to the benefit of the cooperative by the members holding at least five per cent of the votes of the cooperative, within a term of preclusion of thirty days following the general meeting.

Section 3:365 *[Prohibition of derogation]*

Provisions of the articles of association derogating from the provisions of this Title to the detriment of minority stakeholders shall be null and void.

TITLE XX

TRANSFORMATION, MERGER AND DIVISION OF COOPERATIVES

Section 3:366 *[Transformation, merger and division of cooperatives]*

(1) Transformation, merger and division may be initiated by at least ten per cent of the members or by the board of directors.

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(2) Upon transformation, merger and division, members leaving the cooperative shall be liable, within a term of preclusion of five years, for the obligations of the cooperative incurred before the termination of their membership and not covered by the legal successor, up to the extent of their share in the assets of the cooperative on its termination.

(3) A cooperative may transform into a limited liability company or a company limited by shares.

(4) The company limited by shares created through the transformation of a cooperative may only be established privately, with the proviso that the shares may be offered exclusively to the members of the cooperative undergoing transformation and the owners of its business shares. Offering the shares in the course of transformation in a way that qualifies as an offer to the public shall not constitute a violation of a restriction under this Act relating to the offering of shares of a private company limited by shares.

TITLE XXI

TERMINATION OF COOPERATIVES

Section 3:367 *[Termination of cooperatives]*

In addition to the general cases of the termination without succession of legal persons, a cooperative shall terminate without succession if the number of its members falls under seven and the cooperative does not file for the registration of an adequate number of new members at the court of registration within a term of preclusion of six months following that date.

PART FIVE

GROUPINGS

Section 3:368 *[Concept of groupings]*

(1) A grouping shall be a company with legal personality having the character of cooperation founded by its members with the aim of improving the effectiveness of their management, coordinating their economic operations and representing their professional interests. A grouping shall not operate primarily for its own profit; its members shall have unlimited, joint and several liability for debts exceeding the assets of the grouping.

(2) A grouping may engage in services and joint economic activities (supplementary economic activities) supporting the implementation of its coordination duties.

(3) With the exceptions set out in this Part, the common rules on companies shall apply accordingly to groupings.

Section 3:369 *[Memorandum of association of groupings]*

(1) In addition to the common mandatory content elements of instruments of incorporation, the memorandum of association of a grouping shall specify

a) the tasks for facilitating and coordinating the business activities of members, and the related activities to represent professional interests

b) the division of operating costs among members, the individual amounts payable by members and how payments shall be settled;

c) the conditions for disbursing the share of members from the assets upon their leaving;

d) the procedural rules for distributing the remaining assets after the termination of the grouping.

(2) If so required, the memorandum of association shall also provide for

a) supplementary economic activities;

b) the amount of assets of the grouping necessary for conducting supplementary economic activities;

c) the number of the voting rights of the individual members and the mode of exercising their voting rights within the scope of supplementary economic activities;

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d) the rules on the separate records kept on the income from, and the costs and expenses of supplementary economic activities, and the allocation of after-tax profits from supplementary economic activities according to these records;

e) the conditions on members contributing other services representing pecuniary value (hereinafter "secondary services").

Section 3:370 *[Pecuniary matters between the company and its members]*

(1) Members shall be entitled to the services provided by the grouping without consideration; they shall be entitled to a share in after-tax profits from economic activities provided to third parties.

(2) Members providing secondary services may be entitled to remuneration.

(3) After-tax profits from economic activities shall be distributed among members in proportion to their monetary or in-kind contributions; other profits shall be distributed among members in equal shares.

Section 3:371 *[Members' meeting]*

(1) The decision-making body of groupings shall be the members' meeting. The director, supervisory board member or auditor shall not represent the member at the members' meeting.

(2) Members' meetings shall convene as appropriate but at least once every year. Provisions of the articles of association prescribing less frequent sessions shall be null and void.

(3) The members' meeting shall have a quorum if members representing at least three-quarters of the votes are present.

Section 3:372 *[Powers of the members' meeting; rules on decision-making]*

(1) The exclusive powers of the members' meeting shall include the power to

a) establish the policy for managing and inspecting the internal organisation of the grouping;

b) determine the strategy for coordination, interest representation and supplementary economic activities;

c) approve the accounts of the grouping;

d) decide on the allocation of after-tax profits arisen from supplementary economic activities;

e) adopt a resolution on tasks to be implemented by the individual members' own business operations;

f) decide on termination without succession, transformation, merger or division of the grouping;

g) approve member admission and approve limitations on the liability of joining members;

h) elect and dismiss directors and exercise employer's rights over them;

i) elect the supervisory board, if applicable, recall its members and determine their remuneration;

j) appoint the auditor, if applicable, dismiss him and determine his remuneration;

k) amend the memorandum of association;

l) initiate the exclusion of a member;

m) decide on the conclusion or amendment of contracts of a value exceeding the limit specified in the memorandum of association, or contracts to be concluded between the grouping and its member outside its ordinary activities;

n) decide on all matters falling within the powers of the members' meeting under this Act or the memorandum of association.

(2) Within the scope of coordination and interest representation each member shall have one vote. The memorandum of association may grant extra voting rights to certain members, with the restriction that no single member shall be allowed to acquire more than fifty per cent of the votes.

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(3) Within the scope of supplementary economic activities, as well as in the matters listed under paragraph (1) *f)* to *g)* and *l)* to *m)*, voting rights shall be established in proportion to the monetary or in-kind contributions provided, or failing this, in equal share.

(4) A unanimous resolution of the members shall be required for

a) modifying the activity of the grouping;

b) amending the number of votes of the individual members;

c) amending the conditions for adopting resolutions.

(5) Resolutions on the termination without succession, transformation, merger or division of the grouping, on the approval of admission of new members, initiation of the exclusion of members and amendment of the memorandum of association for any other reason not regulated in paragraph (3) shall require a majority of at least three-quarters of the votes.

(6) Resolutions on duties to be implemented by the individual members' own business operations shall require a majority of at least three-quarters of the votes. Such a resolution shall only be adopted with the consent of the member concerned.

Section 3:373 *[Management and representation of groupings]*

(1) A grouping shall be managed and represented by the director, acting within the scope of the resolutions of the members' meeting.

(2) For managing the grouping, the memorandum of association may allow the formation of a board of directors made up of three members. In such a case, the members of the board of directors shall qualify as directors. The resolution on the election, term of office, remuneration and eventual recall of the members of the board of directors, as well as on the approval of the rules of procedure of the board of directors, shall be adopted by the members' meeting.

Section 3:374 *[Registering a grouping]*

(1) Anyone may join a grouping under the conditions set out in their memorandum of association.

(2) The members' meetings shall decide on admission and may establish the date of admission, the obligations related to it and the volume of voting rights of the joining member within the scope of supplementary economic activities.

(3) Unless previously exempted by the resolution approving his admission, the joining member shall be liable for the debts of the grouping that arose prior to his admission.

(4) The fact and date of admission as well as the eventual exemption from liability shall be entered in the register, the exemption becoming effective against third parties from registration.

Section 3:375 *[Termination of membership]*

(1) Membership shall terminate

a) if the member, despite having been called upon to do so, fails to provide his monetary or in-kind contribution specified in the memorandum of association within a time limit not shorter than fifteen days;

b) upon the member's leaving the grouping;

c) upon the exclusion of the member;

d) upon the death or termination without succession of the member;

e) if its continuation is against the law;

f) upon the transfer of membership rights.

(2) The rules on admission shall apply accordingly to the transfer of membership rights.

(3) Members may leave the grouping with year-end effect. Notice of intention to leave shall be given at least three months before the end of the year.

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Section 3:376 *[Rules on financial settlement with leaving members]*

(1) Financial settlement with leaving members shall be carried out in accordance with the conditions prevailing at the date of their leaving. The members' meeting shall specify the date and the instalments in which the share of assets due to the exiting member will be disbursed. The date of disbursement shall be set in such a manner that it does not jeopardise the continuous operation of the grouping; however, the disbursement shall be completed within one year.

(2) If the disbursement does not take place upon the member's leaving, the member shall be entitled to a proportionate share of the after-tax profits, if allocated, in proportion to his assets to be disbursed.

(3) Upon the termination or death of the member, the rules under paragraphs (1) to (2) shall apply accordingly to the financial settlement with the legal successor or heir of the member. The legal successor or heir intending to pursue the activity of the member may join the grouping, subject to the consent of the members' meeting. In such a case, the new member continuing the membership shall be liable for the debts that arose prior to the termination of the membership of the legal predecessor.

Section 3:377*[Distribution of assets upon termination of groupings]*

In the event of a grouping being terminated without succession, the assets remaining after the satisfaction of debts shall be distributed in equal shares or, if members provided monetary or in-kind contributions, the remaining assets shall be distributed to them in proportion to their monetary or in-kind contributions.

PART SIX

FOUNDATIONS

TITLE XXII

CONCEPT, ESTABLISHMENT AND ASSETS OF FOUNDATIONS

Section 3:378 *[Concept of foundations]*

Foundations are legal persons established by the founders for the purpose of the continuous implementation of the long-term objectives set out in the deeds of foundation. In the deed of foundation, the founders shall specify the funds made available to the foundation and the organisation of the foundation.

Section 3:379 *[Operational limitations of foundations]*

(1) Foundations shall not be established for the purpose of pursuing economic activities.

(2) Foundations shall only be authorised to engage in economic activities that are directly related to the implementation of their objectives.

(3) Foundations shall not assume unlimited liability membership in another legal entity, shall not establish foundations themselves and shall not join another foundation.

(4) Unless otherwise provided in this Act, no foundation shall be established to the benefit of its founder, joining member, officer, member of a foundation organ, or their relatives. Contractual remuneration of the officers of a foundation shall be without prejudice to this provision.

Section 3:380 *[Foundations established by several founders]*

(1) Foundations may be established jointly by several founders.

(2) Founder's rights of foundation established by several founders shall be exercised by the founders jointly.

Section 3:381 *[Withdrawal of a juridical act on establishing a foundation]*

The founder may withdraw his juridical act on the establishment of a foundation before the registration of the foundation becomes final and binding.

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Section 3:382 *[Providing monetary or in-kind contributions]*

(1) The founder shall provide the contributions required for the implementation of the objectives of the foundation and undertaken in the deed of foundation.

(2) The founder shall transfer to the foundation at least the assets that are needed to commence operations before the application for registration is filed.

(3) Within one year after the registration of the foundation, the founder shall transfer the allocated assets in full to the foundation.

(4) If the founder does not transfer, within the time limit set in the deed of foundation, the allocated assets to the foundation in full, the board of trustees shall call upon him to perform his obligation within an adequate time limit. After the expiry of the time limit with no result, upon the notification of the board of trustees, the court of registration shall suspend the exercise of the rights of the founder. During the period of suspension, the founder's rights shall be exercised by the court of registration.

(5) The suspension of founder's rights shall not relieve the founder of his obligations undertaken in the deed of foundation.

Section 3:383 *[Joining a foundation]*

(1) New members shall join registered foundations by providing monetary or in-kind contribution, subject to the conditions set out in the deed of foundation.

(2) Joining members entitled to exercise founder's rights under the deed of foundation shall, after joining the foundation, exercise such rights jointly with other members having similar rights.

Section 3:384 *[Management and protection of the assets of the foundation]*

(1) Foundations shall manage and use their assets in accordance with their objective, as provided in the deed of foundation.

(2) Founders or joining members shall not relieve the foundation of its assets and shall not claim that such assets be returned to them; provisions of the deed of foundation to the contrary shall be null and void. This provision shall apply accordingly to the legal successors of the founder and joining members.

Section 3:385 *[Beneficiaries]*

Within the scope of the objective of the foundation, the assets of the foundation shall be used to provide services of pecuniary value to benefit the parties designated as beneficiaries in the deed of foundation or, in the absence of such provision of the deed of foundation, by the appropriate organ of the foundation.

Section 3:386 *[Founders and their relatives as beneficiaries]*

(1) The founder and the joining member may only be beneficiaries if the objective of the foundation is to administer the founder's scientific, literary and artistic works.

(2) The relative of the founder and joining member may only be beneficiary if the objective of the foundation is to administer the scientific, literary and artistic works of the relative, or to care for, nurse or maintain the relative, to cover his medical expenses, or to support his education by means of scholarship or otherwise.

Section 3:387 *[Exceptional cases when the beneficiary may have claims against the foundation]*

The designated beneficiary shall not be entitled to raise claims against the foundation unless

a) the deed of foundation identifies the beneficiary, specifies the services the beneficiary is entitled to and the date of performance in a manner required for the performance; or

b) the board of trustees has decided to provide benefits to the beneficiary, communicated this decision to the beneficiary, and the beneficiary has accepted the conditions of receiving benefits.

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TITLE XXIII

ESTABLISHING FOUNDATIONS BY MEANS OF TESTAMENTARY DISPOSITION

Section 3:388 *[Establishing foundations by means of testamentary disposition]*

(1) A foundation may be established by means of a written will or a contract of inheritance. In such a case, the testamentary disposition shall contain the content elements of a deed of foundation.

(2) In the case of foundations established by means of a written will or a contract of inheritance, a member of the board of trustees shall be responsible for filing the application for the registration of the foundation. If the members of the board of trustees fail to file for the registration of the foundation, a guardian *ad litem* appointed by the court of registration shall proceed in the matter.

(3) Foundations established by means of a written will or a contract of inheritance shall become effective upon registration, retroactively to the date of the founder's death.

(4) The party proceeding in the matter of registering the foundation may proceed in the matter of assets and shall take the measures required to protect such assets.

Section 3:389 *[Establishing a foundation by means of testamentary burden]*

(1) The testator may prescribe the establishment of a foundation by means of a testamentary burden. The testamentary burden shall specify the objective and assets of the foundation to be established, and designate the party entitled to demand the establishment of the foundation

(2) If, despite being called upon to do so, the party obliged fails to comply with the testamentary burden, the person entitled to demand that the foundation be established may request the court to substitute for the deed of foundation with its judgment and order the heir or the legatee to provide assets for the establishment of the foundation. Upon the court decision, the person entitled to demand the establishment of the foundation may request the court of registration to register the foundation.

Section 3:390 *[Frustration of establishing a foundation by means of testamentary disposition]*

(1) If the establishment of a foundation for a purpose of public interest provided for in a will or a contract of inheritance is frustrated, the testator's grant shall qualify as a testamentary burden in the public interest, and the assets designated for the foundation shall be administered in order to implement the objective of the foundation.

(2) If the establishment of a foundation other than one for a purpose of public interest provided for in a will or a contract of inheritance is frustrated, the assets thus affected shall form part of the estate.

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TITLE XXIV

DEED OF FOUNDATION

Section 3:391 *[Content elements of the deed of foundation]*

(1) In addition to the standard mandatory content elements of the instrument of incorporation of a legal person, the deed of foundation of a foundation shall determine

a) whether the foundation is established for a definite or indefinite term and if the foundation is established for a definite term, the definite term;

b) the rules of administering and utilising the assets of the foundation;

c) the rules on the commencement and termination of membership of the board of trustees, whether the membership is of definite or indefinite term, and if it is of definite term, its definite term, and the grounds for exclusion or conflicts of interest of members of the board of trustees, and

d) the rules for determining the remuneration of members of the board of trustees.

(2) If so required, the deed of foundation shall also determine
a) the delegation of founder's rights to a certain organ of the foundation;
b) the rules on the transfer of founder's rights;
c) the admission to join the foundation in exchange for a contribution of assets, the conditions thereof, and the founder's right and other rights to which the joining member is entitled;
d) the pursuit of economic activities and the framework of it;
e) the powers and rules of procedure of the organs of the foundation;
f) the formation and operational rules of the founders' meetings;
g) the formation and operational rules of organs of the foundation not provided in this Act, and the appointment, dismissal and remuneration of the members of such organs;
h) the detailed rules on the representation of the foundation, including the designation of the person entitled to exercise employer's rights over the employees of the foundation;
i) the category of eligible beneficiaries and beneficiaries specifically designated, as well as the services and rights to which the beneficiaries are entitled;
j) the person to whom the remaining assets of the foundation will be transferred in the event of the foundation's termination without succession.
(3) The founder may declare in the deed of foundation an organisational unit of the foundation to be a legal person.

Section 3:392 *[Interpretation of the deed of foundation]*
The deed of foundation shall be interpreted, with a view to the fulfilment of its objectives, in accordance with the intention of the founder.

Section 3:393 *[Amendment of the deed of foundation]*
(1) Amending the objectives of the foundation in the deed of foundation shall be null and void, except if the foundation has fulfilled its objective or fulfilling the objective has become impossible and the foundation has not sufficient assets to fulfil the new objectives.
(2) Amendments to the deed of foundation which are aimed at reducing the assets of the foundation or, if a new member joined the foundation, change the person designated as a beneficiary upon termination without succession shall be null and void.

TITLE XXV

EXERCISING FOUNDER'S RIGHTS

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Section 3:394 *[Exercising founder's rights in the absence of the founder]*
(1) Upon the death or termination without succession of the founder, or in the event that the founder permanently ceases to exercise founder's rights for any other reason, founder's rights shall be exercised by the person or organ of the foundation designated in the deed of foundation, or failing this, by the board of trustees.
(2) If the founder's right are exercised by a person other than the founder, the provisions of this Act on founders shall apply to the person exercising founder's rights.
(3) If one of the organs of the foundation is entitled to exercise founder's rights, the authorised organ of the foundation shall not be entitled to exercise founder's rights related to its own members, head or the persons supervising it.
(4) In the absence of persons or organs entitled to exercise founder's rights under paragraphs (1) to (3), founder's rights shall be exercised by the court of registration.

Section 3:395 *[Founders' meetings]*
(1) If several persons establish a foundation with the founder's right being exercised by them acting as a body, the rules on the general meeting of associations shall apply accordingly to the founders' meeting in matters not provided in the deed of foundation.

(2) Upon the founders' meeting exercising the founder's rights, the founder, whose whereabouts are unknown and who fails to exercise his founder's rights despite having been called upon to do so by means of a public notice, shall not be taken into account.

(3) The provisions under paragraph (2) shall apply accordingly when founder's rights are exercised by a designated organ of the foundation as a body.

Section 3:396 *[Transfer of the rights and obligations of founders]*

The founder may transfer founder's rights and obligations after providing the monetary or in-kind contribution undertaken in the deed of foundation.

TITLE XXVI

ORGANS OF FOUNDATIONS

Section 3:397 *[Board of trustees]*

(1) The board of trustees shall be the managing organ of the foundation. Members of the board of trustees shall be the executive officers of the foundation.

(2) The board shall be made up of three natural persons, at least two having permanent domicile in Hungary.

(3) Beneficiaries and their close relatives shall not be members of the board of trustees. Any provision of the deed of foundation derogating from this shall be null and void.

(4) The founder and his close relatives shall not have a majority on the board of trustees. Any provision of the deed of foundation derogating from this shall be null and void.

(5) The founder may appoint a sole trustee to act as a single-member managing body of the foundation. The rules on the board of trustees shall apply accordingly to the trustee.

Section 3:398 *[Rules on membership of the board of trustees]*

(1) Members of the board shall be elected for a definite or indefinite term.

(2) The person exercising founders' rights may revoke the mandate of any member of the board of trustees jeopardising the implementation of the objective of the foundation before the expiry of such member's mandate.

Section 3:399 *[Operation of the board of trustees]*

(1) The board of trustees shall elect a chair from among themselves unless the founder reserved such a right for himself or transferred this right to another officer or organ of the foundation.

(2) The board of trustees shall convene for a meeting convened by the chair at least once a year. Provisions of the deed of foundation prescribing less frequent meetings shall be null and void.

(3) Members of the board of trustees may request the convocation of the meeting of the board, indicating the purpose of and reasons for it. Upon such a request, the chair of the board of trustees shall convene the meeting within eight days from receipt of the request. If the chair of the board of trustees does not comply with that obligation, the requesting member may convene the meeting.

Section 3:400 *[Supervisory board]*

(1) The supervisory board operating in a foundation shall perform its activities on behalf of the founder and give account of its activities to the person exercising founder's rights every year.

(2) The rules on the exclusion and conflicts of interest applicable to members of the board of trustees shall apply accordingly to members of the supervisory board.

Section 3:401 *[Other organs of the foundation]*

Other organs established in the foundation shall not prejudice the rights of the board of trustees, supervisory board or auditor.

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TITLE XXVII

TRANSFORMATION AND TERMINATION OF FOUNDATIONS

Section 3:402 *[Transformation of foundations]*

(1) The foundation shall not be transformed into another legal person. The foundation may only merge with another foundation and may only be divided into foundations.

(2) The founder shall only be entitled to decide on the merger or division of the foundation if he has provided the assets specified in the deed of foundation.

(3) Merger and division shall not impair the assets of the foundation or jeopardise the objective of the foundation.

Section 3:403 *[Termination of foundations]*

(1) The foundation shall terminate if

a) the foundation has fulfilled its objective and the founder has set no new objective;

b) fulfilling the objective of the foundation is frustrated and its modification or the merger of the foundation with another foundation is not possible; or

c) the foundation has not pursued any activity to achieve its objective for three years.

(2) The founder may not terminate the foundation.

(3) Upon the occurrence of any of the grounds for termination, the board of trustees shall notify the person or body exercising founder's rights to take the necessary measures and shall communicate the occurrence of the ground for termination to the supervisory board and the auditor as well.

(4) If the person or body exercising founder's rights does not take substantive actions with respect to the ground for termination within thirty days, the board of trustees shall subsequently notify the court of registration of the reason for termination. The members of the board of trustees shall be jointly and severally liable against the foundation and third parties for the damage caused by delay in the performance of the notification obligation or by failing to comply with this obligation.

(5) The decision ordering the deletion of the foundation terminating without succession shall provide for the foundation's assets remaining after the satisfaction of the creditors' claims.

Section 3:404 *[Assets of the foundation terminating without succession]*

(1) If the foundation terminates without succession, the assets remaining after the satisfaction of the creditors' claims shall be allocated to the person designated in the deed of foundation, with the proviso that the assets due to the founder, joining member or other sponsor, or their relatives shall not exceed the assets provided by the founder, joining member or other sponsor to the foundation.

(2) When the foundation terminates without succession, the founder may transfer the assets provided by him to another foundation of association with identical or similar objective if the deed of foundation does not arrange for the assets for such event or complying with this provision is impossible.

(3) If the deed of foundation or the founder does not provide for the assets of the terminating foundation, or if the person designated by the deed of foundation, or the foundation or association designated by the founder does not accept or is not entitled to acquire such assets, the court of registration shall allocate the assets to an organisation designated by law.

(4)

PART SEVEN

PARTICIPATION OF THE STATE IN RELATIONS GOVERNED BY CIVIL LAW

Section 3:405 *[The capacity of the state to be subject of law]*

(1) The State shall act in relations governed by civil law in the capacity of a legal person.

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(2) In relations governed by civil law, the State shall be represented by the minister responsible for supervising state assets.

Section 3:406 *[Liability for the obligations of the state]*

The State and legal persons constituting part of general government shall remain liable for their obligations arising from relations governed by civil law even if there is no budgetary coverage available.

BOOK FOUR

FAMILY LAW

PART ONE

FUNDAMENTAL PRINCIPLES

Section 4:1 *[Protection of marriage and family]*

(1) The law protects marriage and family.

(2) In the course of applying this Act, the alignment of family and individual interests shall be ensured.

Section 4:2 *[Protection of the interests of the child]*

(1) In legal relationships concerning the family, the interests and rights of the child shall be granted increased protection.

(2) The child shall have the right to be brought up in his own family.

(3) If the child cannot be brought up in his own family, it shall be ensured that the child grow up in a family environment and keep his own earlier family relationships if possible.

(4) The child's right to be brought up in his own family or in a family environment and his right to maintain his earlier family relationships may only be restricted in cases set out by an Act, exceptionally and in the interests of the child.

Section 4:3 *[Principle of equality between spouses]*

Spouses shall be equal in matters of married life and the family; their rights and obligations shall be equal.

Section 4:4 *[Principle of equity and protection of the weaker party]*

Legal relationships concerning the family shall be settled in an equitable manner and by taking the protection of the party weaker in terms of in asserting interests into account.

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PART TWO

THE MARRIAGE

TITLE I

CONCLUSION OF MARRIAGE

Section 4:5 *[Conclusion of marriage]*

(1) The marriage shall be concluded if a man and a woman both present, before the civil registrar declare in person that they enter into marriage with each other. This declaration shall not be subject to conditions or a time limit.

(2) After the mutual declaration is made, the civil registrar shall establish that the marriage is concluded and enter the fact of the conclusion of marriage into the register of marriages.

(3) In the absence of the conditions set out in paragraph (1), the marriage shall not be concluded. A non-existent marriage shall be considered as it had never been entered into.

Section 4:6 *[Establishing the existence or non-existence of marriage]*

(1) If the existence or non-existence of a marriage cannot be decided on in an administrative authority procedure, an action for establishing the existence or non-existence of the marriage may be brought by either of the spouses, the public prosecutor or anyone with a legal interest in the establishment of that fact.

(2) The action shall be brought by the spouse against the other spouse; by the prosecutor or any other person who is entitled to bring the action against both spouses. If the party against whom the action should be brought is no longer alive, the action shall be brought against a guardian *ad litem* appointed by the court.

(3) A judgment establishing the existence or non-existence of a marriage shall be effective against all.

Section 4:7 *[Procedure preceding the conclusion of marriage]*

(1) Before the conclusion of marriage, future spouses shall declare before the civil registrar that there are no legal impediments to their marriage, and they shall certify that the legal conditions for the conclusion of their marriage are met.

(2) The civil registrar may set a date for the conclusion of the marriage only to a date over thirty days from the declaration of the intention to marry. In justified cases, the local government clerk may grant an exemption from this rule.

(3) If the health condition of either future spouse risks imminent death, the declaration of the future spouses shall substitute the certification of all legal conditions for concluding marriage, and the marriage may be concluded immediately after the declaration is made.

Section 4:8 *[Formal rules for the conclusion of marriage]*

(1) Marriage shall be concluded in the presence of two witnesses, in public and in the official premises of the local government.

(2) At the request of future spouses, the marriage may be concluded with the exclusion of the public, or, if permitted by the local government clerk, in an appropriate location other than the official premises.

TITLE II

INVALIDITY OF MARRIAGE

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Chapter I

Reasons for the invalidity of marriage

Section 4:9 *[Age limit to marry]*

(1) The marriage of a minor shall be invalid if concluded in the absence of the prior permission of the guardianship authority.

(2) In cases specified by the law, the guardianship authority may grant permission for the minor over the age of sixteen who has limited capacity to act to marry.

(3) The guardianship authority shall decide to grant or reject the application after hearing the parent or the guardian. Those parents who may not exercise their custody rights even in substantial matters affecting the future of the child, or whose whereabouts are unknown or who cannot be heard due to other irremovable obstacles need not be heard.

(4) A marriage concluded in the absence of the guardianship authority's permission or before one of the spouses reaching the age of sixteen years shall become valid retroactively to the date of its conclusion after six months of the spouse reaching majority if the spouse concerned does not challenge the validity of the marriage within this term of preclusion, or the court, at the spouse's request, terminates the action brought on this ground earlier by another person entitled to do so.

Section 4:10 *[Marriage of a person having no capacity to act due to placement under custodianship]*

(1) The marriage of the person who, at the time of the conclusion of the marriage, was subject to custodianship limiting capacity to act in full shall be invalid.

(2) The marriage of a person placed under custodianship shall become valid retroactively to the date of its conclusion after six months of the termination of the placement under custodianship if the spouse affected by the ground for invalidity does not challenge the validity of the marriage within this term of preclusion, or the court terminates, at the spouse's request, the action brought on this ground earlier by another person entitled to do so.

Section 4:11 *[Marriage concluded while having no capacity to act]*

(1) The marriage of the person who had no capacity to act at the time of the conclusion of the marriage shall be invalid.

(2) The marriage shall become valid retroactively to the date of its conclusion after six months of the spouse regaining capacity to act if the spouse affected by the ground for invalidity does not challenge the validity of the marriage within this term of preclusion.

Section 4:12 *[Blood relatives' and relatives' relationship]*

(1) The following shall be invalid:

a) marriage between lineal relatives;

b) marriage between siblings;

c) marriage with a lineal descendant of a sibling;

d) marriage between the adoptive parent and the adoptive child during the term of the adoption.

(2) The marriage with a lineal descendant of a sibling shall not be invalid if the local government clerk grants an exemption from this impediment to marriage before the conclusion of marriage or during the marriage. This exemption may be granted if the relationship created through the marriage does not jeopardise the health of the children to be born.

Section 4:13 *[Existence of an earlier marriage]*

(1) A marriage shall be invalid if either of the future spouses has an existing marriage.

(2) The new marriage shall become valid upon the termination of the earlier marriage. If a court established the invalidity of the earlier marriage, the new marriage shall become valid retroactively to the date of its conclusion.

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Chapter II
Establishing the invalidity of marriage

Section 4:14 *[Annulment of marriage]*

(1) A marriage may be considered as invalid if its invalidity is established by the court in an action brought for this end (hereinafter "action for annulment").

(2) A judgment establishing the invalidity of a marriage shall be effective against all.

(3) An invalid marriage shall attract the legal consequences set out in this Act.

Section 4:15 *[Eligibility to bring an action for annulment]*

(1) An action for annulment may be brought either during the marriage or after the termination of the marriage.

(2) Unless otherwise provided in this Act, an action for annulment may be brought by either spouse, the prosecutor or any person with a legal interest in the establishment of the invalidity of the marriage.

(3) If the person who brought the action dies, any other eligible person may replace him in the action.

Section 4:16 *[Restriction of eligibility to bring an action]*

(1) For the ground of minority and the absence of the permission to marry, after reaching majority; and for the ground of being subject to custodianship, after the termination of custodianship, the spouse affected by such grounds for invalidity may bring an action for annulment. The action may be brought by the eligible person within six months after reaching majority, and the termination of custodianship, respectively.

(2) On the ground of having no capacity to act at the time of the conclusion of marriage, the action for annulment may be brought by the spouse who had no capacity to act at the time of the conclusion of the marriage. The action may be brought within six months of the termination of incapacity, starting on the day when the spouse regains his capacity to act. If the spouse died without regaining his capacity to act, the action for establishing the invalidity of the marriage may be brought by the prosecutor, within six months of the death of the spouse.

(3) Failure to meet the time limits specified in paragraphs (1) to (2) shall lead to forfeiture of rights.

(4) If the spouse exclusively eligible to bring an action under paragraphs (1) to (2) dies, any person who is eligible to bring an action for annulment can replace the spouse in the action.

Section 4:17 *[Bringing an action in person]*

(1) The action for annulment of marriage shall be brought in person by the person eligible to do so.

(2) The spouse having partially limited capacity to act in terms of bringing actions may bring such an action without the consent of his statutory representative.

(3) For the person eligible to bring an action and having no capacity to act, the action shall be brought on his behalf by his statutory representative with the consent of the guardianship authority.

Section 4:18 *[Respondents in actions for annulment]*

The action for annulment shall be brought by a spouse against the other spouse; and by the prosecutor or another person eligible to bring the action against both spouses. If the party against whom the action should be brought is no longer alive, the action shall be brought against a guardian *ad litem* appointed by the court.

Section 4:19 *[Establishing the validity of marriage]*

The provisions applicable to actions for annulment of marriage shall be applied accordingly to actions for establishing the validity of marriage.

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TITLE III

TERMINATION OF MARRIAGE

Section 4:20 *[Cases for the termination of marriage]*

(1) Marriage shall be terminated

a) upon the death of one of the spouses;

b) upon its dissolution by the court.

(2) For a new marriage, the former marriage of the spouse concerned shall be considered as terminated, even if the effect of the entry in the register of deaths, the establishment of death or the declaration of presumed death regarding the other spouse has been terminated after the conclusion of the new marriage, provided that neither future spouse knew at the time of the conclusion of the new marriage, that the death has not occurred.

(3) When applying paragraph (1) *a)* and paragraph (2), the marriage shall be considered as terminated on the date indicated in the entry of the register of deaths or in the court decision

as the date of death. When applying paragraph (1) *b)*, the marriage shall terminate on the day when the judgment dissolving the marriage becomes final and binding.

Section 4:21 *[Dissolution of marriage]*

(1) The court shall dissolve the marriage at the request of either spouse if the marriage has completely and irretrievably broken down. The complete and irretrievable breakdown of the marriage can be established in particular if the community of life between the spouses has ceased, and, considering the process leading up to the termination of the community of life and of the duration of the separation, there is no prospect of restoring it.

(2) The court shall dissolve the marriage without examining the circumstances specified in paragraph (1) if the spouses mutually request it on the basis of their final understanding reached without undue influence.

(3) The dissolution of marriage under paragraph (2) shall be possible if the spouses have agreed on the exercise of parental custody of their common child, contact between the parent living separately and the child, maintenance of the child, use of the matrimonial home, and the spousal maintenance, if claimed, and their court settlement is approved by the court.

(4) If the spouses agreed to have joint parental custody, they need not agree on contact; however, they shall determine the child's place of domicile.

(5) Upon the dissolution of marriage, the interests of the common child shall be taken into account.

(6) When agreeing on the exercise of parental custody and on contact between the parent and child and on the maintenance of the child, the interests of the child shall prevail.

Section 4:22 *[Mediation procedure]*

Before or during the action for dissolution of marriage, the spouses may avail of, by their own decision or at the initiation of the court, a mediation procedure to settle amicably any disputed issues in connection with their relationship and the dissolution of their marriage. Their agreement concluded as a result of the mediation procedure may be drawn up in a court settlement.

Section 4:23 *[Bringing an action for the dissolution of marriage; effect of dissolution]*

(1) The action for dissolution of marriage shall be brought in person by one spouse against the other.

(2) The spouse having partially limited capacity to act in terms of bringing actions may bring such action without the consent of his statutory representative.

(3) For a spouse having no capacity to act, the action shall be brought on his behalf by his statutory representative, with the consent of the guardianship authority.

(4) The judgment dissolving marriage shall be effective against all.

TITLE IV

PERSONAL RELATIONS OF SPOUSES

Chapter III

General provisions

Section 4:24 *[Obligation of cooperation and support]*

(1) Spouses owe each other loyalty; they shall cooperate with and support each other in the interest of their common goals.

(2) In cases specified by an Act, this obligation of support shall apply even after the dissolution of marriage.

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Section 4:25 *[Right to make decisions together and individually]*

Spouses shall decide jointly on the matters of married life and the family, and individually on matters affecting their own person, but having due concerns to the interests of their family. When making decision, they shall take the interests of their children and of the other into account.

Section 4:26 *[Choosing the place of domicile]*

Spouses shall choose their place of domicile in agreement with each other.

Chapter IV

Name of spouses

Section 4:27 *[Married name]*

(1) After the conclusion of marriage, the wife shall, at her choice, bear

a) her birth name or her name as borne directly before the conclusion of the marriage;

b) her husband's full name with a suffix indicating marital status, to which she can add her name as borne directly before the conclusion of the marriage;

c) her husband's family name with a suffix indicating marital status, to which she shall add her name as borne directly before the conclusion of the marriage; or

d) her husband's family name, adding her own given name to it.

(2) After the conclusion of marriage the husband shall, at his choice, bear

a) his birth name or his name as borne directly before the conclusion of the marriage;

b) his wife's family name, adding his own given name to it.

(3) After the conclusion of marriage, the husband and the wife may bear, as married name, their joint family names each of them adding their own given names to it. The part of their married name that consists of their joint family names shall be double at most.

(4) In the cases specified in paragraph (1) *b) to d)*, paragraph (2) *b)*, and paragraph (3), spouses shall bear a joint married name.

(5) With the exception set out in paragraph (3), only one of the future spouses can take up the family name of the other as married name.

(6) Future spouses may agree on their name under paragraphs (1) to (3). In the absence of their agreement, the spouses shall continue to bear their names borne before the conclusion of marriage, unless the wife bears the married name as set out in paragraph (1) *b)* or *c)*.

Section 4:28 *[Names after the termination of marriage or the establishment of its invalidity]*

(1) After the termination of the marriage or the establishment of its invalidity, the former spouses shall continue to bear their names as during their marriage. Either of them, if wishing to depart from this, may notify the civil registrar of it after the termination of the marriage or the establishment of its invalidity. The former wife shall not be allowed to bear her former husband's name with the suffix indicating marital status even in this case if she did not bear it during their marriage.

(2) At the former husband's request, the court may prohibit the former wife from bearing the name in the form including the suffix indicating marital status if the wife was sentenced with final and binding effect to imprisonment for the commission of an intentional criminal offence.

(3) If concluding a new marriage, the wife and the husband shall be allowed to continue to bear their joint married name as borne during their marriage, except that the wife shall not be allowed to bear her former husband's name with the suffix indicating marital status, and her right to bear this name shall not revive by the termination of her new marriage.

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TITLE V

SPOUSAL MAINTENANCE

Section 4:29 *[Entitlement to maintenance]*

(1) Those unable to maintain themselves through no fault of their own may claim maintenance from their spouses in case of termination of the marital community of life and from their former spouses in case of dissolution of the marriage.

(2) If the spouse or the former spouse becomes indigent after more than five years since the termination of the marital community of life, maintenance may be claimed in circumstances deserving special consideration.

(3) If the community of life between spouses lasted for less than one year and no child was born from the marriage, the former spouse, if indigent, shall be entitled to maintenance for a period equal to the duration of the community of life. In circumstances deserving special consideration, the court may order maintenance for a period longer than that.

Section 4:30 *[Unworthiness of maintenance]*

(1) The spouse or former spouse shall be unworthy of maintenance

a) whose seriously reprehensible conduct or lifestyle essentially contributed to the complete and irretrievable breakdown of the marriage; or

b) who displayed a conduct, after the termination of the marital community of life that was seriously detrimental to the interests of the other spouse, former spouse or a relative of the spouse or former spouse living with the spouse or former spouse.

(2) When assessing the conduct of the spouse or former spouse invoking unworthiness shall be taken into account.

Section 4:31 *[Capacity to provide maintenance]*

A spouse shall not be required to provide maintenance to the other spouse if it would jeopardise his necessary self-maintenance or that of his child.

Section 4:32 *[Agreement on providing maintenance by way of a one-off benefit]*

Spouses may agree, in a public deed or in a private deed countersigned by an attorney-at-law, that the spouse obliged to provide maintenance may discharge the maintenance obligation by the one-off provision of a suitable asset or sum of money. In this case the spouse in receipt of this benefit shall not be eligible to enforce a maintenance claim in the future even if becoming entitled to it under this Act.

Section 4:33 *[Application of the rules on blood relatives' maintenance]*

The common rules on blood relatives' maintenance shall be applied accordingly to the rate, manner and duration of providing maintenance and their amendment, to the retroactive enforcement of maintenance claims and the termination of entitlement to maintenance and the termination of maintenance, with the proviso that entitlement to spousal maintenance also terminates if the person entitled to maintenance enters into a new marriage or into cohabitation.

TITLE VI

MATRIMONIAL PROPERTY LAW

Chapter V

General provisions

Section 4:34 *[Settling property relations between spouses]*

(1) Future spouses and spouses may, in a matrimonial property contract, settle their property relations between themselves for the duration of their marital community of life.

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(2) Unless otherwise provided in the matrimonial property contract, a matrimonial community of property shall exist between spouses during the period of the marital community of life (statutory matrimonial property regime).

Section 4:35 *[Temporal scope of matrimonial property provisions]*

(1) The statutory matrimonial property regime shall take effect upon the commencement of the community of life, even if the spouses cohabited as cohabitants before entering into marriage. The community of life shall be presumed to come into existence by the conclusion of marriage.

(2) Temporary interruptions in the community of life shall not affect the continuity of the statutory or contractual matrimonial property regime unless the parties have divided their property.

Section 4:36 *[Property effects of an invalid marriage]*

(1) If, upon the conclusion of an invalid marriage, both spouses acted in good faith, the property consequences of the marriage shall be identical to the property effect of a valid marriage. In this case, if the marriage is annulled, property claims may be enforced by either spouse as if the marriage had been dissolved by the court at the time of the establishment of its invalidity; or, if its invalidity was established after the death of one of the spouses, as if the marriage had terminated upon the death of that spouse.

(2) If, upon the conclusion of an invalid marriage, one of the spouses acted in good faith, the provisions of paragraph (1) shall apply to the request of the spouse who acted in good faith.

(3) The property claims under paragraph (1) of the spouse who acted in good faith may be enforced by the heirs of their spouses as well.

(4) The invalidity of the marriage shall be without prejudice to the effect of contracts entered into by the spouses or either of them with third parties acting in good faith.

Chapter VI

Matrimonial community of property

1. Matrimonial common property and separate property

Section 4:37 *[Matrimonial common property]*

(1) In the case of matrimonial community of property, assets acquired jointly or separately by the spouses during the community of property shall belong to the matrimonial common property.

(2) The burdens of the shared assets shall belong to the matrimonial common property, and, unless otherwise provided in this Act, the spouses shall bear jointly the debts arising from obligations undertaken by either of them during the community of property.

(3) The spouses shall be entitled to the matrimonial common property undivided and in equal shares.

(4) Assets, burdens and debts qualifying as separate property shall not belong to the common property.

Section 4:38 *[Separate property of the spouse]*

(1) The followings shall belong to the separate property of the spouse:

a) assets that are owned by the spouse upon the creation of the matrimonial community of property;

b) assets inherited by and gifted to the spouse, and benefits free of charge provided to the spouse during the matrimonial community of property;

c) property rights held by the spouse as creator of intellectual property, with the exception of fees becoming due during the community of property regime;

d) benefits received for violation of personality rights of the spouse;

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e) personal assets of modest value; and

f) assets acquired from the value of the separate property and the value replacing the separate property.

(2) The earnings from the separate property that, during the marital community of life, remain following the deduction of the management and maintenance costs and burdens shall be common property.

(3) Assets belonging to the separate property that replace furnishings and equipment of modest value that serve everyday common life shall become common property after five years of the marital community of life.

Section 4:39 *[Burdens and debts of separate property]*

(1) With the exception of maintenance based on an Act, any debt that is based on a legal title arisen before the commencement of the community of life shall burden the spouse's separate property.

(2) Burdens of assets belonging to separate property and the interest on debts qualifying as separate debt shall belong to the separate property.

(3) Any debt incurred during the community of life

a) that is entailed by the acquisition and maintenance of separate property, except for expenses related to obtaining the benefits of the separate asset and to maintaining assets that are used or exploited jointly by the spouses;

b) that is based on an obligation arising from the spouse disposing of his separate property;

c) that is assumed free of charge by the spouse at the expense of the common property without the consent of the other spouse; and

d) that is caused by the spouse's illegal and intentional or grossly negligent conduct, provided that the debt exceeds the enrichment of the other spouse shall belong to the separate property.

(4) The fact that a debt belongs to separate property shall be without prejudice to the liability of the other spouse towards third parties.

Section 4:40 *[Presumption of common property]*

(1) Unless otherwise provided in this Act, assets owned by the spouses during their community of property shall be presumed to belong to the common property.

(2) During the community of property regime, the fulfilment of an obligation related to the common property or the separate property of either spouse shall be presumed to be performed from the common property.

Section 4:41 *[Certain contracts between the spouses]*

(1) Contracts for sale, exchange, gifting or loan entered into by and between the spouses during their marital community of life and any acknowledgement of debt between the spouses shall be valid if drawn up as a public deed or private deed countersigned by an attorney-at-law. This provision shall not apply to the gifting of moveable property of modest value if the gift has been handed over.

(2) Contracts between the spouses that affect the common property or separate property nature of any asset, burdens or debts, or that amend the volume of such property shall be effective against third parties if that third party knew or should have known about the common property or separate property nature of that asset.

2. Use and management of assets belonging to community of property

Section 4:42 *[The use and management of assets belonging to the community of property]*

(1) Assets belonging to the community of property may be used in accordance with their designated use by either spouse. Neither spouse may exercise this right at the expense of the other spouse's rights and legal interests.

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(2) Spouses may manage jointly the assets belonging to the community of property. Either spouse may request the consent of the other spouse to measures necessary for the preservation or maintenance of asset belonging to the community of property. The spouse may take urgent preservation measures even without the consent of the other spouse, however, the other spouse shall be informed thereof without delay.

(3) Unless otherwise provided in this Act, the rules on co-ownership shall apply to the use and management of assets belonging to the community of property in the period between the termination of the community of life and the division of the common property.

Section 4:43 *[The use and management of assets required to pursue a profession and assets of a business purpose]*

(1) The right to use and manage assets belonging to the community of property but serving the purpose of pursuing a profession or private entrepreneur activities by one of the spouses shall lie with the spouse pursuing the profession or private entrepreneur activities, provided that the other spouse consented to the exclusive exercise of these rights. Consent shall be considered as granted if the other spouse knows or should know about pursuing the profession or private entrepreneur activities and does not object to it.

(2) The spouse who is a member of an individual firm, a cooperative or is a shareholder in a company may exercise the member's and shareholders' rights independently, without seeking the consent of the spouse, even if the contribution was provided at the expense of the matrimonial common property; the spouse shall inform the other spouse of the profitability of the individual firm, cooperative or company on a regular basis.

(3) When exercising the rights to use and manage and the rights of members' and shareholders' set out in paragraphs (1) to (2), the spouse shall appropriately take the interests of the other spouse into account. The spouse shall be liable for any damage arising from the failure to comply with this obligation in accordance with the general rules of extra-contractual liability.

Section 4:44 *[Bearing costs and expenses]*

(1) Costs for maintaining and managing assets belonging to the community of property, the costs of the common household, and the expenses required for the subsistence of the spouses and for the upbringing of their common child shall be primarily covered from their common property.

(2) If the common property does not cover the costs and expenses specified in paragraph (1), the spouses shall contribute to those from their separate property, *pro rata* to their property. If only one of the spouses has separate property, that spouse shall make available the amount required to complement these costs.

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3. Availing of common property

Section 4:45 *[Availing of common property during the community of property regime]*

(1) During the community of property regime, the spouses shall avail of their common property jointly or with the consent of the other spouse.

(2) No form-related requirements shall be applied to the consent of the spouse that is required for contracts concluded by the other spouse during the community of property regime.

Section 4:46 *[Presumption of the spouse's consent]*

(1) Unless otherwise provided in this Act, reciprocal contracts regarding common property concluded by a spouse during the community of property regime shall be considered as concluded with the consent of the other spouse, unless the third party concluding the contract knew or should have known of the absence of the other's spouse consent to that contract.

(2) For contracts concluded by a spouse for the purpose of covering everyday common needs, or in the context of his profession or private entrepreneur activities, the other spouse may invoke the absence of his consent if he expressly objected against the conclusion of that contract to the third party entering into the contract before the conclusion of that contract.

Section 4:47 *[Availing of common property in the period between the termination of the matrimonial community of property and the division of the common property]*

(1) In the period between the termination of the matrimonial community of property and the division of the common property, the rules on availing of common property during the community of property regime shall be applied subject to the derogation that, according to the rules of normal operation, the spouse, even without the consent of the other spouse,

a) may avail of assets used and allocated in the context of pursuing a profession or private entrepreneur activities;

b) may avail of movables of which the spouse acquired exclusive possession, with the consent of the other spouse, after the termination of the community of property regime;

c) may assume obligations that ensure the preservation, maintenance, recovery and stable value of common assets; and

d) discharge debts of the common property in a way that ensures that the debt does not become more burdensome for the common property.

(2) The provisions in paragraph (1) shall be without prejudice to the reimbursement obligation applicable upon the division of common property.

Section 4:48 *[Special rules on matrimonial home and on financial contribution provided to companies]*

During the community of property regime and in the period between the termination of the community of property regime and the division of the common property, a spouse, without the consent of the other spouse, shall not avail of the real estate property co-owned by the spouses containing their matrimonial home, and shall not provide common assets to individual firms, companies or cooperatives as financial contribution. The consent of the other spouse shall not be presumed granted in such cases.

4. Liability arising from the exercise of the right of disposal

Section 4:49 *[Liability to third parties regarding contracts]*

(1) The spouse concluding a contract at the expense of the common property shall be liable with his separate property and his share of the common property for the debt arising from that contract with third parties.

(2) The liability for a contract of a spouse not participating in the conclusion of a contract concluded by the other spouse but consenting to it shall to third parties make up to the share that this spouse is entitled to from the common property upon the due date of the debt.

Section 4:50 *[Legal effects of contracts concluded without the consent of the other spouse]*

If a spouse did not consent to a contract concluded by the other spouse regarding their common property, and such consent cannot be presumed granted or the presumption is rebutted, this spouse shall not be liable for the obligation arising from that contract. Contracts concluded without the spouse's consent shall be ineffective regarding that spouse if the acquiring party acted in bad faith or benefited for free from that contract. If the other spouse concluded that contract with a relative, bad faith and the gratuitousness shall be presumed.

Section 4:51 *[Liability to third parties on the basis of unjustified enrichment]*

One enriching through his spouse's contracts or by his any other conduct giving rise to an obligation shall be liable to third parties in accordance with the rules on unjustified enrichment even if he is otherwise not responsible for the debt.

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Section 4:52 *[Liability of the spouse concluding the contract to his spouse]*

A spouse who concludes, without the consent of his spouse, contracts that also impose burdens on his spouse shall be obliged to compensate his spouse for the damage having arisen from that contract, in accordance with the rules on extra-contractual liability, with the proviso that he shall be exempted from liability if he proves that the contracts were compliant with the other spouse's interest and presumable will in particular if the contracts protected the common property from damage.

5. Termination of the community of property regime

Section 4:53 *[Termination of the community of property regime]*

The community of property regime shall terminate if

a) the spouses, in a matrimonial property contract, exclude the community of property regime for the future;

b) the court terminates it during the marital community of life; or

c) the marital community of life terminates.

Section 4:54 *[Termination of community of property regime by the court]*

(1) The court, at the request of either spouse, may terminate, if justified, the community of property regime during the marital community of life. Justified cases shall especially include cases where

a) a spouse accumulated, through a contract concluded without the consent of the other spouse or by causing extra-contractual damage, a debt of such a volume that might jeopardise his share of the common property;

b) the spouse engaged in private entrepreneur activities was subject to enforcement procedure, or the individual firm, cooperative, company in which the other spouse is a member with unlimited liability is subject to an enforcement or liquidation proceedings, and that procedure might jeopardise the spouse's share of the common property; or

c) the other spouse is placed under custodianship limiting capacity to act in full or partially, regarding financial matters, and the appointed custodian is other than the spouse.

(2) Unless otherwise ordered by the court, the community of property regime shall be terminated on the last day of the month following the month when the decision on its termination becomes final and binding.

Section 4:55 *[Legal effects of the termination of the community of property regime by the court]*

If the court terminates the community of property regime, the rules on separation of property shall henceforward apply to the spouses' financial matters during their community of life.

Section 4:56 *[Restoration of the community of property regime by the court]*

If the grounds on the basis of which the court terminated the community of property no longer prevail, the court shall, at the joint request of the spouses, restore the community of property regime during the community of life for the future.

6 Dividing matrimonial common property

Section 4:57 *[Division of common property]*

(1) When terminating the community of property regime, either spouse may apply for the division of common property. If the marriage has been terminated upon the death of either spouse, the heir of that spouse shall also have this right.

(2) If the spouses divide the matrimonial common property regime in a contract, the contract shall be valid if drawn up as a public deed or private deed countersigned by an

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attorney-at-law. This provision shall not apply to the division of movables belonging to the common property if the division was completed.

(3) If the parties do not conclude a contract on the division of common property or the contract does not cover all claims related to the termination of the community of property regime, the division of the matrimonial common property and decision on any unsettled claim may be requested from the court.

Section 4:58 *[Settling common property claims]*

Claims arising from the matrimonial community of property shall be settled in a uniform manner.

Section 4:59 *[Reimbursement claims between common property and separate property]*

(1) Upon the division of common property, the reimbursement of the expenses paid out from the common property to a separate property, from a separate property to the common property, and from the separate property of one of the spouses to the other spouse's separate property, as well as the reimbursement of debts discharged from the other property may be claimed. The provisions on the establishment of the value of the asset share shall be applied accordingly to the fulfilment of the reimbursement claims.

(2) The separate property used up or exhausted during common life may only be reimbursed in exceptional cases.

(3) No reimbursement shall take place if the spouse has waived it. No form-related requirements shall be applied to such a waiver but the spouse relying to the waiver shall prove that it exists.

(4) As consideration for expenses resulting in a significant and durable increment in the value of a property, the spouse entitled to reimbursement may claim an ownership proportion corresponding to the property's value increment.

(5) The reimbursement of the missing parts of common property or separate property cannot be claimed if no common property exists upon the termination of the community of property regime and the party subject to the reimbursement obligation has no separate property.

Section 4:60 *[Value and disbursement of the share from the common property]*

(1) The share in the common property to which the spouse is entitled shall be determined on the basis of the conditions and value that existed when the community of property regime was terminated. Changes in value that occurred during the period between the termination of the community of property regime and the division of the common property shall be taken into account unless it is the result of the conduct of one of the spouses.

(2) The rules on terminating co-ownership shall be applied to the division of co-owned assets belonging to the community of property regime, with the proviso that no physical division may take place if objected to by either spouse on reasonable grounds.

(3) The rules set out in paragraph (2) shall be applied accordingly to the division of rights and claims included in the community of property regime.

Section 4:61 *[Allocation of assets and debts]*

(1) When determining the allocation of specific assets between the spouses in the course of division of property, the court shall primarily give consideration to the concordant declaration of the spouses.

(2) As a general rule, assets serving the purpose of pursuing a profession or private entrepreneur activities by one of the spouses shall be granted to the spouse pursuing that profession or private entrepreneur activities.

(3) If one of the spouses is a member or shareholder in a company in which the financial contribution of the spouse was provided from the common property, the court, at the request of the other spouse, may allocate any share in the company to the other spouse in accordance with the rules on transferring membership rights if the share of that spouse cannot be released

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in other way from the matrimonial common property in view of the rules on the release of the share in common property and of the provision of paragraph (1).

(4) The debt charged on an asset shall be borne, with regard to the spouses, by the spouse who becomes the owner of the asset after the division of property. The division of debts shall be effective against the beneficiary in accordance with the rules on the assumption of debt.

Section 4:62 *[Disbursement of separate property]*

Upon the termination of the community of property regime, the separate property, if any, shall be disbursed physically, unless it is impossible due to the amalgamation of assets or separation would result in significant loss of value to the common property or the separate property.

Chapter VII

Matrimonial property contract

1. General provisions

Section 4:63 *[Content of a matrimonial property contract]*

(1) Future spouses and spouses may determine, in a matrimonial property contract, the matrimonial property regime to be applied, instead of the matrimonial community of property, to their financial matters during their community of life, from the date set out in the contract.

(2) In the matrimonial property contract, the parties may set out various matrimonial property regimes for certain parts of their property, and they can depart from the rules of the statutory or chosen matrimonial property regimes if such derogations are not prohibited by this Act.

Section 4:64 *[Conditions for entering into a matrimonial property contract]*

(1) Future spouses and spouses may enter into a matrimonial property contract in person.

(2) The approval of the guardianship authority shall be required for the matrimonial property contract to be valid if the spouse is less than eighteen years of age or the spouse's capacity to act is partially limited in terms of legal declarations in property issues.

Section 4:65 *[Form and registration of matrimonial property contracts]*

(1) A matrimonial property contract shall be valid if drawn up as a public deed or a private deed countersigned by an attorney-at-law.

(2) The contract shall be effective against third parties if entered into the national register of matrimonial property contracts, or if the spouses prove that the third party knew or should have known of the existence and the content of that contract.

Section 4:66 *[Amendment and dissolution of a matrimonial property contract]*

(1) During the community of life, the spouses may amend and dissolve the contract.

(2) The rules on validity and effectiveness applicable to the establishment of contracts shall apply accordingly to the amendment and dissolution of the contract.

Section 4:67 *[Protection of third parties]*

(1) A matrimonial property contract shall not contain any provision of retroactive effect that would change an obligation of either spouse against a third party, arisen before the conclusion of the contract, to the detriment of that third party.

(2) Any contract between the spouses that changes the nature of any asset as common property or separate property in derogation from the provision of the matrimonial property contract, shall be effective against a third party if the third party knew or should have known that, under the provisions of that contract, the relevant asset belonged to the common property or separate property.

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Section 4:68 *[Disposition upon death]*

If the spouses arrange for their property for the event of their death in the matrimonial property contract, the rules on joint will shall be applied to that disposition.

2. Property regime of community of accrued gains

Section 4:69 *[Property regime of community of accrued gains]*

(1) If future spouses or spouses, in the matrimonial property contract, agreed to apply the property regime of community of accrued gains, they shall be independent earners during their marital community of life, and accordingly, the rules of separation of property shall apply between them. After the termination of the community of life, either spouse may claim from the other spouse to divide the increase in their property that qualifies as accrued gains.

(2) The accrued gains mean the net value of the spouse's property owned by the spouse at the time of the termination of the community of life, after deducting the spouse's share of the debts and the separate property of the spouse.

(3) Assets belonging to the spouses' property upon the termination of the marital community of life shall be presumed to be accrued gains.

(4) The provisions of the statutory matrimonial property regime on separate property shall apply when establishing which assets, burden and debts are to be taken into account as separate property. Besides the separate property, the value of the separate property spent, during the marital community of life, on the property of accrued gains and the separate property of the other spouse shall also be added to the separate property; the missing separate property may be reimbursed only if it has been expressly stipulated.

Section 4:70 *[Protection of the spouse's share of the accrued gains]*

(1) The determination of the spouse's own share in the accrued gains may be claimed even during the community of life and the spouse may claim appropriate security up to the value of it or may claim the dissolution of the matrimonial property contract if the other spouse accumulated, through contracts the conclusion of which the spouse was not aware of, debts of such a volume that exceeds that spouse's share of the accrued gains.

(2) Securing the accrued gains under paragraph (1) shall not infringe the rights of a third party who have a claim, incurred earlier, against the other spouse.

(3) If the spouse, despite being called upon, refuses the determination of the accrued gains and to provide adequate security, or prevent those, the other spouse may bring the case before a court.

(4) The court in that action may dissolve the contract at the request of either spouse on the grounds set out in paragraph (1) and may order the separation of property between the parties for the future.

Section 4:71 *[Division of accrued gains]*

(1) The division of accrued gains from the property at hand upon the termination of the community of life may be claimed, applying accordingly the relevant provisions of the statutory matrimonial property regime on the division of common property. The spouse may not claim the assets that are required for the other spouse to pursue a profession or private entrepreneur activities and the share of the other spouse in a company even if the spouse contributed to their financial coverage.

(2) The spouse shall be entitled to the half of the accrued gains.

3. Regime of separation of property

Section 4:72 *[The regime of separation of property]*

If the spouses, in a matrimonial property contract, excluded the matrimonial community of property in full or with regard to certain acquisitions, assets, burdens and debts for the future,

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a regime of separation of property shall apply between them to the part of the property affected by this exclusion.

Section 4:73 *[Use and management of assets; bearing debts, costs and expenses]*

(1) If a regime of separation of property is established between the future spouses or spouses by a contract or court decision, during the marital community of life they may use, manage and avail of their own property independently, and they shall be liable for their debts independently.

(2) The spouses shall jointly bear the costs of their common household, the expenses required for the subsistence and bringing up of the common child and the child of one of the spouses who, with the consent of the other spouse, is brought up in the common household, even if they live under the separation of property regime. Clauses exempting either spouse from such costs and expenses, completely or predominantly, shall be null and void. The work performed in the household and in upbringing children shall be considered as contributing to costs.

4. Termination of the contract

Section 4:74 *[Cases for the termination of the contract]*

(1) The parties may rescind or either of them may cancel the matrimonial property contract before the commencement of their marital community of life. During the marital community of life, the parties may dissolve the contract for the future.

(2) The matrimonial property contract shall also terminate if

a) dissolved by the court in cases specified in this Act; or

b) the marital community of life terminates for a reason other than the death of either spouse and the contract may take effect as the joint will of the spouses.

(3) If the contract is terminated by the mutual agreement of the parties or either spouse's right to unilaterally terminate the contract as provided in the contract, the rules of matrimonial community of property shall apply to the financial relations between the spouses during their community of life, as of the date of termination.

(4) The termination of the contract shall be effective against third parties as of the date when the contract is deleted from the register or when the third party gains knowledge of its termination.

Section 4:75 *[Settlement, division of property]*

Upon the termination of the contract, the spouse may claim settlement in line with the matrimonial property regime stipulated in the contract and the division of common property.

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Chapter VIII

Settling the use of the matrimonial home

Section 4:76 *[Matrimonial home]*

(1) Matrimonial home shall be the residential premises where the spouses live together on the basis of the right of ownership, usufruct or lease of one or both of them.

(2) The right of the spouse's minor child to use the residential premises shall be ensured in the matrimonial home.

(3) For the purposes of this Chapter, the minor child of the spouse who holds an exclusive right to use the residential premises shall also be entitled to this right.

Section 4:77 *[Limitations on disposing of the matrimonial home]*

(1) During the community of life, and following its termination until the use of the matrimonial home is settled, the spouse may, jointly or with the consent of the other spouse,

dispose of the use of the residential premises occupied by them under a common title. This consent shall not be presumed.

(2) The dissolution of marriage or the termination of the marital community of life in itself shall not terminate the right to use the residential premises of the spouse who uses the residential premise under the title of the other spouse.

(3) During the community of life, and following its termination until the use of the matrimonial home is settled, the spouse may not dispose of the residential premises used under his exclusive title either in a way that would be detrimental to the use of the marital home by the other spouse, or the minor child residing in the residential premise.

Section 4:78 *[Settling in advance the use of the matrimonial home in a contract]*

(1) Future spouses or spouses may settle in a contract the use of the matrimonial home in advance for the event of the dissolution of marriage or the termination of the community of life. The contract shall be valid if drawn up as a public deed or a private deed countersigned by an attorney-at-law.

(2) The contract shall cover the matrimonial home that has replaced the residential premises used at the time of the conclusion of the contract if provided so in the contract.

(3) The parties may also provide for the use of the matrimonial home in a matrimonial property contract.

Section 4:79 *[Considering the child's right to use the matrimonial home]*

(1) If, in the contract on settling in advance the use of the residential premises, the parties agree how to provide for housing for their children entitled to use the matrimonial home in the event of the dissolution of their marriage or the termination of the community of life, the contract shall also cover the children born after the conclusion of that contract.

(2) If the contract does not contain provisions referred to in paragraph (1), or that provision seriously violates the right of the minor child who is entitled to the use of the residential premises, to live in suitable residential premises, the court may, in the event of the dissolution of marriage or the termination of community of life, settle the use of the matrimonial home notwithstanding the provisions of the contract.

Section 4:80 *[Settling the use of the matrimonial home after the termination of community of life]*

(1) After the termination of the community of life, the spouses may agree on the further use of the matrimonial home. No form-related requirements are required for this agreement.

(2) In the absence of a contract settling in advance the use or other agreements concluded after the termination of the community of life, in the event of the dissolution of marriage or the termination of the community of life the court, at the request of either spouse, shall decide on the further use of the matrimonial home.

(3) If either spouse requests the termination of co-ownership, in an action for dissolution of marriage or in an action for the division of the matrimonial common property, the court shall settle both the use of the matrimonial home and the termination of co-ownership.

(4) The right to use the residential premise to which the minor child is entitled shall be ensured in the former matrimonial home with due regard to the child's living conditions, unless the child's adequate housing has been arranged elsewhere.

Section 4:81 *[Division of the use of the matrimonial home occupied under a common title and omission to divide]*

(1) If the spouses are entitled to use the matrimonial home under a common title, the court shall divide the use of the matrimonial home between them if it is possible on the basis of the features of the residential premises. The use of the matrimonial home can also be divided if the residential premises can be made suitable for shared use through minor transformations, provided that either or both spouses demonstrate their right to transform it, and the technical

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preconditions of that transformation as well as they undertake to advance the costs of the transformation. In the event of a dispute, the court shall decide on bearing the costs of transformation.

(2) If the use of the matrimonial home is divided, the spouses can use certain rooms and premises of the residential premises exclusively, and other premises jointly. The division of the use of the matrimonial home shall be without prejudice to the spouses' rights and obligations against third parties.

(3) The court may omit the division of the matrimonial home, subject to considering the parties' circumstances, if

a) the spouses, or one of them, have available residential premises in the same town, or this residential premises can be made available by a unilateral declaration; or

b) one of the spouses left the residential premises voluntarily and without the intention to return and if this spouse exercising parental custody duly ensured the right of the minor child to the residential premises.

(4) The use of residential premises that, due to its features, is otherwise suitable for division shall not be divided if one of the spouses is at fault, as a consequence of which the shared use would entail a serious violation of the interests of the other spouse or the minor child.

Section 4:82 *[Termination of one of the spouses' right to use]*

(1) If the use of the matrimonial home under the spouses' common title is not divided, the court shall terminate one of the spouses' right to use the matrimonial home and shall order that spouse to leave the residential premises, except where one of the spouses moved out of the matrimonial home voluntarily and without the intention to return.

(2) The court may terminate the right to use the matrimonial home regarding one of the spouses and may order that spouse to leave the residential premises, even if the residential premises would be suitable for shared use but the other spouse offers suitable replacement residential premises to the spouse, and this way of settling the use of the matrimonial home does not violate the interests of the minor child.

Section 4:83 *[Settling the use of the matrimonial home occupied under the exclusive title of one of the spouses]*

(1) If the spouses use the matrimonial home under the title of one of them, the court shall authorise this spouse to use the residential premises in the future, in the event of the dissolution of marriage or termination of the community of life.

(2) The court may order the shared use of the residential premises that is suitable for shared use due to its features if the exercise of parental custody rights of at least one of the minor children entitled to use the residential premises has been granted by the court to the other spouse, or leaving the residential premises would be seriously unfair to the other spouse on the basis of the duration of the marriage and the circumstances of that spouse.

(3) In exceptionally justified cases, the court may grant to the spouse the right of exclusive use of the residential premises that is in the exclusive ownership or usufruct of the other spouse if the exercise of parental custody rights of the minor child entitled to use the residential premises is granted to that parent and the housing of the minor child cannot be ensured otherwise. In this case, the spouse shall have the status of tenant, with the proviso that his right to use the residential premises may be terminated by way of ordinary unilateral termination, by offering an adequate replacement property.

(4) The court may provide for the shared or exclusive use of the residential premises under paragraphs (2) to (3) for a defined period of time or until the occurrence of a condition.

Section 4:84 *[Reimbursement of the value of the right to use the matrimonial property]*

(1) The spouse obliged to leave the matrimonial home under a contract or the court's decision may claim reimbursement equivalent to the financial value of the former right to use.

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(2) No reimbursement may be claimed by the spouse

a) who undertook to leave the marital home in a contract without claiming for accommodation and reimbursement; or

b) whose right to use the matrimonial home was withdrawn by the court for a fixed period of time or until the occurrence of a condition.

(3) When determining the amount of reimbursement, the value of the child's right to use the matrimonial property shall be taken into account to the benefit of the spouse who, upon exercising parental custody right, ensures the use of the residential premises for the child.

(4) This reimbursement shall become due upon leaving the matrimonial home unless

a) the court ordered the spouse to leave the matrimonial home for being at fault and the simultaneous performance would seriously violate the interests of the remaining spouse and the minor child; or

b) the use of the matrimonial home is to be settled in an action for the division of the matrimonial common property, and the value of the right to use is settled by the court during the division of property.

(5) Instead of reimbursement, the spouse remaining in the matrimonial home may offer an adequate replacement residential premise to the spouse leaving it.

Section 4:85 *[Re-settling the use of the matrimonial home]*

(1) If the court ordered the shared use of the matrimonial home, or obliged the spouse who is the owner or the holder of usufruct to leave the matrimonial home, either spouse may request the court to re-settle the use of the marital home on the ground that, due to changes in the circumstances on which the settlement was based, the way of use, if it remained unchanged, would violate a substantial legal interest of that cohabitant or the interests of the common minor child.

(2) Paragraph (1) shall be without prejudice to the former spouse's right to request, after the division of use, the termination of the legal relationship of the former spouse as co-tenant in accordance with the provisions of this Act concerning co-tenants.

PART THREE

FAMILY LAW EFFECTS OF COHABITATION

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Chapter VII

COHABITANT MAINTENANCE

Section 4:86 *[Entitlement to cohabitant maintenance]*

(1) In the event of the termination of the community of life, a former cohabitant unable to maintain himself through no fault of his own may claim maintenance from his former cohabitant, provided that the community of life lasted for at least one year and a child a was born from the cohabitants' relationship.

(2) If the former cohabitant becomes indigent after one year of the termination of the cohabitation, the cohabitant can claim maintenance from the former cohabitant in circumstances deserving special consideration.

Section 4:87 *[Unworthiness of maintenance]*

(1) Due to unworthiness, former cohabitants

a) whose seriously reprehensible conduct or lifestyle essentially contributed to the termination of the cohabitant relationship; or

b) who displayed a conduct, after the termination of the community of life, that was seriously detrimental to the interests of the former cohabitant or a relative living with the former cohabitant shall not be entitled to maintenance.

(2) When assessing unworthiness, the conduct of the former cohabitant who invokes it shall be taken into account.

Section 4:88 *[Capacity to provide maintenance]*

A person shall not be required to provide maintenance to the former cohabitant if it would compromise the person's necessary self-maintenance or that of his child.

Section 4:89 *[Agreement on providing maintenance by way of a one-off benefit]*

Cohabitants may make an agreement, in a public deed or in a private deed countersigned by an attorney-at-law, that the cohabitant obliged to provide maintenance may discharge the maintenance obligation by the one-off provision of a suitable asset or sum of money. In this case, the cohabitant in receipt of this benefit shall not be entitled to enforce a maintenance claim in the future even if becoming entitled to it under this Act.

Section 4:90 *[Order of maintenance between cohabitant and spouse]*

Former cohabitants shall have the same ranking regarding maintenance as separated spouses and former spouses.

Section 4:91 *[Application of the rules for blood relatives' maintenance]*

The common rules on blood relatives' maintenance shall be applied accordingly to the rate, manner and duration of providing maintenance their amendment, to the retroactive enforcement of maintenance claims and to the termination of entitlement to maintenance and the termination of maintenance, with the proviso that entitlement to cohabitant's maintenance shall also terminate if the person entitled to maintenance enters into a new cohabitation or into marriage.

TITLE VIII

SETTLING THE USE OF THE RESIDENTIAL PREMISES OF COHABITANTS

Section 4:92 *[Settling the use of the residential premise by the court]*

In the absence of a contract settling in advance the future use following the termination of the community of life of the residential premise used by the cohabitants together or of any other agreement concluded after the termination of the community of life, in the event of the termination of the community of life either cohabitant may request the court to settle the future use of the residential premise the cohabitants used jointly.

Section 4:93 *[Settling the use of the residential premise occupied under a common title of the cohabitants]*

(1) The court shall decide on the future use of the residential premise used under a common title of the cohabitants by applying the provisions on settling the use of the marital home used under a common title of the spouses, accordingly.

(2) The court shall take the right to an adequate living for the common minor child, who is entitled to the use of the residential premise into account, when deciding on the future use of the residential premise used under a common title of the cohabitants in the event of the termination of the cohabitant relationship.

Section 4:94 *[Authorising a cohabitant to use the residential premise occupied under the other cohabitant's exclusive title]*

(1) In the event of the termination of the cohabitant relationship, the court may authorise a former cohabitant, at the request of that cohabitant, to use the residential premises that has been used together by the cohabitants under the other cohabitant's exclusive title, provided that the community of life lasted for at least one year, and it is justified in order to ensure the right to use the residential premises of the minor child born from the cohabitants' relationship.

(2) In the cases specified in paragraph (1), the court may primarily order the shared use of the residential premises that is suitable for shared use due to its features.

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(3) In exceptionally justified cases, the court may grant to the former cohabitant the right of exclusively use of the residential premise used under the title of exclusive ownership or usufruct of the other cohabitant, if the exercise of parental custody rights for at least one of the common minor children who are entitled to use the residential premises is granted to that cohabitant and the housing of the minor child cannot be ensured otherwise.

(4) The court may provide for the shared or exclusive use under paragraphs (2) and (3) for a defined period of time or until the occurrence of a condition.

(5) The former cohabitant granted the right of exclusive use shall have the status of tenant, with the proviso that his right to use the residential premises may be terminated by way of ordinary unilateral termination, by offering an adequate replacement property.

(6) The former cohabitant who has available residential premises or residential premises that can be made available by a unilateral declaration may not claim the shared or exclusive use of the residential premises used under the other cohabitant's exclusive title.

Section 4:95 *[Re-settling the use of the matrimonial home]*

(1) If the court ordered the shared use of the residential premise or obliged the cohabitant who is the owner or the holder of usufruct to leave the residential premises, either former cohabitant may request the court to re-settle the use of the residential premises on the ground that due to changes in the circumstances on which the settlement was based, the way of use, if remained unchanged, would violate a substantial legal interest of that cohabitant or the interests of the common minor child.

(2) Paragraph (1) shall be without prejudice to the former cohabitant's right to request, after the division of use, the termination of the former cohabitant's co-tenant legal relationship in accordance with the provisions of this Act concerning co-tenants.

PART FOUR

KINSHIP

TITLE IX

KIN RELATIONSHIP

Section 4:96 *[Kin relationship]*

(1) Lineal kin relationship exists between those of whom one originates from the other.

(2) Blood relatives with no lineal bond are collateral relatives if they have at least one common lineal ascendant.

Section 4:97 *[Fundamentals of kin relationships]*

(1) Lineal kin relationship between parent and child shall arise from bloodline or adoption.

(2) The child shall, by bloodline or adoption, have kin relationship with the entire kinship of the parent.

TITLE X

KIN RELATIONSHIP BASED ON BLOODLINE

Chapter IX

Creation of paternity status

Section 4:98 *[Facts determining paternity status]*

Paternity status shall be created by

a) matrimonial bond;

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b) for cohabitants, a special procedure for human reproduction (hereinafter "reproductive procedure");

c) a declaration of paternity; or

d) a court decision.

Section 4:99 *[Presumption based on matrimonial bond]*

(1) Unless otherwise provided in this Act, the man who had lived in matrimonial bond with the mother during the whole or a part of the period starting from the time of the child's conception until the birth of the child shall be considered as the father of the child. The invalidity of marriage shall be without prejudice to the presumption of paternity.

(2) The presumed time of conception shall be the period between the hundred and eighty-second and the three hundredth day counted backwards from the child's date of birth, including the start and the end dates. It shall be possible to prove that the child was conceived before or after the presumed time of conception.

(3) If, after the termination of her marriage, the woman entered into a new marriage, the new husband shall be considered as the father of the child born during the new marriage even if the time elapsed between the termination of the previous marriage and the birth of the child is less than three hundred days. If this presumption is rebutted, the former husband shall be considered as the father of the child.

Section 4:100 *[Presumption based on a reproductive procedure]*

(1) If paternity cannot be established on the basis of the presumption based on the mother's matrimonial bond, the man who participated with the mother during their cohabitation relationship in a reproductive procedure as a result of which the child was born shall be considered the father of the child.

(2) The marriage of the mother concluded with another man during the period between the completion of the successful reproductive procedure and the birth of the child shall not result in the presumption of paternity with regard to the husband.

(3) The mother's cohabitant shall be considered as the father of the child in accordance with paragraph (1) if the period between the termination of the former marriage of the mother and the birth of the child conceived in a reproductive procedure is shorter than the presumed time of conception.

Section 4:101 *[Presumption based on a declaration of paternity]*

(1) If the mother neither lived in matrimonial bond during the whole period or a part of it between the conception and the birth of the child nor took part in a reproductive procedure giving rise to the presumption of paternity, or if the presumption of paternity was rebutted, the man who acknowledged the child to be his own in a declaration of paternity with full effect shall be considered as the father of the child.

(2) Declaration of paternity may be made by a man who is at least sixteen years older than the child.

(3) Declaration of paternity may be made from the beginning of the time of conception of the child. A declaration of paternity made before the birth of the child shall have full effect upon the birth of the child.

(4) A declaration of paternity shall be made in person. For a declaration of paternity made by a minor having limited capacity to act or a person having partially limited capacity to act in terms of juridical acts concerning the establishment of parentage to be valid, the consent of the of his statutory representative shall be required. The consent of the statutory representative who is permanently prevented from making declarations, or does not grant his consent may be substituted by the consent of the guardianship authority.

(5) For the declaration of paternity to be of full effect, the consent of the mother, the statutory representative of the minor child and, if the child is older than fourteen years, the

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consent of the child shall be required. If the mother is the child's statutory representative, she can grant this consent in this capacity as well unless there is a conflict of interests between the mother and the child. In such cases, the guardianship authority shall appoint an *ad hoc* guardian for the statutory representation of the minor child. If the mother or the child is no longer alive or is permanently prevented from making declarations, the consent shall be granted by the guardianship authority.

(6) If, at the time of making the declaration of paternity, there is an action for establishing the paternity of another man, the declaration of paternity shall become of full effect, even if the declarations of consent set out in paragraph (5) have been made, if that action is completed with finality without the establishment of paternity.

(7) If the declaration of paternity with full effect is made for a child of full age, the child may declare whether he intends to bear the family name of his birth father henceforward or continues to bear his family name worn so far. In the absence of such declaration, the presumption of paternity shall not affect the child's name.

Section 4:102 *[Form-related conditions and the effect of the declaration with full effect]*

(1) The declarations and consents shall be recorded at the civil registrar, the court, the guardianship authority or the career consular officer, or they shall be drawn up in a notarial deed. The consent may be made at an honorary consul authorised to issue consular certificates. The declaration of paternity may not be revoked after the record or the deed is signed.

(2) A declaration of paternity with full effect shall be effective against all.

Section 4:103 *[Presumption based on a court decision]*

(1) If the identity of the father of child cannot be established either on the basis of the mother's matrimonial bond, a reproductive procedure or of a declaration of paternity with full effect, paternity may be established by the court.

(2) The court declares the man who had sexual intercourse with the mother during the time of conception to be the father of the child, if upon the thorough consideration of all circumstances, it can be reasonably concluded that the child was conceived from that intercourse.

(3) If the establishment of paternity by the court concerned a child of majority age, the child may declare whether he intends to bear the family name of his birth father or continues to bear his family name worn so far. In the absence of such declaration, the presumption of paternity shall not affect the child's name.

(4) A judgment establishing paternity shall be effective against all.

(5) If the child was conceived as the result of a reproductive procedure, the man who donated reproductive cells or an embryo for that procedure cannot be subject to a court procedure establishing paternity.

Section 4:104 *[Eligibility for bringing an action for the establishment of paternity]*

(1) The establishment of paternity by the court may be requested by the mother, the child, and the child's descendant after the death of the child, and by the father.

(2) The minor child may take part in the action as co-litigant to the mother with the consent of the guardianship authority.

(3) Regarding children conceived as the result of a reproductive procedure, the man who donated reproductive cells or an embryo for the procedure shall not be entitled to bring an action.

Section 4:105 *[Bringing an action in person]*

(1) The action for the establishment of paternity shall be brought in person by the person eligible to do so.

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(2) Minors having limited capacity to act and persons having partially limited capacity to act in terms of juridical acts concerning the establishment of parentage may bring an action subject to the consent of their statutory representative. The consent of the statutory representative who is permanently prevented from granting the consent, or does not grant his consent shall be substituted by the consent of the guardianship authority.

(3) If the person entitled to bring the action has no capacity to act, the action shall be brought on his behalf by his statutory representative subject to the consent of the guardianship authority.

(4) In the action, the mother may act as statutory representative for her child.

Section 4:106 *[Defendants in an action for the establishment of paternity]*

(1) The action for the establishment of paternity shall be brought against the father; and if brought by the father, against the child.

(2) If the child is not a co-litigant to the mother in an action brought by the mother, the mother shall bring the action against the child as well. In such cases, the guardianship authority shall appoint an *ad hoc* guardian for the representation of the child.

(3) If the person against whom the action should be brought is no longer alive or his whereabouts are unknown, the action shall be brought against a guardian *ad litem* appointed by the court.

Chapter X

Challenging the presumption of paternity

Section 4:107 *[Grounds for challenging the presumption of paternity]*

(1) The presumption of paternity may be challenged on the ground that the person who is to be considered the father under the presumption had no sexual intercourse with the mother at the time of the conception or, it is otherwise impossible under the circumstances that he fathered the child.

(2) If the presumption of paternity is based on a declaration of paternity with full effect, the presumption can also be challenged on the grounds that

a) the declaration, in the absence of fulfilling the legal conditions, is not of full effect;

b) the declaration of paternity has been made by mistake, due to misrepresentation or under unlawful threats; or

c) the declaration of paternity has been made in order to circumvent the law.

(3) If the child was conceived in a reproductive procedure, the presumption of paternity may be challenged if the mother's husband or cohabitant did not consent to the procedure.

Section 4:108 *[Exclusion of challenging the presumption of paternity]*

The presumption of paternity may not be challenged if

a) the parentage is the result of a reproductive procedure, unless the mother's husband or cohabitant did not consent to the procedure; or

b) paternity has been established by the court.

Section 4:109 *[Eligibility for challenging the presumption of paternity]*

(1) The presumed father, the mother, the child and after the death of the child, the child's descendant may challenge the presumption of paternity.

(2) Only the presumed father shall be eligible to challenge the presumption of paternity on the ground that the declaration of paternity was made by mistake, due to misrepresentation or under unlawful threats.

(3) The mother may bring an action jointly with her minor child, with the consent of the guardianship authority.

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(4) The mother's former husband may challenge the presumption of paternity, if, the new husband of the mother is considered as the father of child under the presumption, but should this presumption be rebutted, the former husband would be considered as father.

(5) The prosecutor and the guardianship authority may challenge the declaration of paternity on the ground that the declaration of paternity has been made in order to circumvent the law.

Section 4:110 *[Bringing an action in person]*

(1) The action shall be brought in person by the person eligible to do so.

(2) Minors having limited capacity to act or persons having partially limited capacity to act in terms of juridical acts concerning the establishment of parentage may bring an action with the consent of their statutory representatives. The consent of the statutory representative who is permanently prevented from granting the consent, or does not grant his consent shall be substituted by the guardianship authority.

(3) If the person entitled to bring the action has no capacity to act, the action shall be brought on his behalf by his statutory representative with the consent of the guardianship authority.

(4) In the action, the mother may act as the statutory representative for her child.

Section 4:111 *[Time limits for challenging]*

(1) The action for rebutting the presumption of paternity may be brought by the minor child and the mother with the consent of the guardianship authority up to the minor child's third year of age. The presumption of paternity may be challenged by other persons eligible to do so for one year from the presumption of paternity is arisen.

(2) If the presumed father made the declaration of paternity with full effect by mistake, due to misrepresentation or under unlawful threats, he may bring an action for rebutting the presumption within one year from recognising the mistake or misrepresentation or, in case of unlawful threats, from the termination of such duress.

(3) If no actions have been brought under paragraphs (1) and (2) by the time the child has reached majority, the child shall be eligible to bring an action on his own within the following one year.

(4) If the person entitled to challenge the presumption becomes aware of a fact serving as ground for challenging the presumption after the expiry of the time limit applicable to him, he can challenge the presumption of paternity within one year from becoming aware of such a fact.

Section 4:112 *[Defendants in the actions for the rebuttal of the presumption of paternity; the effect of the judgment]*

(1) The action for rebutting the presumption of paternity shall be brought by the child and the mother against the father, the father against the child, and by other eligible persons against the child and the father. The action, other than one brought by the child, shall also be brought against the mother, unless it is not possible due to her death.

(2) If the child was born during the mother's new marriage, but within three hundred days from the termination of the mother's previous marriage, the action shall also be brought against the mother's former husband.

(3) If the person against whom the action should be brought is no longer alive or his whereabouts are unknown, the action shall be brought against a guardian *ad litem* appointed by the court.

(4) A judgment rebutting the presumption of paternity shall be effective against all.

Section 4:113 *[Name and contact rights after the rebuttal of the presumption of paternity]*

(1) If the court upholds the action for rebutting the presumption of paternity, in justified cases and upon request, it may

a) entitle the child to continue to bear his family name; and

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b) entitle the man who has brought up the child in his family for a longer period as his own to maintain contacts with the child.

(2) The child may continue to bear the family name under paragraph (1) *a)* even if the status of father is held by another person.

Section 4:114 *[Rebuttal of the presumption of paternity in a non-contentious procedure]*

(1) No action needs to be brought for rebutting the presumption of paternity if the presumption of paternity is based on the mother's marriage, the community of life between the spouses has been terminated for at least three hundred days and the man who actually fathered the child intends to recognise the child as his own by way of a declaration of paternity with full effect.

(2) In the case specified in paragraph (1), the court shall establish, in a non-contentious procedure and upon the joint application of the presumed father, the mother and the man intending to recognise the child as his own by way of a declaration of paternity with full effect, that the child's father is not the mother's husband or former husband. Paternity shall be settled in the same procedure via a declaration of paternity with full effect.

(3) The time limits applicable for bringing the action for rebutting the presumption of paternity shall not be applied to the procedure set out in paragraph (2).

Chapter XI

The mother's status

Section 4:115 *[The mother's status]*

(1) The child's mother shall be the woman who gave birth to the child.

(2) If the mother's identity cannot be established, the child may apply for the court to declare that the person indicated by the child is the child's mother. If the child has died, his descendant may this right.

(3) The judicial declaration of maternity can be requested also by the person alleging that she is the child's mother.

(4) If the child resulted from a reproductive procedure the woman who donated a reproductive cell or embryo for the procedure shall not be eligible to bring an action.

Section 4:116 *[Action for a negative declaration]*

The child, or, after the child's death, the child's descendant or the biological mother may request the court to declare that the woman entered into the register of births as mother is not identical to the woman who gave birth to the child, provided that the erroneous entry on maternity cannot be remedied by an administrative procedure.

Section 4:117 *[Bringing an action in person]*

(1) The action establishing maternity shall be brought by the person eligible to do so.

(2) A minor having limited capacity to act or a person having partially limited capacity to act in terms of juridical acts in the context of establishing parentage may bring an action with the consent of his statutory representative. If the statutory representative is permanently prevented from granting the consent, or does not grant consent, the consent of the guardianship authority may substitute for this consent.

(3) If the eligible person has no capacity to act, the action shall be brought on his behalf by his statutory representative with the consent of the guardianship authority.

Section 4:118 *[Defendants in an action establishing maternity and the legal effect of the change in the mother's status]*

(1) The action shall be brought by the child or his descendant against the mother or the person entered into the register of births as mother; or by the mother against the child or the person entered into the register of births as mother.

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(2) If the parentage is the consequence of a reproductive procedure, the court shall not proceed to establish the maternity of the woman who donated a reproductive cell or embryo for that procedure.

(3) If, in the action for establishment of maternity, the change in the mother's status affects, through the woman's marriage, the presumption of paternity, the action shall also be brought against the husband who is to be considered the father of the child on the basis of the presumption based on matrimonial bond.

(4) If the person against whom the action should be brought is no longer alive, the action shall be brought against a guardian *ad litem* appointed by the court.

(5) In the event of the change in the mother's status, the child of majority age may declare whether he intends to bear the family name of his biological mother or continues to bear the family name worn that far. In justified cases and upon request, the court shall entitle the child to continue to bear his family name.

(6) A judgment made in an action establishing maternity shall be effective against all.

TITLE XI

ADOPTION

Chapter XII

Purpose and conditions of adoption

Section 4:119 *[Purpose of adoption]*

(1) Adoption establishes a kin relationship between the adoptive parent, the blood relatives of the adoptive parent and the adopted child with a view to bring up the adopted child in a family.

(2) Only minor children can be adopted.

Section 4:120 *[General conditions for adoption]*

(1) Adoption requires the concordant application of the person intending to adopt and the child's statutory representative, as well as the consent of the parents of the child and the spouse of the adoptive parent, if married.

(2) A minor older than the age of fourteen having limited capacity to act may only be adopted with his consent. The opinion of a minor younger than the age of fourteen but who is of sound mind shall be considered with appropriate weight regarding his adoption.

(3) During adoption, desirable continuity in the child's upbringing shall be sought, taking into account in particular the child's family relationships, nationality, religion, mother tongue and cultural roots.

(4) Adoption shall be authorised by the guardianship authority.

(5) The guardianship authority shall only authorise the adoption, even if the conditions set out in this Act are fulfilled, if the adoption is in the interests of the minor child. In the interests of the minor child, the guardianship authority shall primarily authorise adoptions by adoptive parents living in marriage.

Section 4:121 *[The adoptive parents]*

(1) With the exception of adoption by blood relatives and by the spouse of the parent as well as the case referred to in paragraph (4), only spouses shall be allowed to adopt a child. Adoptive parents may be only persons having capacity to act who are at least twenty-five years old and at least sixteen years and at most forty five years older than the child and based on their personality and circumstances are suitable to adopt the child. If the adoption of a child over the age of three years is applied for then, in the interest of the child, adoption may be authorised also if the difference in age between the adoptive parent and the child does not

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exceed fifty years. In the event of adoption by blood relatives or spouses, the difference in age shall be ignored.

(2) In the event of adoption as a common child, only one of the adoptive parents shall meet the conditions regarding age and the difference in age specified in paragraph (1). If siblings are adopted, the age of the elder sibling shall be taken into account.

(3) Persons subject to a final and binding court judgment withdrawing parental custody or excluding them from participating in public affairs, and persons whose child has been taken into care shall not be allowed to adopt.

(4) Exceptionally, in an event specified by an Act and deserving special consideration, and in accordance with a procedure laid down in a government decree, the suitability for adoption of a person who wishes to solely adopt as determined therein may also be established.

Section 4:122 *[Establishment of suitability for adoption]*

(1) Suitability for adoption shall be established by the guardianship authority, after the completion of a preliminary procedure and preparation as set out in law.

(2) The suitability of blood relatives, the parent's spouse, the person who has raised the child continuously for at least one year with the consent of the parent of the child and, regarding international adoption, the suitability of the person intending to adopt shall be established by the guardianship authority in the course of the procedure for authorising adoption. This rule shall be applied when establishing the suitability of a person who raises against consideration the child placed with him in his own household by virtue of the decision of the guardianship authority (hereinafter "child protection foster parent").

Section 4:123 *[Children available for adoption]*

(1) With the exception of adopting the spouse's minor child, children whose parents are no longer alive or are not able to bring up the child appropriately shall be available for adoption.

(2) During adoption, the adopted child may be adopted by the spouse of the adoptive parent; after the death of the adoptive parent by other persons as well. If the adopted child is adopted after the death of the adoptive parent, the earlier adoption shall terminate.

Section 4:124 *[Declaration of availability for adoption]*

(1) The guardianship authority may declare the child who is taken into care available for adoption for a period of four years at the most, if his parent's parental custody rights have not ceased and the parent, through his own fault,

a) have failed to keep regular contacts with the child for eight months or failed to keep any contact with the child for at least three months, or fails to change his lifestyle and circumstances, and for this reason, such care cannot be terminated; or

b) changes his place of domicile or residence without notifying his new place of domicile or residence, and the search measures to localise it have failed to bring any result within three months.

(2) In justified cases, the time limit set out in paragraph (1) may be extended by up to two years.

(3) In the event under paragraph (1) *a*), the parent shall be warned of the legal consequences of declaring the child available for adoption in the decision placing the child temporarily and taking the child into care.

(4) With a view to the child's adoption, the guardianship authority may suspend the parents' contact rights upon the declaration of availability for adoption.

(5) If the minor has not been adopted, and later on the guardianship authority terminates taking him into care, the decision declaring availability for adoption shall cease to be effective.

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Section 4:125 *[Parental consent to open adoption]*

(1) An adoption shall be an open adoption if the biological parent grants consent to the adoption with regard to an adoptive parent known by the parent.

(2) The parent may withdraw that declaration of consent within six weeks of the child's birth, with the view to the child be raised by the parent or another relative. The parent shall be notified of the possibility to withdraw the declaration.

(3) If the parent has consented to the adoption, the parental custody right of the parent shall be terminated upon the child reaching six weeks of age. The termination of parental custody shall be established by the guardianship authority.

(4) In cases other than adoption by blood relatives or the parent's spouse, the involvement of the local child protection service or an organisation facilitating adoption shall be required for an open adoption even if parental consent is granted

Section 4:126 *[Parental consent to a closed adoption]*

(1) An adoption shall be a closed adoption if the biological parent grants consent for the child to be adopted t without knowing the identity and particulars of the adoptive parent or if the parent's consent is not required under this Act. The declaration of consent may be made before the birth of the child.

(2) The parent may withdraw that declaration of consent within six weeks of the child's birth, with the view to the child be raised by the parent or another relative. The parent shall be notified of the possibility to withdraw the declaration.

(3) If the child is older than six years of age or of impaired health, the guardianship authority's approval shall be required for the declaration of consent to be valid.

(4) In the case specified in paragraph (2), parental custody shall be terminated upon the child reaching six weeks of age. The termination of parental custody rights shall be established by the guardianship authority.

(5) In the event of closed adoption, the parent shall not be notified of the adoption and shall not be entitled to appeal against the decision on adoption.

(6) In the event of closed adoption, the biological parent and the adoptive parent shall not be informed of the other's natural identification data.

Section 4:127 *[Adoption without the parent's consent]*

(1) The consent of the parent

a) who is subject to a final and binding judgment terminating parental custody;

b) whose child taken into care has been declared available for adoption by the guardianship authority;

c) who has no capacity to act on any ground other than minority;

d) whose identity is unknown, or whose whereabouts are unknown, and the search measures have failed to bring any result; or

e) who left the child, without revealing identity, at the place designated by a healthcare institution with the view to have the child brought up by others and does not claim the child within six weeks shall not be required to the adoption.

(2) The consent of the adoptive parent's spouse shall not be required to the adoption if

a) the spouse has no capacity to act or the spouse's whereabouts are unknown; or

b) the community of life between the spouses has been terminated.

Section 4:128 *[Care before adoption]*

(1) After submitting the application for adoption and obtaining the consent of the interested parties, the person who intends to adopt shall look after the child in his own household for at least one month. The adoption may be authorised after the successful conclusion of that care period.

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(2) The adoption may be authorised without the care period under paragraph (1) if

a) the adoptive parent and the biological parent are spouses;

b) the adoptive parent has been caring for the child in his own household with the consent of the biological parent; or

c) the child taken into care is adopted by the child protection foster parent who has been caring for and bringing up the child for at least one year.

Section 4:129 *[International adoption]*

(1) It shall be an international adoption if the child is permanently moved to another country through the adoption, irrespective of the nationality of the adoptive parent and whether the child's nationality changes or not.

(2) With the exception of adoption by blood relatives or by the parent's spouse, adoption abroad may be authorised regarding a child declared available for adoption and taken into care, provided that the child taken into care and available for adoption has not been adopted in Hungary because the measures taken for his adoption failed to bring any result.

Section 4:130 *[Prohibition of financial gain]*

The adoption shall not be authorised if, for the persons or organisations involved in the adoption, the adoption results in a financial gain that would exceed their justified costs.

Section 4:131 *[Completion and follow-up of the adoption]*

(1) The adoption shall become effective upon the decision becoming final. If the adoptive parent dies during the procedure, the legal effects of the adoption, if authorised, shall take effect upon the death of the adoptive parent.

(2) After the adoption, the organisation designated by law, or the local child protection service shall monitor and assist the child's circumstances and the changes to his living conditions for a maximum of five years after the decision authorising the adoption becomes final.

Chapter XIII

Legal effects of the adoption

Section 4:132 *[Child's status in the adoptive parent's family; adoption as common child by a couple]*

(1) The adopted child shall have the status of the adoptive parent's child with regard to the adoptive parent and his blood relatives.

(2) A child adopted by a couple, either jointly or separately, shall be considered as the couple's common child. Adopting the child of one spouse by the other spouse shall also qualify as adoption as common child by a couple.

(3) The adoption shall affect the descendants of the adopted child.

Section 4:133 *[Legal effect on rights and obligations arising from parentage]*

(1) Upon the adoption, the rights and obligations pertaining to parental custody and blood relatives' maintenance arising from lineal kinship shall terminate, unless one of the spouses adopted the other spouse's child.

(2) If one of the spouses adopts the other spouse's child, and the marriage in which the child was born terminated due to the death of the spouse, the adoption shall be without prejudice to the contact rights of the deceased spouse's blood relatives.

(3) If, due to the death of both parents, the child is adopted by a blood relative of one of the parents, the adoption shall be without prejudice to the contact rights of the other spouse's blood relatives.

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(4) In exceptionally justified cases, in the event of an open adoption, the guardianship authority may grant contact rights to the biological parent who consented to his child's adoption by the other parent's spouse.

Section 4:134 *[Name of the adopted child]*

(1) The adopted child shall bear the adoptive parent's family name at birth or the family name acquired by marriage, excluding where the adoptive parent bears the spouse's full name or family name with a suffix indicating marital status. If the adoptive parent bears the name of her spouse or former spouse without a suffix indicating marital status or the joint family names of both of them as married name, the new family name of the adopted child shall be, at the choice of the adoptive parent, the family name of the spouse, former spouse, the joint family name or the adoptive parent's name at birth. More than one child adopted by the same adoptive parent shall all bear the same family name.

(2) In the event of an adoption as a common child by a couple, the adoptive parents shall state in their application for adoption which adoptive parent's family name the adopted child shall bear. Upon the agreement of the adoptive parents, the adopted child may bear the family names of the adoptive parents jointly, even if the adoptive parents have not joined their family names. If the spouses have not adopted the child jointly, in the absence of their agreement, the child shall bear the family name of the adoptive parent who was the first to adopt the child.

(3) The guardianship authority may exceptionally authorise the adopted child to bear the family name he has borne that far.

(4) In exceptionally justified cases, the guardianship authority may authorise that the adopted child's given name be changed. The given name shall be determined by the adoptive parents.

(5) The adopted child's family and given name shall be determined simultaneously with the authorisation of the adoption.

Section 4:135 *[The adopted child's right to know his biological parentage]*

(1) The adopted child may request information from the guardianship authority on whether he was adopted, if his biological parent is alive, if he has any siblings, and, if he is older than fourteen, the natural personal identification data of his biological parent and siblings as well. The child having reached the age fourteen may submit this application without the consent of his statutory representative. The parties shall be informed of this fact in the course of the adoption procedure.

(2) The biological parent and sibling need to be heard in order to provide this information. If the adopted child is a minor, the adoptive parent or other statutory representative shall also be heard. Prior consent from his statutory representative shall be needed for the hearing of a minor sibling. If the biological parent or sibling has no capacity to act, his statutory representative needs to be heard.

(3) The hearing of the biological parent, sibling, adoptive parent or other statutory representative shall not be required if his whereabouts are unknown or he cannot be heard due to irremovable obstacles.

(4) The natural personal identification data of the biological parent and the sibling shall not be disclosed to the adopted child if

a) the hearing of the biological parent, the sibling, the adoptive parent or other statutory representative was not possible due to their unknown whereabouts or irremovable obstacles;

b) the biological parent or the sibling declares that their natural personal identification data cannot be disclosed; or

c) it is against the interests of the minor child, in particular if the parental custody of the biological parent was terminated by the court because of the parent's fault seriously harming

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or jeopardising the interests of the child, in particular the physical well-being, mental or moral development of the child.

(5) If the biological parent is no longer alive upon the submission of the application under paragraph (1), the natural personal identification data can be disclosed to the adopted child unless the parent already declared in an earlier procedure that he does not consent to the disclosure of his data.

Section 4:136 *[Information on the biological parent's medical data]*

The guardianship authority shall, at the request of

a) the statutory representative of the adopted child under fourteen;

b) the adopted child older than fourteen, and the statutory representative; or

c) the adopted child who has reached majority,

without disclosing the natural personal identification data of the biological parent, inform the adopted child of the medical data of the biological parent that is relevant for his health. The statutory representative shall also be informed of the data requested by the adopted child older than fourteen.

Chapter XIV

Ineffectiveness and termination of adoption

Section 4:137 *[Ineffectiveness of the adoption]*

(1) The adoption shall become ineffective if the adoptive parent recognises the adopted child as his own by way of a declaration of paternity with full effect, or if the adoptive parent shall be considered as the father or mother of the adopted child upon a final and binding judgment.

(2) If the adoption becomes ineffective, it shall be considered as if the adoption did not take place.

Section 4:138 *[Termination of the adoption upon mutual request]*

(1) The guardianship authority may terminate the adoption at the mutual request of the parties.

(2) If the adopted child is still a minor, the adoption may only be terminated in the interest of the minor. During the procedure, the guardianship authority may hear the biological parents of the adopted child, unless irremovable obstacles prevent this hearing.

(3) The adoption shall be terminated upon the decision of the guardianship authority becoming final. If either party dies during the procedure, the legal effects of the adoption shall cease, retroactively to the date of the application's submission if the termination is granted.

(4) The termination shall affect the adoptive parent, the blood relatives of the adoptive parent, the adopted child and the descendants of the adopted child.

Section 4:139 *[Termination of the adoption upon a unilateral request]*

(1) The court shall terminate the adoption if either the adoptive parent or the adopted child displays a conduct due to which sustaining the adoption became unbearable to the other party. If the adopted child is a minor, the adoption can be terminated at the request of the adoptive parent only in exceptionally justified cases.

(2) After the death of the adoptive parent, the adoption may also be terminated with the view to allow the adopted child to regain his family status based on parentage.

(3) The termination of the adoption by court may be requested by either party. The guardianship authority may also bring an action for terminating the adoption in the interest of the adopted minor child. If the party against whom the action should be brought is not alive, the action shall be brought against the guardian *ad litem* appointed by the court. If the

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adoptive parent dies during the procedure, the action shall be continued against the guardian *ad litem* appointed by the court.

(4) If, upon bringing the action, only one of the adoptive parents is alive, the adoptive parent alive may request that the adoption be terminated also .with regard to the deceased adoptive parent. A conduct displayed towards either adoptive parent may serve as ground for the action.

(5) If the adopted child is a minor, the court shall hear the biological parents, unless irremovable obstacles prevent their hearing.

Section 4:140 *[The effect of the judgment terminating the adoption]*

(1) The adoption shall be terminated on the day when the judgment terminating it becomes final and binding. If either party dies during the procedure, the legal effects of the adoption shall cease, retroactively to the date of the application's submission if the adoption is dissolved.

(2) The judgment terminating the adoption shall affect the adoptive parent, the blood relatives of the adoptive parent, the adopted child and the descendants of the adopted child.

(3) A judgment terminating the adoption shall be effective against all.

Section 4:141 *[The effect of the decision terminating the adoption in the case of more than one adoptive parent]*

If the adoption was terminated for one of the adoptive parents, the adoption shall cease only with regard to that adoptive parent and his blood relatives, unless provided otherwise by the guardianship authority or the court.

Section 4:142 *[Name in the event of the termination of the adoption]*

After the termination of the adoption, the adopted child and his descendants shall not continue to bear the family name taken up upon the adoption. In justified cases, the guardianship authority or the court shall, upon request, authorise the parties concerned to continue to bear the family name taken up upon the adoption.

Section 4:143 *[Protection of the rights acquired from the deceased adoptive parent]*

Terminating the adoption shall be without prejudice to the rights acquired from the adoptive parent who died before the procedure at the guardianship authority was initiated or the action was brought. The inheritance that has already passed may not be reclaimed.

Section 4:144 *[Legal effect of terminating the adoption on kinship based under parentage]*

Upon terminating the adoption, the rights and obligations arising from the kinship based on parentage which were terminated upon the adoption shall be restored; however, parental custody rights and obligations shall not.

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Chapter XV

Juridical acts regarding adoption

Section 4:145 *[Juridical acts regarding adoption]*

(1) Juridical acts regarding adoption shall be made in person, except in the cases set out in paragraphs (2) and (3). Minors having limited capacity to act may make their juridical acts in person, without the consent of their statutory representative.

(2) For persons having partially limited capacity to act in terms of family law, the consent of their statutory representative shall be required to make juridical acts regarding adoption.

(3) On behalf of persons having no capacity to act, juridical acts regarding adoption may be made by their statutory representative; a minor younger than fourteen who is of sound mind shall be heard by the guardianship authority.

(4) When terminating the adoption, the adoptive parent shall not act as the adopted child's statutory representative. In such cases the guardianship authority shall appoint an *ad hoc* guardian for the adopted minor child.

TITLE XII

PARENTAL CUSTODY

Chapter XVI

General rules on parental custody

Section 4:146 *[Status of the minor; parental custody rights and obligations]*

(1) A minor child shall be subject either to parental custody or guardianship.

(2) Parental custody includes the right and obligation to determine the minor child's name, to care for and bring the child up, to determine the place of residence and manage the minor child's assets, as well as the right to appoint a guardian and to exclude someone from being a guardian.

Section 4:147 *[Principles for exercising parental custody]*

(1) The parents shall be required to exercise, in cooperation with each other, parental custody with the view to ensure the child's appropriate physical, mental or moral development.

(2) In the joint exercise of parental custody, the rights and obligations of the parents shall be equal.

Section 4:148 *[Involving the child in the decision-making]*

The parents are obliged to inform the child of any decisions affecting him; they shall ensure that their child who is of sound mind may express his views before the decisions are taken, and in the cases specified by an Act decide jointly with his parents. The parents shall take the child's views into account with appropriate weight, according to his age and maturity.

Section 4:149 *[Exceptional nature of restrictions on parental custody]*

The parent's parental custody may be restricted or withdrawn by the court of other authorities in exceptionally justified cases set out by an Act, to the extent required to ensure the interests of the child.

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Chapter XVII

Content of parental custody

1 Determining the child's name

Section 4:150 *[Determination of the child's name]*

(1) The child shall bear, as agreed by the parents, the family name at birth of his father or mother or the family name of either of them acquired by marriage. If the parents are not married to each other, the child may not bear the mother's name borne upon the mother's marriage with another person, if the mother bears her name with a suffix indicating marital status. The child may also bear as family name his parents joint family names, even if the parents have not joined their family names after marriage or the parents are not married to each other. The child's family name shall be double at most.

(2) All common children born during the marriage of their parents shall have the same family name, unless the parents have amended their family names during the marriage. The child of spouses bearing a common married name shall bear the parents common married name. If one of the parents bears the joint family names of both of them as married name, the

child shall bear, as agreed by the parents, the other parent's name without a suffix indicating marital status or the parents' joint family name.

(3) If there is no person who shall be considered as the father of the child, the child shall bear the mother's family name at birth or the family name acquired by marriage, unless the mother bears her husband's full name or family name with a suffix indicating marital status.

(4) The mother may request the guardianship authority that an imaginary person be entered into the register of births as the father of the minor child. During the procedure for registering an imaginary person as the father of the child, the mother may decide that the child shall bear the family name of the imaginary father from then on. In the absence of a statement to this end, the child shall continue to bear the mother's family name.

(5) If there is no person to be considered as the father of the child, the child, after reaching majority, may request to enter an imaginary person as his father into the register of births, if such an imaginary father has not been registered earlier, and he may also request the name of an imaginary father registered earlier be removed In this case, the child may make a statement on whether to bear the family name of the imaginary father.

(6) The child's given name shall be determined by the parents.

Section 4:151 *[Determination of name by the guardianship authority]*

(1) The guardianship authority shall determine the name of the child if

a) the parents exercising parental custody jointly fail to notify their agreement related to determining the child's family and given name within thirty days following the notice of the civil registrar to this end; or

b) both parents of the child are unknown.

(2) The guardianship authority shall determine the child's given name if parental custody rights are exercised by the parent who failed to determine the child's given name despite a notice of the civil registrar within thirty days of the notice being communicated.

2 Caring for and bringing up the child

Section 4:152 *[Caring for the child, determining the child's place of domicile and residence]*

(1) The parents shall have the right and are obliged to take care of the child, and to ensure the conditions required for the child's subsistence and upbringing.

(2) The parents shall provide housing for their child in their own household. Unless otherwise provided by the court or the guardianship authority, the child's place of domicile shall be the residential premise of his parents, even if the child temporally resides somewhere else.

(3) The parent or the guardianship authority may demand the release of the child from the person wrongfully retaining the child.

(4) If approved by the guardianship authority, the child who has reached the age of sixteen may, without the consent of his parents, leave the parent's place of domicile or the place of residence appointed by the parents if it is not contrary to his interests. Leaving the parent's place of domicile or another place of residence appointed by the parents shall not affect parental custody, except for personal care and upbringing.

(5) The child may, alone or with one of his parents, stay abroad for an extended period of time such as to study, work or another similar purpose, with the consent of both parents.

(6) For the child to settle abroad parental authorisation shall be required.

Section 4:153 *[Choices concerning the upbringing and the career path of the child]*

(1) The parents may choose the way their child is to be brought up.

(2) The parents and the child shall jointly decide, while taking the child's abilities into account, what career path the child should prepare for.

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(3) The guardianship authority shall decide in any dispute arising between the parent and the child in connection with determining the career path, and in this context the child's education and choice of school.

Section 4:154 *[Involvement in the child's care and upbringing by a person in an active family relationship with the child]*

The person in whose own household or in the household shared with the parent the child has been brought up for an extended period of time, can be involved in exercising certain rights and obligations during the care and upbringing of the child, with the consent of the parent exercising custody.

3 Management of the child's property

Section 4:155 *[Managers of the child's property]*

(1) The parents exercising parental custody shall be entitled and obliged to manage any property of their child, not withdrawn from their management according to this Act.

(2) If the child received property on condition that it cannot be managed by the child's parents, the guardianship authority shall appoint a guardian to manage that property (hereinafter "guardian for managing property"), taking the proposal of the person granting the property into account. If the third party granting the property has excluded one of the parents from the management of the property, the property shall be managed by the other parent otherwise entitled to the management of the property.

Section 4:156 *[The sole property management right of the parent]*

(1) The parents exercising parental custody jointly may authorise each other, mutually or individually, to manage the property on behalf of the other parent. This authorisation shall be valid if drawn up as a public deed or a private deed countersigned by an attorney-at-law.

(2) Third parties acting in good faith may consider the parent acting on behalf of the child to conclude contracts of minor importance to be authorised by the other parent.

(3) If justified by the child's interests, the guardianship authority may appoint one of the parents exercising joint parental custody as manager of the child's property.

Section 4:157 *[Using the child's property and income]*

(1) The parents are obliged to spend the part of the income arising from the child's property that remains after discharging the property's burdens to satisfy the child's justified needs.

(2) For the purpose of covering the child's maintenance, the parents may avail of the property of the child in accordance with the provisions of this Act on child maintenance.

(3) If the child has been brought up in his parent's household and has earning, the parent may claim the child's appropriate contribution to the household expenses.

Section 4:158 *[The parent's liability for property management]*

(1) The parents shall manage the property of their child without the obligation to provide security and accounting.

(2) In the course of managing their child's property, the parents shall act in accordance with the rules for ordinary management of property, subject to the same care as regarding their own matters. If they violate this obligation intentionally or with gross negligence, they shall compensate for the damage caused thereby in accordance with the rules of extra-contractual liability.

Section 4:159 *[Restrictions on the parents' property management right]*

If the parents exercising parental custody fail to discharge their obligation in terms managing their child's property seriously violating the child's interests, in justified cases, the guardianship authority

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a) may order the transfer of the child's funds and valuables to the guardianship authority, if they need not be kept available in accordance with the rules for ordinary management of property;

b) may order the parents to provide security;

c) may subject the property management to its regular supervision;

d) may order the parents to give an account of the property management like a guardian; or

e) may restrict or withdraw the parents' right of property management and their right of representation in property matters with respect to certain property matters or a certain group of matters.

Section 4:160 *[Releasing the child's property]*

If the parents' right of property management terminates, they shall be required to release their child's property to the child of majority age or to the person who becomes responsible for the management of that property.

4 Statutory representation of the child

Section 4:161 *[Statutory representation of the child]*

(1) The parents exercising parental custody shall have the right and obligation to represent their child in his personal and property matters.

(2) The parent who does not hold the right to manage property shall not act as statutory representative in the child's property matters.

Section 4:162 *[Exclusion of statutory representation due to the personal nature of the juridical act]*

The parent's right of representation shall not cover the child's juridical acts that can exclusively be made in person under the law.

Section 4:163 *[Exclusion of statutory representation by the parent due to conflict of interests]*

(1) Unless otherwise provided in this Act, the parent shall not represent his child in cases in which the parent himself, his spouse, cohabitant, lineal relative or any other person whose statutory representation is performed by the parent is a party of opposing interest regarding the child.

(2) If the parent who is the statutory representative of the child cannot act in the child's affair by virtue of an Act or upon the order of the guardianship authority, due to conflict of interests or any other obstacle, the guardianship authority shall appoint an ad hoc guardian for the child.

(3) The appointment of an *ad hoc* guardian may be applied for by any interested party, any authority or it can also take place *ex officio*. For the purposes of the appointment of an *ad hoc* guardian, the parent shall be required to notify, without delay, the guardianship authority of the parent not being allowed to act due to the grounds specified in paragraph (2).

(4) The *ad hoc* guardian shall have the same competence as the guardian in the case.

Chapter XVIII

Exercising parental custody

1. The parents' agreement on the exercise of parental custody

Section 4:164 *[Joint exercise of parental custody]*

(1) Unless otherwise provided by the parents in their agreement, by the guardianship authority or the court, parental custody shall be exercised by the parents jointly even if they do not live together any longer.

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(2) In the course of exercising joint parental custody, separated parents shall ensure that their child's life be balanced.

(3) The parent, even if exercising parental custody jointly with the other parent, may, in the interest of the child, decide independently in cases requiring immediate action, subject to notifying the other parent without delay.

Section 4:165 *[Agreement between separated parents on the division of custody rights and on joint parental custody]*

(1) Separated parents may divide between each other the rights and obligations pertaining to parental custody, and they can agree that parental custody be exercised by one of them. If the child has been brought up for an extended period of time in the household of one of the parents undisturbed, the agreement of the parents to this end shall be presumed.

(2) At the joint request of the parents and considering the interests of the child, the court shall, in a marital action or an action for settling parental custody, approve the parents' settlement or decide in a judgment, on the joint parental custody, and in this context the place of domicile of the child, or on the settlement of parental custody under paragraph (1).

Section 4:166 *[Deciding in disputes related to the exercise of joint parental custody]*

The guardianship authority shall decide if, in the course of exercising joint parental custody, the parents are unable to reach an agreement in an issue, other than issues within the freedom of conscience and religion.

2. Settling the exercise of parental custody by the court

Section 4:167 *[Settling of the exercise of parental custody by the court]*

(1) In the absence of an agreement between the separated parents, the court shall decide at request or in the interests of the child ex officio, which parent shall exercise parental custody.

(2) When deciding, the court shall consider how the child's physical, mental or moral development can be ensured the best.

Section 4:168 *[Authorising the parent living separately to exercise certain parental custody rights]*

(1) If the court grants parental custody to one of the parents, the parent living separately from the child, except for substantial matters affecting the future of the child, may not exercise parental custody rights.

(2) The court may authorise the parent living separately from the child to perform certain tasks related to caring for and bringing up the child, and exceptionally, to exercise property management or perform statutory representation in the property matters of the child, either in full or in part. If the interests of the child require so, the court may restrict or withdraw the right to decide in certain substantial matters affecting the future of the child.

Section 4:169 *[Placing the child with a third party]*

(1) If the exercise of parental custody by the parents endangers the child's interest, the court may place the child with someone else, provided that this person also requests that the child be placed with him. In this case, this person shall be appointed as guardian, and the parental custody of the parent shall be suspended.

(2) In the case specified in paragraph (1), the court shall place the child primarily with a person who was earlier, in accordance with the child's interests, involved in caring for and bringing up the child.

Section 4:170 *[Modifying the exercise of parental custody' and the placement of the child]*

(1) The court may be requested to modify the exercise of parental custody and the child's placement with a third party if the circumstances upon which the parents' decision or the court's decision was based subsequently changed significantly, and consequently, the modification serves the interests of the child. The parent who was at fault in causing changes

in the circumstances, in particular by wrongfully taking or retaining the child, may not rely on the interests of the child with regard to the changes in the circumstances.

(2) If, in exercising joint parental custody, the parents are unable to cooperate any longer, the court shall terminate joint parental custody at the request of either parent.

Section 4:171 *[Action for settling the exercise of parental custody and for the child's placement with a third party]*

(1) The action for settling the exercise of parental custody, for modifying parental custody and certain custody rights, and for placing child with a third party and for modifying the placement may be requested by the parent and the guardianship authority.

(2) With the exception set out in paragraph (3), this action shall be brought by a parent against the other parent or by the guardianship authority against both parents.

(3) The action for the modification of placement with a third party shall be brought against the person with whom the child was placed.

(4) During the procedure, the court shall hear both parents, except for irremovable obstacles. In justified cases or if requested so by the child, either directly or with involving an expert, the child shall be heard as well. For a child older than fourteen, the consent of the child shall be required for any decision on parental custody and placement regarding him, unless the child's choice endangers his development.

Section 4:172 *[Mediation in the action for settling of exercising parental custody]*

In justified cases, the court may order the parents to avail of a mediation procedure in the interest of the proper exercise of parental custody and of the cooperation between them required for the former, including the contact rights between the parent living separately and the child.

3. Rights and obligations of a parent living separately from the child

Section 4:173 *[The parents' cooperation obligation]*

The parent exercising parental custody and the parent living separately from the child shall cooperate in the interest of the balanced development of the child, respecting each other's family life and peace.

Section 4:174 *[Information obligation of a parent living together with the child]*

The parent exercising parental custody is obliged to inform the parent living separately at adequate intervals of the development, health and studies of the child and information regarding the child shall be provided if sought by the parent living separately.

Section 4:175 *[Parental custody rights exercised jointly]*

(1) Separated parents shall exercise their rights concerning substantial matters affecting the future of the child even if parental custody is exercised by one of the parents by virtue of the parents' agreement or the court's decision, except if the parental custody of the parent living separately from the child has been withdrawn or restricted by the court in this regard.

(2) Determining and changing the name of the minor child, determining his place of residence if other than his place of domicile shared with the parent or his place of residence abroad for an extended period of time or for the purpose of settlement, changing the nationality of the child, and choosing the school and career path of the child shall be considered as substantial matters affecting the future of the child.

(3) The guardianship authority shall decide if the separated parents are unable to reach an agreement in certain custody rights set out in paragraph (2) and exercised jointly.

Section 4:176 *[Information obligation of the parent living separately]*

If the parent living separately from the child is authorised by the court to perform certain tasks related to caring for and bringing up the child or to exercise property management or perform statutory representation in the child's property matters, parental custody in this regard

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shall be exercised by the parent living separately. The parent living separately shall be required to inform of his activity the parent otherwise exercising parental custody.

Section 4:177 *[Mediation in guardianship authority's procedure]*

The guardianship authority may order, at request or in the interest of the child, *ex officio*, the parents to avail of a mediation procedure in the interest of creating proper cooperation between the parent exercising parental custody and the parent living separately, including contact between the parent living separately and the child.

4. Contact rights

Section 4:178 *[Right of contact]*

(1) The child shall have the right to maintain a personal and direct contact with the parent living separately. The parent or other person bringing up the child shall be required to ensure undisturbed contact.

(2) Unless otherwise provided by the court or the guardianship authority, the parent living separately from the child shall be entitled and obliged to maintain contact with the child.

(3) The parent may have contact with the child even if the parent's parental custody rights have been suspended, unless subjected to a restraining order for an act committed against the child or the child's relative living in the same household with the child.

(4) In exceptionally justified cases, in the interest of the child, the parent

a) whose parental custody rights have been terminated by the court;

b) who granted consent for the child to be adopted by the spouse of the other parent; or

c) whose parental custody rights have been terminated upon granting consent for the child to be adopted by an unknown person upon leaving, without revealing identity, the child in a healthcare facility, in a place designated for this purpose, with the view to have the child brought up by others and does not claim the child within six weeks, and if the child has not been adopted, may be authorised to keep contact with the child.

(5) In cases falling under paragraph (4), the court terminating parental custody or, if the child has been taken into care, the guardianship authority shall decide on the authorisation of the parent to keep contacts with the child.

Section 4:179 *[Other relatives entitled to have contact with the child]*

(1) The grandparents, sibling and, if the parent and the grandparent are not alive or are permanently prevented from having contact with the child or do not exercise the right of contact on their own fault, the sibling or parent of the child's parent shall also be entitled to have contact with the child.

(2) The right of contact of persons specified in paragraph (1) shall not be affected if the marriage, in which the adopted child was born, terminated upon the death of the child's parent, and the child, born in an earlier marriage of his parent, is adopted by his parent's spouse.

(3) Upon their request, if the child was raised for an extended period of time in their household, the former step-parent, foster parent, guardian and also the person whose presumption of paternity regarding the child was rebutted by the court, may be granted the right of contact.

Section 4:180 *[Content of the right of contact]*

(1) Contact rights shall include to meet the child in person, to take the child regularly for a specified period of time from his place of domicile or residence, to spend a longer time with the child periodically, mainly during school holidays and multi-day public holidays, and it shall include the right to maintain contact with the child without meeting in person.

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(2) Unless otherwise provided by the court or the guardianship authority in the interest of the child, the right of contact shall include taking the child abroad for a definite period of time within the limits of paragraph (1).

(3) Unless otherwise provided by the court or the guardianship authority, any expense incurred in connection with taking away the child shall be borne by the holder of the right of contact.

Section 4:181 *[Settling contact with the child]*

(1) The parents may conclude a settlement agreement in the marital action or in the action for settling parental custody; in the absence of their settlement, the court shall decide, at request or in the interest of the child *ex officio*, on the contact with the child. If no matrimonial action or action for settling parental custody is pending, in the absence of the parents' agreement the guardianship authority shall decide on the contact with the child. Before adopting the decision, any interested party and the child who is of sound mind shall be heard.

(2) The court or the guardianship authority shall decide on the contact with the child taking the age, health and living conditions of the child, the parents' personal conditions and the opinion of the child who is of sound mind into account.

(3) The decision on contact shall provide the frequency and duration of contact, whether the contact is regular or periodical, whether the contact is to be supervised, furthermore where, when and how the child is to be received and returned by the parent, the obligation to notify the other parent of contacts to be missed and substitution of missed contact.

(4) If the contact with the child was regulated by the court, modification of the contact with the child may be requested from the court.

Section 4:182 *[Information obligation; substitution of missed contacts]*

(1) The parties shall be required to inform, without delay, each other of any circumstance preventing the contact with the child.

(2) Contact missed for a reason to which the right holder is not at fault shall be substituted at the earliest suitable date, but within six months at the latest.

Section 4:183 *[Liability for preventing the exercise of contact rights or violating its rules]*

(1) The person entitled or obliged to have contact with the child who, without due reason, prevents the exercise or violates the rules of exercising contact rights, shall be required to compensate for the damage caused to the other party.

(2) At request, the court shall, in a non-contentious civil court procedure, order the party to pay the justified costs incurred as a result of the prevention of exercising contact rights or the violation of the rules on contact rights without due reason.

Section 4:184 *[Restriction or withdrawal of contact rights]*

The guardianship authority or, in a marital action or in an action for settling parental custody, the court may restrict or withdraw the contact rights of the parent or another person entitled to exercise contact rights who was at fault.

Section 4:185 *[Implementation of the decision on contact rights]*

The court shall, in a non-contentious civil court procedure, order the implementation of the decision on contact rights.

Chapter XIX

Suspension and termination of parental custody rights

1. Suspension of parental custody rights

Section 4:186 *[Suspension of parental custody rights]*

(1) Parental custody rights shall be suspended if

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a) the parent has no capacity to act;

b) the parent of minor age has limited capacity to act, except the right and obligation of a parent of minor age who has reached the age of sixteen to care for and bring the child up;

c) the parent's capacity to act is partially limited in terms of exercising parental custody rights;

d) the parent's whereabouts are unknown, or the parent is prevented from discharging parental custody;

e) the guardianship authority granted consent for the child to be taken in nominated fostering;

f) the parent granted consent to the adoption of his child younger than six weeks of age;

g) the child has been taken into care by the guardianship authority, and the parent's parental custody rights have not ceased or been terminated by the court;

h) the court has placed the child with a third party; or

i) the parent is subject to a restraining order for an act committed against the child or a relative of the child living in the same household with the child.

(2) The parental custody rights of the parent living together with the other parent who is deprived of parental custody rights shall be suspended during their community of life.

(3) The parental custody right of the parent whose child the guardianship authority has placed temporarily with the other parent living separately, a third party or in an institution shall be suspended until the action for terminating parental custody or settling parental custody is completed.

2. Nominated fostering

Section 4:187 *[Nominated fostering]*

(1) At the request of parents exercising parental custody jointly or the parent exercising parental custody, the guardianship authority may consent, after having heard the other parent living separately, for the child to be fostered, cared for and brought up temporarily by a family nominated by the guardianship authority due to the health conditions or justified absence of the parents or another family reason, provided that this nominated fostering serves the interests of the child.

(2) The guardianship authority shall consent to the nominated fostering if the nominated foster parent, due to his personality and circumstances, is suitable, to care for and bring up the child, and to discharge the guardianship, and undertakes to perform these tasks.

(3) The guardianship authority shall appoint the nominated foster parent or parents as guardians.

Section 4:188 *[The parent's rights and obligations in the event of nominated fostering]*

(1) The parental custody rights of the parent shall be suspended during the period of nominated fostering.

(2) The parent shall be entitled to the right of contact and the right to decide jointly in substantial matters affecting the future of the child.

(3) In particularly justified cases, the guardianship authority may authorise the parent to manage the property of the child and to act as the statutory representative of the child in the child's property affairs.

(4) Nominated fostering shall not affect the parent's maintenance obligation.

Section 4:189 *[Reviewing nominated fostering]*

(1) The guardianship authority shall review annually whether the conditions of nominated fostering are met.

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(2) The guardianship authority shall terminate nominated fostering if it is requested by the parent or the nominated foster parent, or if maintaining nominated fostering would endanger the child's development.

3. Termination and restoration of parental custody rights

Section 4:190 *[Termination of parental custody rights]*

(1) The parent's parental custody rights shall terminate

a) upon the child reaching majority;

b) upon the child's adoption unless the child is adopted by the parent's spouse;

c) upon the consent of the parent for the child to be adopted, or if the parent granted consent for the child less than six weeks of age to be adopted, upon the child reaching six weeks of age unless the parent has revoked the declaration of consent; or

d) if the parent left the child, without revealing identity, at the place designated by a healthcare institution with the view to have the child brought up by others and does not claim the child within six weeks.

(2) If parents exercise parental custody jointly, in the event of the death of one of the parents, the surviving parent shall be entitled to parental custody.

(3) If the parent exercising parental custody or its certain composite rights individually dies, the surviving parent shall be entitled to parental custody, provided that he is not subject to a judgment terminating parental custody.

(4) If the surviving parent is entitled to parental custody rights under paragraph (3), the guardianship authority shall call upon that parent to exercise parental custody rights. The surviving parent shall not be called upon to exercise parental custody rights if his parental custody rights are suspended for having no capacity to act, having limited capacity to act due to minority, having partially limited capacity to act in terms of exercising parental custody rights, having unknown whereabouts or being prevented from discharging parental custody, or if it is obviously contrary to the child's interests.

Section 4:191 *[Judicial termination of parental custody]*

(1) The court shall terminate parental custody if

a) the parent is at fault in seriously harming or jeopardising the interests of the child, in particular the physical well-being, mental or moral development of the child; or

b) the child has been placed with another person or has been taken into care, and the parent whose parental custody rights are suspended, is at fault in not changing his lifestyle and circumstances giving rise to placing the child with another or taking the child or into care.

(2) If the parent has been convicted by the court to imprisonment for an intentional criminal offence committed against any of his children, the court may terminate the parent's parental custody with regard to all of the children of the parent. The court may provide for that scope of the decision on termination shall cover any child to be born later on.

(3) Those subject to a final and enforceable judgment terminating parental custody shall not be eligible to adopt children, to be a guardian, and no child shall be placed with them, and, unless otherwise provided by the court or the guardianship authority, they shall not be entitled to keep contacts with their children.

Section 4:192 *[Judicial restoration of parental custody rights]*

The court shall restore parental custody for the future if the grounds for its termination no longer prevail, and there is no other reason that would give ground for the termination of parental custody.

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Section 4:193 *[Eligibility for bringing an action for the termination and restoration of parental custody rights; defendants in the action]*

(1) An action for the termination of parental custody shall be brought by the other parent; and for its restoration by either parent. The child, the guardianship authority and the prosecutor shall also be eligible to bring an action in both cases.

(2) The minor having limited capacity to act and the parent having partially limited capacity to act in terms of exercising parental custody rights may bring the action for the termination and restoration of parental custody, in person, with the consent of his statutory representative. On behalf of a parent and child having no capacity to act, the action may be brought by their statutory representative, subject to the consent of the guardianship authority.

(3) The action for the termination of parental custody shall be brought against the parent whose parental custody is sought to be terminated. The action for the restoration of parental custody shall be brought against the person whose action served as a basis for the judicial termination of parental custody; if the restoration of parental custody is requested by that parent, the action shall be brought against the other parent. If the person against whom the action should be brought is no longer alive, the action shall be brought against a guardian *ad litem* appointed by the court.

(4) A judgment adopted in an action for the termination and restoration of parental custody shall be effective against all.

TITLE XIII

Maintenance of blood relatives

Chapter XX

Common rules on the maintenance of blood relatives

Section 4:194 *[Entitlement to maintenance of blood relatives]*

(1) Those unable to maintain themselves through no fault of their own and have no spouse, former spouse or former cohabitant who could be ordered to pay maintenance shall be entitled to maintenance from their blood relatives.

(2) A person of majority age shall be unworthy of maintenance who displays a seriously reprehensible conduct towards the person obliged to provide maintenance or his relative living in the same household with the former, or carries a lifestyle, due to which, having regard the nature of the relationship between the creditor and the debtor and the behaviour of the debtor, the maintenance cannot be expected from the debtor.

(3) If the parent complied with the obligation to maintain, care for and bring up the child the child may allege that the parents is unworthy of maintenance only upon the parent's particularly serious conduct against the child.

Section 4:195 *[Capacity to provide maintenance]*

Unless otherwise provided in this Act, those who would jeopardise, by providing maintenance, their own maintenance or of one preceding the maintenance creditor concerned in the order of maintenance shall not be shall be required to maintain other people.

Section 4:196 *[Range of maintenance debtors and the order of the maintenance obligation]*

(1) Unless otherwise provided in this Act, lineal relatives shall be subject to maintenance obligation towards each other.

(2) Primarily, parents towards their children and children of majority age towards their indigent parents shall be obliged to provide maintenance.

(3) Children entitled to maintenance having no parents to be ordered to provide maintenance shall be maintained by their other ascendants.

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(4) If the person who is entitled to maintenance has no children, his other descendants shall be required to provide maintenance for him.

(5) The maintenance obligation of a closer relative prevails over the maintenance obligation of remote relatives.

(6) The indigent person may not enforce his claim for maintenance against any of his blood relatives on the ground that due to his unworthiness, he could not assert his claim for maintenance against another blood relative who precedes the person concerned in terms of maintenance obligation.

Section 4:197 *[Maintenance of siblings]*

For minors having no lineal relatives who could be ordered to provide maintenance, the sibling of majority age of the minor shall be obliged to provide maintenance provided that the sibling is able to discharge this obligation without jeopardising his own, his spouse's, cohabitant's or indigent lineal relative necessary maintenance.

Section 4:198 *[Maintenance of step children]*

(1) A spouse shall be required to maintain in his household his cohabiting spouse's minor child (hereinafter the "step-child") who was brought by his spouse into the common household with his consent.

(2) The step-parent's maintenance obligation shall not affect the biological parent's obligation to pay child support.

Section 4:199 *[Maintenance for the step-parent and the foster parent]*

(1) A step-child shall be required to maintain his indigent step-parent if the step-parent provided maintenance to the step-child for an extended period of time.

(2) The foster child shall be required to provide maintenance, subject to conditions set out in paragraph (1), for the person who provided maintenance for him for an extended period of time in his own household without consideration and who is not his biological parent, adoptive parent or step-parent (hereinafter the "foster parent").

Section 4:200 *[The order of entitlement to maintenance in biological and actual family relationships]*

The order of entitlement to maintenance shall be as follows:

a) the biological child, step- and foster child in tandem; and

b) the biological parent and, if the legal conditions are otherwise met, the step-parent and the foster parent in tandem.

Section 4:201 *[Distribution of maintenance obligation]*

(1) The maintenance obligation shall be distributed amongst more debtors with the same position regarding maintenance obligation *pro rata* to their income, wealth and financial capacity.

(2) If the maintenance debtor is exempted from providing maintenance, the part in the maintenance of such debtor shall be borne by the others debtors in tandem with him, and if there is no such person, by the debtors next in the order.

(3) When determining the maintenance obligation, the activity performed by the debtor while providing personal care to the person entitled to maintenance and his other burdens shall be taken into consideration in favour of such debtor.

Section 4:202 *[The order of entitlement to maintenance]*

If someone is required to provide maintenance to more than one person who is entitled to maintenance and is unable to provide to all, in the order of entitlement,

a) the minor child shall prevail over the child of majority age;

b) the child shall prevail over the spouse, the former spouse and the former cohabitant;

c) the spouse, the former spouse and the former cohabitant, shall prevail over the parent;

d) the parents shall prevail over other blood relatives; and

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e) regarding other blood relatives, the descendant shall prevail over the ascendant; and the blood relative closer in the order of lineage shall prevail over the more remote one.

Section 4:203 *[Derogation from the order]*

I justified cases, the court may, at request, depart from the order of maintenance entitlement and maintenance obligation.

Section 4:204 *[Setting the level and manner of maintenance]*

The level and manner of maintenance shall primarily be governed by the agreement between the debtor and the creditor. In the absence of an agreement, the maintenance creditor may request that maintenance be determined by the court.

Section 4:205 *[Level of maintenance]*

(1) The court shall set the level of maintenance on the basis of the creditor's justified needs and the debtor's financial capacity.

(2) Regarding the justified needs of the creditor, the justified subsistence costs shall be taken into account.

(3) Maintenance to descendants and minor siblings shall cover the bearing of the costs of raising the minor and of necessary education.

(4) The obligation to provide maintenance to a blood relative who is in need of care due to his old age, illness, disability or any other reason shall include the costs of providing care, and the other services required in that context.

(5) If the person entitled to maintenance is only partly indigent, he shall be entitled to maintenance supplement. If the person entitled to maintenance is completely indigent, and his blood relatives cannot provide him maintenance that covers all his justified needs, he may claim maintenance supplement from the debtors next in the order.

(6) The maintenance claims enforceable against the debtor shall not exceed half of his income.

Section 4:206 *[Manner of maintenance]*

(1) Unless otherwise provided in this Act, maintenance shall be provided by the debtor primarily in funds (hereinafter the "maintenance allowance").

(2) At the request of either party, the court may change the manner how maintenance is to be provided, if it is justified in the light of the circumstance of the parties, and the other party does not object to it.

(3) Maintenance allowance shall be paid periodically in advance.

Section 4:207 *[Determining maintenance allowance]*

Maintenance allowance shall be determined in a fixed amount of money. The court may provide in its judgment that the maintenance allowance shall, without any further measure, be modified annually, as of 1 January of the next year, with the increment of the annual consumer price index as published by the Central Statistical Office.

Section 4:208 *[Actions related to maintenance]*

(1) The action for maintenance to a minor may be brought, in the interest of the minor, by the guardianship authority, and the action for the maintenance to a parent may be brought, in the interest of the parent, by the district office subject to the consent of the parent.

(1a) The person who provides for the satisfaction of the needs of a parent in need of maintenance instead of the parent's child obliged to provide maintenance without being required to do so under the law or a contract may claim, within a one-year term of preclusion, that the child obliged to provide maintenance reimburse the value of the justified maintenance.

(2) The maintenance debtor blood relative who himself provides maintenance to the creditor or cares for him may bring an action against the other debtors on his own right.

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(3) Maintenance claims for more than six months retroactively may only be enforced by judicial means if the creditor has failed to enforce the claim due to a reasonable cause. Maintenance claims for more than three years retroactively cannot be enforced by the court.

Section 4:209 *[Duration of maintenance]*

(1) The court shall order the provision of maintenance for a fixed period of time.

(2) The maintenance may be set for a fixed period of time or until the occurrence of a certain condition if it can be assumed that the creditor will no longer be in need of maintenance upon the expiry of the set period or the occurrence of the condition.

Section 4:210 *[Modifying the level of maintenance or the manner of its provision]*

(1) If any of the circumstances that served as basis for determining the maintenance based on the agreement of the parties or a court judgment has changed and upon such change the provision of the maintenance would violate a substantial legal interest of either party, it may be requested that the level of maintenance or the manner of its provision be modified. The party who had to expect the possibility of changing circumstances at the time when the agreement was concluded or who is at fault regarding the change in the circumstances may not apply for the modification of the maintenance that is based on agreement.

(2) The organ or person disbursing the emoluments to the maintenance debtor shall, upon request, be required to inform the creditor, upon request, of the amount of the debtor's salary and other benefits.

Section 4:211 *[Termination of the maintenance obligation]*

(1) The person to whom the maintenance allowance is disbursed shall be required to notify the court, while simultaneously notifying the debtor too, if the entitled is no more in need of the maintenance. He shall be liable for any damage arising from the failure to comply with this obligation in accordance with the general rules of extra-contractual liability. After the notification, the court shall terminate the maintenance obligation without a contentious procedure.

(2) The debtor may request that maintenance be terminated if, due to the changes of the circumstances, the conditions for the maintenance obligation are no longer met or the creditor failed to fulfil the notification obligation under paragraph (1).

Section 4:212 *[Termination of the entitlement to maintenance and of the maintenance obligation]*

(1) The entitlement to maintenance shall cease upon the death of the creditor, the expiry of the defined period or the occurrence of the condition.

(2) The maintenance obligation shall cease upon the death of the debtor. The maintenance allowance that became due but remained unpaid until the death of the debtor shall pass to the heir, in accordance with the rules of the liability for the testator's debts.

Chapter XXI

Maintenance for a minor child

Section 4:213 *[Applying the rules on blood relatives' maintenance]*

The common rules on blood relatives' maintenance shall be applied accordingly to the parents' maintenance obligation towards their minor child subject to the derogations set out in this Chapter.

Section 4:214 *[Presumption of indigence]*

The indigence of a minor child shall be presumed. This presumption shall apply even after the child reaching majority age, until the child reaches the age of twenty years at most, if the child is engaged in secondary education.

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Section 4:215 *[The parent's maintenance obligation]*

(1) The parent shall be required to maintain his minor child even if it results in the restriction of his own necessary maintenance. This provision shall not apply if the justified needs of the child are covered by his salary or the income of his property, or if the child has another lineal relative who may be ordered to provide maintenance.

(2) If the maintenance of the child cannot be ensured under paragraph (1), the guardianship authority may authorise the parents to avail of the child's property, in instalments, to cover the maintenance costs.

Section 4:216 *[Manner of child maintenance]*

(1) The parent caring for the child shall provide maintenance in kind, and the parent living separately shall provide maintenance primarily in money (hereinafter "child support").

(2) The parent may be ordered to pay child support even if the child lives in his household but he fails to provide for the child's maintenance.

Section 4:217 *[The parents' agreement on child maintenance]*

(1) With regard to the level of child support and the manner of its payment shall primarily be governed by the agreement of the parents.

(2) The parents may agree that the parent living separately from his child discharges his maintenance obligation by the one-off provision of an adequate asset or sum of money. For the agreement to be valid the period for which maintenance is covered by such benefit shall be determined and the agreement shall be approved by the guardianship authority or, for a court settlement, by the court.

(3) Notwithstanding an agreement under paragraph (2), child support may be ordered by the court if it is justified upon significant unforeseen changes of the circumstances in the interest of the child or of preventing that the interests of either party be harmed.

Section 4:218 *[Judicial setting of child support]*

(1) In the absence of the parents' agreement, the court shall decide on child support.

(2) When setting child support,

a) the justified needs of the child;

b) the income and property of both parents;

c) other children, either own, step-children or foster children, who live in the parents' household and the children towards whom the parents are subject to maintenance obligation;

d) the own income of the child; and

e) the child protection allowances, family support, social insurance and social allowances provided to the child, and to the parent, in view of the child shall be taken into account.

(3) The child's justified needs shall include the regular expenses for the child's subsistence, healthcare, upbringing and education. If, in the interest of the child, an extraordinary expense is required which, notwithstanding due foresight cannot be covered by the maintenance allowance, the maintenance debtor shall be required to reimburse this extraordinary expense *pro rata*.

(4) The amount of the maintenance allowance per child shall be set as fifteen to twenty-five percent of the debtor's average income. When determining average income, the debtor's total income for one year before bringing the action shall be taken into account.

Chapter XXII

Maintenance of a child of majority engaged in further studies

Section 4:219 *[Applying the rules on blood relatives' maintenance and minor children]*

The common rules on blood relatives' maintenance and the provisions on the maintenance of minor children shall be applied subject to the derogations set out in this Chapter.

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Section 4:220 *[The entitlement to maintenance of a child of majority age engaged in further studies]*

(1) The child of majority age who is fit for work, and is engaged in further studies shall be entitled to maintenance irrespective of the presumption of indigence, if he is need of maintenance in order to complete his further studies within a reasonable time. The child shall inform the parent of his intention to pursue further studies without delay.

(2) Training or courses needed for acquiring a professional qualification preparing for the career path, studies in bachelor and master education providing tertiary qualification, and studies in tertiary vocational training, if pursued continuously, shall qualify as studies under paragraph (1). The continuity of studies shall not be affected by interruptions for which the person entitled is not at fault.

(3) The parent shall not be required to provide maintenance to his child of majority age engaged in further studies if

a) the child is unworthy of maintenance;

b) the child fails to discharge his study and examination obligations at the fault of his own; or

c) the parent would jeopardise his own necessary maintenance or his minor child's maintenance thereby.

(4) The child of majority age shall be unworthy of maintenance also if failing to keep contacts with the maintenance debtor without due reason.

(5) The parent may be ordered to provide maintenance to his child older than twenty five years only in particularly justified cases.

Section 4:221 *[The level of maintenance allowance]*

When setting the level of maintenance allowance, the justified needs, own income and the property of the child engaged in further studies, the allowances and supports for pursuing studies provided under the law and the parents' financial capacity shall be taken into account.

Section 4:222 *[Information obligation regarding studies]*

The institution providing training and education for the child engaged in further studies shall be required to inform, at his request, the parent obliged to pay child support on whether his child pursues or has terminated his studies.

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PART FIVE

GUARDIANSHIP

Chapter XIII

Appointment of a guardian

Section 4:223 *[Minors under guardianship]*

Those minors who are not under parental custody shall be subject to guardianship.

Section 4:224 *[Responsibilities of the guardian]*

Unless otherwise provided in this Act, the guardian shall be the caretaker, tutor, property manager and statutory representative of the child under his guardianship.

Section 4:225 *[Notifying the need to appoint a guardian]*

(1) The close relative of the minor child and the person providing care for the child shall be required to notify the guardianship authority without delay if a guardian needs to be appointed for the minor. The court or other authority shall also be required to notify the guardianship authority if becoming aware, during its official procedure that a guardian needs to be appointed for a minor. The necessity for appointing a guardian can be notified by all.

(2) The guardian shall be appointed by the guardianship authority *ex officio*.

Section 4:226 *[Named guardian]*

(1) Primarily, the person named as guardian by the parent exercising parental custody in an authentic instrument or in a testamentary disposition may be guardian. If the parents both entitled to exercise parental custody named different persons as guardian, the guardianship authority shall decide, upon considering the interests of the child, which of them should act as guardian.

(2) The named guardian can be ignored if

a) he does not accept the guardianship;

b) he is not allowed to act as guardian under this Act;

c) he is prevented from acting as guardian; or

d) his appointment would jeopardise the interests of the minor.

Section 4:227 *[Appointed guardian]*

(1) In the absence of a named guardian, the guardianship authority shall primarily appoint a close relative who is suitable for the guardianship to act as guardian. If there is no such relative, the guardianship authority shall appoint another relative or a suitable other person as guardian, primarily from among those who took part in caring for and bringing up the child before.

(2) Except for child protection guardianship, the guardianship authority shall usually appoint one guardian for each minor. For siblings brought up in the same place, the same person shall be appointed as guardian if it is not contrary to the interests of the minors.

Section 4:228 *[Taking the views of a child of sound mind into account]*

When appointing a guardian, the views of a minor of sound mind shall be taken into account with proper weight, in accordance with his age and maturity. The person, against whom the child older than fourteen years objects for a well-grounded reason, shall not be appointed as guardian.

Section 4:229 *[Mandatory appointment of a guardian]*

The person

a) with whom the guardianship authority placed the child temporarily;

b) with whom the court placed the child; or

c) who is a nominated fosterer of the child upon the guardianship authority's consent shall be appointed as guardian for the child.

Section 4:230 *[Child protection guardianship]*

The child shall be subject to child protection guardianship in particular if

a) taken into care;

b) placed temporarily with child protection foster parents, in a children's home or other boarding facility, and an action for the termination of parental custody has been brought against his parent; or

c) his parent granted his consent for the child to be adopted.

Section 4:231 *[Appointment of more than one guardian]*

(1) Exceptionally, more than one guardian can be appointed for the child. The appointment of more than one guardian may be possible if

a) spouses who raise the child in their own household undertake guardianship jointly;

b) two close relatives of the minor subject to guardianship undertake guardianship jointly;

c) managing the child's property and administering certain other affairs of his require special expertise; or

d) it serves the interests of the child subject to child protection guardianship.

(2) In the case specified in paragraph (1) *c)*, the guardianship authority shall determine how to divide responsibilities between the guardians.

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(3) If the guardian exceeds his powers, his juridical act shall be effective against third parties, however, the guardian shall compensate the individual under his guardianship for damage caused by the juridical act.

Section 4:232 *[Conditions for undertaking guardianship]*

(1) Any person of majority age who is not subject to the grounds for exclusion set out in this Act, and who himself and regarding his circumstances is suitable, for performing guardianship may be guardian.

(2) With the exception of child protection guardian, those who undertake the office of guardian may be appointed as guardians.

Section 4:233 *[Exclusion from guardianship]*

(1) The person

a) who is subject to custodianship affecting his capacity to act;

b) who is subject to a final and enforceable judgment terminating parental custody or excluding from participating in public affairs;

c) whose parental custody rights are suspended for his child having been taken into care;

d) whose child has been declared as available for adoption; or

e) who was excluded from guardianship by a parent entitled to exercise parental custody in an authentic instrument or will.

(2) If the parent exercising parental custody excluded the person named as guardian by the other parent from guardianship, the guardianship authority shall decide which provision to apply, by taking the child's interests into account.

TITLE XV

EXERCISING GUARDIANSHIP

Section 4:234 *[Exercising guardianship]*

(1) The guardian shall be required to pursue his activity in accordance with the child's interests. During his activity, the guardian shall be obliged to ensure that the minor who is of sound mind has the possibility to participate in the preparation of decisions affecting him and to express his views.

(2) Unless otherwise provided in this Act, the provisions on the rights and obligations of the parent exercising parental custody shall be applied accordingly to the guardian's rights and obligations.

Section 4:235 *[Limitations to the guardian's competence]*

(1) The guardian shall not be entitled to determine the child's name, and may not grant a declaration of consent for the child to be adopted.

(2) If a juridical act of the guardian relates to a change of the child's name, the child's family status and the bringing of an action in this context, an approval by the guardianship authority shall be required for it to be valid.

Section 4:236 *[The guardian's rights and obligations pertaining to property management related rights and obligations]*

The guardian shall be required to transfer the child's funds and valuables to the guardianship authority if they not need to be kept available in accordance with the rules for ordinary management of property.

Section 4:237 *[Supervision of the guardian's activity by the guardianship authority]*

(1) The guardian shall perform his activity under the regular supervision of the guardianship authority; for child protection guardianship, subject to its direction. He shall be required to inform the guardianship authority at any time of his activity.

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(2) The guardianship authority may restrict the competence of the guardian, and, in the interest of the child, may change the measures of the guardian *ex officio*, or at the request of the child subject to guardianship or a close relative of the child. In this regard, the parent shall be considered as close relative even if his parental custody rights are suspended.

(3) The guardianship authority shall be required to hear the guardian, the minor who is of sound mind and, if justified, the close relative of the child before deciding in major matters of the minor subject to guardianship.

Section 4:238 *[Reimbursing the guardian's costs and expenses]*

(1) Unless otherwise provided in this Act, benefits serving the child's subsistence shall be disbursed to the guardian.

(2) The guardian may avail of the child's income for the child's necessary maintenance. If the child has no parent who can be ordered to provide maintenance, the guardianship authority may authorise the guardian to avail of the child's property, in instalments, to cover the costs of maintenance.

(3) The guardian may claim the reimbursement of his justified expenses and costs related to performing guardianship from the child's income. In the absence of appropriate income, the guardianship authority shall provide for the reimbursement of the expenses and costs.

(4) Paragraph (2) and (3) shall not apply to the child protection guardian.

Section 4:239 *[The guardian's accountability]*

(1) Unless otherwise provided in this Act, the guardian shall be required to report on the property management to the guardianship authority on an annual basis.

(2) If the income of the minor subject to guardianship does not exceed the level set out by the law, the guardianship authority may authorise the guardian, other than a child protection guardian, to submit a simplified report. If guardianship is performed by a close relative, the guardian may be exempted even from the simplified reporting obligation.

(3) The guardianship authority may, *ex officio* or at the request of the person having limited capacity to act subject to guardianship or of his relative, order the guardian to submit an ad *hoc* report in addition to the cases set out in paragraphs (1) and (2).

TITLE XVI

TERMINATION OF GUARDIANSHIP AND THE OFFICE OF GUARDIAN

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Section 4:240 *[Termination of guardianship and the office of guardian]*

(1) Guardianship shall be terminated if the person under guardianship dies or becomes subject to parental custody or reaches majority age.

(2) The office of guardian shall be terminated

a) upon the termination of guardianship;

b) upon the guardian's death;

c) upon the guardian's discharge; or

d) upon the guardian's removal.

Section 4:241 *[The guardian's discharge]*

(1) The guardianship authority shall discharge the guardian if

a) the guardian requests his discharge for an important reason;

b) the guardian proves to be unsuitable for the office of guardian; or

c) after the appointment, the guardianship authority becomes aware of an impediment or an impediment arises subsequently due to which the guardian may not act as guardian.

(2) The guardianship authority may exceptionally discharge the guardian if the interests of the child justify the appointment of another person as guardian.

Section 4:242 *[Removal of the guardian]*

(1) The guardianship authority shall remove the guardian if the guardian misuses his rights, neglects his obligations or commits an act that seriously violates or jeopardise the interests of the child under his guardianship, or that renders him unworthy of performing that task.

(2) If it can be reasonably assumed that the guardian should be removed, and any delay might entail risks, the guardianship authority shall remove the guardian from his office.

Section 4:243 *[The guardian's obligations upon the termination of the office of guardian]*

(1) After the termination of his office, the guardian shall be required to submit a report to the guardianship authority on his activity and a final account of the property under his management.

(2) The claims that can be enforced against the guardian on the basis of his reporting obligation shall lapse after one year from that the decision discharging the guardian from property management was communicated to the guardian. If the interested party becomes aware of the reason underlying a claim at a later point in time, the time limit shall be reckoned from that time, provided that the claim has not yet lapsed pursuant to the rules on limitation period.

Section 4:244 *[The guardian's liability for compensation]*

The guardian shall be liable for any damage caused to the child subject to his guardianship in accordance with the general rules on extra-contractual liability.

BOOK FIVE

RIGHT *IN REM*

PART ONE

POSSESSION

TITLE I

POSSESSION AND PROTECTION OF POSSESSION

Chapter I

Possession. Acquisition and loss of possession

MINISTRY OF JUSTICE HUNGARY

Section 5:1 [*Possessor]*

(1) Possessor means the person holding the thing in his possession as his own or under a legal relationship entitling him to possess the thing temporarily.

(2) Beside the possessor holding the thing in his *de facto* possession on the basis of a legal relationship entitling him to possess the thing temporarily (sub-possessor), the person from whom this possession was obtained by the *de facto* possessor shall also be considered a possessor (main possessor).

(3) The person from whom a thing has been temporarily transferred without just title to the *de facto* possession of another person shall also be considered a possessor.

Section 5:2 *[Acquisition of possession]*

The person obtaining the *de facto* possession of a thing shall acquire the possession of the thing.

Section 5:3 *[Transfer of possession]*

(1) The transfer of possession shall be concluded by ceding the *de facto* control of the thing on the basis of an agreement enabling it. The rules on the establishment and validity of contracts shall apply accordingly to the transfer of possession.

(2) It shall qualify as a transfer of possession if, on the basis of an agreement between the possessor and the person acquiring the possession enabling such a transfer,

a) the person acquiring possession already holds the thing in his possession as sub-possessor; or

b) the transferring party keeps on holding the thing in his possession as sub-possessor.

(3) The possession may be transferred by way of terminating the possessor's *de facto* possession of the thing provided that the possessor and the person acquiring the possession so agree.

(4) If the thing is in the possession of a third party, transferring the claim for releasing the thing to the person acquiring the possession shall qualify as transfer of possession, provided that the possessor and the person acquiring the possession so agree.

Section 5:4 *[Loss of possession]*

(1) The possessor shall lose possession if he ceases definitively to exercise *de facto* possession of the thing or when another person acquires possession of the thing.

(2) The possessor being temporarily prevented from exercising *de facto* possession shall not result in losing possession.

(3) Upon the death of the possessor or its termination with legal succession, the possession of the thing shall pass to the heir or the legal successor upon the opening of succession or upon legal succession. The status of the heir or legal successor as a possessor shall be determined by the title of possession held by the testator or the legal predecessor.

Chapter II

Protection of possession

Section 5:5 *[The possessor's right to protection of possession]*

(1) The possessor shall be entitled to protection of possession if he is deprived without just title of his possession or if he is disturbed without just title in possessing (hereinafter "unlawful arbitrariness").

(2) The possessor shall be entitled to protection of possession against everyone with the exception of the person from whom he has taken the possession by way of unlawful arbitrariness.

(3) The sub-possessor shall be granted protection of possession against the main possessor in accordance with his legal title.

(4) In the case of co-possession, all possessors shall be entitled to protection of possession individually, and any of the possessors may claim the thing to be put into co-possession.

(5) Co-possessors shall be entitled to protection of possession against each other in accordance with their legal title.

Section 5:6 *[Arbitrariness]*

(1) The possessor may also apply arbitrary act against unlawful arbitrariness, to the extent necessary for the protection of possession.

(2) An Arbitrary act can be used for the purpose of retrieving lost possession when the loss of time due to availing of other possession protection measures would prevent the protection of possession.

Section 5:7 *[Possessory action]*

(1) In the event of unlawful arbitrariness, the possessor may request the restoration of the original possessory status or to order the cessation of disturbance from the court.

(2) The court shall decide on the basis of the entitlement to possession. The entitlement of the party disturbed in his unperturbed possession shall be presumed.

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Section 5:8 *[Protection of possession on the basis of the de facto possessory status]*

(1) Within one year, the possessor may also request the local government clerk to restore the original possessory status or to order the cessation of disturbance.

(2) The local government clerk shall order the restoration of the original possessory status and prohibit the person in breach from violating possession unless it is clear that the person requesting the protection of possession is not entitled to possession or he was obliged to tolerate the disturbance of possession. The local government clerk may, upon request, decide upon benefits, damage and expenses.

(3) There shall be no legal remedy by way of an administrative procedure against the decision of the local government clerk. A party considering the decision of the local government clerk to be detrimental may request the court to amend the decision by way of a court procedure launched against the other party within fifteen days upon serving the decision.

(4) The decision of the local government clerk adopted regarding possession shall be executed within three days from the decision being adopted. Bringing an action shall have no suspensory effect on the execution of the decision adopted by the local government clerk unless the local government clerk has taken a decision regarding benefits, damage and expenses as well, and the interested party has brought an action regarding this issue or regarding possession.

(5) The court may order the suspension of the execution of the decision adopted by the local government clerk regarding possession if, on the basis of the data available, it can be expected that the decision will be amended.

TITLE II

UNJUSTIFIED POSSESSION

Section 5:9 *[The status of the possessor without just title and his obligation to release]*

(1) A person without just title to possess a thing shall be obliged to release it to the person entitled to possession.

(2) The possessor without just title may refuse to release the thing until the demands he is entitled to claim in connection with possessing the thing have been satisfied. The person who has acquired the thing through a criminal offence or another violent or duplicitous method shall not be entitled to refuse to release the thing.

(3) Unless otherwise provided in this Act, the rules on agency without authority shall apply to the status of the possessor without just title.

Section 5:10 *[Claim for reimbursement of the possessor without just title and his right of removal]*

(1) The possessor without just title may claim the reimbursement of his necessary costs incurred on the thing, with the exception of usual minor expenses of maintenance, and he may remove the fixtures and equipment installed by him.

(2) The possessor without just title but acting in good faith may also claim the reimbursement of his necessary expenses not covered by benefits; if acting in bad faith, he may have a claim to reimbursement according to the rules on unjustified enrichment.

(3) The possessor without just title may exercise the right of removal without harming the condition of the thing.

Section 5:11 *[Releasing the benefits of the thing and the responsibility of the possessor without just title]*

(1) The possessor without just title shall release to the beneficiary the existing benefits of the thing unless he acquired the possession for consideration and acting in good faith.

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(2) The possessor without just title acting in good faith shall not be liable for reimbursing the value of consumed or uncollected benefits and shall not be responsible for the damage to the thing in the period of time when the possession has not yet been reclaimed from him at the local government clerk or in court. Despite the thing being reclaimed, the possessor without just title acting in good faith shall not be obliged to reimburse the value of consumed or uncollected benefits he collected or could have collected in accordance with his presumed right until the thing was reclaimed, nor shall he be responsible for the damage incurred when exercising his presumed right regarding the thing.

(3) The possessor without just title acting in bad faith shall reimburse the value of the consumed or uncollected benefits, and he shall reimburse, in accordance with the rules on extra-contractual liability, all damage to the thing that would not have occurred at the beneficiary.

Section 5:12 *[The right of the possessor without just title to sell or utilise the thing]*

(1) If the beneficiary fails to transport the thing after being called upon to do so within an appropriate time limit, and placing the thing elsewhere would entail disproportionate difficulties or the advancement of expenses, the possessor without just title may sell or utilise the thing.

(2) Perishable things or things in which the delay would result in significant loss of value shall be sold or utilised if it is possible.

(3) The beneficiary shall be entitled to the amount collected from the sale or to the consideration for the utilised thing.

(4) In other respects, the rules on unjustified enrichment shall apply to the status of the possessor without just title.

PART TWO

OWNERSHIP

TITLE III

GENERAL RULES OF OWNERSHIP

Chapter III

Ownership in general

MINISTRY OF JUSTICE HUNGARY

Section 5:13 *[Ownership]*

(1) The owner shall have full and exclusive power of control, subject to limitation by law and by the rights of others, over the object of his ownership.

(2) The owner shall in particular be entitled to the right to possess, use, exploit, collect benefits and the right to dispose.

(3) The owner may exclude any unauthorised intrusion.

Chapter IV

Objects of ownership

Section 5:14 *[The thing]*

(1) Physical objects that can be taken into possession can be objects of ownership.

(2) The rules on things shall apply accordingly to money and securities as well as to natural forces usable as things.

(3) The rules on things shall apply to animals, taking the provisions of Acts establishing derogations reflecting their special nature into account.

Section 5:15 *[Components]*

Ownership shall extend to all parts solidly united with the thing in such a way that their separation would result in the destruction of the thing or of the separated part, or its value or usability would decrease significantly due to the separation.

Section 5:16 *[Accessories]*

In case of doubt, ownership shall extend to those elements that are not components but are commonly needed for and contribute to the designated use of the thing or the maintenance of its integrity.

Section 5:17 *[Extent of ownership of real estate]*

(1) The ownership of a real estate shall extend to the airspace above the land and to the land underground within the limits of the potential to utilise the real estate.

(2) The ownership of a real estate shall not extend to the treasures of the earth or to natural resources.

Section 5:18 *[Ownership of buildings and land]*

(1) The owner of the land shall be entitled to the ownership of the building, unless the owners of the building and of the land agree otherwise.

(2) The owner of the real estate may decide to have the land and the building recorded in the real estate register as independent real estates.

Section 5:19 *[Regulating the use of land in a contract between the owners of the land and of the building]*

(1) If the owner of the land and the owner of the building regulate in a contract their rights and obligations related to the construction of the building and the use of the land, the contract shall be effective against third parties if it is recorded in the real estate register.

(2) The owner of the land and the owner of the building may agree that the owner of the building is entitled to alienate or encumber the building with the landowner's consent only. The owner of the building may demand that the owner of the land provide his consent if the alienation or encumbrance does not jeopardise the performance of the building owner's obligations or the contractual aim of erecting the building.

Section 5:20 *[Right of pre-emption under separate ownership of the building and land]*

If the ownership of the land and that of the building standing on it are separate, the landowner shall have the right of pre-emption over the building and the building's owner shall have the right of pre-emption over the land.

MINISTRY OF JUSTICE HUNGARY

TITLE IV

SUBSTANCE AND PROTECTION OF OWNERSHIP

Chapter V

The right to possession

5:21 *[The right of possession]*

The owner shall be entitled to the right of possession and the right to the protection of possession.

Chapter VI

The right to use and to collect benefits

1. GENERAL RULES

Section 5:22 *[Use, collecting benefits, bearing burdens and risks]*

The owner may use the thing and collect its benefits; he shall bear the burdens connected to the thing, as well as any damage to the thing when no one can be obliged to pay compensation for such damage.

Section 5:23 *[General limitation under private law on the use of things]*

While using the thing, the owner shall refrain from any conduct unnecessarily disturbing others, in particular the neighbours, or which would jeopardise the exercise of their rights.

2. Certain neighbouring rights

Section 5:24 *[Right to support of soil]*

The owner shall not deprive the neighbouring building of the necessary support of soil without providing another appropriate form of support.

Section 5:25 *[Use of the neighbouring plot]*

(1) The owner shall allow access to his land against recompense, should it be necessary for the purposes of performing works in the public interest, capturing animals, collecting the fruits of overhanging branches, removing branches and roots or for any other important purpose.

(2) The owner may use the neighbouring land against recompense if it is necessary for the purposes of performing construction, demolition, reconstruction or maintenance works on the owner's land.

3. Use in special cases

Section 5:26 *[Emergency]*

(1) In the event of a danger directly threatening the life, physical integrity or assets of others, which cannot be averted in any other way, the owner shall be obliged to allow his thing to be used, utilised or damaged, to the extent necessary for the danger to be eliminated. For a danger threatening the assets of others, this obligation shall be binding upon the owner if the threatening damage is foreseen to significantly exceed the damage that may be caused to the owner by the intrusion.

(2) The owner may demand recompense from the person in emergency and claim damages, from the person causing an unreasonably large amount of damage while eliminating the danger, according to the rules on extra-contractual liability.

(3) When a danger threatening the life, physical integrity or assets of several persons is averted by sacrificing certain endangered objects, the resulting damage, if sacrificing the objects was necessary, shall be borne by all of them in proportion to their endangered interests; the same rule shall apply to the division of the necessary expenses incurred to avert the danger.

Section 5:27 *[Use for public interest]*

(1) The owner of the real estate shall be obliged to allow the persons authorised by law to use the real estate temporarily, acquire a right to use it or otherwise restrict the ownership of the real estate, to the extent necessary for performing their duties. In this case the owner of the real estate shall be entitled to a recompense corresponding to the level of the restriction.

(2) If the restriction makes the designated use of the real estate impossible or it obstructs the designated use significantly, the owner may claim the expropriation of the real estate.

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4. Encroaching buildings

Section 5:28 *[Encroachment in good faith]*

(1) If the owner, acting in good faith, has erected a building encroaching over the borders of his land, the neighbour may require the encroaching party to

a) provide recompense for using the encroaching part and the loss of value caused by the encroachment;

b) buy the encroaching part if the land can be divided; or

c) buy the whole land.

(2) The neighbour may require the encroaching party to purchase his whole land if

a) the remaining part of the land becomes unusable due to the encroachment; or

b) the exercise of a right or an occupation connected to the land becomes impossible or significantly more costly due to the encroachment.

(3) The court may apply another legal consequence as specified in paragraph (1) instead of the legal consequence chosen by the neighbour. The court shall not apply a legal consequence the application of which is rejected by both parties.

Section 5:29 *[Encroachment in bad faith]*

(1) If the encroaching party acted in bad faith or the neighbour protested against the encroachment in due time for the encroaching party to restore the original situation without suffering disproportionate damage, the neighbour may require the encroaching party to

a) demolish the building; or

b) transfer his land and the building to the neighbour's ownership against the reimbursement of the value of the land and the building.

(2) Notwithstanding the provisions in paragraph (1), the neighbour shall be entitled, at his discretion, to the rights contained in the provisions on encroachment in good faith.

(3) The costs of demolition and restoration of the original situation shall be borne by the encroaching party. The encroaching party shall be entitled to the right of removal of the built-in materials.

Chapter VII

The right of disposal

MINISTRY OF JUSTICE HUNGARY

1. General rules of the right of disposal

Section 5:30 *[The content of the right of disposal]*

(1) The owner may concede the possession or the use of the thing or the right to collect the benefits of the thing to another person, to provide it as security or encumber it in another way, and to transfer his ownership to another person or to discontinue his ownership.

(2) The ownership of real estate cannot be discontinued.

2. The prohibition of alienation and encumbrance

Section 5:31 *[Establishing the prohibition of alienation and encumbrance]*

(1) For the purpose of securing a right regarding the object of ownership, the owner may establish a prohibition of alienation and encumbrance or a prohibition of alienation regarding the object of the ownership, effective against third parties. With regard to real estate, the real estate register shall also indicate the right that is secured by the prohibition.

(2) The prohibition of alienation and encumbrance and the prohibition of alienation shall be terminated upon the termination of the right the prohibition intended to secure.

Section 5:32 *[Effects of the prohibition of alienation and encumbrance]*

(1) Any disposition interfering with the prohibition of alienation and encumbrance shall require the beneficiary's consent. Dispositions in conflict with the prohibition of alienation and encumbrance shall be ineffective against the person whose right is secured by the prohibition. Dispositions in conflict with the prohibition of alienation and encumbrance shall become effective upon the declaration of consent addressed by the beneficiary of the right secured by the prohibition to the beneficiary of the right of disposal.

(2) The prohibition of alienation and encumbrance shall not restrict the acquisition of rights of persons acting in good faith and having acquired a right for consideration.

(3) The provisions on the prohibition of alienation and encumbrance shall apply accordingly if the thing is subject only to the prohibition of alienation or if the prohibition restricts the right of disposal in any other way.

Section 5:33 *[Prohibition of alienation and encumbrance established by law or a court decision]*

The rules on the prohibition of alienation and encumbrance established by contract shall apply to the prohibition of alienation and encumbrance established to the benefit of persons specified by law or a court decision.

Section 5:34 *[The conditions for registering the disposal in breach of the prohibition of alienation and encumbrance in the real estate register]*

For a prohibition of alienation and encumbrance registered in the real estate register or applicable to the real estate on the basis of the law or a court decision without being registered in the real estate register, the change of ownership or the encumbrance of the real estate may be registered in the real estate register upon a declaration of consent made by the beneficiary of the prohibition of alienation and encumbrance.

Chapter VIII

Protection of ownership

Section 5:35 *[Exclusion of ownership claims from the effect of limitation period]*

Ownership claims shall not lapse.

Section 5:36 *[Protection of ownership]*

(1) The owner may claim that the unlawful intrusion or influence be ceased and he may require the possessor holding no just title to release the thing.

(2) If the sub-possessor has wrongfully conceded the possession of the thing to a third party, the owner may, on behalf of the sub-possessor, demand that the third party return the thing to the sub-possessor. If the sub-possessor refuses to take the thing, the owner may demand the thing to be released to him.

(3) The possessor of the thing shall be entitled to invoke all the excuses against a claim to release the thing made by an owner who had acquired the ownership of the thing without *de facto* handover, by way of concession of the claim to release the thing that he would have enjoyed against the claim to release the thing made by the owner conceding the claim to release the thing.

(4) According to the rules on the protection of possession, the owner may also exclude or avert by arbitrary act any unlawful intrusion or influence that obstructs, restricts or renders impossible the exercise of his ownership.

Section 5:37 *[Claim to be registered in the real estate register]*

If the owner of the real estate acquired ownership outside the real estate register, he may demand that his ownership be registered in the real estate register.

MINISTRY OF JUSTICE HUNGARY

TITLE V

ACQUISITION OF OWNERSHIP

Chapter IX

Acquisition of ownership by transfer

Section 5:38 *[Transfer]*

(1) For the acquisition of ownership of a moveable thing by transfer, a contract on the transfer or another legal title shall be required together with the transfer of possession of the thing accordingly.

(2) For the acquisition of ownership of a real estate by transfer, a contract on the transfer or another legal title shall be required together with the registration of the transfer of the ownership accordingly.

Section 5:39 *[Acquisition of ownership from persons other than the owner]*

(1) Ownership can be acquired by way of transfer only from the owner of the thing.

(2) A person who acquires the moveable thing in a commercial transaction in good faith and for consideration shall acquire ownership by transfer, even if the transferor was not the owner.

(3) Purchase by the buyer from a seller who concludes the sales contract in his own name in the framework of his lawful businesslike economic activity shall be considered as acquisition in a commercial transaction.

(4) Acquisition of ownership according to paragraph (2) shall result in terminating third parties' rights established before the transfer and burdening the thing, provided that the party acquiring ownership acted in good faith as far as the existence of such rights is concerned.

Section 5:40 *[Acquisition of ownership of money and securities]*

The party to whom money or securities have been transferred, according to the rules on transferring securities, shall acquire ownership even if the transferor was not the owner.

Chapter X

Acquisition of ownership by a decision of an authority or by official auction

Section 5:41 *[Acquisition of ownership by a decision of an authority or by official auction]*

(1) A person who acquires the thing in good faith by a decision of an authority or by official auction shall acquire ownership regardless of who was the former owner.

(2) The beneficiary acquiring the ownership by a decision of an authority shall, unless otherwise provided in the decision of the authority, acquire ownership, in the case of a moveable thing, by transferring the thing, and in the case of real estate by having it registered in the real estate register.

(3) In the case of an official auction, the buyer at the auction shall acquire the ownership of a moveable thing through the possession being transferred by the person performing the official auction, and in the case of real estate by having it registered in the real estate register.

(4) In the case of acquiring the ownership of a thing by a decision of an authority or by official auction, the third party's rights burdening the thing shall be terminated, unless the party acquiring the ownership of a thing by a decision of an authority or by official auction was not acting in good faith as far as such rights are concerned.

Section 5:42 *[Acquisition of ownership by the state by authority decision without recompense]*

(1) In the event the state acquires ownership by virtue of the law or by way of a court decision or by any other decision of an authority, without providing recompense, the state shall be liable, up to the value of the thing, for the obligations the former owner had at the

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time of the acquisition of ownership by virtue of the law, a court decision, any other decision of an authority or an reciprocal contract, against a person acting in good faith. The state should be liable if a beneficiary had launched an enforcement procedure against the assets of the former owner, and his claim was not satisfied during the enforcement.

(2) The acquisition of ownership by the state shall not affect the rights registered in the real estate register on behalf of a third party acting in good faith.

Chapter XI

Expropriation

Section 5:43 *[Expropriation]*

(1) The ownership of a real estate can be acquired exceptionally by way of expropriation, for a purpose of public interest and against immediate, full and unconditional recompense.

(2) Recompense shall be provided by the party acquiring the ownership by virtue of expropriation.

Chapter XII

Acquisitive prescription

Section 5:44 *[Conditions and legal consequences of acquisitive prescription]*

(1) A person who possesses a thing as his own without interruption for fifteen years in the case of a real estate and for ten years for a moveable thing shall acquire its ownership by way of acquisitive prescription.

(2) In the event of acquiring ownership of a moveable thing by acquisitive prescription, third party rights burdening the thing and established before the beneficiary of acquisitive prescription acquired possession shall terminate, provided that the period of acquisitive prescription has lapsed with regard to such rights as well, unless the beneficiary of acquisitive prescription was not acting in good faith regarding the existence of the rights of the third party.

(3) The prohibition of alienation and encumbrance shall not prevent the acquisition of ownership by acquisitive prescription if the conditions of acquisitive prescription are satisfied otherwise.

(4) An ownership proportion of a thing can be acquired by way of acquisitive prescription as well, according to the general rules on acquisitive prescription.

Section 5:45 *[Acquisitive prescription by legal title]*

Acquisitive prescription shall occur after five years if the possessor of a real estate has acquired his possession from the owner by way of a written agreement, on the basis of which he could claim the registration of his ownership in the real estate register, if the contract complies with the form-related requirements specified for this purpose and provided that the possessor rendered consideration.

Section 5:46 *[Legal succession in acquisitive prescription]*

The new possessor may add to the time of his own acquisitive prescription the time that qualified as a period of acquisitive prescription during his legal predecessor's possession.

Section 5:47 *[Exclusion of acquisitive prescription]*

(1) A person who has acquired the possession of a thing through a criminal offence or another violent or duplicitous method shall not acquire ownership by way of acquisitive prescription.

(2) The ownership of real estate shall not be acquired by way of acquisitive prescription if the conditions of acquisitive prescription are only fulfilled with regard to a part of the land and the land cannot be divided.

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Section 5:48 *[Suspension of the prescription period]*

If the owner cannot exercise his ownership rights for an excusable reason, acquisitive prescription shall not occur for a year counted from the date when the obstacle ceased to exist, even if the period of acquisitive prescription has lapsed or there is less than one year left of it.

Section 5:49 *[Interruption of the acquisitive prescription]*

(1) Acquisitive prescription shall be interrupted if

a) the owner enforces his claim for releasing the thing by judicial means;

b) the owner exercises his ownership right in connection with the thing; or

c) the possessor involuntarily loses possession and fails to regain it within one year or fails to request in court the return of the thing by its new possessor.

(2) When the acquisitive prescription is interrupted, the elapsed time of possession shall not be counted and acquisitive prescription shall recommence after the circumstance causing the interruption ceased to exist.

Chapter XIII

Acquiring ownership of products, produce and progeny

Section 5:50 *[Acquiring ownership of products, produces and progeny]*

(1) A person who has a right over another person's thing entitling him to obtain the ownership of products, produce or progeny, shall acquire their ownership by separation, provided that he has not acquired ownership of them earlier. If the beneficiary is not in possession of the thing from which the product, produce or progeny originates, he shall acquire ownership by taking the product, produce or progeny into possession.

(2) When someone's right entitling him to acquire the ownership of products, produces or progeny ceases to exist before acquiring their ownership, he may claim, unless otherwise agreed, from the owner or from the new beneficiary to provide reimbursement according to the rules on unjustified enrichment up to his expenses that are not recoverable from elsewhere, in proportion to the value of the products, produce and progeny and his labour.

(3) The possessor acting in good faith shall acquire ownership of products, produce or progeny by separation unless he starts to act in bad faith or until the thing is being reclaimed from him in court or at the local government clerk.

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Chapter XIV

Accretion

Section 5:51 *[Acquisition of ownership of accretion]*

The owner of the land shall acquire the ownership of all the things that have subsequently become components of the land, unless they belong to another party based on a specific legal relationship.

Chapter XV

Acquisition of ownership of derelict goods

Section 5:52 *[Acquisition of ownership of derelict goods]*

(1) A person taking possession of a derelict moveable thing with the intention of acquiring ownership shall acquire ownership.

(2) Moveable things that have never been owned by anyone or the possession of which has been discontinued by their owner with the intention of surrendering ownership, shall be considered derelict goods.

Chapter XVI

Acquiring ownership of game and fish

Section 5:53 *[Acquiring ownership of game and fish]*

(1) Game and fish as well as other useful aquatic animals living in flowing waters and natural lakes shall be owned by the state.

(2) Ownership of the game killed, captured or perished in the hunting area shall be acquired by the beneficiary of the hunting right in whose hunting area the kill, capture or death took place, provided that the hunting right was applicable to the game concerned. In the absence of that right, the ownership of the game shall be acquired by the beneficiary of the hunting right applicable to another hunting area from whose territory the game arrived, provided that he was entitled to hunt for the killed, captured or dead game.

(3) Ownership of the fish and other useful aquatic animal caught shall be acquired by the party entitled to exercise fishing rights.

Chapter XVII

Finding lost property

Section 5:54 *[Acquiring ownership by finding lost property]*

(1) If a person finds a lost property presumably owned by another person and takes it into possession, he shall acquire its ownership if he intends to do so, provided that

a) he has done everything he could to return the thing to the owner; and

b) the owner of the thing, or another person who was authorised to take over the thing, failed to present himself to take over the thing within one year from the date of finding, or within three months in the event of finding a live animal.

(2) If the thing has been found by more than one person, the co-finders shall enjoy the finders' rights jointly and in equal proportions between each other and they shall be bound by their obligations jointly and severally. The person who was first to discover the thing and who intended taking it into possession but finally was preceded by another person in taking the thing into possession shall also be considered a co-finder.

Section 5:55 *[Obligations of the finder]*

(1) The finder shall hand over the thing found within eight days from the date of finding to the person who lost the thing, to its owner, to another person authorised to take over the thing or to the local government clerk competent at the place where the thing was found.

(2) Upon handing over the thing to the local government clerk, the finder shall declare whether he intends to acquire the ownership of the thing. The local government clerk shall issue a certificate on the finder's declaration of claim.

Section 5:56 *[Procedure by the local government clerk]*

(1) If the beneficiary entitled to take over the thing can be identified, the local government clerk shall hand over the thing to the beneficiary without delay.

(2) If the beneficiary entitled to take over the thing cannot be identified, the local government clerk shall retain the thing for three months after the handover. If the beneficiary fails to report during this period, the thing shall be released to the finder, provided that he claimed its ownership when handing it over.

Section 5:57 *[Limitations of the finder's rights and the provisions applicable to the rights encumbering the thing]*

(1) The finder may use the thing released to him without harm to its condition, however he shall not alienate or encumber it and shall not relinquish its use to others.

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(2) Acquiring ownership by the beneficiary shall result in third parties' rights encumbering the thing being terminated.

Section 5:58 *[Sale of the thing found]*

(1) If the beneficiary fails to report to take the thing within three months after handover and the finder has not claimed its ownership when handing it over, the local government clerk shall sell the thing.

(2) The provisions on the sale of property seized or impounded under administrative enforcement shall apply to the sale of found things accordingly.

Section 5:59 *[Things found in places open to the public]*

(1) The finder shall hand over the thing found in a building or in premises open to the public as well as on the means of transport of a public transport company or a carrier operating publicly to the employee of the operator without delay. The finder shall not be entitled to claim ownership of such a thing.

(2) If the person entitled to take over the thing found can be identified, the operator shall notify him and shall release the thing to him without delay upon presenting himself.

(3) If the person entitled to take over the found thing cannot be identified, the operator shall safekeep the thing for three months after it was handed over or if the operator has no means of safekeeping the thing, the thing shall be released to the local government clerk within eight days after being handed over.

(4) If the beneficiary fails to present himself to take over the thing within three months, the operator or the local government clerk shall sell it.

Section 5:60 *[Procedure to be followed in the case of perishables or things that cannot be preserved]*

If the thing found is perishable or cannot be preserved, the local government clerk, the office or the company shall organise its sale without delay.

Section 5:61 *[Owner's rights]*

If the entitled person presents himself before the sale, the thing shall be released to him; if he presents himself after the sale of the thing, the amount collected shall be paid to him. Failure by the entitled person to present himself within one year after the thing was found shall result in the loss of his claim to ownership of the thing or to the amount collected from its sale.

Section 5:62 *[Reward]*

(1) If the thing found is of significant value and the finder does not acquire its ownership, the finder shall be entitled to a reward of a fair amount, provided that he has done everything for the thing to be returned to the owner. Co-finders shall be entitled to the award in equal proportions.

(2) The finder may refuse to release the thing found until his claim for expenses and for the reward has been satisfied.

(3) The finder shall also be entitled to these rights if he has handed over the thing to the authority. With the consent of the finder, the thing or the purchase price collected from its sale may be released by the authority to the person entitled to take it over, unless the person entitled to take it over deposits the value of the thing with the authority. The deposited amount shall replace the deposited thing.

Section 5:63 *[Ownership and provisions applicable to the purchase price collected during the sale when the entitled person fails to present himself]*

When the owner, loser or another person entitled to take over the lost thing fails to present himself within the time limit of one year, or three months in the case of a live animal, nor does the finder acquire the ownership of the thing, the state shall acquire the ownership of the thing or the purchase price collected from its sale.

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Section 5:64 *[Treasure trove]*

(1) A person who finds a valuable thing that was hidden by unknown persons or the ownership of which had otherwise fell into oblivion shall offer it to the state.

(2) If the state has no interest in acquiring the thing, the ownership of the thing shall be acquired by the finder; if the state claims ownership, the finder shall be entitled to an appropriate reward according to the value of the thing.

(3) If the object found specified in paragraph (1) falls within the scope of protected cultural goods, the state shall be entitled to its ownership.

Chapter XVIII

Processing, converting combining, mixing, extending, rebuilding, building-in and building-over

Section 5:65 *[Processing and converting]*

(1) The person, acting in good faith, who creates a new thing for himself by processing or transforming the thing of another shall, according to the choice of the thing's owner, reimburse the value of the thing or relinquish the ownership of the new thing against the reimbursement of the value of his work.

(2) If the value of the work significantly exceeds the value of the processed or transformed thing, the owner of the thing may claim the reimbursement of the value of the thing.

(3) If the processor or the transformer acted in bad faith, it shall be the owner of the material to have the right to choose.

(4) If the owner of the material opts for the ownership of the new thing, he only has to reimburse his enrichment.

(5) If the ownership of the new thing is acquired by the processor, third parties' rights encumbering the thing shall be terminated. If the new thing is owned by the owner of the material, the right that encumbered the material shall burden the new thing as well.

Section 5:66 *[Combining and mixing]*

(1) If the things of more than one person are combined or mixed in a way allowing them to be separated only at the expense of disproportionate harm or disproportionate costs or they cannot be separated at all, co-ownership shall be established in the proportion of the value the things had at the time of combining or mixing them.

(2) If one of the combined or mixed things is considered, due to its value, quality or economic purpose or for another reason, to be the main component compared with other elements of the new thing created by way of combining or mixing, its owner may opt either to take ownership of the thing created by way of combining or mixing against recompense to the other owners, or to relinquish ownership to them against recompense.

(3) A person causing the combining or mixing in bad faith shall not be entitled to the right to choose. In such an event the former owner who acted in bad faith may only claim the enrichment to be reimbursed.

(4) If the thing created by way of combining or mixing becomes co-owned by the parties according to the provisions of this Act, third parties' rights that encumbered the specific things affected by combining or mixing them shall burden the ownership proportions replacing these things. If one of the things is encumbered with a right and the thing created by way of combining or mixing passes to the owner of the other thing, the right encumbering the thing shall be terminated unless otherwise provided in this Act. The right encumbering the thing shall pass to the thing created by way of combining or mixing if it passes to the owner of the encumbered thing.

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Section 5:67 *[Sale of the processed, transformed, combined or mixed things]*

(1) If none of the parties claim ownership of the processed, transformed, combined or mixed thing, it shall be sold and the purchase price shall be distributed to the beneficiaries according to their ownership proportions.

(2) In this case, the party who is allowed to claim reimbursement only to the extent of his enrichment may receive no more than the amount remaining from the purchase price after satisfying those entitled to full recompense.

Section 5:68 *[Extension]*

(1) Someone, acting in good faith, using his own materials to extend a building owned by another person and thus significantly increasing the value of the real estate shall result in co-ownership unless otherwise agreed by the builder and the owner of the building (hereinafter "extension"). The ownership proportions shall be determined in accordance with the value of the complete building and the value of the extended part at the time of completing the extension.

(2) Consideration for any building work that does not qualify as extension may be claimed according to the rules on unjustified enrichment.

(3) The rules on building over in bad faith shall apply to extension carried out in bad faith.

Section 5:69 *[Building-in]*

(1) If someone uses another person's materials to erect a building by making the materials used a component of the land, the owner of the land shall acquire the ownership of the materials as the result of building-in, unless otherwise agreed by the owner of the materials and the owner of the land.

(2) If someone builds in another person's materials and the materials used become components of the building, the owner of the building shall acquire the ownership of the materials as the result of building-in, unless otherwise agreed by the owner of the materials and the owner of the building.

Section 5:70 *[Building-over]*

(1) If someone, acting in good faith, builds over another person's land without being entitled to do so, the owner of the land shall acquire the ownership of the building; however, he shall pay his enrichment to the party building over. At the landowner's request, the court may order the party building over to buy the land or, provided that the land can be divided, buy the appropriate part of the land.

(2) If the value of the building significantly exceeds the value of the land or the appropriate part of the land, the party building over shall acquire the ownership of the land or the appropriate part of the land. The court may also establish at the landowner's request that the party building over has acquired the ownership of the building; in this case the party building over shall be entitled to the right of use over the land.

Section 5:71 *[Building-over in bad faith]*

In the event of building-over in bad faith and if the owner of the land protested against the building over at a time when the party building over could have restored the original state without disproportionate harm, the rules of encroachment of buildings shall apply accordingly.

(2) The party building over shall be considered to have acted in bad faith if he knew or should have known from the circumstances that the building-over was breaching the ownership right of the owner.

Section 5:72 *[Rules governing co-ownership]*

The rules of this Chapter shall apply accordingly if the co-owner processes or transforms the thing in co-ownership, extends, rebuilds or builds an attachment to a building in co-ownership, or if the co-owner builds over a real estate in co-ownership.

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TITLE VI

CO-OWNERSHIP AND CONDOMINIUM

Chapter XIX

Co-ownership

Section 5:73 *[Concept of co-ownership]*

(1) The ownership of a thing can be shared between more than one person according to specific ownership proportions.

(2) In case of doubt, the ownership proportions of the co-owners shall be considered equal.

Section 5:74 *[The co-owners' right to possession and use]*

All co-owners may possess and use the thing; this right, however, shall not be exercised by any of the co-owners to the detriment of the others' rights and substantial legal interests attached to the thing.

Section 5:75 *[Collecting the benefits of the thing in co-ownership, bearing the costs and risks]*

The co-owners may collect the benefits of the thing according to their ownership proportions; the same proportion shall apply to bearing the costs connected to the thing, the obligations originating from co-ownership, and shares of co-owners in bearing the cost of damage caused to the thing.

Section 5:76 *[Preserving the condition of the thing in co-ownership]*

Any of the co-owners may perform the works absolutely necessary for preserving and maintaining the condition of the thing; all co-owners shall bear their own share of such costs. The co-owners shall be notified before such costs are incurred, if possible.

Section 5:77 *[The provisions applicable to the rights on the materials of a thing in co-ownership made of more than one thing]*

If the thing in co-ownership is made of more than one thing, the rights of third parties that encumbered the things before co-ownership was established shall burden the ownership proportions replacing the separate things.

Section 5:78 *[Adopting decisions]*

(1) Unless otherwise provided by the co-owners, co-owners shall adopt decisions regarding the co-ownership by majority voting. All co-owners shall have a right to vote according to their ownership proportion.

(2) The unanimous decision of the co-owners shall be required for

a) expenses exceeding normal operation;

b) transferring the ownership of the whole thing, encumbering the whole thing or undertaking an obligation relating to the whole thing.

Section 5:79 *[Contesting the decision adopted by majority in court]*

(1) If a decision violates reasonable economic management or results in a grave violation of the legal interests of the parties in minority, the minority parties may contest the decision in court. Contesting the decision shall not have a suspensory effect on the enforcement of the decision; although the court may suspend enforcement if necessary.

(2) The same rule shall apply if the co-owners dispute whether the planned works are absolutely necessary for preserving and maintaining the condition of the thing.

(3) In the absence of a decision, the court may regulate, at the request of any of the co-owners, the possession, the use or the way of exploitation in accordance with the ownership proportions, the co-owners' rights and legal interests attached to the thing and the requirements of reasonable economic management.

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Section 5:80 *[Right of disposal of one's own ownership proportion]*

The co-owner is entitled to avail of his own ownership proportion.

Section 5:81 *[Right of pre-emption, right of first refusal for lease and usufructuary lease]*

(1) Co-owners shall be entitled against third parties to the right of pre-emption and the right of first refusal for lease and usufructuary lease in respect of the ownership proportion of the other co-owners.

(2) If it is obvious to the seller that there are other co-owners too who are not recorded in the real estate register, the seller's duty to provide information on the offer shall also extend to those co-owners according to the general rules. If there are co-owners who are not recorded in the real estate register, the legal consequences of the failure to perform the duty to provide information shall not apply to a party who has acquired rights, provided that he was acting in good faith while concluding the contract.

(3) Co-owners may exercise the right of pre-emption and the right of first refusal for lease and usufructuary lease regarding the ownership proportion concerned, in accordance with their own proportion. If they do not agree on the offer, but a co-owner who, either alone or together with another co-owner, accepts the offer concerning the ownership proportion concerned, the right of pre-emption or right of first refusal for lease and usufructuary lease may only be exercised by him, either alone or together with the other co-owner. If there is more than one co-owner acting on his own, the owner shall make a choice between them; the co-owner chosen shall have the right of pre-emption or the right of first refusal for lease and usufructuary lease.

(4) The right of pre-emption granted in a specific law shall precede the co-owner's right of pre-emption granted by this Act.

(5) The co-owner may also exercise the right of pre-emption in the event of an enforcement auction.

Section 5:82 *[Protection of co-ownership]*

Any of the co-owners may take individual acts to protect co-ownership.

Section 5:83 *[Request to terminate co-ownership]*

(1) Any of the co-owners may request the termination of co-ownership; waiving this right shall be null and void.

(2) The court shall not order the termination of co-ownership if the termination of co-ownership falls on an inconvenient date.

Section 5:84 *[Terminating co-ownership]*

(1) The objects of co-ownership shall primarily be divided physically. The court may assign the objects of co-ownership or a part of them to the ownership of one or more co-owners for appropriate consideration, provided that it is justified by the circumstances of the co-owners. This shall require the consent of the co-owner acquiring the ownership, unless the court assigns the part of the real estate in co-ownership to the ownership of the co-owner who lives in it and it is not against the fair interests of the party living in it.

(2) If co-ownership cannot be terminated by other means or if physical division would result in a substantial loss of value or it would hinder the designated use, the objects of co-ownership shall be sold and the purchase price shall be divided appropriately between the co-owners. The co-owners shall also be entitled to the right of pre-emption against third parties in the case of sale.

(3) In the case of assigning the object of co-ownership to the ownership of the co-owner, the court shall adopt a judgment on the appropriate consideration or, in the case of sale at auction, on the minimum purchase price. The minimum purchase price established in the judgment shall not be changed by the bailiff or by the court in the course of the enforcement.

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(4) If the co-ownership of real estate is to be terminated and one of the co-owners lives in it, the court shall oblige him to leave the real estate, or if ordering the co-owner living in it to leave the real estate violates the fair interests of the co-owner living in it, shall grant him a right of use proportionate to his ownership proportion. The co-owner remaining in the real estate shall bear the depreciating effect of the right of use when determining the consideration to be paid in the course of buy-out or the proportions of dividing the purchase price received at the auction. If the exercise of the right of use substantially exceeds the extent specified by the court and granted by an Act, the court shall terminate the right of use at the request of the owner.

(5) The co-ownership of a real estate can also be terminated by transforming the real estate into a condominium, provided that the conditions of establishing a condominium are otherwise satisfied. If the co-ownership is terminated by the court by way of transforming it into a condominium, the deed of foundation of the condominium shall be replaced by the judgment of the court.

(6) The court shall not terminate the co-ownership in such a way which is objected to by all co-owners.

Chapter XX

Condominium

Section 5:85 *[Condominium]*

(1) A condominium shall be established if at least two separate flats or premises not to be used as flats, or at least one flat and one premise not to be used as flat are owned individually by the co-owners and the parts or equipment of the building, premises or flats not designated as individual ownerships are co-owned by the co-owners.

(2) If the part of the land on which the building stands is not under co-ownership, the co-owners shall be entitled to a land use right to it.

(3) The ownership proportion of the part of the real estate in co-ownership and the flat and the premise not to be used as flat in individual ownership shall form together an independent real estate together.

(4) The ownership proportion of the individual co-owner pertaining to the co-ownership and his ownership of the flat or premise not to be used as a flat shall not be transferred or encumbered individually.

(5) The rules on co-ownership shall apply accordingly to condominium ownership.

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PART THREE

LIMITED RIGHTS *IN REM*

TITLE VII

LIEN

Chapter XXI

Establishment of lien

Section 5:86 *[Lien]*

(1) On the basis of his lien, the pledgee may seek satisfaction from the asset securing his claim (hereinafter “pledged item”) preceding other claims if the obligor of the secured claim (hereinafter “party liable in person”) fails to perform.

(2) The right to obtain satisfaction of one’s claim shall not be affected by rights acquired on the pledged item after it has been pledged, unless otherwise provided in this Act.

Section 5:87 *[Establishment of lien]*

Lien shall be established if

a) a lien is founded by the pledgee and the pledger, and

b) the pledger possesses a right of disposal over the pledged item.

Section 5:88 *[Foundation of lien]*

The foundation of a lien shall require a contract of pledge based on which it is required to

a) register the lien in the appropriate register (mortgage lien); or

b) transfer the possession of the pledged item to the pledgee (possessory lien).

Section 5:89 *[Contract of pledge]*

(1) In the contract of pledge, the pledger and the pledgee agree to establish a lien on a specific pledged item and they do so, unless otherwise provided in this Act, for the purpose of securing a specific claim.

(2) On the basis of the contract of pledge, the pledger shall

a) for a possessory lien, transfer the possession of or the power over the pledged item to the pledgee;

b) for a mortgage lien, give his consent required for the lien to be registered; and

c) according to the choice of the pledgee, notify the obligor in writing of the pledged claim on establishing the lien or release to the pledgee the declaration regarding this.

(3) For the contract of pledge to be concluded, the pledged item and the secured claim shall be specified.

(4) The pledged item can also be defined by type and quantity or by any other circumscription that allows it to be identified. The specification may also include an asset that does not yet exist or over which the pledger has no right of disposal.

(5) The claim secured by lien shall be specified in a manner allowing it to be identified by making a reference to the underlying legal relationship or relationships and by specifying the amount, or by any other way allowing the identification of the secured claim. The specification may also include a claim that has not yet been established.

(6) The contract of pledge shall be laid down in writing. In the case of a possessory lien the contract of pledge may be replaced by securities issued by the pledgee, authorising the holder of the document to receive from the pledgee the pledged item within the period and in consideration of the amount specified in the securities.

Section 5:90 *[Consumer pledge contract]*

If the pledger is a natural person and the primary purpose of use of the pledged item falls outside the scope of natural person's profession, independent occupation or business activity and provided that the claim secured by lien does not stem from a legal relationship within the scope of the pledger's profession, independent occupation or business activity, the provisions on the contract of pledge shall apply subject to the following derogations:

a) the pledged item can only be a specifically defined asset owned by the pledger or an asset the ownership of which is acquired by the pledger through a loan or a moratorium provided by the pledgee;

b) the specification of the secured claim shall include the definition of the amount of the claim, excluding charges, or the amount to the extent of which the pledgee may seek satisfaction from the pledged item.

Section 5:91 *[The effect of the contract of pledge between the parties]*

Even if no lien has been established, on the basis of the contract of pledge, the parties, towards each other shall be entitled to the rights and shall be bound by the obligations established by this Act regarding the pledgee and the pledger.

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Section 5:92 *[Statutory lien]*

The provision of this law upon which the beneficiary of a certain claim is entitled to a lien shall substitute for a contract of pledge.

Section 5:93 *[Registration of the mortgage lien]*

(1) A mortgage lien shall be registered into

a) the real estate register in the case of real estate;

b) the security interest register in the case of a moveable thing, a right or claim.

(2) If the ownership of a moveable thing or the existence of a right is certified by a publicly certified register (hereinafter "public register"), the establishment of the lien shall require registration in the appropriate public register.

(3) Registration in the real estate register and in the public register shall take place on the basis of the authorisation of registration provided in the contract of pledge or given by the pledger, provided that

a) the contract of pledge or the authorisation of registration specifically identifies the pledged item; and

b) the pledger is the owner or the beneficiary of the thing or of the right as registered in the real estate register or the public register.

(4) Only a pledged item that is specifically identified or identified by circumscription can be registered in the security interest register. The non-existence of the pledged item to be registered or the pledger not holding the right of disposal over the pledged item shall not prevent registration.

Section 5:94 *[Transfer of possession under possessory lien]*

(1) The pledgee and the pledger holding the thing in co-possession or a third party as lien holder safekeeps the thing for the pledgee and the pledger shall substitute for shall transfer of possession.

(2) If the thing is in the possession of a third party sub-possessor and possession is transferred with the transfer of the claim for releasing the thing, to establish the possessory lien, notification by the owner to the sub-possessor on the pledge shall also be required.

(3) No possessory lien shall be established if the transfer of possession takes places by way of a relevant agreement between the owner and the pledgee whereby the owner remains in possession of the thing as a sub-possessor.

Section 5:95 *[Establishing collateral security]*

(1) Collateral security may be established on

a) money and securities,

b) a claim to debit a payment account and on a claim resulting from a deposit contract, or on a claim recorded on an account maintained by an institution authorised by law as account provider (hereinafter for the purpose of this Title "claim to debit a payment account"), and

c) another asset specified by the law as subject of security.

(2) Collateral security on money and on non-dematerialised securities shall be established as a possessory lien, while on dematerialised securities, on claims to debit a payment account and on another asset specified by the law as object of collateral security it shall be established by the object of the collateral security being transferred from the power of the collateral security's obligor to the power of the collateral security's obligee in a clearly identifiable way, or by taking it out of the unrestricted power of disposal of the collateral security's obligor by any other means.

(3) Collateral security can also be established on dematerialised securities and on a claim to debit a payment account by

a) a written agreement between the account holder, the account provider and the collateral security's obligee, stating that the account provider is required to perform the account

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holder's orders with the consent of the collateral security's obligee and to perform the orders of the collateral security's obligee even without the consent of the account holder; or

b) a mere contract of pledge between the account holder and the account provider to the benefit of the account provider.

(4) The account manager shall indicate on all statements of account or other balance statements the existence of collateral security on the dematerialised securities and on the claim to debit a payment account.

Section 5:96 *[Commission agent on behalf of the pledgee]*

(1) The obligee of the claim or more than one of such obligee may jointly appoint in the contract of pledge or otherwise in writing a commission agent on behalf of the pledgee. The appointment shall be laid down in writing. The commission agent on behalf of the pledgee may conclude a contract of pledge in his own name to the benefit of the obligees as pledgees appointing him, and if he is also an obligee of the claim, to his own benefit as well.

(2) Appointment of the commission agent on behalf of the pledgee shall be effective against third parties from the date of registering the commission agent, by indicating his status as a commission agent on behalf of the pledgee, into the real estate register, the public register or the security interest register.

(3) In the event of withdrawing the appointment of the commission agent on behalf of the pledgee, the pledgee, or if there is more than one pledgee, the pledgees jointly may appoint a new commission agent on behalf of the pledgee or the pledgee himself may take the place of the commission agent on behalf of the pledgee. The withdrawal of the appointment of the commission agent on behalf of the pledgee shall be effective against third parties from the date of registering the new commission agent on behalf of the pledgee or the pledgee himself into the real estate register, the public register or the security interest register.

(4) When registering a commission agent on behalf of the pledgee, the real estate register, the public register or the security interest register shall not contain the names of the pledgees to the benefit of whom the commission agent on behalf of the pledgee shall act.

(5) The commission agent on behalf of the pledgee registered in the real estate register, the public register or the security interest register shall be entitled to the rights and shall be bound by the obligations of the pledgee; in this respect the commission agent on behalf of the pledgee shall act in his own name to the benefit of the pledgee.

(6) The pledgee shall not exercise the rights resulting from the lien during the term of registration of the commission agent on behalf of the pledgee, but he shall be responsible for the conduct of the commission agent on behalf of the pledgee as for his own conducts if the pledgees and the commission agent on behalf of the pledgee, with the consent of the pledger, do not stipulate otherwise.

(7) The transfer of the claim secured by lien shall not affect the rights and the obligations of the commission agent on behalf of the pledgee.

(8) The commission agent on behalf of the pledgee shall hold and manage everything he has collected or has taken into possession on the basis of enforcing the lien or otherwise in connection with the lien, separated from his own assets. Creditors of the commission agent on behalf of the pledgee shall not have a right to demand

a) the pledgee's claims against the pledger;

b) the amounts collected and held or managed separately by the commission agent on behalf of the pledgee, if it can be verified that the pledgee is entitled to these amounts.

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Chapter XXII

The claim secured by lien

Section 5:97 *[Claims that can be secured by lien]*

(1) A lien can be established to secure one or more, existing or future, unconditional or conditional pecuniary claims of a determined or determinable amount.

(2) A lien established to secure claims other than pecuniary ones shall secure claims for damages or other claims for money resulting from the non-performance of the claim.

(3) No lien shall be established to secure a claim that is not enforceable in court.

Section 5:98 *[The extent of liability with the pledged item]*

(1) The extent of liability with the pledged item shall conform to the current extent of the claim secured by the pledged item.

(2) The extent of liability with the pledged item shall extend to the interests on the claim secured by lien, the necessary costs of enforcing the demand and the lien, and to the necessary costs spent on the pledged item.

(3) If the parties have specified the amount to which the pledgee may seek satisfaction from the pledged item, the lien shall secure the claim and its charges to the extent not exceeding that amount.

Section 5:99 *[Transfer and encumbrance of the secured claim]*

(1) By transferring the secured claim or by the passing of it by other means, the lien shall pass to the new obligee of the claim as well. The transferor of the claim shall release to the new pledgee the pledged item or the authorisation required to register the transfer of the mortgage lien.

(2) If transferring a part of the secured claim, the old and the new pledgees shall be entitled to the lien at the same rank, in proportion to their claims.

(3) The lien can be transferred or encumbered, except for seceded liens, together with the claim secured by the lien.

(4) A claim secured by lien can be encumbered with a lien by way of establishing a subordinated lien. The object of a subordinated lien shall be the lien and the claim secured by it; the rules on lien shall apply to subordinated liens unless provided otherwise in this Act.

Section 5:100 *[Seceded lien]*

(1) A mortgage lien on real estate to the benefit of a financial institution can also be established independently from the secured claim to have the mortgage lien burden the pledged item up to a specified amount (seceded lien).

(2) The contract of pledge establishing a seceded lien shall contain, in addition to the identification of the pledged item, the amount up to which satisfaction may be sought from the pledged item. This amount shall be indicated in the real estate register as well.

(3) The contract of secured transactions concluded between the pledgee and the pledger shall determine the conditions for exercising the right to satisfaction of one's claim from the pledged item. The contract of secured transactions shall be laid down in writing and shall include the fact that the seceded lien is established to secure a claim, the conditions and extent of the right to satisfaction of one's claim, and if the right to satisfaction opens by way of notice, the manner of giving notice and the notice period as well. The right to satisfaction of one's claim shall be exercised according to the provisions of the contract of secured transactions.

(4) Seceded liens may be transferred to another financial institution in full, in part or in instalments. By way of transfer, the party obtaining the seceded lien shall replace the transferor in the contract of secured transactions to the extent of the transfer. The acquiring

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party may request that the right he acquired or, if the seceded lien is transferred in part or in instalments, the division of the seceded lien be indicated in the real estate register.

(5) Unless otherwise provided in the contract of secured transactions, for satisfying the pledgee, both the pledgee and the pledger may terminate the seceded lien by giving written notice. Unless otherwise agreed by the parties, the notice period shall be six months. If the right to satisfaction of one's claim opens by way of giving notice, the exclusion of termination shall be null and void.

(6) The pledger may invoke the same excuses as to which the obligor of the claim specified in the contract of secured transactions is entitled against the respective holder of the seceded lien. The amount of the claim to be satisfied according to the contract of secured transactions shall be reduced by the purchase price collected in the course of exercising the right to satisfaction of one's claim.

(7) The party acquiring the ownership of the pledged item burdened with a seceded lien shall replace the pledger in the contract of secured transactions. To secure his claim for reimbursement, the obligor, pledger or third party satisfying a claim that can be satisfied under the contract of secured transactions shall – if he is not a financial institution – be entitled to a lien securing a claim at the rank of and replacing the seceded lien. As security for its claim for reimbursement, the seceded lien shall pass to the financial institution which satisfies the claim.

(8) If the contract of secured transactions has not been concluded, the purpose of establishing a seceded lien as specified in the contract of secured transactions has been permanently frustrated, or the contract of secured transactions or the claim that can be satisfied from the pledged item under the contract of secured transactions, including a claim for reimbursement, has been terminated, or the occurrence of another cause or condition contained in the contract of secured transactions resulting in the termination of the seceded lien, the pledgee shall, upon the pledger's written notice, give consent to

a) have the pledger or the financial institution designated by it registered in the real estate register as the pledgee of a seceded lien, or

b) have the seceded lien deleted from the real estate register.

(9) A seceded lien can be transformed into a lien securing a claim and the latter can be transformed into a seceded lien with the respective written agreement of the parties and by registering the transformation into the real estate register along with keeping the rank of the lien. The approval of the pledgees placed in the same rank or a lower rank shall not be required for the above.

(10) Unless the independence of the seceded lien from the secured claim requires otherwise, the provisions on lien securing a claim shall apply accordingly to seceded liens.

Chapter XXIII

Object of the lien

Section 5:101 *[Pledged items]*

(1) Any asset can be the object of a lien.

(2) Any moveable thing can be the object of a possessory lien.

(3) With the exception of the pledger's ownership proportion of a thing in co-ownership, the pledger's share of a right held by more than one person and the specific part of a divisible claim, no lien shall be established on a part of a thing or a right.

(4) If the pledged item is a right or a claim and this Act does not provide otherwise or the nature of the pledged item does not require otherwise, the ownership of the pledged item shall mean the right or the claim, and the owner of the pledged item shall mean the obligee.

(5) The rules on lien established on a claim shall be applied accordingly if the object of the lien is a right.

Section 5:102 *[Pledged item identified by circumscription]*

If the object of the lien registered in the security interest register has been identified by way of circumscription, the objects of the lien shall at any time be those things, rights and claims complying with the circumscription over which the pledger has a right of disposal. The lien shall persist despite the termination of the right of disposal if the pledged item is alienated outside the scope of commercial transactions or if it was acquired by a third party not acting in good faith and for no consideration.

Section 5:103 *[Components, accessories and benefits of the pledged item]*

(1) A possessory lien shall burden the thing together with its components as existing at all times. In case of doubt, the possessory lien shall extend to the existing accessories of the thing.

(2) The lien shall extend to the product, produce and progeny of the thing and to any other benefit of the pledged item.

(3) The lien shall not extend to the components, accessories and benefits that have been separated from the real estate according to the rules of normal operation before the right to satisfaction can be exercised, if the ownership has been transferred and the components, accessories and benefits have been taken away from the real estate.

Section 5:104 *[Thing or asset replacing the pledged item]*

(1) The insurance amount, damages or other value due in the event of loss of value or the loss of the pledged item, or any claim on these shall replace the pledged item or shall serve the purpose of supplementing the pledged claim.

(2) Recompense received for the expropriation of the pledged item or any claim relating to this recompense shall replace the pledged item.

(3) If the pledgee sells the pledged item for the purpose of averting damage, the purchase price collected shall replace the pledged item.

(4) If the subject of the lien registered in the security interest register is sold by the pledger within the scope of normal operation, the revenue originating from the sale shall replace the original pledged item.

(5) If the pledger processes or transforms the thing or combines or mixes it with other items, the new thing resulting from the processing, transforming, combining or mixing shall replace the original pledged item.

(6) If the pledger or the party personally liable has provided an appropriate new pledged item instead of the original pledged item or a supplementary pledged item in the event of the loss of value of the pledged item, the new pledged item shall replace the original one or shall be added to it.

(7) The money or other asset collected on the basis of the lien, suretyship or other security provided as performance of the pledged claim or securing the pledged claim shall replace the original pledged item.

(8)

Section 5:105 *[Lien on more than one pledged item]*

(1) If the lien burdens more than one pledged item to secure the same claim, the appropriate register shall indicate that the lien is joint and several. The fact that the lien is joint and several need not be indicated specifically, if there is the same pledger for all pledged items and the lien is registered in the security interest register.

(2) In the case of a joint and several lien, all pledged items shall serve the purpose of securing the whole claim. The pledgee may specify the rank order of enforcing the lien,

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however the right to satisfaction of one's claim shall only extend to the number of pledged items necessary for satisfying the secured claim.

Chapter XXIV

Rights and obligations of the parties before the right to satisfaction may be exercised

Section 5:106 *[Possession, use and exploitation of the object of possessory lien]*

(1) The pledgee may hold the object of the possessory lien in his possession and shall preserve the integrity of the pledged item.

(2) The rules of deposit for consideration shall apply to the parties' rights and obligations related to the possession, use and exploitation of the pledged item, however, the pledger shall not be entitled to reclaim the pledged item during the duration of the lien.

Section 5:107 *[Safekeeping the item under possessory lien]*

(1) The pledger or the party personally liable may monitor the condition and the use of the pledged item.

(2) If the loss of value of the pledged item jeopardises the satisfaction of the claim, and, despite being called upon by the pledgee who sets an appropriate time limit, the pledger fails to restore the condition of the pledged item, does not provide an appropriate new pledged item or supplementary security covering the extent of the loss of value, the pledgee, acting instead and on behalf of the owner of the pledged item, may sell the pledged item in order to prevent further loss of value. The pledgee may sell the pledged item without giving notice or setting a time limit if giving notice is prevented by an unavertable obstacle or if waiting for the measure to be taken by the pledger would result in further substantial loss of value to the pledged item.

(3) If the pledger or the party personally liable offers another appropriate asset, and it does not jeopardise the right to obtain satisfaction of the claim, the pledgee shall return the pledged item.

(4) If there is a change in the value of the object of the collateral security, or in that of another divisible pledged item the value of which can be determined clearly on the basis of publicly available information or of the secured claim, the pledger shall be required to provide supplementary security and the pledgee shall be required to proportionately release the excessive security to the pledger.

(5) The pledger may use the insurance money, damages or other valuables replacing the pledged item to restore the pledged item, provided that it does not jeopardise the satisfaction of the secured claim.

Section 5:108 *[Possession, use and exploitation of the object of mortgage lien]*

(1) The pledger may hold the object of the mortgage lien in his possession, use and exploit it for its designated purpose, and shall preserve the integrity of the pledged item.

(2) The pledger of the mortgage lien registered in the security interest register may process, transform, combine, mix and alienate the pledged item identified by circumscription within the scope of normal operation.

Section 5:109 *[Safekeeping the item under mortgage lien]*

(1) The pledgee may monitor the condition and the use of the pledged item.

(2) If the pledger or a third party jeopardises the integrity of the pledged item, the pledgee may exercise the rights that the party in jeopardy is entitled to exercise if there is a risk of suffering damage.

(3) If the loss of value of the pledged item jeopardises the satisfaction of the claim, and, despite being called upon by the pledgee, who sets an appropriate time limit, the pledger does not restore the condition of the pledged item, does not provide an appropriate new pledged

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item or a supplementary security covering the extent of the loss of value, the pledgee may sell the pledged item in order to prevent further loss of value.

(4) The pledger may use the insurance money, damages or other valuables replacing the pledged item to restore the condition of the pledged item, provided that it does not jeopardise the satisfaction of the secured claim.

Section 5:110 *[Safekeeping the pledged claim as lien security]*

(1) After the obligor of the pledged claim is notified in writing, the pledged claim and the pledgee being indicated therein, of the establishment of the lien, the dissolution of the contract between the pledger and the obligor of the pledged claim or the amendment of this contract to the detriment of the pledgee's right to satisfaction of the claim or otherwise reducing the lien security shall not be effective against the pledgee. However, the dissolution or amendment of the contract shall become effective if the pledgee approves it in a declaration made to the pledger and the obligor of the pledged claim.

(2) The obligor may invoke those excuses and set off those counter-claims against the pledgee that had been established against the pledger on a legal basis having already existed at the time of the notification.

Section 5:111 *[Rights and obligations of the obligor of a pledged claim]*

(1) The obligor of the pledged claim shall deliver performance to the pledger until he receives a performance instruction that specifies the pledgee, its seat, or, for a natural person, his place of domicile, place of habitual residence or account number. After receiving the performance instruction, the obligor shall be allowed to perform according to it.

(2) The performance instruction shall have the legal effect specified in paragraph (1) if the instruction is included in the notification on pledging, it originates from the pledger or if the pledgee verifies that the claim has been pledged by the contract of pledge or in any other credible way. If the notification on pledging identified the pledgee but did not include the performance instruction, only the pledgee may give a performance instruction.

(3) The pledgee may send a performance instruction after the right to satisfaction is allowed to be exercised.

(4) By way of derogation from the provisions in paragraph (1), the performance instruction shall not affect the rights and the obligations that the bank maintaining the account has against the account holder on the basis of the account and deposit contract.

(5) At the pledgee's request, the pledger shall hand over the documents required to enforce the pledged claim. If the due date of the pledged claim is conditional on the pledgee's juridical act or any other condition to be fulfilled by the obligee, the pledgee shall be entitled to make this juridical act or to fulfil the condition necessary for making the claim fall due.

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Chapter XXV

Security interest register

Section 5:112 *[Principles of the security interest register]*

(1) The security interest register contains, with reference to the pledgers, the mortgage liens established on non-registered moveable things, rights and claims, as well as other security rights specified in this Act.

(2) The security interest register is open to the public; its content can be accessed via the internet free of charge, without personal identification.

Section 5:113 *[The declarations determining the content of the security interest register]*

(1) Registration in the security interest register and the modification or the deletion of the records shall be made on the basis of the declarations made on the website of the security

interest register by the pledgees and the pledgers filling out the electronic forms specified by the law, without the content of such declarations being examined.

(2) Upon making the declaration, the pledger shall receive an electronic notification of the declaration made by the pledgee and the pledgee shall receive an electronic notification of the declaration made by the pledger, without delay.

(3) Only persons registered as users of the security interest register may make declarations.

(4) On behalf of the legal person or other organisation registered as a user, it is the natural person designated by the organisation at the time of its registration or thereafter as a person entitled to act on behalf of it who may act in the course of making the declarations.

(5) A declaration shall only be made after the person acting on his own behalf or in the name of others has been personally identified by electronic means.

Section 5:114 *[Registration of the lien]*

(1) A declaration for registration of a lien shall be made by the pledgee or the pledger only.

(2) If the declaration for registering the lien is made by the pledgee, the lien shall be registered on the basis of the declaration if the pledger has consented to the registration by a declaration given in electronic form on the website of the security interest register.

(3) If the declaration for registering the lien is made by the pledger, the registration shall take place on the basis of the declaration.

Section 5:115 *[Content of the declaration for registering the lien]*

(1) A lien shall be registered on the basis of a declaration containing

a) the pledger's name and his data as specified in a specific law;

b) the pledgee's name and his data as specified in a specific law;

c) the name and the data, as specified in a specific law, of the natural person acting in the name of the legal person or other organisation; and

d) the individual or circumscribed definition of the pledged item.

(2) The declaration for registering the lien may also specify the amount to which the pledgee may seek satisfaction from the pledged item.

Section 5:116 *[Content of the security interest register]*

The security interest register shall contain with regard to all registered liens

a) the content of the declaration for registering the lien;

b) the date of the registration of the lien; and

c) the serial number of the entry.

Section 5:117 *[Deletion of the lien]*

(1) Both the pledgee and the pledger may make a declaration for deleting the lien.

(2) If the declaration for deleting the lien is made by the pledgee, the lien shall be deleted on the basis of the declaration.

(3) If the declaration for deleting the lien is made by the pledger, the lien shall be deleted on the basis of the declaration, provided that the pledgee

a) consents to the deletion of the lien; or

b) fails to make a declaration on maintaining the entry within thirty days of the pledger's declaration for deleting the lien.

(4) The pledgee shall consent to the deletion of the lien and shall not be entitled to make a declaration for maintaining the entry, if he does not have a claim secured by lien or a legal relationship on the basis of which he may have a future claim secured by lien.

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Chapter XXVI

Ranking of liens

Section 5:118 *[The principle of ranking by establishment of the lien]*

If a pledged item is encumbered by more than one lien, the pledgees shall be entitled to the right to satisfaction of their claims in the order in which their liens have been established.

Section 5:119 *[The ranking of the lien on an asset replacing the pledged item or supplementing the pledged claim]*

The lien on an asset replacing the pledged item or supplementing the pledged claim, unless the asset is burdened by other liens, shall take the rank of the lien established on the original pledged item.

Section 5:120 *[Changing the objects of the lien registered in the security interest register]*

If the object of the lien registered in the security interest register is more than one circumscribed asset, the changes to the individual things, rights and claims shall not affect the ranking of the lien.

Section 5:121 *[Lien established by the former obligee of the right of disposal]*

The lien established by the former obligee of the right of disposal over the object of the lien registered in the security interest register shall precede the mortgage lien established earlier, but, in the absence of the right of disposal, was created later.

Section 5:122 *[Priority of the lien securing the acquisition of the pledged item]*

The mortgage lien provided by the seller to secure the repayment of the loan for the purchase price of a moveable pledged item or by the creditor to the acquisition of the ownership of a moveable pledged item shall precede the mortgage liens established earlier by the buyer or by the debtor, provided that before the transfer of the pledged item

a) the lien is registered in the security interest register; and

b) on the establishment of the lien, the pledgee sends written notice to those previous pledgees whose mortgage liens shall be extended to the new pledged item should the pledger acquire ownership.

Section 5:123 *[Ranking between collateral security and mortgage lien]*

If the same pledged item is encumbered by both collateral security and a mortgage lien, the obligee of the collateral security shall have priority over the obligee of the mortgage lien regarding the right of satisfaction of his claim.

Section 5:124 *[Ranking contract]*

(1) The ranking of liens can be modified with the consent of all interested parties. Modification of the ranking shall require the registration and the recording of the change of rank.

(2) Availing of the rank of entries shall not result in the breach of third parties' rights registered at the time of modifying the rank.

(3) The lien promoted in rank due to modifying the ranking shall keep its rank even if the lien that was relegated in rank is terminated.

Section 5:125 *[Preliminarily securing the rank of the lien]*

(1) The owner may have his intent to encumber an asset with a lien, to the benefit of a specific person or without designating the obligee, recorded or registered in the appropriate register.

(2) The application for recording and the entry shall specify the amount up to which the owner intends to establish the lien.

(3) The lien registered in the rank secured in advance shall receive a rank in line with the rank of the entry or record.

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Chapter XXVII

Enforcement of the lien

1. General rules of exercising the right to satisfaction of one's claim

Section 5:126 *[The right to satisfaction of one's claim]*

(1) The pledgee's right to satisfaction of his claim shall open when the claim secured by lien becomes due, in the event of failure to perform.

(2) Unless agreed otherwise by the parties in the contract of secured transactions, the right to satisfaction of the claim of the obligee of a seceded lien shall open upon the termination of the seceded lien, after the expiry of the notice period.

(3) The right to satisfaction of one's claim may be exercised, according to the choice of the pledgee, by way of judicial enforcement or, if against consumers, subject to the limitations specified in this Act, outside judicial enforcement procedure.

(4) Enforcement of a mortgage lien burdening a claim on a payment account shall be performed by judicial enforcement.

2. Common rules of the enforcement of lien outside judicial enforcement procedure

Section 5:127 *[The ways of exercising the right to satisfaction outside judicial enforcement procedure]*

(1) Outside judicial enforcement procedure, the right to satisfaction shall be exercised, according to the choice made by the pledgee, by

a) the pledgee selling the pledged item;

b) the pledgee acquiring the ownership of the pledged item; or

c) enforcing the pledged right or claim.

(2) The pledgee may proceed from the chosen way of enforcing the right to satisfaction to another.

Section 5:128 *[Exercising the right to satisfaction against a consumer]*

The pledgee may exercise the right to satisfaction against a consumer outside judicial enforcement procedure only if he

a) exercises the right to satisfaction directly with regard to the object of the security,

b) enforces the pledged right or claim according to this Act, or

c) upon being entitled to the right to satisfaction, concluded a written agreement with the pledger on how the pledgee should sell the pledged item.

Section 5:129 *[The right to take over the enforcement of a lien]*

(1) The pledgee placed on a rank preceding the pledgee who started the enforcement of the lien may take over the enforcement of the lien by way of a written declaration addressed to the pledgee enforcing the lien, provided that he reimburses the costs incurred by the pledgee who started the enforcement.

(2) If the pledgee enforcing the lien receives a declaration on the enforcement being taken over, he shall accordingly notify the priority pledgee on the steps taken and the costs incurred.

Section 5:130 *[Suspension or limitation of exercising the right to satisfaction]*

If, in the course of exercising the right to satisfaction of his claim, the pledgee breaches his obligations specified in this Act, the pledger, the party personally liable or any other person having a legal interest in that may request the court to suspend the exercise of the right to satisfaction or to order the pledgee to exercise the right to satisfaction according to the conditions specified by the court.

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3. Sale of the pledged item by the pledgee

Section 5:131 *[Prior notification]*

(1) The pledgee shall send written notification of his intention to sell the pledged item to

a) the pledger, the party personally liable and the persons guaranteeing the performance of the party personally liable;

b) the pledgees of other liens burdening the pledged item;

c) all those who have a registered right on the pledged item in the case of a registered pledged item; and

d) all those who have notified the pledgee, by the tenth day preceding the notification given by the pledgee, on having a verified right burdening the pledged item.

(2) At least ten days shall have to pass between the date of the prior notification and that of the sale.

(3) The prior notification shall indicate

a) the pledgee and the pledger;

b) the pledged item to be sold;

c) the amount and the incidental charges of the enforced claim;

d) the reason for and the date from which the right to satisfaction may be exercised;

e) the planned method of sale;

f) the venue and the date of the public sale, as for another method of sale, the date after which the sale shall take place.

(4) The pledgee may sell the pledged item without prior notification if the pledged item

a) is a perishable thing or another thing the value of which would be decreased substantially due to the delay; or

b) is a thing or right traded on the stock exchange.

Section 5:132 *[The right to possess the pledged item]*

(1) After the date from which the right to satisfaction may be exercised, the pledgee may take the pledged item into possession in order to sell it and for this purpose may call upon the pledger to release the pledged item into his possession within the time limit specified in the notice.

(2) The time limit for releasing the item into the pledgee's possession shall be set as justified by the circumstances, but it shall be at least ten days for a pledged moveable item and twenty days for a pledged real estate. A time limit of at least three months shall be set for releasing residential real estate into possession in an emptied condition.

(3) After the right to satisfaction may be exercised, when called upon by the pledgee, within the time limit specified in the call, the pledger shall release the pledged item held in his possession to the pledgee for the purpose of selling that, shall allow that the pledged item be taken into possession and shall refrain from any conduct that would prevent the pledgee from performing the sale.

(4) Failure to releasing it into possession shall not prevent the sale of the pledged item.

Section 5:133 *[Requirement of commercial reasonableness]*

(1) In the course of selling the pledged item, the pledgee shall comply with the requirement of commercial reasonableness, also taking the interests of the pledger and the party personally liable into account.

(2) Unless proven to the contrary, it shall be presumed that the sale of the pledged item complied with the requirement of commercial reasonableness, if the sale takes place

a) on the stock exchange, at the price applicable at the date of the sale; or

b) in the customary way generally applied in the trade of the pledged item on the relevant market.

Section 5:134 *[The sale]*

(1) The pledgee, acting on behalf and in the name of the owner of the pledged item, may transfer the ownership of the pledged item.

(2) The sale may take place

a) with the pledged item in its original condition or after having it processed or transformed as commercially reasonable;

b) privately or publicly.

(3) If the lien encumbers more than one pledged item, these can be sold either together or separately.

(4) The pledgee may acquire ownership of the pledged item sold by him if the pledged item is sold at an auction or if traded on the stock exchange.

Section 5:135 *[Settlement, distribution of the revenue from the sale]*

(1) Shortly after the sale, the pledgee shall prepare a written accounting settlement specifying

a) the pledged item sold;

b) the purchase price received;

c) the benefits of the pledged item collected by the pledgee,

d) the expenses arisen from safekeeping, maintaining, processing, transforming and selling the pledged item; and

e) the ranking of the liens encumbering the pledged item and the amount of the claims secured by the liens, if known.

(2) The pledgee shall send the settlement to the pledger and to the persons entitled to receive prior notification.

(3) The pledgee shall, without delay, distribute the collected purchase price plus the collected benefits less the expenses arisen from safekeeping, maintaining, processing, transforming and selling the pledged item between the pledgees of the liens encumbering the pledged item according to the ranking of the liens and the level of the claim secured by lien, and shall release the remaining amount to the pledger.

4. Acquiring ownership of the pledged item by the pledgee

Section 5:136 *[The prohibited instance of the pledgee acquiring the pledged item]*

Any agreement allowing the pledgee to acquire the ownership of the pledged item upon when the right to satisfaction may be exercised shall be null and void.

Section 5:137 *[Acquiring ownership of the pledged item by the pledgee when the right to satisfaction may be exercised]*

(1) After the right to satisfaction may be exercised, the pledgee may notify the pledger in writing of his offer to accept the ownership of the pledged item in return for the full or partial satisfaction of the secured claim.

(2) The offer shall indicate

a) the pledgee and the pledger;

b) the pledged item subject to the offer;

c) the effective amount of the claim secured by lien;

d) the reason for and the date from when the right to satisfaction may be exercised; and

e) the extent to which the secured claim would be satisfied by the acquisition of ownership of the pledged item or the amount of money the pledgee is willing to pay to the pledger as consideration for acquiring ownership, in addition to the accounting settlement of the secured claim.

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(3) The pledgee, by sending the offer, shall notify not only the pledger but

a) the party personally liable and the persons guaranteeing the performance of the party personally liable;

b) the pledgees of other liens burdening the pledged item;

c) for a registered pledged item, all persons who have a registered right on the pledged item; and

d) all persons who have notified him, until the tenth day preceding the notification given by the pledgee, together with documenting the right burdening the pledged item.

(4) Persons entitled to receive notification may raise an objection against the pledgee's offer if it jeopardises the satisfaction of their secured claim.

(5) If within twenty days after receipt, the pledger accepts the pledgee's offer in writing and the persons specified in paragraph (3) do not raise a written objection against the offer within twenty days upon receiving it, a contract of sale shall be concluded between the pledgee and the pledger, on the basis of which the pledger is required to transfer the possession of the pledged item and to issue the permission to register the ownership in the register. By virtue of the transfer of ownership the claim secured by lien shall be terminated in full or in part, according to the content of the offer.

Section 5:138 *[The right to obtain direct satisfaction]*

(1) If money, a claim on a payment account, a security having a stock exchange price or other publicly quoted market price or a security embodying a pecuniary claim of a value that is determinable according to the conditions contained in it at that given time, independently from the parties, is the object of a security, the pledgee may, when the right to satisfaction may be exercised, by way of a unilateral statement addressed to the pledger, acquire the ownership of the pledged item up to the amount of the secured claim, or if he has acquired it earlier, may terminate his obligation to transfer assets of the same type and quantity to the pledger .

(2) After exercising the right to satisfaction directly, the pledgee shall settle, without delay, with the pledger in writing and release to the pledger any coverage exceeding the secured claim. In the course of the settlement, money and claim on a payment account shall be taken into account at nominal value; the securities shall be taken into account at their public commercial value or at the value determined independently from the parties according to paragraph (1).

(3) The same rules shall apply accordingly when the lien concerns securities embodying ownership and when the object of the ownership is a thing having a stock exchange price or another publicly quoted market price.

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5. Enforcement of a pledged right or claim

Section 5:139 *[Enforcement of a pledged right or claim]*

If the object of a mortgage lien is a claim, the pledgee is entitled to give performance instructions to the obligor of the claim, and when the claim became due he may, instead of the original beneficiary, even enforce the claim against the obligor of the claim. The same rule shall apply accordingly if the object of the mortgage lien is a right.

Section 5:140 *[Enforcement of a secured lien]*

(1) The beneficiary of the secured lien may exercise the pledgee's rights arising from the lien to the same extent to which the pledgee himself is entitled to exercise such rights. If the claim is secured by a possessory lien then, at the request of the beneficiary of the secured lien, the pledgee shall transfer the possession of the pledged item to the beneficiary of the secured lien.

(2) The beneficiary of the secured lien shall exercise his rights originating from this lien in a way not jeopardising the satisfaction of the pledgee's claim secured by lien. The pledgee shall have a lien to secure his claim for settlement against the beneficiary of the secured lien over the money or other assets in excess to the claim secured by the secured lien collected by the beneficiary of the secured lien along the enforcement of the secured lien.

(3) If the claim that is the object of the lien is secured with suretyship, the pledgee may, by applying paragraph (2) accordingly, exercise his rights arising from the suretyship against the surety of the claim in accordance with the rules applying to the obligee of the suretyship.

Section 5:141 *[Securities embodying a claim]*

The rules on secured liens and the enforcement of pledged rights or demands shall apply accordingly when the object of the lien are securities embodying a claim.

Chapter XXVIII

Termination of the lien

Section 5:142 *[Termination of the lien]*

(1) The lien shall terminate if

a) the pledgee waives his lien and returns the pledged item to the pledger or when the mortgage lien is deleted from the appropriate register;

b) the thing that is the object of the lien perishes or the claim or right object of the lien is terminated without any other asset replacing it;

c) the beneficiary of the possessory lien loses the possession of the pledged item, unless he has launched a procedure for the protection of possession or a possessory action without delay;

d) the claim secured by lien, or any legal relationship on the basis of which a claim secured by lien may be established in the future, is terminated;

e) the claim secured by lien lapse, which, however, shall not constitute an obstacle to satisfaction from the possessory lien securing the claim;

f) by exercising the right to satisfaction of his claim, the pledgee sells the pledged item or acquires the ownership of the pledged item.

(2) Upon the termination of the claim secured by lien, the lien shall persist to secure the claim for reimbursement of the party personally liable, the pledger or the third party satisfying the claim, in such a way that the obligee of the claim for reimbursement shall be entitled to the remaining lien.

(3) The lien shall persist as security of the claim secured by lien even if the same person becomes the pledger and the pledgee.

(4) The lien shall terminate if on the transfer of the claim the transfer of the lien securing it was explicitly excluded. If, however, the lien has secured other claims of its transferor in addition to the transferred claim, the lien shall persist as security of those claims.

Section 5:143 *[Acquisition of ownership free from lien]*

(1) In commercial transactions for consideration, a person acting in good faith shall acquire the ownership, right or claim free from lien registered in the security interest register.

(2) If the pledged item was sold in order to protect the pledged claim, the buyer shall acquire the ownership, right or demand free from lien.

Section 5:144 *[Pledgee's obligation upon the termination of the lien]*

(1) If the claim secured by lien terminates or lapses and there is no legal relationship on the basis of which a claim secured by lien may be formed in the future, the pledgee shall without delay

a) return the pledged item to the pledger;

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b) give consent to deleting the lien; and

c) notify the account provider of the pledger or the third party who, as lien holder, is in possession of the pledged item or on whose account the pledged item has been credited to the pledgee, on the termination of the lien, in writing.

(2) Upon receiving written notice of the termination of the lien, the third person who, as lien holder, is in possession of the pledged item or on whose account the pledged item has been credited in favour of the pledgee, shall return, without delay, the pledged item to the pledger or shall order the pledged item to be credited to his account, or to be credited to the pledger's account.

(3)

TITLE VIII

RIGHTS OF USE

Chapter XXIX

Use of land

Section 5:145 *[Land use rights when the land and the building have different owners]*

(1) If different persons are entitled to the ownership of the land and of the building erected on it then the owner of the building shall have, as long as the building stands, a land use right on the land to the extent necessary for the designated use of the building.

(2) By virtue of his land use right, the owner of the building may use the land and collect its benefits to the extent necessary for using the building, and shall bear the burdens related to maintaining the land in proportion to its use.

Chapter XXX

Usufruct

Section 5:146 *[Formation of usufruct based on contract]*

(1) For a usufructuary right to be formed a contract or another legal title together with the transfer of the possession of the thing shall be required; a usufructuary right established on real estate or a right registered in the real estate register shall require the registration of the usufructuary right into the real estate register.

(2) If usufruct is established on a real estate or a right registered in the real estate register by virtue of the law, the usufructuary right shall be registered in the real estate register; in the absence of such registration the usufructuary right shall be enforceable against the person acquiring the thing acting in bad faith or free of charge.

(3) Usufruct right shall not extend to the gains of the object of usufruct gained after the establishment of the usufruct, unless the gains result from exploiting the object of usufruct in the scope of normal operation.

Section 5:147 *[Content of usufructuary right]*

(1) By virtue of the usufructuary right, the beneficiary may hold in possession, use, exploit and collect the benefits of a thing owned by another person.

(2) If more than one person is entitled to the usufructuary right at the same time, the rules of co-ownership shall apply accordingly to the right of possession, use and the collection of benefits.

(3) The usufructuary right shall persist without regard to the change of the owner of the thing.

(4) Usufructuary right benefiting a natural person may persist for a limited time and until the death of the entitled person at the latest.

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(5) Usufructuary right benefiting a legal person may be established for a limited time but for not more than fifty years; usufructuary right established for indefinite time shall persist for fifty years.

Section 5:148 *[Relinquishing the exercise of usufruct]*

(1) The usufructuary shall not transfer the usufructuary right, but may relinquish the exercise of the right of possession and use and the collection of benefits.

(2) The usufructuary may relinquish the exercise of the usufructuary right for consideration if the owner does not claim, under the same conditions, the use, exploitation or collection of the benefits of the thing for himself.

Section 5:149 *[The rights and the obligations of the usufructuary during the existence of the usufruct]*

(1) In the course of exercising his right, the usufructuary shall act according to the rules of normal operation.

(2) The usufructuary may change the economic purpose of the object of the usufructuary right or significantly transform or change the thing without the owner's consent, if maintaining the economic purpose or original form of the thing would be against the requirement of normal operation.

(3) The usufructuary shall bear the burdens of the thing, with the exception of extraordinary repairs and reconstructions. The usufructuary shall bear the obligations connected to the use of the thing.

(4) The usufructuary shall notify the owner of any threat and damage to the thing, including when a third party hinders him in exercising the usufruct, and shall tolerate the necessary measures taken by the owner for the purpose of averting the danger or eliminating the consequences of the damage.

Section 5:150 *[Bearing expenses]*

(1) The usufructuary may perform the extraordinary repairs or reconstruction works if the owner fails to perform them upon being called upon to do so.

(2) Upon the termination of the usufruct, the usufructuary may claim from the owner the reimbursement of the increase in value resulting from the extraordinary repairs or reconstruction works performed at his own expense on the thing, according to the rules of unjustified enrichment.

Section 5:151 *[Irregular usufruct]*

(1) The usufructuary may, to a reasonable extent, dispose of the things consumable by nature, economic equipment and animal stock, goods in stock and money existing at the time of the establishment of usufruct according to the rules of normal operation. Upon the termination of usufruct, the usufructuary shall replace these, or if it is not possible, shall reimburse their value.

(2) If the claim for replacement or reimbursement of the former owner of the object of usufruct that is sold or consumed is endangered, the owner may claim adequate security.

Section 5:152 *[The owner's rights during the existence of the usufruct]*

(1) The owner may check the exercise of the usufruct.

(2) If the usufructuary uses the thing against its designated use or impairs it, or if he changes its purpose improperly or otherwise jeopardises the return of the thing upon the termination of the usufruct, the owner, if his protest is unsuccessful, may claim adequate security if his protestation against the above failed.

(3) If the usufructuary fails to provide adequate security, then at the owner's request, the court may suspend the exercise of the usufructuary right until security has been provided.

(4) The owner shall be entitled to the aforementioned rights against the person to whom the usufructuary relinquished the exercise of rights originating from usufruct as well. In this case,

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in the absence of adequate security being provided, the court shall prohibit the third person from exercising the right relinquished to him by the usufructuary.

(5) During the persistence of the usufruct right, the owner may exercise the right of possession, use and collection of benefits only to the extent that the usufructuary fails to exercise such rights.

Section 5:153 *[Perishing of the object of usufruct]*

(1) If the thing or a substantial part of it perishes, the owner shall not be obliged to reconstruct it.

(2) If the owner reconstructs the thing, the usufructuary right shall come into effect again, but the owner may request the limitation of the usufruct proportionately to the amount spent on reconstruction.

(3) If the owner fails to reconstruct the thing, the usufruct shall be terminated. If another thing or claim replaces the object of the usufruct, the usufruct shall not extend to it. If the thing has been replaced by money or a claim, both the owner and the usufructuary may request this amount to be spent on reconstructing or replacing the thing if this conforms to the requirement of normal operation.

(4) The owner may perform the reconstruction or replacement himself, or he may cede the reimbursement amount to the usufructuary for this purpose.

Section 5:154 *[Termination of the usufruct]*

(1) The usufruct shall be terminated upon the expiry of the term defined, the death or termination without succession of the beneficiary and if the usufructuary acquires ownership of the thing.

(2) Terminating the usufruct by way of a legal transaction shall require the usufructuary's statement of waiver; in the case of a usufruct on real estate or on a right registered in the real estate register or another publicly certified register, the deletion of the usufructuary right from the register shall also be required.

(3) With regard to the usufruct of a thing, the statement of waiver shall be addressed to the owner; in the case of the usufruct of a right, it shall be addressed to the beneficiary of the right being the object of the usufruct or to the founder of the right.

(4) With regard to a usufruct on real estate or on a right registered in the real estate register or another publicly certified register, the waiver shall be made in writing.

Section 5:155 *[Usufructuary's obligations on the termination of the usufruct]*

(1) Upon the termination of the usufruct, the usufructuary shall return the thing. The usufructuary shall be liable for damage to the thing according to the rules on extra-contractual liability. The usufructuary shall not be obliged to reimburse the loss of value arisen from designated use.

(2) The rules on the protection of ownership shall be apply accordingly to the claims originating from the breach of the usufructuary right.

Chapter XXXI

Special rules on the usufruct of rights and claims

Section 5:156 *[Usufruct on rights]*

(1) The rules on the usufruct of things shall apply accordingly to the usufruct of profitable titles and claims.

(2) In order that the effects of contractual termination of a right or claim or the modification of a right or claim to the detriment of the beneficiary have effect on the right of usufruct, the consent of the beneficiary shall be required.

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Section 5:157 *[Legal status of the usufructuary of a right]*

If the object of the usufruct is a right by virtue of which the provision of a service can be claimed, the rules relating to the legal relationship between the person acquiring the right and the obligor when transferring a right shall apply accordingly to the legal relationship between the usufructuary and the person obliged to provide the service.

Section 5:158 *[Usufruct on a claim]*

(1) The usufructuary of a claim may enforce the claim, and if termination by the creditor is required for the claim falling due, the usufructuary may exercise the creditor's right to terminate the contract. If the claim is collected by the usufructuary, the usufructuary shall be responsible for the enforcement of the claim to the beneficiary according to the rules on extra-contractual liability. Any other disposition of the usufructuary relating to the claim shall be null and void.

(2) Upon the debtor's performance, the beneficiary of the claim shall acquire the object of the service, and the usufructuary shall acquire usufruct on it upon the performance.

Chapter XXXII

Use

Section 5:159 *[Use]*

(1) By virtue of the right of use, the beneficiary may use the thing and collect its benefits to the extent not exceeding his own needs and the needs of his family members living with him. By virtue of the right of use, a legal person may use the thing and collect its benefits in accordance with the goals and activity specified in the instrument of incorporation of the legal person. The right of use shall not be relinquished to another person.

(2) The rules of usufruct shall apply to use in other respects.

TITLE IX

EASEMENT AND USE FOR PUBLIC INTEREST

Chapter XXXIII

Easement on land

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Section 5:160 *[Concept of easement]*

(1) By virtue of easement, the current possessor of the real estate may use another's real estate to a specified extent for the purposes of providing pathways, water supply, drainage, establishing a cellar, placement of electricity pylons, propping a building or for any other similar purpose of benefit to the current possessor of the real estate, or may require the possessor of the other real estate to refrain from a conduct to which he is otherwise entitled.

(2) If a piece of land is not connected with an appropriate public road, the neighbours shall tolerate the current possessor of the real estate passing through their lands.

Section 5:161 *[Establishment of easement by contract and by acquisitive prescription]*

(1) The rules on establishing usufruct on real estate shall apply accordingly to the contractual establishment of an easement.

(2) The owner of a real estate may also establish an easement to his own benefit by a unilateral statement.

(3) The possessor of a real estate shall acquire easement by way of acquisitive prescription if the possessor of the other real estate does not protest for fifteen years against him using it. Exercising a right allowed by courtesy or until withdrawal shall not result in acquisitive prescription.

(4) Easement in itself shall not be traded.

Section 5:162 *[Exercising easement]*

(1) Exercising easement shall not result in unnecessarily offence to the rights of others, in particular that of the user of the thing burdened with easement.

(2) If exercising the easement implies the use of equipment or a fitting, the maintenance costs shall be borne by the beneficiary and the obligor of the easement proportionately to their use of the equipment or fitting, unless otherwise agreed.

Section 5:163 *[Termination of easement]*

(1) The court may terminate, restrict or suspend the exercise of the easement if it is no longer necessary for the designated use of the current possessor's real estate.

(2) The easement shall be terminated if, for fifteen years, the beneficiary having the opportunity to do so, did not exercise it or accepted to be prevented from exercising it.

(3) Terminating the easement with a legal transaction shall require a written statement of waiver by the owner of the dominant plot addressed to the owner of the serving plot and the deletion of the easement from the real estate register.

Chapter XXXIV

Use for public interest

Section 5:164 *[Right of use for public interest]*

(1) In the public interest, and in favour of the persons authorised by law, an easement or another right of use may be established on the real estate by the administrative decision of the authority. Recompense proportionate to the level of restriction shall be paid as consideration for the establishment of the right of use.

(2) The damage resulting from the establishment of a right of use shall be reimbursed according to the rules on compensation for expropriation.

PART FOUR

REAL ESTATE REGISTER

TITLE X

THE REAL ESTATE REGISTER AND ITS PRINCIPLES

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Section 5:165 *[The real estate register]*

The real estate register is the public and publicly certified register of the rights and legally significant facts related to real estates. The real estate register shall contain the data of real estates and of persons registered in the real estate register as specified by law.

Section 5:166 *[Publicity of the real estate register]*

(1) The real estate register is public.

(2) Anyone may have access to the content of the title deeds and maps of the real estate register with the exception of personal data under specific protection, may make written notes, and may request certified true copies or certifications thereof.

(3) The content of the documents that form the basis of an entry or a record in the real estate register and of the pending claim at the real estate register shall be disclosed to the applicant, to the extent of the consent and justified claim, if the applicant proves that the beneficiaries and the obligors affected by the content of the relevant document have given their consent to such disclosure or that the access to a document is required for enforcing the applicant's right or for performing the applicant's obligation prescribed by law or an authority decision.

(4) The content of the document relating to the physical specification of a part of the real estate which forms the basis of the rights, facts registered or recorded and the data entered on the physically specified part of the real estate shall be open to access without restriction even

if the entry on the title deed does not refer to the document containing the physical specification of the part of real estate.

Section 5:167 *[The principle of documentary requirements]*

Registering rights, recording legally significant facts and entering data into the real estate register shall be made on the basis of documents specified by the law or a court decision or authority decision.

Section 5:168 *[The principle of registration]*

(1) The establishment, modification and termination of specific rights determined by the law shall take place by virtue of registration in the title deed of the real estate register. Only rights specified and allowed to be registered by the law shall be registered in the real estate register.

(2) Registration based on a document issued on the transfer of right shall create the ownership based on transfer; registration based on a document issued on founding a right shall create contractual trusteeship, land use right, usufruct right and right of use, easement and mortgage lien.

(3) The failure to record certain legally significant facts specified in an Act, or the failure to register rights established by virtue of the law shall not affect the legal effect attributed to them.

(4) The rights specified in an Act or the legally significant facts failed to be registered may not be enforce them against any third party who acquiring rights acting in good faith.

(5) Registration of certain rights specified in an Act and legally significant facts shall restrict acquisitions by subsequent acquirers or render them conditional.

Section 5:169 *[The principle of ranking]*

The order in the real estate register of the rights related to a real estate (hereinafter "ranking") shall be determined by the date of effectiveness of the entries.

Section 5:170 *[Certified authenticity of the real estate register]*

The real estate register shall certify the existence of the rights registered and the facts recorded therein as authentic.

TITLE XI

CERTIFIED AUTHENTICITY OF THE REAL ESTATE REGISTER

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Section 5:171 *[Content of certified authenticity]*

(1) No one may plead ignorance of the rights registered and facts recorded in the real estate register.

(2) With regard to pending requests in the real estate register, the provisions of paragraph (1) shall apply accordingly to the fact and subject of ongoing procedures.

Section 5:172 *[Good faith of the acquirer of title trusting the real estate register]*

(1) Assessment of the good faith of a person stating to have acted in good faith shall be made according to the time when the application to register the acquisition of a right was submitted. If an agreement modifying certain rights was concluded after the date of an entry becoming effective, the act in good faith shall be assessed according to the date of concluding the agreement.

(2) The person acquiring a right or carrying out any other act under the protection of acting in good faith shall not be deemed to be acting in good faith who, at the time of acquiring the right or at the time of performing the act, knew or should have known of the incorrectness of the content of the real estate register or of the restriction of a right of the person registered as beneficiary.

(3) The acquirer of a right may not refer to him acting in good faith against a beneficiary whose acquisition of a right is based on a right or fact that can be registered or recorded if the

fact that the procedure for registering the right or recording has been commenced was already indicated in the real estate register in the form of a pending note at the time applicable to the assessment of acting in good faith, provided that the entry or the recording took place on the basis of the application.

Section 5:173 *[Completeness of the real estate register]*

(1) Unless proven to the contrary, the right registered or the fact recorded in the real estate register shall be held as existing and entitling the beneficiary indicated in the real estate register.

(2) Unless proven to the contrary, the right or fact deleted from the real estate register shall be held as non-existent.

Section 5:174 *[The protection of acquirers acting in good faith and providing consideration]*

(1) The content of the real estate register shall be held to be correct and complete in favour of an acquirer acting in good faith and providing consideration even if it differs from the true legal status under substantive law. For this reason, the acquirer shall receive protection according to this Act.

(2) The acquirer acting in good faith shall not be entitled to refer to the protection specified in paragraph (1) against a person who brings an action against him for the deletion of an entry in the real estate register or for establishing the invalidity of the legal transaction serving as the basis of the pending claim at the real estate register or for establishing that the claim lapsed. The same shall apply to when the fact of a court action for deletion or rectification has been recorded in the real estate register before the submission of the application.

Section 5:175 *[Legal status of the party acquiring a right outside the real estate register]*

(1) The person acquiring a right outside the real estate register or the beneficiary of a fact that can be recorded in the real estate register shall not enforce the right acquired or the recordable fact against an acquirer acting in good faith who is registered in the real estate register or who is preceding him having a position of higher rank with a claim for registration.

(2) The right not registered and the fact not recorded in the real estate register shall not be enforceable against an acquirer of a right acting in good faith and acquiring the right for consideration or against an acquirer of a right acting in good faith with a claim for registration of higher rank. The protection of the right of the acquirer acting in good faith shall not be extended to the application for recording a fact that refers to the pending legal status of the real estate register.

Section 5:176 *[Extending the scope of an entry in the real estate register]*

The rules on the scope of an entry in the real estate register and on the protection of acquirers acting in good faith and acquiring rights for consideration shall apply accordingly to the case when, on the basis of a right registered in the real estate register, a service is provided to the person indicated in the real estate register as a beneficiary.

Section 5:177 *[The governing nature of the data of the real estate register]*

(1) In administrative procedures connected to real estate, the data indicated and the demarcations illustrated on the maps of the real estate register shall prevail.

(2) The party contesting the correctness of the data shall bear the burden of proof against the data indicated in the real estate register.

(3) If the size of the territory of the real estate indicated in the real estate register differs from the legally definable territory calculated according to the demarcations illustrated on the map of the real estate register, the latter shall prevail.

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TITLE XII

REGISTRATION, RECORDING. RANKING AND RANK

Section 5:178 *[Registration]*

(1) Acquisition, modification, termination or the enforceability of a right shall result directly from registration, provided that other conditions of the modification of the right are satisfied.

(2) The registration in the real estate register shall require a legal title for modification and an authorisation of registration by the beneficiary registered in the real estate register who is affected by the modification of a right; deleting a right shall require the beneficiary's authorisation of deletion. The rules on the establishment and the validity of contracts shall apply accordingly to the authorisations of registration and deletion.

(3) The registration may be based on a court judgment or authority decision as well.

(4) The registration shall have retroactive effect to the date of submission of the application on the basis of which the entry has been ordered.

(5) If, for the acquisition of ownership of real estate or for founding, transferring or encumbering a right burdening the real estate, registration in the real estate register is required, any such modification of right shall take place upon registration in the real estate register, with the corresponding content.

(6) If the termination of ownership of a real estate or of a right encumbering the real estate requires registration into the real estate register, the right shall be terminated upon the registration of the deletion in the real estate register, with the corresponding content.

(7) If, due to the registration, the beneficiary of the rights burdening the real estate and the owner is the same person, the rights burdening the real estate shall remain effective against lower rank beneficiaries.

Section 5:179 *[Recording]*

(1) Recording is the indication in the real estate register of certain facts affecting the rights registered into the real estate register.

(2) Only facts prescribed by an Act may be recorded in the real estate register.

(3) The record shall have retroactive effect to the date of the submission of the application on the basis of which the recording has been ordered.

Section 5:180 *[Ranking and rank]*

(1) Establishing a rank shall require an application to which the document that serves as the basis of the registration is attached.

(2) The rights, the registration of which is effective from the same date, shall have the same rank.

(3) The order of the registration of applications received on the same day and the rank of the entries and records taking effect shall be determined by when the document was dated, drawn up or, if on the basis of the document registration requires countersigning, then by the date of the countersigning.

(4) The ranking of entries may be modified with the consent of all the interested parties. The modification of the ranking shall require that a record be entered in the real estate register indicating that the rank was modified.

(5) Availing of the rank of entries shall not prejudice third party rights registered by the time the rank was changed.

(6) The right promoted in rank due to changing the ranking shall keep its rank even if the right relegated in rank is terminated or the claim secured with the relegated mortgage lien lapses.

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Section 5:181 *[Modification of the content of the right]*

The rules on establishing and terminating a right encumbering the real estate shall apply accordingly to the modification of the content of the right encumbering the real estate.

TITLE XIII

RECTIFICATION OF THE REAL ESTATE REGISTER; ACTION FOR DELETION AND FOR RECTIFICATION OF REGISTERED DATA; EFFECT ON THE PROTECTION OF RIGHTS

Section 5:182 *[Rectification of the real estate register]*

(1) If the content of the real estate register is incorrect as compared to the document that served as the basis of the entry or record, the real estate register shall be rectified.

(2) Rectification shall take place by deleting the incorrect entry or record in the real estate register or by correcting the content of the real estate register.

Section 5:183 *[Deletion of the entry]*

The invalidity of the legal transaction that served as a basis for the entry or the recording or the entry becoming subsequently incorrect may give rise to the deletion of the entry or recording in the real estate register.

Section 5:184 *[Claim for deletion and rectification]*

(1) The beneficiary's claim for deletion or rectification shall not lapse against the person who acquired ownership or any right directly related to the real estate.

(2) An action for deleting the invalid entry can be brought against the party who acquired a right or who has been exempted from an obligation directly by virtue of the entry until the invalidity of the juridical act that formed the basis of the entry can be claimed.

Section 5:185 *[Obligation to have rights registered]*

If the rectification of the real estate register is conditional upon the prior registration of another party's right, the beneficiary may request this person to have his right registered in the real estate register.

Section 5:186 *[Correction of the entry]*

(1) The authority in charge of the real estate register shall correct, in its own material competence, any incorrect name, numeric error or miscalculation or any similar misspelling or incorrect indication in the entry or in the record. The authority in charge of the real estate register shall supplement its decision if it failed to decide on any matter in the application for registration or recording or in the document serving as the basis of it, and also if the entry or the record is incomplete as compared to the content of the document or the application.

(2) If it can be ascertained on the basis of the real estate register that a third party acting in good faith and acquiring for consideration has subsequently acquired a right registered in the real estate, and the rectification or the supplementation would violate his right, the right or fact can only be rectified or supplemented with the consent of the interested third party.

Section 5:187 *[The effect of the real estate register on the protection of rights]*

A person who is a beneficiary under substantive law or the person becoming a beneficiary due to the deletion of an entry and relying on the completeness and correctness of the entry may bring an action for deletion on the basis of the unlawful entry or an entry subsequently becoming incorrect against a third party acquiring a right in good faith and for consideration, within six months from the date of delivery of the decision on the originally invalid entry in the case of a beneficiary under substantive law, and within six months from the date of delivery of the decision on acquiring the right on the basis of the entry that has subsequently became incorrect with regard to a person becoming the beneficiary due to the deletion of the entry, provided that he was served the decision. If service did not take place, the action for

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deletion may be brought within a time limit of three years from the date the entry became effective. Failure to comply with these time limits shall result in forfeiture of rights.

BOOK SIX

LAW OF OBLIGATIONS

PART ONE

COMMON RULES FOR OBLIGATIONS

TITLE I

GENERAL PROVISIONS

Chapter I

Obligation

Section 6:1 *[Obligation]*

(1) Obligation means a commitment to perform services and an entitlement to claim the performance of services.

(2) The obligation may involve the provision of a thing, an activity or abstention from an activity, or another conduct.

(3) With their concordant intent, the parties may depart from the common rules for obligations concerning their rights and obligations, if such derogations are not prohibited by this Act.

Section 6:2 *[Facts giving rise to an obligation]*

(1) Obligations may arise in particular from contracts, from causing damage, violating personality rights, *in rem* or other rights, from unilateral juridical acts, securities, unjustified enrichment, agency without authority and from implied conduct.

(2) Obligations shall arise from unilateral juridical acts in cases specified by law. The common rules for obligations and the general rules for contracts shall apply accordingly to such obligations.

(3) Obligations shall arise from law or a court or authority decision if the law or the court or authority decision provides for it and determines the obligor, the obligee and the service. The common rules for obligations and the general rules for contracts shall apply accordingly to such obligations.

Section 6:3 *[Termination of the obligation]*

The obligation shall terminate

a) upon the performance of the service;

b) if the same person becomes the obligee and the obligor, unless otherwise provided in this Act;

c) upon the obligor's death or termination without succession if his obligation involved a service that can only be performed in person;

d) upon the obligee's death or termination without succession if, due to the nature of the service, it had to be provided expressly to him;

e) upon an agreement by the parties to terminate the obligation;

f) for other reasons determined by law or by a court or authority decision.

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Chapter II

Juridical act

Section 6:4 *[Juridical act]*

(1) Juridical act means a declaration of intent aiming at producing legal effect.

(2) Juridical acts shall be made orally, in writing or by way of implied conduct.

(3) If a party performs his juridical act by way of implied conduct, the juridical act shall be considered as being made when the implied conduct have been shown.

(4) Silence or abstention from a certain conduct shall qualify as a juridical act if the parties expressly provided so.

Section 6:5 *[Effectiveness of a juridical act]*

(1) A juridical act made between parties who are present shall become effective immediately. A juridical act shall qualify as having been made between parties who are present if the addressee becomes aware of the juridical act's content at the same time as it is made.

(2) A juridical act made between parties who are absent shall become effective upon its receipt by the addressee.

(3) A juridical act made by way of implied conduct shall become effective when the addressee becomes aware of it.

(4) A juridical act without an addressee shall become effective upon being made.

Section 6:6 *[Juridical act subject to form-related requirements]*

(1) If form-related requirements are prescribed by law or by the agreement of the parties, the juridical act shall be valid in that form.

(2) If a juridical act can only be made validly under certain form-related requirements, the amendment, confirmation, withdrawal and contesting of that juridical act, as well as, the amendment and termination of legal relationships created under that juridical act shall be made in that specified form to be valid.

Section 6:7 *[Juridical act subject to written form]*

(1) If a juridical act is required to be made in writing then it shall be valid if at least its material content is put down in writing.

(2) Unless otherwise provided in this Act, a juridical act shall qualify as written if it has been signed by the party making it.

(3) A juridical act shall also be considered written if it has been presented in a form that allows for the content being properly recalled in and for the person who made the statement and the time when the statement was made being identified.

(4) A juridical act made by a person who is unable to write or is not capable of writing shall be valid if it is drawn up as a public deed or a private deed of full probative value, on which the signature or initials of the party making the statement are certified by court or a notary, or on which an attorney-at-law certifies by countersignature or two witnesses certify by their signatures that the party has signed or initialled in front of them the deed that was written by someone else, or acknowledged the signature or initials on the deed as his own. For a person who is unable to read or does not understand the language in which the deed containing his written statement was drawn up, a further validity requirement shall be that the deed itself is required to indicate that its content was explained to the party making the statement by one of the witnesses or the certifying person.

(5) Invalidity under paragraph (4) may only be invoked in the interest of the person making the statement.

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Section 6:8 *[Interpretation of a juridical act]*

(1) In the event of a dispute, a juridical act shall be interpreted like it had to be interpreted by the addressee on the basis of the presumed intent of the party making the statement and of the circumstances of the case, and in accordance with the generally accepted meaning of words.

(2) In the event of a dispute, a juridical act without an addressee shall be interpreted in like it has to be interpreted on the basis of the presumed intent of the party making the statement and of the circumstances of the case, and in accordance with the generally accepted meaning of the words.

(3) A waiver or release of a right shall be made by way of an express juridical act. If someone waives or releases a right, his juridical act shall not be interpreted broadly.

Section 6:9 *[Application of the rules on contracts]*

Unless otherwise provided in this Act, the general rules on contracts shall apply accordingly to the effect, invalidity and ineffectiveness of juridical acts.

Section 6:10 *[Application of the rules on juridical acts]*

Unless otherwise provided in this Act, the rules on juridical acts shall apply accordingly to juridical acts that do not fall under the law of obligations.

Chapter III

Representation

1. General rules of representation

Section 6:11 *[Representation]*

(1) Unless otherwise provided in this Act, a juridical act may also be made via another person. A juridical act made by a representative shall directly entitle and oblige the party being represented.

(2) The right of representation shall be based on law, a court or authority decision, an instrument of incorporation or on an authorisation.

Section 6:12 *[Limitation of the right of representation]*

Unless otherwise provided in this Act, the limitation of the powers of the representative shall be ineffective towards third parties acting in good faith.

Section 6:13 *[Conflict of interests]*

(1) If there is a conflict of interests between the representative and the party being represented, the latter may contest the juridical act made by the representative.

(2) If the party with opposing interests or his own representative is the representative then conflict of interests shall be presumed.

(3) The party being represented shall not be entitled to contest the juridical act if he was aware of the conflict of interests upon the establishment of the right of representation.

Section 6:14 *[Pseudo-representation]*

(1) If a person makes a juridical act on behalf of another person in the absence of a right of representation or exceeding his powers of representation, his statement shall produce legal effects subject to the approval of the party being represented.

(2) If the person being represented does not approve the juridical act made on his behalf, the pseudo-representative acting in good faith shall be liable for the compensation of any damage to third parties arising from that juridical act, while the pseudo-representative acting in bad faith shall be liable for the compensation of all damages to third parties.

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2. Representation by authorisation

Section 6:15 *[Authorisation]*

(1) Authorisation means a unilateral juridical act establishing the right of representation. The authorisation shall be addressed to the representative, the authority or court concerned, or to the person towards whom the representative is entitled to make a juridical act under the authorisation.

(2) The authorisation shall comply with the same form-related requirements that are prescribed by the law for the juridical act that can be made under that authorisation.

(3) The authorisation shall be valid until withdrawn.

(4) Any waiver of the right to limit or withdraw an authorisation shall be null and void. The limitation or withdrawal of an authorisation shall be effective against a third party only if that third party knew or should have known of that limitation or withdrawal.

(5) Under an authorisation, a person having full capacity to act shall be allowed to be represented by a person having limited capacity to act or by a person having partially limited capacity to act.

Section 6:16 *[General authorisation]*

An authorisation for matters not specified individually shall be valid if drawn up as a private deed of full probative value or as a public deed. A general authorisation granted for an indefinite period of time or for a period longer than five years shall become ineffective on expiry of five years.

Section 6:17 *[The scope of the representation]*

The right of representation shall cover the performance of any acts and the making of any juridical acts that are required for the objective intended to be reached through the representation.

3. Certain specific cases of representation

Section 6:18 *[Presumed and apparent representation]*

(1) In business premises or in other premises open for customers, those who can be presumed for a good reason to be entitled to make juridical acts that are customary in such premises shall be considered representatives. A limitation of the representative's powers shall be ineffective towards a third party, unless the third party knew of that limitation.

(2) A person who can be presumed for a good reason, on the basis of his acts and the conduct of the person being represented, to be entitled to make juridical acts on behalf of the person being represented shall be considered a representative.

Section 6:19 *[Representation of a person prevented from taking care of his own affairs]*

(1) Upon request, the guardianship authority shall appoint a custodian for a person prevented from taking care of his own affairs due to his circumstances. The appointment of a custodian may be requested by any party having an interest in it, or by any authority, and it can also take place *ex officio*.

(2) The appointment of a custodian shall not affect the capacity to act of the individual under custodianship.

(3) The custodian shall manage the assets of the individual under custodianship. Subject to the prior consent of the guardianship authority, the custodian of an absent individual may take any action that saves the individual under custodianship from suffering damage. For taking urgent actions that cannot be postponed the consent of the guardianship authority shall not be required; however, such actions shall be reported to the guardianship authority without delay.

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Section 6:20 *[Ad hoc custodianship and ad hoc guardianship]*

(1) The guardianship authority shall appoint an *ad hoc* custodian if, on the basis of the law or the order of the guardianship authority, due to a conflict of interest or another material obstacle, the custodian is not entitled to act.

(2) An *ad hoc* custodian shall also be appointed

a) if an urgent action has to be taken and the adult having no capacity to act or the adult having partially limited capacity to act has no statutory representative, or his statutory representative cannot be identified; and

b) if it is necessary to protect the rights of an unknown or absent person, or a person otherwise prevented from taking care of his own affairs.

(3) In the given case, the *ad hoc* custodian shall have the same powers as the custodian.

(4) The custodian's powers shall not cover matters for which an *ad hoc* custodian has been appointed.

(5) In cases determined in paragraphs (1) and (2), the guardianship authority shall appoint an *ad hoc* guardian if the representation of a minor has to be provided for. The rules applicable to the *ad hoc* custodian shall apply accordingly to the *ad hoc* guardian.

Chapter IV

Statute of limitations

Section 6:21 *[The legal effect of elapsed time]*

The expiry of a time limit determined by law for exercising a right and enforcing a claim shall result in a forfeiture of right if it is expressly provided by a law. If a term is not preclusive then the rules on the statute of limitations shall apply.

Section 6:22 *[Statute of limitations]*

(1) Unless otherwise provided in this Act, claims shall lapse after five years.

(2) The statute of limitations shall commence when the claim becomes due.

(3) Agreements concerning the alteration of the limitation period shall be made in writing.

(4) Agreements excluding the statute of limitations shall be null and void.

Section 6:23 *[Legal effects of the statute of limitations]*

(1) Unless otherwise provided in this Act, lapsed claims shall not be enforceable in court procedure.

(2) The statute of limitations shall be without prejudice to the obligor's obligation to perform the services; services performed on the basis of a lapsed claim shall not be claimed back on the ground that the claim lapsed.

(3) Upon the principal claim lapsing, the secondary claims that are dependent on it shall also lapse. Lapsing of secondary claims shall not affect the lapsing of the principal claim.

(4) In court or authority procedure, the statute of limitations shall not be taken into account *ex officio*.

Section 6:24 *[Suspension of the limitation period]*

(1) If the obligee is unable to enforce the claim for an excusable reason, the running of the limitation period shall be suspended.

(2) If the running of the limitation period is suspended, the claim may be enforced within a time limit of one year or, for limitation periods of up to one year, three months after the obstacle ceases to exist if the limitation period has already expired or only a period of less than one year or, for limitation periods of up to one year, less than three months remained of it.

(3) During the period specified in paragraph (2), the limitation period shall not be suspended, and provisions on the interruption of the limitation period shall apply with the

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derogation that following an interruption, the time limit of one year or, for limitation periods of one year of less than one year, the time limit of three months shall be restarted.

Section 6:25 *[Interruption of the limitation period]*

(1) The limitation period shall be interrupted

a) by the obligor's acknowledgement of the debt;

b) by the amendment of the obligation by agreement, and a settlement agreement;

c) by the enforcement of the claim against the obligor in court procedures, if the court adopted a final and binding decision on the merits that concluded the procedure; or

d) by the notification of the claim in bankruptcy proceedings.

(2) The limitation period shall restart upon its interruption, or upon the final conclusion of the procedure that interrupted the limitation period.

(3) If an enforceable decision has been adopted in the procedure that interrupted the limitation period, the limitation period shall be interrupted by the amendment of the obligation by agreement and by any act of enforcement.

Chapter V

Acknowledgement of debt. Settlement

Section 6:26 *[Acknowledgement of debt]*

Acknowledgement of the debt by the obligor shall not alter the legal title of the debt, however, the burden of proof shall lie on the obligor acknowledging his debt to prove that the debt has not existed, or it existed at a lower amount at the time of making the juridical act on acknowledgement, or that is has been based on a claim that cannot be enforced in a court procedure, or on an invalid contract.

Section 6:27 *[Settlement]*

(1) The parties may also settle their disputed or uncertain matters arising from an obligation by mutual concession, or if one of the parties unilaterally concedes some of his claim.

(2) A mistake by the parties concerning a circumstance that was disputed between them or which they considered to be uncertain shall not affect the validity of the settlement.

TITLE II

MULTI-PARTY OBLIGATIONS

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Chapter VI

Several obligors in an obligation

Section 6:28 *[Shared obligation]*

If more than one obligor owes a divisible performance, the obligee may require each obligor to perform his own part, unless otherwise provided in this Act. In case of doubt, the obligors shall be required to perform services of equal share.

(2) The performance of services shall be divisible if it can be divided into independently usable parts, except if the division would harm the obligee's substantial legal interest.

Section 6:29 *[Joint and several obligation]*

(1) If several obligors owe an indivisible performance, performance may be claimed from any of the obligors. An obligation shall also be joint and several if several obligors owe a divisible performance, and the obligee is entitled to claim performance from any of them.

(2) In the event of a joint and several obligation, all the obligors owe the entire performance, but if any of them performs, the obligations of the others shall also terminate towards the

obligee to the extent of the performed part. The obligors shall be liable for a breach of contract committed by any of them.

(3) Against the claim of the obligee, the obligor may refer to the objection of the other obligors in connection with the satisfaction of the obligee, however, he shall not set off the claims of the other obligors.

(4) The default of the obligee towards one of the obligors shall be effective in favour of each of the obligors.

(5) The lapsing of a claim against one of the obligors shall not affect the other obligors.

Section 6:30 *[The relationship between joint and several obligors]*

(1) Unless it follows otherwise from their legal relationship, the obligation shall encumber the joint and several obligors in equal proportions. If an obligor performed a service to the obligee in excess of his obligation, he may claim reimbursement from the other obligors with respect to the over-performance he made, and up to the part of the performance with which the other obligors are encumbered.

(2) The obligor shall not invoke an advantage granted to him by the obligee against the other obligors.

(3) The obligor against whom the obligee's claim lapsed can invoke the statute of limitations against the other obligors as well.

Chapter VII

Several obligees in an obligation

Section 6:31 *[Several obligees in the event of a divisible performance]*

If a divisible performance can be claimed by several obligees, each obligee may claim the part he is entitled to. In case of doubt, the obligees may claim performances of equal shares.

Section 6:32 *[Co-obligees]*

If several obligees are entitled to claim an indivisible performance, it shall be performed to all of them jointly.

Section 6:33 *[Joint and several obligees]*

(1) If several obligees are entitled to a claim in such a way that each of them may claim the entire performance, but the obligor is encumbered by a single performance, the obligation shall terminate towards all obligees if any of them receives the satisfaction of his claim.

(2) The default of any obligee or a juridical act being a condition for the enforcement of the claim or for the performance of the obligation shall affect each obligee.

(3) The claim shall not lapse with respect to any of the obligees as long as the conditions for the statute of limitations have not occurred with respect to each of them.

(4) If any of the obligees brings an action for performance, the obligor, without being exempted from the legal consequences of default, can refuse performance towards the other obligees until the action is completed with final and binding effect.

(5) Unless it follows otherwise from their legal relationship, the obligees shall be entitled to the claim in equal proportions.

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TITLE III

PERFORMANCE OF THE OBLIGATION

Chapter VIII

General provisions

Section 6:34 *[The general rule of performance]*

The service shall be performed in accordance with the content of the obligation.

Section 6:35 *[The time of performance]*

(1) The time of performance shall be determined by either setting a due date or a time limit. In the event of setting a due date, the service shall be performed on that date. In the event of setting a time limit, the service may be performed at any time within the determined period, unless it follows from the circumstances of the case that the obligee may choose the time of performance.

(2) If the time of performance can be identified based on the purpose of the service, the service shall be performed at that time.

(3) If the time of performance cannot be identified on the basis of paragraphs (1) to (2), the obligor shall perform the service upon the expiry of the period that is required to prepare for the performance.

Section 6:36 *[Early performance]*

(1) The obligee shall accept the performance offered prior to the time of performance provided that it does not harm his substantial legal interest and the obligor bears the related additional costs.

(2) Accepting the performance prior to the time of performance shall not affect the due date of the other party's performance.

Section 6:37 *[Place of performance]*

(1) Unless otherwise provided in this Act, the place of performance shall be the obligor's establishment at the time when the obligation was created; in the absence of such, its seat or, for a natural person, his place of domicile or, in the absence of such, his place of habitual residence.

(2) If the obligor has more than one establishment, the establishment with the closest connection to the obligation shall be considered the place of performance.

(3) If the place of performance changes after the obligation has been created, and the obligor notifies the obligee of this fact, the place of performance shall be the new establishment or seat, or, for a natural person, the new place of domicile or habitual residence. Additional costs arising from the change in the place of performance shall be advanced and borne by the obligor.

Section 6:38 *[Acknowledgement of the performance]*

(1) At the request of the obligor, the obligee shall acknowledge the performance in writing, or shall return the acknowledgement of obligation.

(2) The person presenting the written declaration of acknowledgement of the obligee shall be considered to be the person authorised to accept the performance, unless it is obvious from the circumstances that he is not authorised to accept the performance.

Section 6:39 *[Bearing the costs of performance]*

The costs of performance shall be borne by the obligor.

Section 6:40 *[Division of the fungible service]*

(1) If someone is required to send things that are defined by type and quantity to the same person at various locations, but he is unable to provide the total quantity, he shall divide the available quantity in accordance with the obligee's instructions.

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(2) If the obligee does not provide instructions despite being called upon, the obligor shall be required to reduce the quantity for the individual locations *pro rata*.

Section 6:41 *[Settlement in the event of several debts]*

(1) If the obligor is encumbered by several homogeneous services towards the obligee, and the offered performance fails to cover all his debts, the obligor may, upon the performance, choose the debts against which he intends to settle it.

(2) If the obligor provided no instructions on the order of settling the debts and his unequivocal intention cannot be identified, the other party may choose, from the due and undisputed debts, those against which he intends to settle the performance. The obligee shall notify the obligor of his choice within an appropriate time limit.

(3) If neither party provided instructions or the obligee did not notify the obligor of his choice, the performance shall be settled against the debt which expired earlier, or, in the event of identical expiry, to the less secured debt, or, in the event of equally secured debts, to the debt that is more burdensome for the obligor.

(4) If the performance cannot be settled under paragraph (3) then it shall be settled to all debts *pro rata*.

Chapter IX

Performance of a pecuniary debt

Section 6:42 *[Payment]*

(1) Pecuniary debts shall be performed by transferring the ownership of the money to the obligee, or by paying or transferring it to the obligee's payment account.

(2) In the event of a cash payment, the pecuniary debt shall become performed upon the acceptance of the money, in other cases when the money is credited or should have been credited to the obligee's payment account by the bank maintaining the obligee's account.

(3) These provisions shall apply accordingly to the performance of any other obligation for the handover of money.

Section 6:43 *[Early performance of a pecuniary debt]*

The obligee shall accept the performance offered prior to the time of performance.

Section 6:44 *[Place of performance of a pecuniary debt]*

(1) The place of performance of a pecuniary debt as a cash payment shall be the obligee's establishment at the time when the obligation was created; in the absence of such, its seat or, for a natural person, his place of domicile or, in the absence of such, his place of habitual residence. If a pecuniary debt is performed by the obligor in a way other than cash payment, the place of performance of the pecuniary debt shall be the establishment of the bank maintaining the obligee's payment account at the time of creating the obligation; in the absence of such, its seat. If, upon the creation of the obligation, the obligee had several payment accounts, the obligor shall have a right of choice with respect to the place of performance.

(2) If the obligee has more than one establishment, the establishment with the closest connection to the obligation shall be considered the place of performance.

(3) If the place of performance changes after the pecuniary debt has been created, and the obligee notifies the obligor of this fact, the place of performance shall be the new establishment or seat, or, for a natural person, the new place of domicile or habitual residence.

(4) Additional costs arising from the change in the place of performance shall be advanced and borne by the obligee.

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Section 6:45 *[Ways of performing a pecuniary debt]*

(1) A pecuniary debt shall be paid in the currency valid at the place and time of performance.

(2) A pecuniary debt denominated in another currency shall be converted at the exchange rate set at the time of performance by the central bank of the place of performance; in the absence of such, at the money market rate. If a pecuniary debt is to be paid in a foreign currency, and, upon the performance, this debt cannot be paid in that foreign currency, the pecuniary debt shall be paid as set out in paragraph (1).

Section 6:46 *[Settlement in the event of several debts]*

If the amount paid for the performance of a pecuniary debt is not sufficient to clear the entire debt then, if the obligee has not arranged for otherwise and his unequivocal intention cannot be identified either, it shall be settled primarily against costs, then against interest, and finally against the principal debt.

Section 6:47 *[Interest]*

(1) Unless otherwise provided in this Act, interest shall be due for pecuniary debts.

(2) The rate of interest shall be identical to the base rate.

(3) For a pecuniary debt denominated in foreign currency, the rate of interest shall be the base rate determined by the central bank issuing the relevant currency; in the absence of such, the money market interest rate.

(4) When calculating the interest, the interest rate applicable on the first day of the relevant calendar half year shall apply to that entire calendar half year.

Section 6:48 *[Default interest]*

(1) For a pecuniary debt, the obligor shall be required to pay default interest, even if the pecuniary debt was otherwise interest-free, as of the date of his default at the base rate applicable on the first day of the calendar half year affected by his default, or for a pecuniary debt denominated in foreign currency, at the base rate determined for the relevant currency by the issuing central bank; in the absence of such, at the money market interest rate.

(2) If interest is due to the obligee up to the date of default, the obligor shall be required to pay, as of the date of the default and in addition to that interest, default interest equal to one-third of the base rate applicable on the first day of the calendar half year affected by the default, or for a pecuniary debt denominated in foreign currency, one third of the base rate determined for the relevant currency by the issuing central bank; in the absence of such, one third of the money market interest rate, but in aggregate at least the interest determined in paragraph (1).

(3) When calculating the interest, the base rate applicable at the first day of the calendar half year affected by the default shall apply to that entire calendar half year.

(4) The obligation to pay the interest shall also arise if the obligor exculpates his default.

Chapter X

Set-off

Section 6:49 *[Setting off pecuniary claims]*

(1) The obligor may also discharge his pecuniary debt by setting off, against his pecuniary debt, his overdue pecuniary claim towards the obligee in a juridical act addressed to the obligee.

(2) Obligations covered by the amount of the set-off shall terminate.

Section 6:50 *[Limitations to setting off pecuniary claims]*

(1) A lapsed pecuniary claim can also be set off if the pecuniary claim intended for set-off has not lapsed at the time that the pecuniary debt became due.

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(2) Set-off against pecuniary claims determined by an enforceable title or a settlement agreement, as well as those included in a public deed, shall be allowed if the pecuniary debt to be set off is of the same kind.

(3) Pecuniary debts can be set off against a pecuniary claim that is free from enforcement of a court judgment if arising from the same legal basis.

Section 6:51 *[Exclusion of set-off]*

(1) No set-off shall be allowed

a) against maintenance and annuity claims, except in the event of overpayment; and

b) pecuniary claims for the purpose of compensating intentional damage.

(2) Pecuniary claims that are not enforceable in court procedures shall not be set off.

Section 6:52 *[Applying the rules of set-off for non-pecuniary claims]*

The rules of set-off shall apply accordingly if the obligor sets off any other of his homogeneous and expired claims existing towards the obligee against the debt in a juridical act addressed to the obligee.

Chapter XI

Specific cases of performance

1. Court deposit and notarial deposit

Section 6:53 *[Performance by way of court deposit]*

(1) The obligor may also perform his obligation of monetary payment and his obligation to release securities or other documents by way of court deposit, if

a) the identity of the obligee is uncertain, and the obligor is unable to identify him through no fault of his own;

b) the obligee cannot be found at the place of performance;

c) the obligee does not accept the performance offered appropriately by the obligor; or

d) if there are several obliges and they do not allow the obligor to perform to all of them jointly.

(2) The rules on the deposit contract shall apply accordingly to the obligations of the depositary.

Section 6:54 *[Reclaiming and limitation period]*

(1) The obligor may reclaim the deposit until the obligee receives the court's notification of the deposit being made.

(2) The obligee may claim the release of the deposit within a five year limitation period following the receipt of the notification of the deposit.

(3) If the obligee's right to release the deposit has lapsed, the obligor may demand the return of the deposit.

Section 6:55 *[Release of the deposit]*

(1) The court may release the deposit only to the obligee.

(2) If depositing took place because the identity of the obligee is uncertain, the deposit may be released on the basis of a decision certifying the identity of the obligee if that decision is final or has reached administrative finality.

(3) In the case of several obligees, the court may release the deposit upon their joint request, or on the basis of a final judgment certifying the identity of the obligee.

(4) When making the deposit, the obligor may specify that the deposit be only released to the obligee against a certificate proving that the service the obligee was obliged to perform has been performed.

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Section 6:56 *[Notarial deposit]*

(1) In the event of fulfilling the conditions for performance by court deposit, the obligor may also perform his obligation by making a deposit at a notary.

(2) The rules on court deposit shall apply accordingly to the notarial deposit.

2. Performance by a third party

Section 6:57 *[Performance by a third party]*

(1) The obligee shall be required to accept the performance offered by a third party if the obligor consented to it, the performance of the service is not bound to a particular person and it does not require any specific expertise or skill that the third party does not have. The consent of the obligor shall not be required if the third party has a substantial legal interest in completing the performance, and the obligor failed to perform, or it is obvious that he will not be able to perform in a timely manner.

(2) Unless it follows otherwise from the legal relationship between the obligor and the third party, the third party shall be entitled to a claim for reimbursement against the obligor.

(3) If a claim arises on behalf of the third party against the obligor with respect to the performance of the claim, the securities of the terminated claim shall persist and continue to secure the claim. This provision shall also apply if the claim is satisfied on the basis of a lien or on the liability of the person providing the security.

PART TWO

GENERAL RULES ON CONTRACTS

TITLE IV

THE CONTRACT. PRINCIPLES OF CONTRACT LAW

Section 6:58 *[The contract]*

The contract is the mutual and concordant juridical act of the parties from which the obligation to perform the service and the entitlement to claim the service arises.

Section 6:59 *[Freedom of contract]*

(1) The parties shall be free to enter into a contract, and shall be free to choose the other contracting party.

(2) The parties shall be free to determine the content of the contract. With their concordant intent, they may depart from the rules of contracts concerning the rights and obligations of the parties, if such derogations are not prohibited by this Act.

Section 6:60 *[Contractual content determined by law]*

(1) If the law determines any element of the content of a contract with mandatory force, the contract shall be established with the content determined by the law.

(2) If the law alters the content of a contract that was concluded prior to the entry into force of that law, and the altered content of the contract harms the substantial legal interest of one of the parties, this party may request the court to amend the contract or may cancel the contract.

Section 6:61 *[Presumption of reciprocity]*

A consideration shall be due for a service stipulated in a contract, unless it follows otherwise from the contract or the circumstances.

Section 6:62 *[Obligation of cooperation and to provide information]*

(1) The parties shall be required to cooperate during contract negotiations, upon the conclusion of the contract and during its existence and dissolution, and shall inform each other with respect to any important circumstances concerning the contract.

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(2) The party shall not rely on the breach of the obligation to provide information in connection with rights, facts and data of which he was aware, or should have been aware from the publicly certified register or from other source.

(3) If the contract is formed, the party breaching his obligation determined in paragraph (1) shall be required to compensate the damage of the other party arising from the breach in accordance with the general rules on liability for damage caused by breach of contract.

(4) The parties shall not be subject to an obligation of compensation for their failure to conclude the contract.

(5) If the contract is not formed, the party who breached his obligation determined in paragraph (1) during contract negotiations shall be required to compensate the damage of the other party arising as a result of this breach in accordance with the general rules on extra-contractual liability.

TITLE V

CONCLUSION AND INTERPRETATION OF THE CONTRACT

Chapter XII

Formation of the contract

Section 6:63 *[Formation and content of the contract]*

(1) A contract shall be formed by the concordant and mutual expression of the parties' intent.

(2) For the formation of a contract, an agreement between the parties concerning the substantial issues, as well as those considered substantial by either of the parties shall be required. Agreement on issues that are considered substantial shall be a condition for the contract's formation, if the party has clearly declared that in the absence of an agreement with respect to that certain issue he does not intend to conclude the contract.

(3) If the contract has been formed but the parties did not determine the amount of consideration clearly, or they determine a market price as consideration, the median price applicable at the time of the performance in the market related to the place of performance shall be paid.

(4) The parties do not need to agree on issues that are provided by law.

(5) Any custom having been agreed between the parties in their earlier business relationship and any practice having been established by them shall become a content of the contract. Any custom widely known and regularly applied by parties to contracts of similar nature in the relevant business sector shall become a content of the contract, unless its application would be unjustified considering their earlier relationship.

Section 6:64 *[Binding effect of an offer]*

(1) A party making a juridical act that clearly expresses his intention to conclude a contract and covers substantial issues shall remain bound by his statement. The party making the offer may determine for how long he remains bound by it.

(2) The binding effect of the offer shall commence when the offer becomes effective.

Section 6:65 *[Expiry of the offer's binding effect]*

(1) If the party making the offer did not determine the period during which he is bound by the offer, the binding effect of the offer shall expire

a) in the case of an offer made between parties present, if the other party does not accept the offer without a delay;

b) in the case of an offer made between parties who are absent, upon the expiry of the period within which the party making the offer could expect to receive a reply under normal

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circumstances with respect to the nature of the service specified in the offer and to the manner in which the offer was made;

c) upon the rejection of the offer by the other party.

(2) The binding effect of the offer shall expire if the party making the offer revokes it by way of a juridical act addressed to the other party before the other party sends his juridical act of acceptance.

(3) The written offer may only be revoked in writing.

(4) An offer that became effective shall not be revoked if it contains that it is irrevocable, or if it determines a time limit for its acceptance.

Section 6:66 *[Acceptance of the offer]*

The offer shall be accepted by way of a juridical act indicating an assent to the offer.

Section 6:67 *[New offer, modified acceptance]*

(1) Acceptance with a content that differs in a substantial issue from the offer shall be considered a new offer.

(2) A juridical act indicating an assent to the offer shall qualify as acceptance, even if it contains an additional or different term that does not qualify as and does not affect a substantial issue. In such an event, the additional or different terms shall become part of the contract, unless

a) the offer expressly limited the possibility of accepting those terms which are presented in it; or

b) the party making the offer objects to the additional or different terms without delay.

(3) If the contract has not been concluded in writing, and one of the parties draws it up in writing without delay after the conclusion of the contract by adding or amending the terms which do not qualify as substantial and sends it to the other party then these terms shall become the content of the contract if the other party does not object to them without any delay.

Section 6:68 *[Late acceptance]*

(1) In the event of a late juridical act of acceptance, the contract shall not be formed.

(2) Despite the late juridical act of acceptance, the contract shall be formed if the party making the offer informs the accepting party of it without delay.

(3) In the event of a juridical act of acceptance sent in time but received late by the party making the offer, the contract shall be formed if the juridical act has been made in such a way that in the event of forwarding it under normal circumstances, it would have been received in time by the party making the offer, unless the party making the offer informs the other party without delay that the juridical act has been received late and therefore he does not consider it as effective. In this event, the contract shall be formed when the juridical act of acceptance would have been received by the party making the offer if forwarding would have been made under normal circumstances.

Section 6:69 *[Time and place of the formation of the contract]*

(1) The contract shall be formed upon the juridical act of acceptance becoming effective.

(2) If the offer is made and accepted at the same location, the place of concluding the contract shall be the place where the juridical acts were made. Otherwise, the place of concluding the contract shall be the seat of the party making the offer or, for a natural person, his place of domicile or, in the absence of such, his place of habitual residence.

Section 6:70 *[Contract subject to written form]*

(1) The offer and the statement of acceptance made to conclude a contract that is required to have a written form shall be made in writing.

(2) A contract shall also be considered drawn up in writing if the juridical acts of all the parties are not contained in the same document, but the juridical acts of the contracting parties

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are contained in separate documents and these collectively contain the parties' mutual and concordant intentions.

(3) A contract shall also be considered drawn up in writing if, from the document drawn up in more than one copy, each of the parties signed a copy that was intended for the other parties.

Chapter XIII

Obligation to conclude a contract

Section 6:71 *[Statutory obligation to conclude a contract]*

(1) If a law establishes an obligation to conclude a contract, and the parties fail to conclude that contract, the court may form that contract and determine its content.

(2) By communicating the required data and sending the required documents, the obligee may invite the person subject to the obligation to conclude a contract to make an offer. The obligor shall be required to make his offer within thirty days from the invitation becoming effective.

(3) If the invitation to make the offer does not contain the data or documents required, the obligor shall be required to request that the data or documents be supplemented within fifteen days following the invitation becoming effective. In this event, the time limit for making the offer shall commence upon the remedy of these deficiencies.

(4) The conclusion of the contract may be refused if the obligor proves that he would be unable to perform the contract or the contract could be cancelled or unilaterally terminated.

Section 6:72 *[Rejection of concluding a contract by abusing a dominant position]*

Against a party that unreasonably refuses to form or maintain a contract by abusing his dominant position, the other party may request the court to form the contract between them by applying the rules on the statutory obligation to conclude the contract.

Section 6:73 *[Pre-contract]*

(1) If the parties agree to conclude a contract between each other at a subsequent date, and they determine the substantial terms of this contract, the court may form the contract at the request of either party in accordance with the agreed terms.

(2) Pre-contracts shall be concluded in the form required for contracts. The rules applicable to the contract to be concluded on the basis of the pre-contract shall apply accordingly to the pre-contract.

(3) Either party may refuse to conclude the contract if he proves that

a) due to a circumstance that occurred following the conclusion of the pre-contract, the performance of the pre-contract under the same terms would harm his substantial legal interest;

b) the possibility of a change in the circumstances was not foreseeable when the pre-contract was concluded;

c) the change in circumstances was not caused by him; and

d) the change in circumstances falls outside his normal business risk.

Chapter XIV

Conclusion of contracts in tendering procedure

Section 6:74 *[Call for tender in a tendering procedure]*

(1) If the party makes a call for tender in which he invites several persons to submit their offers, with the proviso that he will enter into a contract with the party submitting the offer that is the most advantageous and complies with the invitation, the party making the call shall be under the obligation to conclude the contract.

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(2) The party making the call may refuse to conclude the contract with the party submitting the offer that is the most advantageous and complies with the invitation if he stipulated this right in the call.

(3) The party making the call may withdraw the call before the expiry of the time limit determined in it.

Section 6:75 *[Binding effect of an offer in a tendering procedure]*

(1) The binding effect of an offer shall commence upon the expiry of the time limit determined in the call. The party making the offer may amend or revoke it the offer until the expiry of that time limit.

(2) The party making the offer shall remain bound by the offer for thirty days following the date of the announcement of the outcome determined in the call.

(3) If the party making the offer provided security in the course of making the offer and he revokes his offer within a period during which the offer is still binding, he shall lose the security he provided, but otherwise the security shall be returned following the closure of the tendering procedure.

Section 6:76 *[Price-related tendering procedure]*

(1) If the tendering procedure only involves the amount of consideration and the parties making offers present their offers while being aware of each other's offer, the contract shall be formed at the price reached and upon the announcement of the winner.

(2) The effectiveness of the offer shall terminate if another party presents a more advantageous offer, or if the tendering procedure closes without the announcement of a winner.

Chapter XV

Concluding a contract under standard contract terms

Section 6:77 *[Standard contract terms]*

(1) Standard contract terms mean contract terms that are not negotiated individually by the parties but are determined unilaterally and in advance by the person applying them for concluding several contracts.

(2) The party applying the standard contract terms shall be liable for proving that the contract terms were individually negotiated by the parties.

Section 6:78 *[Standard contract terms becoming the content of the contract]*

(1) A standard contract term shall become part of the contract if the party applying it, before the conclusion of the contract, facilitated the other party to become acquainted with its content, and the other party agreed to the term.

(2) The other party shall be informed separately of any standard contract term that differs significantly from the laws or from standard contractual practice, unless it complies with the practice established between the parties. The other party shall also be informed separately of any standard contract term that differs from the term applied previously between the parties.

(3) The term referred to in paragraph (2) shall become part of the contract if other party, after being informed separately of it, expressly accepted it.

Section 6:79 *[Additional claims against consumers becoming content of the contract]*

Any term entitling the undertaking to a monetary claim in addition to the consideration that is due for the performance of the principal obligation under the contract shall become part of the contract if the consumer, after having been informed separately of it, expressly accepted it.

Section 6:80 *[Conflicting contract terms]*

If a standard contract term is in conflict with another term of the contract, the latter shall become part of the contract.

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Section 6:81 *[Conflicting standard contract terms]*

(1) If an offer which is presented with reference to standard contract terms is accepted by the other party under his own standard contract terms, and these standard contract terms are not contrary to each other, the standard contract terms of both parties shall become part of the contract.

(2) If the standard contract terms differ over issues which are not substantial, the contract shall be formed, and the standard contract terms that are not contrary to each other shall become part of the contract.

(3) If the standard contract terms differ over substantial issues of the contract, the contract shall not be formed.

Chapter XVI

Specific rules for concluding contracts by electronic means

Section 6:82 *[Providing information if concluding contracts by electronic means]*

(1) In the event of concluding contracts by electronic means, the party providing the electronic means shall be required, before making his juridical act for concluding the contract, to inform the other party

a) of the technical steps of concluding the contract;

b) whether the contract to be concluded qualifies as a written contract and whether the party providing the electronic means records the contract; furthermore, whether the contract will be accessible later on;

c) of the devices providing for the identification and correction of errors that occur during the electronic recording of data before the contractual juridical act is made;

d) of the language of the contract; and

e) if applicable, of the code of conduct that is related to the service activity and is acknowledged as binding by the party providing the electronic means, as well as of the electronic accessibility of this code of conduct.

(2) The party providing the electronic means shall make its standard contract terms accessible in a manner that allows the other party to store and retrieve them.

Section 6:83 *[Correction of data entry errors]*

The party providing the electronic means shall ensure, using the appropriate devices that the other party will be able to correct any errors that occur during the electronic recording of data before making his contractual juridical act. If the party providing the electronic means fails to comply with this obligation, the other party may contest his contractual juridical act.

Section 6:84 *[The electronic contractual juridical act and its confirmation]*

(1) A contractual juridical act made by electronic means shall become effective when it becomes accessible by the other party.

(2) The party providing the electronic means shall confirm the receipt of the other party's contractual juridical act by using electronic means and without delay. The party shall be released from the binding effect of the offer and shall not be obliged to perform the contract if the confirmation fails to reach the other party without delay.

Section 6:85 *[The scope and mandatory nature of the rules on concluding contracts by electronic means]*

(1) Other than the provisions on the effectiveness of the contractual juridical act made by electronic means, provisions of this Chapter shall not apply to contracts concluded by electronic correspondence or using an equivalent personal communication device.

With respect to contracts concluded between consumers and undertakings, any agreement derogating from the provisions of this Chapter shall be null and void.

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Chapter XVII

Interpretation of the contract

Section 6:86 *[Interpretation of the contract]*

(1) Individual contract terms and statements shall be interpreted in accordance with the whole contract.

(2) If the content of the standard contract term or the content of any other contract term not negotiated individually cannot be established clearly by applying the provisions on the interpretation of juridical acts and the rule in paragraph (1), the interpretation that is more advantageous for the party contracting with the party applying the term shall be adopted. For contracts between consumers and undertakings, this rule shall apply to the interpretation of any of the contract terms.

(3) Paragraph (2) shall not apply in proceedings initiated by an action in the public interest.

Section 6:87 *[Entire agreement clause]*

(1) If a written contract contains a provision according to which the contract contains all terms agreed on by the parties, previous agreements not included in the written contract shall become ineffective.

(2) Previous juridical acts made by the parties may be taken into consideration when interpreting the contract.

TITLE VI

INVALIDITY

Chapter XVIII

Nullity and contestability

Section 6:88 *[Nullity]*

(1) A contract that is null and void shall be invalid as of the time of its conclusion. No separate procedure shall be required to establish nullity; the court shall detect the nullity of contracts *ex officio*.

(2) If a contract that is null and void complies with the validity requirements of another contract, the latter shall be valid unless it contradicts the presumable intention of the parties

(3) Unless otherwise provided in this Act, relying on the nullity of a contract or commencing litigation procedures related to the nullity of a contract shall be allowed for persons who have a legal interest in it or who are entitled to it by law.

(4) In order to eliminate harm caused to the public interest and also in the case of usurious contracts, the prosecutor may bring an action to establish the contract's nullity or an action to apply the legal consequences of nullity.

Section 6:89 *[Contesting]*

(1) If a contestable contract is successfully contested, the contract shall become invalid as of the time of its conclusion.

(2) The aggrieved party and the person having a legal interest in contesting may contest the contract.

(3) The right to contest may be exercised within a one-year time limit from the conclusion of the contract by way of a juridical act addressed to the other party or by directly enforcing it at court. The party may turn to court within a one-year time limit following the conclusion of the contract if he contested the contract by way of a juridical act addressed to the other party, and his contesting has been unsuccessful.

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(4) In the event of a claim arising from a contract, the person entitled to contest may make use of his right to contest the contract by way of an objection, even if the time limit for contesting has already lapsed.

(5) The right to contest shall terminate if the person entitled to contest, being aware of the grounds for contesting, confirms his contractual intention after the time limit for contesting has started to run or waives the right of contesting.

1 Error in the contractual intention

Section 6:90 *[Mistake]*

(1) Anybody mistaken upon the conclusion of the contract with regard to a substantial circumstance may contest his contractual juridical act if his mistake was caused or could be recognised by the other party. The mistake concerns a substantial circumstance if the party would have not concluded the contract if he had been aware of it or would have concluded the contract with a different content.

(2) If, upon the conclusion of the contract, the parties shared the same erroneous assumption on a substantial issue, either of them may contest the contract.

(3) A person who could recognise his mistake or undertook the risk of being mistaken shall not be entitled to contest the contract.

Section 6:91 *[Misrepresentation and unlawful threats]*

(1) If someone has been deliberately misled or kept mistaken by the other party, he may contest the contractual juridical act he made due to misrepresentation.

(2) If someone has been induced to conclude a contract by the other party by using unlawful threats, he may contest his contractual juridical act.

(3) The rules determined in paragraphs (1) and (2) shall also apply if the misrepresentation or unlawful threats were committed by a third party, and the other party knew or should have known of it.

Section 6:92 *[Secret provisos, sham contracting]*

(1) The secret provisos or hidden motives of a party shall not affect the validity of the contract.

(2) Sham contracts shall be null and void; if a sham contract disguises another contract then the parties' rights and obligations shall be assessed on the basis of the disguised contract.

Section 6:93 *[Error of intention in gratuitous contracts]*

A gratuitous contract shall be open to contest on the grounds of a mistake, erroneous assumption or unlawful threats or misrepresentation by a third party if the other party was unable to recognise these circumstances.

2 Error in the contractual juridical act

Section 6:94 *[Remedying a form-related error in a contract]*

(1) A contract that is null and void on the grounds of breach of form-related requirements shall become valid upon the acceptance of performance with respect to the performed part. If the law prescribes that a contract is to be drawn up as a public deed or a private deed of full probative value, or the contract is aimed at the transfer of ownership of real estate, the performance shall not remedy invalidity arising from ignoring mandatory form-related requirements.

(2) The amendment, dissolution or rescission of a contract by disregarding the mandatory form-related requirements shall also be valid if the actual situation reflecting the amendment, dissolution or rescission has been established by the parties' mutual intent. If the law prescribes that a contract is to be drawn up as a public deed or a private deed of full probative value, or the contract is aimed at the transfer of ownership of real estate, the amendment,

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dissolution or rescission of the contract by ignoring the mandatory form-related requirements shall be null and void, even if the actual situation reflecting the amendment, dissolution or rescission has been established by the parties' mutual intent.

3 Error in the intended legal effect

Section 6:95 *[Prohibited contracts]*

Contracts violating the law or concluded by circumventing the law shall be null and void unless the law attaches other legal consequences to it. Despite these other legal consequences, the contract shall also be null and void if it is specifically provided by the law, or if purpose of the law is to prohibit the legal effect intended to be reached by the contract.

Section 6:96 *[Contracts contrary to good morals]*

Contracts that are obviously contrary to good morals shall be null and void.

Section 6:97 *[Usurious contracts]*

If, by exploiting the other party's situation, the contracting party has stipulated clearly disproportionate benefits upon the conclusion of the contract, the contract shall be null and void.

Section 6:98 *[Obvious disproportionality]*

(1) If, upon the conclusion of the contract, there is an obvious disproportionality between the value of the service and the consideration, and there is no intention by one of the parties to grant benefits free of charge, the aggrieved party may contest the contract. A person who was able to recognise the obvious disproportionality or undertook the risk of obvious disproportionality, shall not contest the contract.

(2) Except for contracts between consumers and undertakings, the parties may exclude in the contract the right to contest as determined in paragraph (1).

Section 6:99 *[Nullity of transferring title as security]*

A clause based on which a consumer undertakes to transfer ownership or another right or claim, or to establish a call option in order to secure a claim shall be null and void.

Section 6:100 *[Contract terms infringing consumer rights]*

In contracts between consumers and undertakings, any clause derogating, to the detriment of the consumer, from the provisions of this Act determining consumer rights shall be null and void.

Section 6:101 *[The consumer's statement of waiver]*

In contracts between consumers and undertakings, a juridical act by which the consumer waives his rights established by law shall be null and void.

Section 6:102 *[Unfair standard contract term]*

(1) A standard contract term shall be unfair if it unilaterally and unreasonably, and by violating the principle of good faith and fair dealing, sets forth the rights and obligations arising from a contract to the detriment of the party contracting with the person applying that contract term.

(2) The unfair nature of a standard contract term shall be assessed by examining all circumstances existing at the time of concluding the contract and leading to its conclusion, and the designated purpose of the stipulated service, as well as the relationship of the term concerned with the other terms of the contract or with other contracts.

(3) The provisions on unfair standard contract terms shall not apply to contract terms defining the main service or the ratio between the service and the consideration, if those terms are clear and intelligible.

(4) A standard contract term set forth by law or established in accordance with the requirements set forth by law shall not qualify as unfair.

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(5) The aggrieved party may contest the unfair contract term that became a part of the contract as a standard contract term.

Section 6:103 *[Unfair contract terms in consumer contracts]*

(1) In contracts between consumers and undertakings, the provisions on unfair standard contract terms shall also apply to contract terms that are determined in advance by the undertaking and not negotiated individually, subject to the derogations set out in this section. The undertaking shall be liable for proving that the contract terms were individually negotiated by the parties.

(2) In contracts between consumers and undertakings, the unclear nature of standard contract terms and contract terms determined by the undertaking in advance and not negotiated individually, shall in itself suffice for the term to be deemed as unfair.

(3) An unfair contract term that becomes a part of a contract between a consumer and an undertaking shall be null and void. Nullity may be relied upon in the interest of the consumer.

Section 6:104 *[Certain unfair terms in consumer contracts]*

(1) In contracts between consumers and undertakings, the following terms shall in particular qualify as unfair:

a) terms that grant to the undertaking the right to interpret any term of the contract unilaterally;

b) terms that grant to the undertaking the exclusive right to establish whether its performance was in conformity with the contract;

c) terms that require the consumer to perform even if the undertaking fails to fulfil the contract;

d) terms that enable the undertaking to cancel or unilaterally terminate the contract any time, if the consumer is not entitled to the same;

e) terms that exclude that, when the contract terminates, the consumer can reclaim the service he already performed but received no consideration for, excluding if the contract terminates as a consequence of a breach of contract;

f) terms that exclude or restrict the consumer's opportunity to discharge his contractual obligations by set-off;

g) terms that enable other persons to take over the undertaking's debt without the consent of the consumer;

h) terms that exclude or restrict the undertaking's liability for the vicarious agent used by it;

i) terms that exclude or restrict the consumer's options to enforce his claims at court or through other legal ways, in particular if it exclusively forces the consumer to the arbitral route without any requirement set forth by law, or unlawfully restricts the possibilities for taking evidence or imposes a burden of proof that should be borne by the other party under the applicable legal provisions;

j) terms that alter the burden of proof to the detriment of the consumer.

(2) Unless proven to the contrary, in contracts between consumers and undertakings, the following terms shall in particular qualify as unfair:

a) terms that classify a certain consumer conduct as making or failing to make a contractual statement, if the time limit for showing that conduct is unreasonably short;

b) terms that set forth unreasonable form-related requirements for making a consumer statement;

c) terms that extend the contract concluded for a definite period if no statement to the contrary has been made by the consumer, provided that the time limit for making that statement is unreasonably short;

d) terms that enable the undertaking to amend the contract unilaterally and without a valid reason specified in the contract, in particular to increase the amount of monetary

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consideration set out in the contract or enable the undertaking to amend the contract unilaterally on the basis of a valid reason specified in the contract, if in such case the consumer is not entitled to cancel or unilaterally terminate the contract;

e) terms that enable the undertaking to perform unilaterally and without valid reason a service with characteristics at variance with the ones set out in the contract;

f) terms that make the undertaking's performance subject to a condition, the occurrence of which depends exclusively on the intention of the undertaking, unless the consumer is entitled to cancel or unilaterally terminate the contract;

g) terms that grant to the undertaking a time limit longer than forty-five days for the performance of a pecuniary debt, or otherwise set an inappropriately specified time limit for the performance of a service and for the acceptance of the consumer's contractual statements;

h) terms that exclude or restrict the consumer's rights provided by the law in the event of the undertaking's breach of contract;

i) terms that exclude the consumer from receiving back the amount he paid under the contract if he fails to perform, or does not perform in conformity with the contract, if the undertaking is not subject to a similar term;

j) terms that require the consumer to pay an excessive amount of money if he fails to perform, or does not perform in conformity with the contract.

Section 6:105 *[Action in the public interest with respect to unfair standard contract terms]*

(1) An action in the public interest to establish the invalidity of an unfair contract term that became part of a contract between a consumer and an undertaking may be brought by

a) the prosecutor;

b) the minister and the heads of autonomous state administration organs, main government agencies and central agencies;

c) the heads of the capital and county government offices;

d) economic and professional chambers or interest representation organisations; and

e) with regard to the consumer interests protected by it, the association that is engaged in the protection of consumer interests, and the association established to protect consumer interests under the law of any Member State of the European Economic Area.

(2) On the basis of an action in the public interest, the court shall establish the invalidity of an unfair standard contract term effective against all parties contracting with the entity that applies the term, and shall order the entity applying the contract term to arrange, at its own cost, the publication of an announcement on the establishment of the contract term's unfair nature. The court shall decide on the text and manner of publishing the announcement. The announcement shall contain the precise identification of the contract term concerned, the establishment of its unfair nature and the arguments on which its unfair nature is based. The establishment of invalidity shall not affect contracts that have been performed up to the time of contesting.

(3) In an action in the public interest, it is also possible to request the establishment of the unfair nature of a standard contract term that has been specified and made publicly available in order to conclude contracts with consumers, even if the term concerned has not yet been applied. If the court finds that the standard contract term concerned is unfair, in its judgment it shall ban the publisher from applying the term.

(4) The action under paragraph (3) may also be brought against a person who publicly offers to apply an unfair standard contract term specified and made publicly available in order to conclude contracts with consumers. If the court finds that the standard contract term concerned is unfair, in its judgment it shall ban the person who publicly offers to apply the unfair standard contract term from making such an offer.

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(5) The rules on publication set out in paragraph (2) shall also apply accordingly if the court establishes the unfair nature of a standard contract term that has not yet been applied in the contract. Publication shall be arranged at its own cost by the person who published or offered the application of the standard contract term concerned.

Section 6:106 *[Action in the public interest in connection with contracts concluded between undertakings and contracts between a contracting authority and an undertaking not qualifying as a contracting authority]*

(1) Organisations engaged in the representation of the interests of undertakings may also contest, pursuant to the rules of the Code of Civil Procedure on actions brought in the public interest, as unfair a clause that becomes, as a standard contract term, a part of the contract between undertakings and sets forth unilaterally, unreasonably and to the detriment of the obligee the time for performance of a pecuniary debt or the rate and due date of the default interest by violating the principle of good faith and fair dealing.

(2) Also an organisation engaged in the representation of the interests of undertakings

a) may apply to the court for a decision establishing that a contract clause that becomes, as a standard contract term, a part of the contract between a contracting authority and an undertaking not qualifying as a contracting authority and sets forth the time for performance of a pecuniary debt longer than sixty days, is null and void with respect to the part in excess of sixty days; or

b) may, by contesting it as unfair term, apply to the court for a decision establishing that a clause that becomes, as a standard contract term, a part of the contract between a contracting authority and an undertaking not qualifying as a contracting authority and sets unilaterally and unreasonably a time limit not exceeding sixty days to the detriment of the undertaking not qualifying as a contracting authority, other than as set out in this Act for the contracting authority, in violation of the principle of good faith and fair dealing, is invalid.

(3) In the event of a well-founded request under paragraphs (1) and (2), the court shall establish the nullity or invalidity of the clause effective against all parties contracting with the entity applying it. The establishment of nullity or invalidity shall not affect the contracts that have already been performed.

(4) An organisation engaged in representing the interests of undertakings may request the establishment of the unfair nature and nullity of a standard contract term under paragraphs (1) and (2) set forth and made publicly available for the purpose of concluding contracts, even if the term concerned has not yet been applied. In the event of establishing the unfair nature of the standard contract term concerned, the court shall ban the publishing entity from applying it.

(5) In proceedings under paragraphs (1) to (2) and (4), the court shall order, at the request of the person enforcing the claim, that the entity that applies or offers the application of the contract term shall arrange, at its own cost, the publication of an announcement on the establishment of the unfair nature or the nullity of the contract term. The court shall decide on the text and manner of publishing the announcement. This announcement shall contain the precise identification of the contract term concerned, the establishment of its unfair nature or nullity and the arguments on which its unfair nature is based.

(6) An organisation engaged in representing the interests of undertakings may request the establishment of the nullity of standard contract terms that

a) exclude in a contract between undertakings the obligation to pay default interest, or exclude or restrict the obligation to pay the costs related to the collection of claims;

b) set forth in a contract between a contracting authority and an undertaking not qualifying as a contracting authority the due date of the default interest at variance with the day following the payment time limit determined by this Act for the performance of a pecuniary

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debt, or exclude or restrict the obligation to pay default interest or the obligation to pay the costs related to the collection of claims.

Section 6:107 *[Impossibility of performance. Incomprehensible, conflicting clauses]*

(1) A contract aimed at an impossible performance shall be null and void. The performance of a service shall not be impossible due to the obligor not having the subject of the service upon the conclusion of the contract.

(2) Incomprehensible and conflicting clauses shall be null and void.

Chapter XIX

The legal consequences of invalidity

Section 6:108 *[Application of the legal consequences of invalidity]*

(1) No entitlement shall be based on an invalid contract, and the performance of such a contract shall not be demanded. Further legal consequences of invalidity shall be applied by the court, within the limits of the statute of limitations and acquisitive prescription, at the party's request filed to this end.

(2) The party may also request the court to establish a contract's invalidity without requesting the application of its consequences.

(3) The court may determine the consequences of invalidity differently from those requested by the party; however, it shall not apply a solution against which all parties object.

Section 6:109 *[Passing of the risk of damage]*

The risk of damage shall pass to the other party upon the performance of a service provided under an invalid contract.

Section 6:110 *[Declaration of validity with retroactive effect by the court]*

(1) The court may declare an invalid contract valid with retroactive effect as from the time of its conclusion, if

a) the harm to interests caused by invalidity can be remedied by the appropriate amendment of the contract; or

b) the reason for invalidity terminated subsequently.

(2) In the event of declaring an invalid contract valid, the contracting parties shall be required to perform to each other and shall be liable for any breach of contract occurring after the declaration of validity in such a manner as if the contract had been valid as of its conclusion.

Section 6:111 *[The contract becoming valid by the intention of the parties]*

(1) The contract shall become valid with retroactive effect as from the time of its conclusion if the reason for invalidity is remedied by the parties subsequently or, should the reason for invalidity no longer exist for another reason, they confirm their contractual intention.

(2) If an invalid contract becomes valid, the contracting parties shall be required to provide mutually performance, and shall be liable for any breach of contract occurring after the contract has become valid in such a manner as if it had been valid as of its conclusion.

(3) If the parties remedy the reason for invalidity subsequently and agree that the contract will become valid for the future, the performances they provided up to that point shall be settled by applying the legal consequences of invalidity.

Section 6:112 *[Restoration of the original situation]*

(1) In the case of an invalid contract, any of the parties may request the restoration in kind of the performed service if he also provides restoration in kind with respect to services provided to him. The party requesting the restoration of the original situation shall be subject to the obligation of restoration, irrespective of the expiry of the statute of limitations or the prescription period.

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(2) Upon restoration of the original situation, the original balance between the values of services shall be maintained.

Section 6:113 *[Monetary reimbursement of groundless enrichment]*

(1) If the contract cannot be declared valid and the situation that prevailed prior to its conclusion cannot be restored in kind, the court shall order the monetary reimbursement of the services that remained without consideration. This legal consequence can also be applied by the court if restoration of the original situation harms the substantial legal interest of a party.

(2) The party shall not be obliged to provide monetary reimbursement for the service that remained without consideration if he proves that he is unable to reimburse the service provided to him for a reason for which the other party is liable. If the party has paid consideration for a service, he may request its reimbursement, even if he is unable to reimburse the service provided to him, and he proves that its reason can be traced back to a circumstance for which the other party is liable.

(3) With regard to usurious contracts, the court may fully or partially waive reimbursement if that would bring the aggrieved party into a difficult situation, even if payment in instalments would be permitted; the party causing harm shall be required to reimburse to the aggrieved party the part of the received service corresponding to the disproportionate benefit.

Section 6:114 *[Partial invalidity]*

(1) If the reason for invalidity concerns a specific part of the contract, the legal consequences of invalidity shall apply to that part of the contract. Partial invalidity of a contract may cause invalidity of the entire contract if it can be assumed that the parties would not have concluded it without the invalid part.

(2) In the event of the partial invalidity of a consumer contract, the entire contract shall be invalid only if the contract cannot be performed without the invalid part.

Section 6:115 *[Ancillary claims with regard to an invalid contract]*

(1) The parties shall be required to pay the benefits and interest not remedied by restoration of the original situation in accordance with the rules of unjustified possession. The party who failed to perform his service or received the service free of charge shall be required to reimburse the benefits or interest to the other party in accordance with the rules of unjustified enrichment.

(2) Damage caused to the other party by the conclusion of an invalid contract shall be compensated for in accordance with the general rules of extra-contractual liability. If the party causing the invalidity of the contract exculpates his conduct, he shall be required to compensate for the other party's damage arising from the conclusion of the contract.

(3) A third party trusting in the existence of an invalid contract in good faith may claim compensation for the damage arising from the conclusion of the contract from the contracting party whose conduct was the reason of invalidity. If the contracting parties caused the invalidity jointly then they shall be subject equally to the obligation to compensate.

(4) The contracting party who was at fault towards a third party acting in good faith shall be liable for full compensation, regardless of whose conduct caused the invalidity.

TITLE VII

THE EFFECT OF THE CONTRACT. INEFFECTIVENESS

Section 6:116 *[Conditions and time clauses]*

(1) If the parties have made the commencement of the contract's effectiveness conditional upon an uncertain future event, the contract shall become effective upon the occurrence of that condition.

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(2) If the parties have made the termination of the contract's effectiveness conditional upon an uncertain future event, the contract shall become ineffective upon the occurrence of that condition.

(3) The rules applicable to the condition shall apply accordingly if the parties subjected the commencement or termination of the contract's effectiveness to a certain date.

Section 6:117 *[Pending condition]*

(1) As long as the occurrence of the condition is pending, neither party shall do anything that would impair or frustrate the right of the other party in the event of the occurrence or frustration of that condition. This rule shall be without prejudice to the rights acquired by third parties in good faith and for consideration.

(2) The person who was at fault in causing the occurrence or frustration of the condition shall not base any right on it.

Section 6:118 *[Contracts subject to consent or approval]*

(1) If the law requires consent from a third party or approval by an authority for a contract to be effective, upon granting this consent or approval the contract shall become effective retrospectively, as of the time of its conclusion.

(2) Until the statement of consent or approval, or until the expiry of the time limit set for making the statement, the parties' rights and obligations shall be assessed in accordance with the rules on the pending condition.

(3) The contract shall not become effective if the third party does not grant consent, or the authority does not grant approval or any of them fails to make a statement on it within the appropriate time limit communicated by either party to the other party.

Section 6:119 *[Legal effect of an ineffective contract]*

(1) If the contract did not become effective or it became ineffective, including if the consent of a third party or the approval from an authority with respect to the contract is missing or has been refused, the performance of the contract shall not be demanded.

(2) The legal consequences of invalid contracts shall apply accordingly to performances provided under ineffective contracts.

Section 6:120 *[Contracts aimed at concealing assets]*

(1) A contract that partially or fully concealed assets that would satisfy the claim of a third party shall be ineffective towards that third party if the acquiring party was acting in bad faith, or had obtained gratuitous benefit from that contract.

(2) If someone concludes with his relative or with a legal person over which he has majority control a contract that is aimed at concealing assets; furthermore, if a legal person concludes such a contract with its member or executive officer or his relative, bad faith and gratuitousness shall be presumed. Bad faith and gratuitousness shall also be presumed with regard to contracts concluded between legal persons that are controlled by the same natural or legal person, even in the absence of a direct or indirect majority control.

(3) Upon request from the third party, the acquiring party shall be required to allow satisfaction from the acquired asset or enforcement against that asset.

(4) If the acquiring party transferred the acquired asset through a contract aimed at concealing assets, or lost it in bad faith, he shall be liable towards the third party up to the value of the acquired asset.

(5) The rules on contracts aimed at concealing assets shall also apply if the benefit accrues to a person other than the person making the contractual juridical act.

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TITLE VIII

CLAIMS NOT ENFORCEABLE IN COURT PROCEEDINGS

Section 6:121 *[Claims not enforceable in court proceedings]*

(1) The following shall not be enforced in court proceedings:

a) claims arising from gambling or betting, unless the game or betting is performed under an authority licence;

b) claims arising from loans expressly promised or granted for gambling or betting;

c) claims which are expressly excluded by law from being enforced before the court;

d) claims arising from contracts or clauses securing or confirming the claims set out in points *a) to c)*.

(2) The fact that a claim is not enforceable for a reason listed in paragraph (1) shall be taken into account *ex officio*.

(3) Voluntary performance of claims not enforceable in court proceedings shall not be reclaimed.

TITLE IX

PERFORMANCE OF A CONTRACT

Chapter XX

General provisions

Section 6:122 *[Passing of the risk of damage]*

Unless otherwise provided in this Act, the risk of damage shall pass to the other party upon performance.

Section 6:123 *[Quality of the service]*

(1) At the time of performance, the service shall be fit for its designated use, hence

a) it shall be fit for the purpose specified by the obligee, if the obligee informed the obligor of it prior to the conclusion of the contract;

b) it shall be fit for purposes for which other services having the same purpose are normally used;

c) it shall have the quality, or shall provide the performance that is usual for services serving the same purpose and that can be expected by the obligee, also taking into account the public statements made by the obligor, or, if the subject of the service is produced by persons other than the obligor, by the producer of the service and their representatives made with respect to the specific characteristics of the service;

d) it shall have the characteristics that are typical for the service as set out in the description handed over by the obligor or presented by him as a sample to the obligee; and

e) it shall comply with the quality requirements set out by law.

(2) The service does not need to comply with the public statement referred to in paragraph (2) *c)*, if the obligor proves that

a) he was not aware of that public statement, nor was he required to be aware of it;

b) this public statement was appropriately corrected by the time of concluding the contract; or

c) his public statement could not have influenced the obligee's decision to conclude the contract.

(3) For the purposes of paragraph (1) *c)*, the manufacturer, the importer and distributor of the service, as well as the person indicating his name, trademark or other distinguishing mark on the thing, shall qualify as the producer.

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(4) In terms of the service's suitability for its designated purpose, the quality standards shall also be taken into account.

(5) If the parties did not determine the quality of the subject of the contract that is specified by type and quantity, the obligor shall perform to the good quality that is customary in that trade.

Section 6:124 *[Handover of the documentation]*

The obligor shall hand over to the obligee the indicative descriptions and other documentation on the service.

Section 6:125 *[Over-performance]*

If the obligor offers the performance in larger quantities than determined in the contract, the obligee may refuse the over-performance. If the obligee accepts the over-performance then he shall be required to provide consideration increased *pro rata* to the additional performance, and he shall provide that at the time and in the manner determined in the contract with respect to the performance of the consideration.

Section 6:126 *[Obligation to provide information in connection with obstacles]*

(1) The parties shall be required to notify each other if the performance of an obligation undertaken in the contract is expected to be affected by an obstacle, unless the other party should have known of this obstacle even without such notification.

(2) The defaulting party shall be liable in accordance with the rules on liability for damage caused by breach of contract for the damage he caused by not complying with the obligation to provide information in connection with the obstacles.

Section 6:127 *[Obligation to examine the service]*

(1) The obligee shall be required to ascertain without delay whether the quality and quantity of the service is appropriate.

(2) While taking over the thing, the characteristics that are certified with respect to their quality or are subject to a guarantee do not need to be examined.

(3) The costs involved in the examination of the quality and quantity of the service shall be borne by the obligee.

Section 6:128 *[Simultaneous performance]*

As of the time of performance, either party may claim the performance of the other party's service that became due if he simultaneously offers the performance of his own service.

Section 6:129 *[Using a vicarious agent]*

(1) The parties may use the assistance of another person for the performance of their obligations or for the exercise of their rights.

(2) If, due to the nature of the service, a provision of law or the agreement of the parties, the obligor is required to act in person, he may only use the assistance of another person if it is necessary to protect the obligee from suffering harm.

Section 6:130 *[Time for performance of a pecuniary debt]*

(1) If the parties did not determine the time for performance of a pecuniary debt, it shall be performed within thirty days following the receipt of the obligee's payment notice or invoice. If the obligor of a pecuniary debt is a contracting authority then, in the event of its contract concluded with an undertaking not qualifying as a contracting authority, its pecuniary debt shall be performed within thirty days following the receipt of the obligee's payment notice or invoice; in this case, the date of receiving the invoice shall not form subject of the parties' valid agreement.

(2) The pecuniary debt shall be performed within thirty days of the obligee's performance if

a) the receipt of the obligee's payment notice or invoice preceded the obligee's performance (or in the event of a contract to produce a work, the completion of the handover-acceptance procedure);

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b) the date of receiving the obligee's payment notice or invoice cannot be identified clearly; or

c) the obligor is required to perform its payment obligation without waiting for the payment notice or invoice.

(3) With regard to contracts between undertakings, the obligee may contest, as unfair clauses, contract terms that depart from the provisions of this section unilaterally and unreasonably to the detriment of the obligee by violating the principle of good faith and fair dealing. With regard to contracts between a contracting authority obliged to pay a pecuniary debt and an undertaking not qualifying as a contracting authority, the period determined for the performance of the pecuniary debt may exceed the time limit determined in paragraphs (1) and (2) only if the parties agreed on the deferred performance of pecuniary debts in the contract, provided that, due to the nature of the contract, it is factually justified; however, the period determined for the performance of the pecuniary debt in these cases shall not exceed sixty days. With regard to contracts between a contracting authority obliged to pay a pecuniary debt and an undertaking not qualifying as a contracting authority, the period determined for the performance of pecuniary debt shall be null and void with respect to the part that exceeds sixty days.

(4) Unless proven to the contrary, with regard to contracts between undertakings, a contract term that unilaterally and unreasonably, to the detriment of the obligee by violating the principle of good faith and fair dealing and by derogating from the provisions of paragraphs (1) and (2), sets a time limit that exceeds sixty days shall be considered unfair. With regard to contracts between a contracting authority obliged to pay a pecuniary debt and an undertaking not qualifying as a contracting authority, the obligee may contest, as an unfair clause, the contract term that sets unilaterally and unreasonably, to the detriment of the obligee by violating the principle of good faith and fair dealing and by derogating from the provisions of paragraphs (1) and (2), a time limit not exceeding sixty days.

Section 6:131 *[Early performance of a pecuniary debt with regard to consumer contracts]*

In contracts between consumers and undertakings, a clause that excludes the early performance of a pecuniary debt and imposes a burden on the consumer other than the costs directly arising from the early performance shall be null and void.

Section 6:132 *[Reduction of the determined interest]*

At the request of the obligor, excessive interest rates may be reduced by the court.

Section 6:133 *[Costs]*

The consideration shall include the costs that usually incur in connection with the performance of the contract.

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Chapter XXI

Special cases of performance

Section 6:134 *[Performance in the event of alternative services]*

(1) If an obligation may be performed by any of more than one service, the obligor shall be entitled to the right to choose.

(2) If the obligee is entitled to the right to choose and he has failed to make a choice, the right to choose shall pass to the obligor.

Section 6:135 *[Performance in the event of divisible performance]*

With regard to a divisible performance, the obligee shall be required to accept partial performance as well.

Section 6:136 *[Performance of contracts concluded for the benefit of a third party]*

(1) If the parties concluded a contract for a service to be performed to a third party, the third party may directly claim the performance of the service if

a) his right to this was expressly set forth by the parties; or

b) this clearly follows from the purpose of the contract or the circumstances of the case.

(2) The third party may claim the performance of a service set forth for his benefit as of his notification by either party that a contract for his benefit has been concluded. If the third party waives his right to claim the performance of the service, the service may be claimed by the party that concluded the contract for the benefit of the third party.

(3) The obligor may also enforce his objections arising from the contract against the third party.

TITLE X

BREACH OF CONTRACT

Chapter XXII

General rules on the breach of contract

Section 6:137 *[Breach of contract]*

Breach of contract means a failure to perform any of the obligations in conformity with the contract.

Section 6:138 *[The right to claim performance]*

In the event of a breach of contract, the aggrieved party shall be entitled to claim the performance of the service.

Section 6:139 *[Right to retain]*

(1) In the event of a breach of contract, the obligee may retain the *pro rata* part of his own due services until performance by the obligor or until the provision of adequate financial security.

(2) The party entitled to retain his performance may cancel the contract, or if the original situation cannot be restored, shall be entitled to unilaterally terminate it if he set an adequate time limit, and during this time limit the other party did not resolve his breach of contract or did not provide adequate security for the performance.

(3) Otherwise, the rules on agency without authority shall apply to the rights and obligations of the party entitled to retain performance.

Section 6:140 *[Cancellation, unilateral termination]*

(1) If, as a consequence of the breach of contract, the obligee's interest in the performance of the contract has ceased, he may cancel the contract, or if the situation that existed before the conclusion of the contract cannot be restored in kind, he may unilaterally terminate the contract unless otherwise provided in this Act.

(2) For the obligee's juridical act to be valid, he shall be required to indicate the reason for cancellation or unilateral termination, if he is entitled to do so on more than one ground. The obligee may switch from the indicated reason for cancellation or unilateral termination to another one.

(3) The obligor shall not claim the monetary reimbursement of the service that remained without consideration if the obligee proves that he is unable to reimburse the service provided to him for a reason for which the obligor is liable. If the obligee has paid consideration for the service, he may request its reimbursement, even if he is unable to reimburse the service provided to him, and proves that the reason for it can be traced back to a circumstance for which the obligor is liable.

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Section 6:141 *[Substitute transaction]*

In the event of his cancellation or unilateral termination, the obligee may conclude a contract capable of achieving the objective pursued by the contract, and he may claim from the obligor, in accordance with the rules on compensation for damages, the reimbursement of the difference between the value determined in the contract and the one determined in the substitute transaction, as well as the costs arising from the conclusion of the substitute transaction.

Section 6:142 *[Liability for damage caused by breach of contract]*

A person causing damage to the other party by breaching the contract shall be required to compensate for it. He shall be exempted from liability if he proves that the breach of contract was caused by a circumstance that was outside of his control and was not foreseeable at the time of concluding the contract, and he could not be expected to have avoided that circumstance or averted the damage.

Section 6:143 *[Amount of damages]*

(1) Damage incurred in the subject of the service shall be compensated for by means of damages.

(2) Other damage to the assets of the obligee and the loss of profit that occurred as a consequence of the breach of contract shall be compensated for to the extent the obligee proves that the damage, as a possible consequence of the breach of contract, was foreseeable at the time of concluding the contract.

(3) In the event of intentional breach of contract, the entire amount of damage arising on the part of the obligee shall be compensated for.

Section 6:144 *[Ancillary application of extra-contractual liability rules]*

(1) The rules on extra-contractual liability shall apply to the injured party's obligation to prevent, avert or mitigate damage, as well as to the liability of persons jointly causing damage.

(2) The rules on extra-contractual liability shall apply to the concept of damage and to the method of paying damages in matters that are not regulated in this Chapter, with the derogation that no reduction of damages shall take place on the grounds of equity.

Section 6:145 *[Exclusion of parallel claims for damages]*

The obligee may also enforce his claim for damages against the obligor in accordance with the rules on liability for damage caused by breach of contract, even if the damage gives rise to the obligor's extra-contractual liability.

Section 6:146 *[Liability for damage caused during performance]*

The obligee may claim, in accordance with the rules on liability for damage caused by breach of contract, compensation for the damage caused to his assets by the obligor during the performance of the contract.

Section 6:147 *[Liability in damages in the event of gratuitous contracts]*

(1) The person undertaking the performance of a service free of charge shall be liable for the damage incurred in the subject of the service if the obligee proves that the obligor caused the damage by an intentional breach of contract, or failed to provide information on a substantial characteristic of the service which was unknown to the obligee.

(2) A person undertaking the performance of a service free of charge shall be required to compensate for the damage caused by his service to the assets of the obligee. He shall be exempted from liability if he proves that he was not at fault.

Section 6:148 *[Liability for the vicarious agent]*

(1) A person using the contribution of another person to perform an obligation or to exercise a right shall be liable for the conduct of the person deployed in the same way as if he had acted himself.

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(2) If the obligor was not entitled to use another person then he shall be liable for any damage that would not have occurred if this person had not been deployed.

(3) The obligor may enforce his rights against the vicarious agent arising from the vicarious agent's breach of contract for as long as he is required to stand liable towards the obligee.

Section 6:149 *[Partial breach of contract]*

In the event of a breach of contract that is related to a part of a divisible performance, the legal consequences of the breach of contract shall apply to that part, unless partial application would violate the obligee's substantial legal interest.

Section 6:150 *[Interim breach of contract]*

(1) A party commits a breach of contract if he fails to take the measures or make the statements necessary for the appropriate fulfilment of the other party's obligations arising from the contract.

(2) Failure to take a measure or make a statement required from one of the parties shall exclude the breach of such an obligation of the other party, the performance of which is prevented by the failure to take that measure or make that statement.

Section 6:151 *[Preliminary breach of contract]*

(1) If it becomes obvious prior to the expiry of the time limit for performance that the obligor will be unable to perform his service when it will become due, and because of this the performance no longer serves the interests of the obligee, the obligee may exercise his rights arising from the default.

(2) If it becomes obvious prior to the expiry of the time limit for performance that the performance will be defective then, after the expiry of the time limit set for repairing the defect or for replacement with no result, the obligee may exercise his rights arising from defective performance.

Section 6:152 *[Limitation and exclusion of the legal consequences of breach of contract]*

Contract clauses limiting or excluding liability for damage caused by breach of contract intentionally, as well as for the breach of contract harming human life, physical integrity and health shall be null and void.

Chapter XXIII

Default

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1 Default by the obligor

Section 6:153 *[Default by the obligor]*

The obligor shall be in default if he fails to perform the service when it is due.

Section 6:154 *[Legal consequences of the obligor's default]*

(1) If the obligor is in default, the obligee may claim performance or if, as a consequence of the default, the obligee's interest in the contract performance has ceased, the obligee may cancel the contract.

(2) The cessation of his interest in the performance does not need to be proved for the cancellation by the obligee, if

a) according to the agreement between the parties or the recognisable purpose of the service, the contract should have been performed at the specified time for performance, and not at another time; or

b) the obligee set an adequate grace period for subsequent performance, and this grace period expired without any result.

(3) The obligor shall compensate the obligee's damage arising from the default or, in the case of a pecuniary debt, the damage exceeding the default interest, unless the obligor provides an excuse for his default.

Section 6:155 *[Payment default in contracts between undertakings and in contracts concluded by an authority obliged to a pecuniary debt payment]*

(1) For contracts between undertakings and contracts concluded by a contracting authority obliged to pay a pecuniary debt with an undertaking not qualifying as a contracting authority, the rate of default interest shall be the base rate applicable on the first day of the calendar half year affected by the default; for a pecuniary debt denominated in a foreign currency, the base rate set for the relevant currency by the issuing central bank; in the absence of such a rate, the money market interest plus eight per cent. When calculating the interest, the base rate applicable on the first day of the calendar half year affected by the default shall apply to that entire calendar half year.

(2)

(3) For contracts between undertakings, a contract term that, unilaterally and unreasonably, to the detriment of the obligee and by violating the principle of good faith and fair dealing, sets the rate of default interest at variance with what is set out in paragraph (1), and sets the due date of the default interest for the time for performance of the pecuniary debt otherwise than the day following the payment time limit set out in this Act may be contested by the obligee as an unfair clause. For contracts between a contracting authority and an undertaking not qualifying as a contracting authority, the contract term that sets the due date of the default interest for the time for performance of the pecuniary debt otherwise than the day following the payment time limit set out in this Act shall be null and void.

(4) For contracts between undertakings, a contract term that excludes default interest, and for contracts concluded by a contracting authority with an undertaking not qualifying as a contracting authority, a contract term that excludes default interest or sets it at a lower rate than the one set out in paragraph (1) shall be null and void, unless the obligor is required to pay a contractual penalty in the event of his default.

2. Default in acceptance by the obligee

Section 6:156 *[Default in acceptance]*

(1) The obligee shall be in default if he fails to accept the performance offered to him.

(2) The obligee's default shall exclude the obligor's simultaneous default.

(3) In the event of a default in acceptance, the obligor shall be required to keep the thing safe in accordance with the rules on agency without authority, and the risk of damage shall pass to the obligee.

(4) If the parties specified the service by type and quantity, the provisions in paragraph (3) shall apply if the parties marked the things intended for performance, or they separated them for the obligee from other similar things.

Chapter XXIV

Defective performance

1. General rules on defective performance

Section 6:157 *[Defective performance]*

(1) The obligor performs defectively if, at the time of performance, the service does not comply with the quality requirements laid down in the contract or by law. The obligor's performance shall not be deemed defective if the obligee was aware of the defect at the time of the conclusion of the contract, or should have been aware of the defect at the time of the conclusion of the contract.

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(2) In contracts between consumers and undertakings, a clause that departs, to the detriment of the consumer, from the provisions of this Chapter on warranty for material defects and on guarantee shall be null and void.

Section 6:158 *[Presumption of defective performance]*

Unless proven to the contrary, with regard to contracts between consumers and undertakings, it shall be presumed that the defect detected by the consumer within six months following the performance already existed at the time of performance, unless this presumption is incompatible with the nature of the thing or the characteristics of the defect.

2. Warranty for material defects

Section 6:159 *[Remedies for breach of warranty for material defects]*

(1) On the basis of a contract in which the parties owe mutual services, the obligor shall be subject to a warranty for material defects for his defective performance.

(2) Under his claim for warranty for material defects, the obligee, subject to his choice,

a) may claim repair or replacement, unless the performance of the chosen remedy for breach of warranty for material defects is impossible, or if it would result in disproportionate additional costs to the obligor compared to satisfying a different claim for warranty for material defects, taking into account the value that the service would have in flawless condition, the gravity of the breach of contract and the harm to interests caused to the obligee by satisfying the right of warranty for material defects; or

b) may claim the *pro rata* reduction of the consideration; may repair the defect himself or have it repaired by somebody else at the obligor's expense, or may cancel the contract if the obligor did not undertake repairing or replacement, or was unable to comply with this obligation under the conditions set out in paragraph (4), or if the obligee's interest in its repair or replacement no longer exists.

(3) An insignificant defect shall not give rise to cancellation.

(4) Repair or replacement shall be completed within an appropriate time limit, by appropriately considering the interests of the obligee and taking the characteristics of the thing and its designated purpose that can be expected from the obligee into account.

Section 6:160 *[Switch to another remedy for breach of warranty for material defects]*

The obligee may switch from the chosen remedy for breach of warranty for material defects to another remedy. The obligee shall pay the costs caused to the obligor by the switch, unless the obligor caused the switch or the switch was otherwise justified.

Section 6:161 *[Departing from the remedy for breach of warranty for material defects chosen by the obligee]*

The court shall not be bound to the request of the obligee; however, it shall not order the performance of a remedy for breach of warranty for material defects objected to by all parties.

Section 6:162 *[Communication of the defect]*

(1) Following the detection of the defect, the obligee shall be required to communicate the defect to the obligor without delay.

(2) For contracts between consumers and undertakings, a defect communicated within two months following the detection shall be considered communicated without delay.

(3) The obligee shall be liable for the damage arising from delayed communication.

Section 6:163 *[Statute of limitations with respect to a claim of warranty for material defects]*

(1) The obligee's claim of warranty for material defects shall lapse after one year from the time of performance.

(2) For contracts between consumers and undertakings, the consumer's claim of warranty for material defects shall lapse after two years from the time of performance. If the subject

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matter of a contract between a consumer and an undertaking is a thing that has been used previously, the parties may agree on a shorter limitation period; however, setting forth a limitation period shorter than one year in such cases shall not be valid either.

(3) If the thing provided under the contract is real estate, the claim of warranty for material defects shall lapse after five years from the time of performance.

(4) The part of the repair time during which the obligee was unable to use the thing in accordance with its designated use shall not be calculated in the limitation period.

(5) The limitation period for the claim of warranty for material defects shall restart with respect to the part of the thing that is affected by the replacement or repair. This rule shall also apply if a new defect occurs as a consequence of the repair.

Section 6:164 *[Enforcement of remedies for breach of warranty for material defects as an objection]*

The obligee may enforce remedies for breach of warranty for material defects he is entitled to as an objection against a claim arising from the same contract, even if the claim of warranty for material defects has lapsed.

Section 6:165 *[Scope of the enforced warranty claim]*

(1) The warranty claim shall be considered enforced within the time limit with regard to any defect in the provided thing that caused the indicated defect.

(2) If the obligee enforces his warranty claim with respect to a part of the thing that can be separated in terms of the indicated defect, the warranty claim shall not qualify as enforced with respect to the other parts of the thing.

Section 6:166 *[Bearing the costs]*

(1) The costs related to the performance of the warranty obligation shall be borne by the obligor.

(2) If the failure of the obligation to perform maintenance activities by the obligee has also contributed to the defect of the thing, the costs related to the performance of the obligation to perform maintenance activities shall be borne by the obligee *pro rata* to his contribution, if he had the knowledge required for the maintenance of the thing, or if the obligor fulfilled his obligation to provide information in this regard.

Section 6:167 *[The enrichment claim of the obligor]*

(1) If, due to the suspension of the limitation period, the replacement of the thing takes place after a significant part of the time limit for the warranty for material defects has passed, and this leads to a significant increase in value for the obligee, the obligor may claim compensation for the enrichment. This provision shall not apply to contracts between consumers and undertakings.

(2) In the event of replacement or cancellation, the obligee shall not be required to compensate the part of depreciation of the thing that resulted from it having been used in accordance with its designated use.

3. Product warranty

Section 6:168 *[Product warranty claim]*

(1) In the event of a defect in movable thing sold by an undertaking to a consumer (for the purposes of this sub-title: “the product”), the consumer may demand that the producer repair the defect in the product, or, if repair is not possible within an appropriate time limit without causing harm to the consumer’s interests, replace the product. A product is defective if it does not comply with the quality requirements applicable at the time of placing the product on the market, or if it does not have the characteristics indicated in the description provided by the producer.

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(2) For the purposes of this sub-title, the manufacturer and the distributor of the product shall qualify as the producer.

(3) The producer shall be exempted from the product warranty obligation if he proves that

a) he has not produced or distributed the product within his business activities or independent professional activities;

b) the defect was not recognisable given the state of scientific or technical knowledge when the product was placed on the market; or

c) the product's defect was caused by the application of a law or a mandatory authority provision.

(4) In the event of replacement, the producer shall be subject to an obligation of warranty for material defects with respect to the replaced product, and in the event of repair, with respect to the part of the product affected by the repair.

Section 6:169 *[Time limits for providing information and enforcing claims]*

(1) Following the detection of the defect, the consumer shall be required to communicate the defect to the producer without delay. A defect communicated within two months following the detection shall be considered communicated without delay. The consumer shall be liable for the damage arising from the delayed communication.

(2) The producer shall be subject to product warranty for two years after he placed the relevant product on the market. The expiry of this time limit shall cause the forfeiture of rights.

Section 6:170 *[Product warranty in the event of a change in the person of the owner]*

In the event of the transfer of the product's ownership, the product warranty rights may be enforced by the new owner against the producer.

4. Guarantee

Section 6:171 *[Guarantee]*

(1) A person undertaking a guarantee for the performance of a contract or being subject to a mandatory guarantee under law shall be liable, during the term of the guarantee, for defective performance in accordance with the conditions set forth in the juridical act or law giving rise to the guarantee. He shall be exempted from the obligation of guarantee if he proves that the reason of the defect occurred after the performance.

(2) The guarantee shall not affect the rights of the oblige arising from law.

Section 6:172 *[Entitlement to guarantee in the event of a change in the person of the owner]*

In the event of the transfer of the product's ownership, the rights arising from the guarantee may be enforced by the new owner against the obligor that undertook the guarantee.

Section 6:173 *[Enforcement of a guarantee claim]*

(1) A guarantee claim can be enforced within the guarantee period. If the obligor fails to comply with his guarantee obligation at the obligee's request within an appropriate time limit, the guarantee claim may be enforced at court within three months from the expiry of the period determined in the request, if the period of the guarantee has already expired. Failure to meet this time limit shall result in the forfeiture of rights.

(2) The rules applicable to exercising remedies for breach of warranty for material defects shall otherwise apply accordingly to the enforcement of the guarantee claim.

5. Claim for damages

Section 6:174 *[Damages in the event of defective performance]*

(1) The obligor shall be required to compensate for the obligee's damage arising from defective performance, unless he provides an excuse for his defective performance.

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(2) The obligee may claim damages for harm occurring in the subject of the service as a result of defective performance if repair or replacement is not possible, or if the obligor did not undertake to provide repair or replacement, or was unable to perform this obligation, or if the obligee's interest in the repair or replacement has ceased to exist. This claim for damages shall lapse within the time limit open for the enforcement of remedies for breach of to the warranty for material defects. The obligee may enforce his claim for damages as an objection against a claim arising from the same contract, even if the claim for warranty has lapsed.

6. Warranty for legal defects

Section 6:175 *[Warranty for legal defects due to obstacles in the acquisition of rights]*

(1) If, in the event of an obligation aimed at the reciprocal transfer of ownership, a right or a claim, the acquisition of the ownership, right or claim is obstructed by the right of a third party, the obligee shall be required to request the obligor to resolve the obstacle or to provide adequate financial security, setting an appropriate time limit. After the expiry of the time limit with no result, the obligee may cancel the contract and claim damages.

(2) If the obligor acted in good faith then he shall be required to compensate for the damage arising from the conclusion of the contract.

Section 6:176 *[Warranty for legal defects due to the limitation of the acquisition of rights]*

(1) If, in the event of an obligation aimed at the reciprocal transfer of ownership, a right or a claim, the exercise of the ownership, other right or claim is limited or decreased in value by the right of a third party, the obligee may demand the removal of the encumbrance, setting an appropriate time limit.

(2) After the expiry of the time limit with no result, the obligee may remove the encumbrance at the expense of the obligor.

(3) If the removal of the encumbrance is impossible or would incur disproportionate costs, the obligee may cancel the contract and claim damages, or may demand the appropriate decrease of the consideration in exchange for undertaking the encumbrance. The obligee shall be entitled to these rights even if the time limit set for the removal of the encumbrance expired with no result and the obligee does not wish to remove the encumbrance on the thing.

(4) If the obligor acted in good faith then he shall be required to compensate for the damage arising from the conclusion of the contract.

(5) The obligee shall not be entitled to these rights if, upon the conclusion of the contract, he was aware or should have been aware of that fact he was unable to acquire ownership, right or claim free of restrictions, unless the obligor expressly undertook a warranty with respect to the ownership, other right or claim being free from restrictions.

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7. Special rules of defective performance

Section 6:177 *[Defective performance with regard to contracts aimed at achieving a result]*

(1) If the obligor undertakes an obligation to create a thing or another result that can be achieved by work, the rules for defective performance shall apply accordingly, with the proviso that

a) replacement shall be construed as the re-performance of the result that can be achieved in part or in full by work; and

b) it is possible to repair or partially or fully re-perform the service in a manner other than originally undertaken with respect to creating the result that can be achieved by work, also taking the obligee's interests in performing in conformity with the contract into account: additional costs arising from this shall be borne by the obligor.

(2) The obligor shall be exempted from the legal consequences of defective performance if the defect can be traced back to the

a) unsuitability of or defect in the material;
b) incompleteness of or defect in the data; or
c) the inexpedient or unprofessional nature of the instruction
provided by the obligee, and the obligor warned the obligee of these circumstances.

Section 6:178 *[Defective performance with regard to contracts for use or exploitation]*

(1) If the obligee is entitled to the temporary use or exploitation of the thing of another person or the protected subject matter of a property right of another person, the obligor shall be liable, throughout the entire duration of the contract, applying the rules on warranty for material defects accordingly, for the thing or the protected subject matter to be fit for use or exploitation in conformity with the contract.

(2) If the obligee is entitled to the temporary use or exploitation of the thing of another person or the protected subject matter of a property right of another person, the obligor shall be liable, throughout the entire duration of the contract, applying the rules on warranty for legal defects accordingly, for ensuring that no right of a third party obstructs or restricts the use or exploitation of the thing or the protected subject matter.

Chapter XXV

Other cases of breach of contract

1. Performance becoming impossible

Section 6:179 *[Performance becoming impossible]*

(1) If performance has become impossible, the contract shall terminate.

(2) The party becoming aware of the fact that the performance has become impossible shall be required to inform the other party of it without delay. Damage arising from failure to provide information shall be compensated by the party who was at fault with respect to that failure.

Section 6:180 *[Liability for performance becoming impossible]*

(1) If neither of the parties is liable for the performance becoming impossible, monetary reimbursement shall be provided for the service provided prior to the termination of the contract. If the other party did not provide the consideration corresponding to the monetary service already performed, the monetary service shall be returned.

(2) If one of the parties is liable for the performance becoming impossible, the other party shall be released from the performance obligation arising from the contract, and may claim compensation for the damage caused to him as a result of the breach of contract.

(3) If both parties are liable for the performance becoming impossible, the contract shall *terminate* and the parties may claim damages from each other *pro rata* to their contribution.

Section 6:181 *[Alternative service becoming impossible]*

(1) If the performance of any of the alternative services becomes impossible, the contract shall be limited to the other services.

(2) If the party not entitled to choose is liable for the service becoming impossible, the service that is possible shall be performed or the legal consequences of the service becoming impossible shall apply subject to the choice of the other party.

Section 6:182 *[Residue of the thing subject to performance becoming impossible]*

If, in the event of the provision of a thing subject to performance becoming impossible, the residue of the thing or a part of it remained in the possession of the obligor or the obligor received or is entitled to claim its replacement value from someone else, the obligee may demand that it be transferred in exchange for the *pro rata* part of the consideration.

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2. Refusal to perform

Section 6:183 *[Refusal to perform]*

If one of the parties refuses to perform without a legitimate reason, the legal consequences of default or the service becoming impossible to perform shall apply subject to the choice of the other party.

3. Failure to make a juridical act

Section 6:184 *[Replacement of a juridical act with a court judgment]*

If the party is required to make a juridical act under a contract and fails to fulfil this obligation, the court shall substitute for this juridical act by a judgment.

TITLE XI

SECURING AND AMENDING CONTRACTS

Chapter XXVI

Securing the contract

1. Earnest money

Section 6:185 *[Earnest money]*

(1) Money paid to the other party is considered earnest money if it has been paid to confirm the assumption of an obligation, and this purpose is clearly evident from the contract.

(2) If the contract is performed, the debt shall be decreased by the amount of the earnest money. In the event of frustration of the contract for a cause for which neither or both parties are liable, the earnest money shall be reimbursed.

(3) The party liable for the frustration of the performance shall lose the earnest money he paid, or shall reimburse twice the amount of the earnest money he received.

(4) Losing the earnest money or reimbursing twice its amount shall not exempt the party from the legal consequences of breach of contract. The amount of the earnest money shall be deducted from the contractual penalty and the damages.

(5) At the request of the obligor, the court may reduce the amount of excessive earnest money.

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2. Contractual penalty

Section 6:186 *[Contractual penalty]*

(1) The obligor may undertake to pay money in case he breaches the contract for a reason for which he is liable. He shall be released from the obligation to pay a contractual penalty if he provides an excuse for his breach of contract.

(2) A contractual penalty shall be set forth in writing.

(3) The obligee may enforce his claim for a contractual penalty irrespective of whether any damage was caused to him by the obligor's breach of contract.

(4) The rules applicable to default interest shall apply to the contractual penalty that was established for the late performance of a pecuniary debt.

Section 6:187 *[Contractual penalty and other breach of contract claims]*

(1) The enforcement of a contractual penalty established for non-performance shall exclude the claim for performance. Payment of a contractual penalty established for default shall not release the defaulter from the performance obligation.

(2) The obligee shall not enforce any warranty claim in addition to a contractual penalty for defective performance.

(3) The obligee may enforce, in addition to the contractual penalty, his damages exceeding the contractual penalty.

(4) The obligee may claim compensation for damages caused by a breach of contract, even if he failed to enforce his contractual penalty claim.

Section 6:188 *[Reduction of the contractual penalty]*

At the request of the obligor, the court may reduce the amount of excessive contractual penalty.

Section 6:189 *[Interest on a contractual penalty claim]*

Imposition of interest on a contractual penalty shall be null and void. The obligor shall be required to pay default interest on the contractual penalty that became due.

3. Setting forth the forfeiture of right

Section 6:190 *[Setting forth the forfeiture of right]*

(1) The parties may set forth in writing that the party liable for the breach of contract will forfeit a right to which he would be otherwise entitled under the contract.

(2) If the forfeiture of right would be excessively burdensome for the obligor then, at his request, the court may mitigate the adverse legal consequences.

Chapter XXVII

Amendment of the contract

Section 6:191 *[Amendment of the contract by the parties]*

(1) The parties may amend by mutual agreement the content of the contract or change the legal title based on which they undertook their obligations.

(2) The part of the contract not affected by the amendment shall remain unchanged. The lien and suretyship securing the obligation shall persist; however, without their consent, the situation of the pledger and the surety shall not become more burdensome.

(3) The provisions on the conclusion of the contract shall apply accordingly to the amendment of the contract.

(4) The content of the contract may be amended unilaterally by one of the parties if this is provided for in the contract, or if the law authorises the party to do so.

Section 6:192 *[Amendment of the contract by court]*

(1) Any of the parties may request the court to amend the contract if, in the permanent legal relationship between the parties, due to a circumstance that occurred after the conclusion of the contract, the performance of the contract with unchanged conditions would harm his substantial legal interest, and

a) the possibility of a change in the circumstances was not foreseeable at the time when the contract was concluded;

b) the change in circumstances was not caused by him; and

c) the change in circumstances falls outside his normal business risk.

(2) The court may amend the contract from the date determined by it, but not earlier than from the date when the claim for the amendment of the contract was enforced at court, and in a manner which prevent the change in circumstances from harming the substantial legal interest of any of the parties.

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TITLE XII

ASSIGNMENT OF CLAIMS, TRANSFER OF RIGHTS, ASSUMPTION OF DEBT AND TRANSFER OF CONTRACT

Chapter XXVIII

Assignment of claims

Section 6:193 *[Assignment of claims]*

(1) The obligee may transfer his claim against the obligor to another person.

(2) For the acquisition of a claim by transfer, a contract for assignment or other legal title, and the assignment of the claim shall be required. Assignment of claims means a contract between the assignor and the assignee, by which the assignee takes over the position of the assignor.

(3) By way of assignment of claims, the rights arising from lien and suretyship securing the claim, as well as the claim for interest, shall pass to the assignee.

Section 6:194 *[Assignable claims]*

(1) A claim can be assigned if the legal relationship from which that claim arises already exists at the time when the assignment is made.

(2) The assigned claim shall be determined by specifying the obligor, the legal title, the amount and the due date, or by any other manner that makes the assigned claim identifiable at the time when the assignment is made, or for future claims, at the time of the establishment of the claim at the latest.

(3) Assignment of a claim that is personally linked to the obligee shall be null and void.

Section 6:195 *[Clauses excluding the assignment of claims]*

(1) Clauses excluding the assignment of claims shall be ineffective towards third parties.

(2) The provision in paragraph (1) shall not affect the assignor's liability for the breach of the clause excluding the assignment of claims. Contract clauses ensuring the right of unilateral termination or setting forth a contractual penalty payment obligation for such a breach of contract shall be null and void.

Section 6:196 *[Information and handover of documents]*

The assignor shall provide the assignee with the information required to enforce the claim, and shall hand over to the assignee any documents in his possession proving the existence of the claim.

Section 6:197 *[Notification of the assignment of claims]*

(1) The assignor shall, in accordance with the choice of the assignee, notify the obligor in writing of the assignment of claims, by indicating the fact of the assignment and the assigned claim, or shall hand over to the assignee the deed of assignment that determines the assignee as well.

(2) After the notification of the obligor, the amendment of the contract between the obligor and the assignor shall be ineffective towards the assignee. The obligor may enforce those objections and set off those counter-claims against the assignee that were created against the assignor on a legal basis which already existed when the notification was given.

(3) The notification of the assignment of claims shall trigger the legal effect referred to in paragraph (2) if it originates from the assignor, or if the assignee verifies, by the deed of assignment or in any other credible way, that the assignment of claims has occurred.

Section 6:198 *[Performance instruction]*

(1) The obligor shall provide performance to the assignor, unless he receives a performance instruction determining the identity of the assignee and the assignee's establishment or, in the absence of such, its seat, or, for a natural person, his place of domicile or, in the absence of

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such, his place of habitual residence or account number. The obligor shall thereafter provide performance in accordance with the performance instruction.

(2) The performance instruction shall trigger the legal effect referred to in paragraph (1) if it originates from the assignor, or if the assignee verifies, by the deed of assignment or in any other credible way, that the claim was assigned to him. If the notification identified the assignee but did not contain any performance instructions, performance instructions may be given by the assignee exclusively.

(3) If the obligor provides performance to the assignor, the assignor shall manage the assets that he has taken into possession as performance of the service separately from his own assets, and shall release them to the assignee without delay. The assignor's creditors shall not claim such assets.

Section 6:199 *[Multiple and subsequent assignment of claims]*

(1) If the assignor assigns the same claim multiple times, the obligor shall be released if he performs in accordance with the performance instruction he received first.

(2) If the assignee further assigns the claim, the obligor shall be released if he performs in accordance with the last performance instruction.

Section 6:200 *[Reimbursement of the obligor's costs]*

The assignor and the assignee shall jointly and severally reimburse the obligor's costs caused by the assignment of claims.

Section 6:201 *[Claims passing by virtue of law]*

If a claim passes to another person by virtue of law, the rules on the assignment of claims shall apply accordingly. In this case, the assignor's liability shall persist if it is set out in an express provision.

Chapter XXIX

Transfer of rights

Section 6:202 *[Transfer of rights]*

(1) The obligee may transfer his right to another person, unless the law excludes the marketability of that right or if its unmarketability can clearly be derived from the nature of the right.

(2) Unless otherwise provided in this Act, for a right to be acquired by transfer, a contract or another legal title for the transfer, and the transfer of the right shall be required. Transfer of rights means the contract between the transferor and the new obligee, by which the new obligee takes over the position of the transferor.

(3) The rules on the assignment of claims shall apply accordingly to the transfer of rights.

(4) If the existence of the right is certified by a publicly certified register then, in addition to the assignment of claims, the registration of the change in the person of the obligee in the register shall be required for the transfer of right.

Chapter XXX

Assumption of debt

Section 6:203 *[Assumption of debt]*

(1) If the obligor and the obligee agree with a third party (for the purposes of this Chapter: "the new debtor") that he takes over the obligor's obligation outstanding against the obligee, the obligee may claim the service exclusively from the new debtor.

(2) The new debtor shall be entitled to all the rights to which the obligor was entitled against the obligee under the contract.

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(3) Upon the assumption of debt, the securities of the claim shall cease to exist. The security shall remain in effect if its obligor grants his consent to the assumption of the debt.

Section 6:204 *[Preliminary consent to the assumption of debt]*

(1) If the obligee makes his juridical act required for the assumption of debt in advance, the assumption of debt shall become effective upon notification to the obligee.

(2) Upon making his juridical act, the obligee may reserve the right to withdraw it.

Section 6:205 *[Assumption of performance]*

If a third party agrees with the obligor on the assumption of the obligor's debt, this third party shall be required to perform the obligor's debt or to bring the obligor into a position enabling him to perform at the due date. The obligee shall not claim the debt from the third party.

Section 6:206 *[Taking over of debt]*

If the parties notify the obligee of the assumption of performance, a joint and several obligation shall arise. In the event of taking over a debt, the joint and several obligor shall be entitled to all the rights to which the obligor was entitled against the obligee under the contract. The person taking over the debt shall not be entitled to set off the obligor's other claims outstanding against the obligee.

Section 6:207 *[Debt passing by virtue of law]*

If a debt passes to another person by virtue of law, the rules on the assumption of debt shall apply accordingly.

Chapter XXXI

Transfer of contract

Section 6:208 *[Legal effects of the transfer of contract]*

(1) The party exiting the contract, the party remaining in the contract and the party joining the contract may agree to transfer all the exiting party's rights and obligations to the party joining the contract.

(2) The party joining the contract shall be entitled to all the rights and shall be subject to all the obligations to which the party exiting the contract was entitled and subject to against the party remaining in the contract. The party joining the contract shall not be entitled to set off other outstanding claims that the party exiting the contract has against the party remaining in the contract. The party remaining in the contract shall not be entitled to set off his other claim outstanding against the party exiting the contract.

(3) The security of the rights passing to the party joining the contract shall remain in effect. The security of the performance of the obligation passing to the party joining the contract shall cease to exist, unless the obligor of the security gives his consent to the transfer of the contract.

Section 6:209 *[Preliminary consent to the transfer of contract]*

(1) If the party remaining in the contract makes the juridical act required for the transfer of contract in advance, the transfer of contract shall become effective upon notification to the party remaining in the contract.

(2) Upon making his juridical act, the party remaining in the contract may reserve the right to withdraw it.

(3) If the obligor of the security makes the juridical act of consent required for the continued effect of the security of the obligation passing to the party joining the contract in advance, his juridical act shall become effective upon notification of the transfer of the contract.

(4) Upon making his juridical act, the obligor of the security may reserve the right to withdraw it.

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Section 6:210 *[Application of the rules on the assignment of claims and the assumption of debt]*

In other respects, with regard to claims and rights, the rules on the assignment of claims, and with regard to obligations, the rules on the assumption of debt shall apply accordingly to the transfer of contract.

Section 6:211 *[Transfer of contract by virtue of law]*

If all rights and obligations of a person arising from a contract pass to another person by virtue of law, the rules on the transfer of contract shall apply accordingly.

TITLE XIII

DISSOLUTION OF CONTRACT BY AGREEMENT OR A UNILATERAL STATEMENT

Section 6:212 *[Dissolution by agreement of the parties]*

(1) By their mutual agreement, the parties may dissolve the contract for the future, or rescind it with retroactive effect as from the date of its conclusion.

(2) In the event of the contract's dissolution, the parties shall owe no further services and shall be required to settle with each other for the services already performed prior to the dissolution.

(3) In the event of the rescission of the contract, the services already performed shall be returned. If the original situation cannot be restored in kind then the contract shall not be rescinded.

Section 6:213 *[Dissolution by unilateral juridical act]*

(1) The person entitled to unilaterally terminate or cancel the contract by virtue of law or on the basis of the contract may dissolve the contract by a juridical act addressed to the other party. In the event of unilateral termination of the contract, the rules on the dissolution of the contract, while in the event of cancellation, the rules on the rescission of the contract shall apply, with the proviso that the party shall only be entitled to cancel the contract if he offers the simultaneous return of the service he received.

(2) If the parties set forth the right of cancellation subject to the payment of a certain amount of money (forfeit money), the court may, at the request of the obligor, reduce the amount of excessive forfeit money.

(3) Unless otherwise provided in this Act, contracts giving rise to permanent legal relationships and concluded for an indefinite period of time may be unilaterally terminated by any of the parties while applying an appropriate notice period. The exclusion of the right of unilateral termination shall be null and void.

Section 6:214 *[Dissolution by court]*

These provisions shall apply accordingly to the dissolution of contracts by the court.

PART THREE

SPECIFIC CONTRACTS

TITLE XIV

CONTRACTS TO TRANSFER OWNERSHIP

Chapter XXXII

General rules on contracts of sale

Section 6:215 *[Contract of sale]*

(1) Under a contract of sale, the seller shall transfer the ownership of a thing, and the buyer shall pay the purchase price and take over the thing.

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(2) If the subject matter of the contract of sale is a real estate, the seller shall be required, in addition to transferring the ownership, to transfer the possession of the thing as well. If the subject of the contract is a real estate, the contract of sale shall be drawn up in writing.

(3) The rules applicable to the sale and purchase of things shall apply accordingly to contracts giving rise to the obligation of transferring rights or claims reciprocally.

Section 6:216 *[Retention of title]*

(1) The seller may retain the title until the payment of the purchase price.

(2) The agreement on the retention of title shall be drawn up in writing.

(3) The seller shall have the retention of title to the real estate recorded in the real estate register, indicating the fact of the retention of title and the identity of the buyer.

(4) The seller shall have the retention of title to movable thing registered in the register of security interests, indicating the fact of the retention of title and the identity of the buyer, or, if the ownership of the movable thing is certified by a publicly certified register and the law makes pledging the movable thing conditional on registration in the register, to have it registered in the relevant register. In the absence of entry into the register,

a) the person acquiring in good faith and for consideration from the buyer shall acquire the ownership of the movable thing by the transfer; and

b) the lien established by the buyer on the movable thing for the benefit of a third party shall be established, even in the absence of the buyer's right of disposal.

Section 6:217 *[Collecting benefits, bearing the burdens and the risk of damage in the event of the sale of real estate]*

If the seller transfers the possession of the real estate to the buyer prior to the buyer's ownership being registered in the real estate register, the buyer shall, as of the date of transferring possession, collect the benefits of the thing and bear its burdens, as well as any damage to the thing, when no one else can be obliged to compensate for such damage.

Section 6:218 *[Costs]*

(1) The seller shall bear the costs related to the transfer of possession and the clarification of the prevailing status indicated in the real estate register.

(2) The costs of the acceptance of the thing and the registration of the change in ownership in the real estate register shall be borne by the buyer.

Section 6:219 *[Passing of the risk of damage in the event of a consumer sale]*

If the seller is an undertaking and the buyer is a consumer, and the seller undertakes to send the thing to the buyer, the risk of damage shall pass to the buyer when the buyer or the third party appointed by him takes possession of the thing. The risk of damage shall pass to the buyer upon handover to the carrier, if the carrier has been commissioned by the buyer, provided that the carrier has not been recommended by the seller.

Section 6:220 *[Legal consequences of the seller's default in the event of consumer sale]*

(1) If the seller is an undertaking and the buyer is a consumer, the seller shall, unless the parties agreed otherwise, make the thing available to the buyer without delay following the conclusion of the contract, but within thirty days at the latest.

(2) In the event of the seller's default, the buyer shall be entitled to set a grace period. If the seller does not perform within the grace period, the buyer shall be entitled to cancel the contract.

(3) The buyer shall be entitled to cancel the contract without setting a grace period if

a) the seller refused to perform the contract; or

b) in accordance with the parties' agreement or due to the recognisable purpose of the service, the contract should have been performed at a specified time of performance and not at another time.

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Chapter XXXIII

Specific types of sale

Section 6:221 *[Right of pre-emption]*

(1) If the owner establishes by contract a right of pre-emption over a certain thing, and he intends to sell the thing by accepting an offer originating from a third party, the obligee of the right of pre-emption shall be entitled to buy the thing before that third party and with the conditions set out in the offer.

(2) If the owner successively grants a right of pre-emption to more than one person over the same thing, the obligees may exercise their rights of pre-emption in the chronological order in which their rights were created.

Section 6:222 *[Communication of the purchase offer to the person entitled to the right of pre-emption]*

(1) If the owner receives a purchase offer from a third party that he intends to accept then, prior to accepting the offer, he shall communicate it in its entirety to the person entitled to the right of pre-emption. The owner shall not be subject to this obligation if fulfilling it would cause extraordinary difficulties or a significant delay due to the place of residence of the entitled person or other circumstances.

(2) The communication of the offer shall qualify as a sale offer made by the owner. The rules applicable to offers made between remote persons shall apply to the binding effect of the offer, with the derogation that the owner shall not set a shorter period for the binding effect of his offer than the period set forth in the general rules of the contract.

(3) If the obligee does not make a statement of acceptance during the period in which the offer is binding, the owner may sell the thing in accordance with the offer made by the third party or under more advantageous conditions with respect to the seller.

(4) If the person entitled to the right of pre-emption accepts the offer in his statement addressed to the owner then the contract shall be established between them.

(5) If more than one person is entitled to the right of pre-emption over the same thing and in the same rank, and more than one of them makes a statement of acceptance, the owner shall inform the obligees of this without delay; the obligees may withdraw their statement of acceptance within eight days of the information becoming effective. Upon the expiry of this time limit, the contract of sale shall be established with the obligees who made an effective statement of acceptance. The obligees who made a statement of acceptance shall acquire co-ownership *pro rata* to their interests with respect to each other. If the ratio of the interests of the obligees who made a statement of acceptance cannot be established, the obligees shall each acquire an equal share of ownership.

Section 6:223 *[Ineffectiveness of a contract concluded by breaching the right of pre-emption]*

(1) If the owner concludes a contract by breaching his obligations arising from the right of pre-emption, the contract concluded in this manner shall be ineffective towards the person entitled to the right of pre-emption.

(2) Claims arising from ineffectiveness may be enforced by the obligee within thirty days of his becoming aware of the conclusion of the contract, subject to the condition that, at the time of enforcing his claim, he is required to make a statement of acceptance with respect to the offer and verify that he is capable of fulfilment. After three years from the conclusion of the contract, the obligee shall not be entitled to enforce claims arising from ineffectiveness.

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Section 6:224 *[Repurchase right]*

(1) If, upon the conclusion of the contract of sale, the parties agree that the buyer grants a repurchase right with respect to the purchased thing, the seller may buy the thing by his statement addressed to the buyer.

(2) The repurchase price shall be determined by the parties in their agreement establishing the repurchase right. In the event of a failure to do so, the obligee may exercise the repurchase right at a purchase price identical to the commercial value of the thing at the time the repurchase right is exercised.

Section 6:225 *[Call option, put option]*

(1) If the owner establishes by contract a call option on a specific thing, the obligee may purchase the thing by his unilateral statement and at the purchase price set in the contract.

(2) If the owner acquires by contract a put option on a specific thing, he may sell the thing by his unilateral statement and at the purchase price set in the contract to the obligor of the put option.

Section 6:226 *[Common rules on the right of pre-emption, repurchase right, call option and put option]*

(1) Contracts establishing the right of pre-emption, repurchase right, call option or put option shall be drawn up in writing.

(2) The right of pre-emption, repurchase right, call option or put option established by a contract on real estate or on a movable property registered in a publicly certified register shall be effective against any person who acquires a right on the thing concerned after the right of pre-emption, repurchase right, call option or put option is registered in the real estate register or the publicly certified register, respectively.

(3) Provisions on the right of pre-emption, repurchase right, call option and put option shall apply to the right of pre-emption, repurchase right, call option and put option arising by virtue of law as well. The right of pre-emption, repurchase right, call option and put option arising by virtue of law shall have priority over the right of pre-emption, repurchase right, call option and put option established by contract.

(4) The obligor of the repurchase right, call option or put option shall be required to refrain from any conduct that would prevent or restrict the exercise of the repurchase right, call option or put option.

(5) The repurchase right, the call option and the put option shall terminate if the thing is destroyed for a reason for which the obligor is not at fault.

Section 6:227 *[Instalment purchase]*

(1) If the parties agree that the buyer pays the purchase price on specified dates and in more than one instalment, but the possession of the thing is transferred to the buyer before the payment of the full purchase price, the seller, subject to his choice, may exercise the right of cancellation or may revoke the entitlement to payment in instalments if the buyer fails to pay the instalment upon its due date. In the event of the first failure to pay the instalment, the seller may exercise this right if he notified the buyer in advance and allowed an appropriate time for performance.

(2) If the seller has cancelled the contract, the buyer shall be required to pay a usage fee for the thing he had possessed under the contract, and shall compensate for any damage that exceeds the loss of value from its designated use.

Section 6:228 *[Purchase upon inspection]*

(1) If the buyer concludes the contract of sale without inspecting the thing that is the subject of the contract, but the parties agree that the buyer is entitled to make a statement on the entry into force of the contract following the inspection of the thing, the seller shall be required to arrange for the inspection of the thing. In this event, the entry into force of the contract shall

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depend on the buyer's statement. The buyer shall not be required to provide reasoning for his statement.

(2) If the seller arranged for the inspection of the thing, he may set an appropriate time limit for the buyer to make his statement. If the buyer fails to meet the time limit specified in the contract or set by the seller for making the statement, the contract shall not enter into force.

(3) The seller's performance shall not be defective if he proves that the buyer has or should have detected the defect during the inspection.

Section 6:229 *[Purchase upon testing]*

(1) If the parties set forth in the contract of sale that the buyer may make a statement within a specified period of time on the entry into force of the contract on the basis of testing the thing that is the subject of the contract, the entry into force of the contract shall depend on the buyer's statement. The buyer shall not be required to provide reasoning for this statement.

(2) If the buyer fails to make the statement within the period usually required for testing the thing or within the time limit set by the seller then the contract shall remain in effect.

(3) The seller's performance shall not be defective if he proves that the buyer has or should have detected the defect during the test period.

Section 6:230 *[Purchase by sample]*

(1) If the parties specify a characteristic of the thing that is the subject of the contract by reference to a sample, the seller shall be required to provide a thing corresponding to the characteristic of the sample to which reference was made.

(2) The seller shall warrant for undetectable defects in the thing, even if the sample already contained that defect.

(3) If the buyer does not present the sample, he shall prove which characteristics the sample had.

Chapter XXXIV

Subtypes of contracts of sale

Section 6:231 *[Forward contract for the sale of things defined by type and quantity]*

(1) If the seller undertakes the obligation to provide in future a thing defined by type and quantity and the parties agree on the range of difference in quantity by which the seller is allowed to provide more or less compared to the quantity determined in the contract, the buyer shall be required to pay the purchase price for the quantity actually provided.

(2) If the seller provided less than the minimum quantity allowed by the quantity difference, the consequences of breach of contract shall apply, taking the quantity determined in the contract into account.

(3) If the seller undertakes the obligation to provide in future a thing defined by type and quantity, the buyer may cancel the contract before the seller offers his performance; if the seller is required to perform the contract in instalments and has already offered the performance of a part of the service, the buyer may terminate the contract with respect to the services not yet offered for performance. The buyer shall be liable for recompense for any damage caused to the seller by exercising his right of cancellation or unilateral termination.

Section 6:232 *[Contract of sale concluded for the provision of self-produced agricultural goods]*

(1) If the seller undertakes the obligation in the contract of sale to provide at a future date self-produced agricultural produce or products, or animals reared or fattened by him then he shall be entitled to provide ten per cent less than the quantity determined in the contract.

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(2) The seller shall be entitled to perform the contract referred to in paragraph (1) prior to the agreed time of performance, provided that he gives advance notice to the buyer allowing him the time required to prepare for the acceptance.

Section 6:233 *[Contract of sale concluded for the provision of agricultural goods produced with the participation of the buyer]*

If the seller undertakes the obligation in the contract of sale to provide at a future date self-produced agricultural produce or products, or animals reared or fattened by him, and the parties agree that the buyer provides services facilitating the performance and also provides associated information to the seller, the seller shall be required to avail of this service in accordance with the information provided. The seller shall be required to pay the consideration determined in the contract for the services provided by the buyer to facilitate performance, and to refund the part of the production advance disbursed by the buyer and not covered by the purchase price, even if the results of production do not cover it.

Chapter XXXV

Barter contract

Section 6:234 *[Barter contract]*

If the parties undertake obligations for the mutual transfer of ownership of things, other rights or claims then the rules on contract of sale shall apply accordingly. In this case, each party shall be the seller with regard to his own service, and shall be the buyer with regard to the other party's service.

Chapter XXXVI

Gifting contract

Section 6:235 *[Gifting contract]*

(1) Under a gifting contract, the gifter shall transfer the ownership of a thing free of charge, and the recipient shall accept the thing.

(2) If the subject matter of the gifting contract is real estate, the gifter shall be required, in addition to transferring the ownership, to transfer the possession of the thing as well. If the subject of the contract is a real estate, the gifting contract shall be drawn up in writing.

(3) The rules applicable to gifting a thing shall apply accordingly to undertaking obligations for the gratuitous transfer of rights or claims.

Section 6:236 *[Refusal to perform]*

The gifter may refuse to perform the contract if he proves that, after the conclusion of the contract, a substantial change has arisen in his own circumstances or in his relationship with the recipient, due to which the performance of the contract cannot be expected of him.

Section 6:237 *[Reclaiming the gift]*

(1) The gifter may reclaim an existing gift if, due to changes that occurred following the conclusion of the contract, it is necessary for his own subsistence and returning the gift does not compromise the subsistence of the recipient. The recipient shall not be required to return the gift if he properly ensures the subsistence of the gifter via an annuity or in-kind maintenance.

(2) If the recipient or his relative living in the same household commits a serious violation of law against the gifter or his close relative then the gifter may reclaim the gift, or may claim the value that replaced the gift.

(3) The gifter may also reclaim the gift, or may claim the value that replaced the gift if the assumption that was known by the contracting parties upon the conclusion of the contract and

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based on which the gifter granted the gift has subsequently been definitively frustrated, and in the absence of this assumption the gifting would not have occurred.

(4) Reclaiming shall not be permitted if the gift or the value that replaced the gift is no longer available when the violation of law was committed, or if the gifter forgave the injury; it shall be considered as granting forgiveness or waiving the right to reclaim if the gifter does not reclaim the gift for a prolonged period of time without an appropriate reason.

(5) Reclaiming gifts of modest value shall not be permitted.

TITLE XV

CONTRACTS AIMED AT PRODUCING A WORK

Chapter XXXVII

Contract to produce a work

1. General rules of contracts to produce a work contracts to produce a work

Section 6:238 *[Contract to produce a work]*

Under a contract to produce a work, the contractor shall create a result (hereinafter "work") by performing certain activities, and the client shall accept it and pay the contractor's fee.

Section 6:239 *[Arrangement of activities]*

(1) The contractor shall arrange conditions for the performance of the activity in a manner that ensures the safe, professional, economic and timely completion of the activity.

(2) If materials are required to create the work, the contractor shall be required to procure them.

Section 6:240 *[The client's right to instruct]*

(1) The contractor shall act in accordance with the client's instructions. Instructions shall not cover the arrangement of activities and shall not make the performance more burdensome.

(2) If the client gives inappropriate or unprofessional instructions, the contractor shall warn him of this. If, despite the warning, the client maintains his instructions, the contractor may cancel the contract or perform the task in accordance with the client's instructions, at the client's risk. The contractor shall be required to refuse to follow the instruction if performing it would lead to the violation of a law or an authority decision, or would endanger others or the property of others.

Section 6:241 *[Place of performing the activities]*

(1) If the activity has to be performed at a work site designated by the client, the client shall be required to make it available to the contractor in a condition suitable for performing the activities.

(2) The contractor may refuse to start carrying out the activities while the work site is unsuitable for performing the activities. If the client fails to provide the work site despite notice from the contractor, the contractor may cancel the contract and claim damages.

(3) If the parties agree that the site designated for the performance of the activities will be made suitable for performance by the contractor then the costs thereof shall be borne by the client.

Section 6:242 *[Client's right of inspection]*

(1) The client may at any time inspect the activities and the materials used.

(2) The contractor shall not be exempted from the consequences of breach of contract on the grounds that the client did not inspect the contractor's activities, or had inspected them inappropriately.

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Section 6:243 *[Coordination of the performance of activities]*

If more than one contractor is working simultaneously or one after the other at the same work site, the client shall be required to create the conditions enabling the economical and coordinated performance of the activities.

Section 6:244 *[Additional work. Supplementary work]*

(1) The contractor shall also perform tasks that are determined in the contract to produce a work but were not taken into account when the contractor's fee was set, and also those without which the creation of the work suitable for its designated purpose cannot occur (additional work).

(2) The contractor shall also perform tasks that were ordered subsequently, in particular those that became necessary due to the amendment of the design, if their performance does not make the work disproportionately more burdensome (supplementary work).

Section 6:245 *[Contractor's fee]*

(1) If the parties agreed on a flat fee, the contractor may claim, in addition to the flat price, the consideration for the supplementary work; however, he shall not be entitled to claim reimbursement for additional work. Nevertheless, the client shall reimburse the costs arising on behalf of the contractor in connection with additional work not foreseeable at the time of conclusion of the contract.

(2) In the case of a contractor's fee determined under a detailed account, the contractor shall be entitled to a consideration for the work he performed.

(3) The contractor's fee shall be due upon the performance of the contract.

Section 6:246 *[Statutory lien]*

To secure the contractor's fee and the costs, the contractor shall be entitled to a lien on the assets of the client's in his possession as a consequence of the contract to produce a work.

Section 6:247 *[Handover and acceptance of services]*

(1) The contractor shall hand over the work in a handover and acceptance process, in the course of which the parties shall perform those tests that are usual in the relevant business sector and are necessary to establish whether performance is in conformity with the contract.

(2) The contractor performs in time if the handover and acceptance commences within the time determined for performance in the contract. The duration of the handover and acceptance shall be thirty days. For contracts between undertakings and for contracts concluded by contracting authorities as clients with undertakings not qualifying as contracting authorities, the contractor may contest the contract term, as an unfair clause, that departs unilaterally and unreasonably, to the detriment of the contractor and by violating the principle of good faith and fair dealing, from the provision determining the duration of the handover and acceptance.

(3) The acceptance of the work shall not be refused if the work's defect or its repair or replacement does not prevent the designated use.

(4) If the client does not carry out the handover and acceptance process, the legal effects of the performance shall arise on the basis of the actual taking into possession.

(5) If, for the performance of the contract, the contractor is required to transfer the ownership of a thing then the ownership of the thing shall be transferred to the client upon the handover of the work and the payment of the consideration.

Section 6:248 *[The contract becoming impossible]*

(1) If performance becomes impossible for a reason for which neither of the parties is liable, and

a) the reason for becoming impossible occurred within the contractor's sphere of interest, the contractor shall not claim remuneration;

b) the reason for becoming impossible occurred within the client's sphere of interest, the contractor shall be entitled to the contractor's fee; however, the client may deduct the amount

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of the costs saved by the contractor due to the performance becoming impossible, as well as the amount the contractor earned or could have earned elsewhere without difficulty in the time freed up;

c) the reason for becoming impossible occurred within or outside of both parties' spheres of interest, the contractor shall be entitled to the *pro rata* fee of the work performed and costs.

(2) In the event of becoming impossible, the client may require the contractor to hand over the commenced but unfinished work; in such a case, the rules of unjustified enrichment shall apply.

Section 6:249 *[Cancellation, unilateral termination]*

(1) Prior to the commencement of the contract performance, the client may cancel the contract at any time; following this and up to the performance, he may unilaterally terminate the contract.

(2) In the event of the client's cancellation or unilateral termination, he shall pay the *pro rata* fee to the contractor and compensate for the damage caused by the dissolution of the contract, with the proviso that the recompense shall not exceed the contractor's fee.

Section 6:250 *[Contract to produce a gratuitous work]*

(1) The provisions of this Chapter shall apply accordingly to contracts to produce a work under which the client is not required to provide consideration.

(2) If the contractor undertakes to provide the service free of charge, the client shall reimburse the contractor's costs.

2. Design contract

Section 6:251 *[Design contract]*

(1) Under a design contract, the contractor shall perform design work and to hand over the design documentation, and the client shall accept it and pay the fee.

(2) The design documentation shall contain technically feasible, economical and expedient solutions, and shall be capable of satisfying the client's recognisable needs that follow from the intended usage.

(3) Rights arising from a breach of contract due to a design error may be enforced until it is possible to enforce the rights arising in connection with the defective performance, linked to the design error, of the service carried out on the basis of the design.

(4) The designer shall be liable under the warranty for legal defects for third parties not having any rights preventing or restricting the use of the design.

3. Construction contract

Section 6:252 *[Construction contract]*

(1) Under a construction contract, the contractor shall perform construction and installation works and hand over the created work, and the client shall accept it and pay the fee.

(2) Preparing the design documentation required for the performance of the work and obtaining authority permits shall be the obligations of the client.

(3) Prior to the conclusion of the contract, the contractor shall examine the design documentation provided by the client, and shall warn the client of the recognisable errors and deficiencies in the design. If an error or deficiency of the design becomes recognisable during the construction process, the contractor shall be required to inform the client of this without delay.

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4. Research contract

Section 6:253 *[Research contract]*

(1) Under a research contract, the researcher shall create a result by performing research activities, and the client shall accept it and pay the fee.

(2) The researcher may use a vicarious agent subject to the consent of the client. No consent shall be required if the use of a vicarious agent is implied in the nature of the research.

(3) If the result is subject to copyright protection or can be granted industrial property protection, the researcher shall be required to transfer the property rights arising from the protection to the client. If the law excludes the transfer of property rights, the researcher shall be required to license the widest utilisation rights permitted.

(4) The exclusion or restriction of warranty for legal defects in research contracts shall be null and void.

(5) The client shall be the holder of trade secrets related to the contract. The client's prior consent shall be required for the intellectual creation created on the basis of the research work to be published.

(6) If the parties agree that the fee is due even if the completion of the research produced no result, the rules on agency shall apply to the performance of the research and to the researcher's fee claim.

5. Travel contract

Section 6:254 *[Travel contract]*

(1) Under a travel contract, the contractor shall organise the journey and the stay at certain stops on the route, as well as provide associated services, and the client shall accept the services and pay the fee.

(2) Clients not qualifying as consumers shall be considered consumers in terms of fee discount or the statute of limitations with respect to claim for damages.

(3) Prior to the start of the journey, the client may transfer his rights and obligations arising from the travel contract to any third party fulfilling the conditions determined in the travel contract.

(4) The client and the third party shall be jointly and severally liable for obligations occurring before the transfer of the rights and obligations, as well as for the additional costs arising from the transfer.

(5) Contract clauses departing from the provisions of this section to the detriment of the client shall be null and void.

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6. Contract to produce an agricultural work

Section 6:255 *[Contract to produce an agricultural work]*

(1) Under a contract to produce an agricultural work, the contractor shall rear an animal owned by the client or produce crops on the land owned by the client, and the client shall pay the fee.

(2) The contractor shall not be liable for the contract becoming impossible due to an animal or crop disease, if the reason for this disease was outside of his control and it was unpreventable. In this event, the contractor shall be entitled to a *pro rata* fee.

(3) The producer shall not refuse to refund the services provided by the client for settlement or as an advance payment on the grounds that they cannot be covered by the results of production.

7. Public service contract

Section 6:256 *[Public service contract]*

(1) Under a public service contract, the service provider shall provide services of general economic interest, and the user shall pay the fee.

(2) The service provider shall be under the obligation to conclude the contract.

(3) The user shall pay the fee on a monthly basis in arrears.

Chapter XXXVIII

Contract of carriage

Section 6:257 *[Contract of carriage]*

Under a contract of carriage, the carrier shall transport the consignment to its destination and deliver it to the consignee, and the consignor shall pay the fee.

Section 6:258 *[Consignment note]*

(1) Upon the instruction of the consignor, the carrier shall be required

a) to issue a consignment note and to hand over a copy of it to the consignor; or

b) to issue a receipt of the delivery of the consignment.

(2) Until proven to the contrary, the consignment note issued by the carrier proves the formation of the contract of carriage, the takeover of the consignment, and, in the absence of a reservation made by the carrier in the consignment note, that the consignment and its packaging was in a good external condition upon takeover, and that the number of consignments is the same as communicated in the consignment note, if the consignment note has been signed by both the consignor and the carrier, and the consignment note contains

a) the place and time of taking over the consignment;

b) the name and address of the consignor, the consignee and the carrier;

c) the place of delivery;

d) the name and packaging method of the consignment, and the indication of its hazard category in accordance with the relevant method of carriage, the number of items, marking and its number, weight or its quantity expressed in another way.

(3) It shall be considered a reservation made by the carrier if he indicates in the consignment note, also specifying the reason, that the verification of the data determined in paragraph (2) *d)* was impossible through no fault of his own.

Section 6:259 *[Packaging; documents]*

(1) The consignor shall be required

a) to package the consignment in such a way that the packaging protects the consignment, and does not endanger others and the property of others;

b) to indicate on the packaging, in the absence of such on the consignment, the information required for handling the consignment during carriage; and

c) to hand over the documents required for transporting and handling the consignment to the carrier.

(2) If it is obvious that the packaging or the information required for handling the consignment is inadequate, or the consignor does not hand over the documents required for transporting and handling the consignment, the carrier may refuse the takeover of the consignment. If the consignor fails to remedy that deficiency without delay, the carrier may cancel the contract.

(3) If the deficiencies of the packaging or the information required for handling the consignment become obvious after the takeover of the consignment, the carrier shall be required to inform the consignor of this circumstance without delay. In the absence of an

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express instruction given by the consignor with respect to transport, the carrier shall not be required to transport the consignment. If the consignor gives an instruction for transporting the consignment, the carrier may demand adequate security against eventual damage arising from deficiencies in the packaging or the information required for handling the consignment, or for the event that his liability towards another party might arise. If the consignor does not give instructions or does not provide adequate security, the carrier may unilaterally terminate the contract.

(4) The carrier shall use the documents provided in accordance with the consignor's instructions.

Section 6:260 *[Carriage of hazardous goods]*

If the consignment involves hazardous goods, the consignor shall be required to communicate to the carrier the hazard category of the goods in accordance with the relevant method of carriage, as well as the information required to prevent the hazard. In the absence of such, the carrier may refuse to take the goods over.

Section 6:261 *[Providing the vehicle for carriage and loading the consignment]*

(1) The carrier shall provide the vehicle for carriage in a condition that is fit for carriage at the time and place determined in the contract, and shall commence carriage without delay.

(2) The consignor shall load the consignment. If the consignee fails to offload the consignment, the carrier shall be allowed to carry out the offloading at the cost of the consignor.

(3) With respect to loading and offloading, the carrier shall have the right to instruct with regard to the placement of the consignment.

Section 6:262 *[The consignor's right of cancellation prior to the commencement of carriage]*

The consignor may cancel the contract prior to the commencement of carriage.

Section 6:263 *[Impediment of carriage]*

(1) If the carriage encounters an obstacle, the carrier shall inform the consignor without delay and, if necessary, request instructions.

(2) The consignor shall pay the *pro rata* carriage fee up to the obstacle being encountered, if its non-payment would result in his enrichment, or if the carrier proves that the impediment was caused by a circumstance that was outside of his control and was not foreseeable at the time of concluding the contract, and he could not be expected to have avoided that circumstance or averted the damage.

Section 6:264 *[Right of disposal]*

(1) Until the delivery of the consignment or the consignee's disposal over the consignment, the consignor shall be entitled to a right of disposal over the consignment.

(2) The carrier may make the fulfilment of the instruction of the consignor given after the commencement of carriage conditional upon the provision of adequate security, if it would make the performance of carriage more burdensome. If the consignor does not provide adequate security, the carrier shall be required to act in accordance with the requirement of commercial reasonableness, also taking the interests of the consignor and the consignee into account. In such cases, the carrier shall also be entitled to sell the consignment.

(3) Until proven to the contrary, it shall be presumed that the sale of the consignment is carried out in accordance with the requirement of commercial reasonableness, if the sale takes place

a) on the stock exchange and at the price applicable at the date of the sale; or

b) in a manner usually applied during the trade of that consignment on the given market.

(4) If the carrier sells or uses the consignment, he shall be required to notify the consignor of it.

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(5) Paragraphs (2) to (4) shall apply accordingly if the carrier requests an instruction following the commencement of carriage and in connection with the performance of carriage, and the consignor fails to give the instruction in a timely manner, or if the carrier makes the fulfilment of the instruction conditional upon the provision of adequate security, and the consignor fails to comply with this.

Section 6:265 *[Notice of the arrival of the consignment]*

(1) The carrier shall notify the consignee of the arrival of the consignment without delay. After receiving the notification, the consignee shall be entitled to avail of the consignment.

(2) An instruction issued by the consignee prior to the arrival of the notification under paragraph (1) may be taken into account by the carrier to the extent that it is not in conflict with the consignor's instruction. The carrier may make the fulfilment of the instruction issued by the consignee conditional upon the provision of adequate security, if fulfilling it would make the carrier's obligation more burdensome. The carrier may refuse to fulfil the consignee's instruction if the consignee does not provide adequate security.

Section 6:266 *[Carriage fee]*

(1) If the charge is to be established on the basis of the data entered into the consignment note, the data entered into the consignment note shall be considered, until proven to the contrary, precise and appropriate even if the carrier made a reservation in the consignment note that he could not verify the data.

(2) In the event of the full or partial loss or destruction of the consignment, the carrier shall not be entitled to a carriage fee or its *pro rata* part, unless he proves that the loss or destruction of the consignment was caused by a circumstance that was outside of his control and was not foreseeable at the time of concluding the contract, and he could not be expected to have avoided that circumstance or averted the damage.

Section 6:267 *[Statutory lien]*

To secure the freight charge and the costs, the carrier shall be entitled to a lien on the things entered into his possession in connection with the carriage, or over which he disposes on the basis of deeds. The lien shall also secure the carrier's undisputed, outstanding and past due claims against the consignor that arise from another contract of carriage.

Section 6:268 *[Liability of the carrier]*

(1) Clauses excluding or restricting the carrier's liability shall be null and void, even if they concern damage caused by the gross negligence of the carrier.

(2) If the carrier transports the consignment using more than one method of carriage, the rules of the relevant carriage sector shall apply to his activities concerning his individual methods of carriage. If the place where the damage occurred cannot be identified, the provisions of this Chapter shall apply to the carrier's liability.

(3) If the consignor is a foreigner, damages to be paid by the carrier shall not exceed the highest amount of damages that can be paid under the law of the consignor's state.

(4) The consignment shall qualify as lost if the carrier fails to deliver it within thirty days following the expiry of the carriage time limit. If the consignment is found following the payment of damages, the carrier shall be required to notify the consignor within the shortest possible time that is allowed by the circumstances, and the consignor shall be entitled to avail of the consignment.

Section 6:269 *[Liability of the consignor]*

The consignor shall be liable towards the carrier for damage arising from inappropriate or incomplete packaging or from the lack, deficiency or inaccuracy of data, information and documents related to the consignment.

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Section 6:270 *[Statute of limitations of claims]*

Claims arising from contract of carriage shall lapse after one year, except in the event of damage caused intentionally or by gross negligence. The starting date of the statute of limitations shall be the date of the consignment's delivery to the consignee, or the time when the consignment should have been delivered to the consignee. These provisions shall also apply if the carrier transports the consignment by using more than one method of carriage.

Section 6:271 *[Application of the rules on contracts to produce a work]*

Unless otherwise provided in this Chapter, the rules on contracts to produce a work shall apply accordingly to contracts of carriage.

TITLE XVI

AGENCY-TYPE CONTRACTS

Chapter XXXIX

Agency contract

Section 6:272 *[Agency contract]*

Under an agency contract, the agent shall perform the tasks entrusted to him by the principal, and the principal shall pay the agency fee.

Section 6:273 *[Instruction]*

(1) The agent shall follow the instructions of the principal.

(2) The agent may only deviate from the instructions of the principal if it is unconditionally necessary in the interest of the principal, and he cannot be notified in advance. In such an event, the principal shall be notified without delay.

(3) If the principal gives inappropriate or unprofessional instructions, the agent shall warn him of this. If, despite the warning, the principal maintains his instructions, the agent may cancel or unilaterally terminate the contract, or perform the task in accordance with the principal's instructions, at the principal's risk. The agent shall be required to refuse to follow the instruction if performing it would lead to the violation of a law or an authority decision, or would endanger others or the property of others.

(4) The principal shall reimburse the costs incurred in relation to the performance of the instruction. The agent may make the fulfilment of the instruction conditional upon the provision of an adequate security. If the principal does not provide adequate security, the agent may refuse to fulfil the instruction.

Section 6:274 *[Right of representation]*

If, for the performance of the agency, it is necessary to conclude a contract or make other juridical acts, agency shall include an authorisation as well.

Section 6:275 *[Obligation to provide information]*

(1) The agent shall inform the principal of his activities and the status of the performance of the task at the principal's request, or without it, if necessary. The agent shall inform the principal if the use of a vicarious agent becomes necessary or if new circumstances have arisen, which justify the amendment of the instructions.

(2) The agent shall inform the principal of the performance of the mandate without delay.

Section 6:276 *[Agency fee]*

(1) The agent shall be entitled to an agency fee, even if his performance did not produce results, except if the results were not produced at all or partly because he was at fault.

(2) The agency fee shall be due upon the performance of the contract. If the contract terminated prior to the completion of the agency, the agent may claim an agency fee *pro rata* to his activities.

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(3) The agent shall advance the costs that are usually related to the performance of the agency.

(4) Upon the termination of the contract, the principal shall release the agent from the obligations undertaken towards third parties on the basis of the mandate, and shall reimburse his necessary and justified costs.

Section 6:277 *[Statutory lien]*

To secure the agency fee and the costs, the agent shall be entitled to a lien on the assets of the principal entered into his possession as a consequence of the agency.

Section 6:278 *[Unilateral termination]*

(1) The contract may be unilaterally terminated by either of the parties.

(2) If the contract has been unilaterally terminated by the principal, he shall compensate the agent for the damage caused by the unilateral termination, except if the contract has been unilaterally terminated due to the agent's breach of contract.

(3) If the contract has been unilaterally terminated by the agent at an inappropriate time, he shall compensate the principal for the damage caused by the unilateral termination, except if the contract has been unilaterally terminated due to the principal's breach of contract.

(4) The limitation or exclusion of the right of unilateral termination shall be null and void. In the event of a long-term agency relationship, the parties may agree to limit the right of unilateral termination and may also determine that the right of ordinary unilateral termination may not be exercised prior to a specified date.

Section 6:279 *[Settlement]*

Upon the termination of the contract, the agent shall release to the principal everything that he obtained for the purpose of fulfilling his mandate, or as a result of his performance, except for those things that he used lawfully under the agency.

Section 6:280 *[Gratuitous agency contract]*

(1) The provisions of this Chapter shall apply accordingly to agency contracts under which the principal is not required to provide consideration.

(2) If the agent undertakes to perform the task free of charge, the principal shall reimburse the agent's costs.

Chapter XL

Commission contract

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Section 6:281 *[Commission contract]*

Under a commission contract, the commission agent shall conclude contracts of sale for movables for the benefit of the principal and on his own behalf, and the principal shall pay the fee.

(2) The provisions of this Chapter shall apply accordingly to commission contracts under which the commission agent undertakes to conclude other contracts.

(3) The commission contract shall be null and void if, under that contract, the commission agent is required to acquire ownership of a real estate.

Section 6:282 *[Legal status of the commission agent]*

(1) The commission agent shall enjoy the rights and be subject to the obligations arising from a contract of sale concluded under the commission contract towards the party contracting with the commission agent.

(2) The commission agent shall be liable for the fulfilment of obligations to which, under the contract, the party contracting with him is subject, if he has explicitly undertaken to do so.

(3) The creditors of the commission agent shall not claim

a) the outstanding claims of the principal against the party contracting with the commission agent;

b) things purchased by the commission agent in the event of a commission for purchase;

c) amounts of money transferred to the commission agent and kept or managed separately, if it can be established that the principal is entitled to these amounts.

Section 6:283 *[Acquisition of ownership]*

(1) In the event of a commission for purchase, the commission agent shall transfer the ownership of the movable thing acquired in the course of performing the contract to the principal upon settlement.

(2) In the event of a commission for sale, the commission agent shall be entitled to transfer the ownership of the movable thing owned by the principal.

Section 6:284 *[Commission fee]*

The commission agent shall be entitled to a fee if the contract of sale has been concluded, or if the conclusion of the contract did not occur due to circumstances arising in the principal's sphere of interests.

Section 6:285 *[Right to join the contract]*

(1) The commission agent may himself conclude the contract of sale with the principal, provided that the commercial value of the thing can clearly be established on the basis of publicly available information.

(2) Even if he joins the contract, the commission agent shall conclude the contract on terms that are the most beneficial for the principal.

(3) Upon settlement, the commission agent shall inform the principal if the contract of sale with the principal has been concluded by him.

(4) The commission agent's claim for the fee shall not be affected by the fact that he concluded the contract with the principal. In other respects, in the event of the commission agent joining the contract, the rules on contracts of sale shall apply to the relationship between the principal and the commission agent.

Section 6:286 *[Derogation from the terms of the commission contract]*

(1) If the commission agent concludes the contract of sale on terms more beneficial to the principal than those determined in the commission contract, the principal shall be entitled to the resulting benefits.

(2) If the commission agent concludes the sale below the price determined in the commission contract then he shall reimburse the difference in price to the principal, except if he proves that the contract of sale could not be concluded at the determined price, and he saved the principal from harm via the sale and also that he was unable to notify the principal in time.

(3) If the commission agent deviates substantially from the terms determined in the commission contract then he shall notify the principal of that deviation. Following the notification and without delay the principal shall be entitled to reject the contract of sale, except if the commission agent made the purchase at a price higher than the one determined in the contract but reimburses the difference in value.

Section 6:287 *[Application of the rules on agency contracts]*

Unless otherwise provided in this Chapter, the rules on agency contracts shall apply accordingly to commission contracts.

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Chapter XLI

Brokerage contract

1. General rules on brokerage contracts

Section 6:288 *[Brokerage contract]*

Under a brokerage contract, the broker shall carry out activities facilitating the conclusion of a contract between the principal of the broker and a third party, and the principal shall pay the fee.

Section 6:289 *[Scope of the broker's right of representation]*

Unless otherwise provided in this Act, the broker shall not be entitled to conclude on behalf of his principal the contract mediated by him, nor shall he be entitled to accept performance under that contract.

Section 6:290 *[Obligation to provide information]*

The broker shall inform the principal if he carries out brokerage activities for third parties.

Section 6:291 *[The broker's fee]*

(1) The fee shall become due upon the conclusion of the mediated contract.

(2) The broker shall be entitled to the fee even if the mediated contract is concluded after the brokerage contract terminates.

Section 6:292 *[Application of the rules on agency contracts]*

Unless otherwise provided in this Chapter, the rules on agency contracts shall apply accordingly to brokerage contracts.

2. Long-term brokerage contract

Section 6:293 *[Special rules on brokers acting independently]*

(1) Under a brokerage contract and within the framework of a long-term legal relationship, the broker, acting independently, shall mediate contracts to be concluded between his principal and third parties, and to conclude those contracts on behalf of his principal, and the principal shall pay the fee.

(2) Persons acting independently shall be those who carry out the activity under paragraph (1) under a relationship other than an employment relationship, legal relationship of an executive officer or any other relationship established by law, court or authority decision entitling him to represent a legal person.

(3) For the purposes of this Chapter a legal relationship is considered long-term if the broker is required to

a) mediate the conclusion of multiple contracts; or

b) mediate the conclusion of a contract, and maintain or renew the legal relationship.

(4) If the contract is drawn up in writing, the party shall hand over a copy of the contract and its amendment at the request of the other party; any deviation from this provision and waiver of this right shall be null and void.

Section 6:294 *[Scope of the broker's right of representation]*

If the broker is entitled to conclude the contract mediated by him, his right of representation shall include making any juridical act that is usually attached to the performance of mediated contracts. This right shall not include the rights to amend contracts already concluded, to take over money and to determine the time limit for payment.

Section 6:295 *[Obligations of the principal]*

(1) The principal shall, at his own expense, provide the broker with all the information and assistance needed for the broker to fulfil his obligations. In this context, documents related to the subject matter of the contract shall in particular be made available to the broker.

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(2) The principal shall notify the broker without delay if he is able or willing to conclude contracts in a substantially smaller amount than the broker could have expected.

(3) The principal shall notify the broker without delay of the acceptance or rejection of the contract mediated by him, and if the performance of the contract did not occur.

(4) Any derogation by the parties from the provisions of paragraphs (1) to (3) shall be null and void.

Section 6:296 *[Duration of the contract]*

A contract concluded for a definite period shall transform into a contract concluded for an indefinite period if, following the expiry of the definite period, the parties continue to perform the services under the contract.

Section 6:297 [*Unilateral termination of the contract*]

(1) The brokerage contract concluded for an indefinite period may be unilaterally terminated by either of the parties for the last day of the calendar month. The notice period shall be one month for the first year of the contract, two months for the second year of the contract and three months for the third and subsequent years of the contract. Providing for a shorter notice period shall be null and void.

(2) If the parties agree on a notice period longer than those provided in paragraph (1), the notice period for the principal shall not be shorter than the notice period for the broker. Any agreement between the parties derogating from this provision shall be null and void.

(3) If a contract concluded for a definite period transforms into a contract concluded for an indefinite period, the entire duration of the contract shall be taken into account when calculating the notice period.

Section 6:298 *[Recompensing the broker]*

(1) In the event of the termination of the brokerage contract, the principal shall recompense the broker, if such recompense is fair, taking all the circumstances related to the contract into account, and considering that, as a consequence of the termination of the contract, the broker loses his entitlement to the commission which would be due to him from deals negotiated or to be negotiated in the future with the given clients if the contract continued, provided that

a) by establishing business contacts, the broker has attracted new clients for the principal, or improved existing business contacts in a way equivalent to acquiring a new client, if the principal obtains significant benefits through these contacts even after the termination of the contract; or

b) he has completed the mandate to establish a permanent legal relationship, but loses his continuous remuneration due to the termination of the contract.

(2) The amount of recompense shall not exceed the yearly amount calculated from the average of the remuneration received by the broker in the last five years preceding the termination of the contract; or, in the event of a brokerage contract concluded for a period shorter than five years, the yearly amount calculated from the average of the remuneration received during the contract period.

(3) Claims for recompense may be enforced within a term of preclusion of one year.

(4) Recompense shall not affect the broker's claim for damages and his claim for remuneration due for an agreement limiting his economic activities following the termination of the contract.

Section 6:299 *[Exclusion of recompense]*

Recompense shall not be due to the broker if

a) the contract was unilaterally terminated by the broker, except if the unilateral termination was based on circumstances under the control of the principal, or on the age or health condition of the broker, due to which he could not be expected to carry out his activities; or

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b) under the contract concluded with the principal, the broker transfers his rights and obligations determined in the contract to another person.

Section 6:300 *[Mandatory nature of the rules on recompense for the benefit of the broker]*

Any agreement between the parties reached prior to the termination of the contract that derogates from the provisions on the recompense of the broker to his detriment shall be null and void.

Section 6:301 *[Competition restriction following the termination of the contract]*

(1) The agreement restricting the broker from the exercise of his economic activities following the termination of the contract shall be drawn up in writing.

(2) The agreement restricting the broker from the exercise of his economic activities shall be determined for not more than two years following the termination of the contract; clauses determining a restriction exceeding two years shall be null and void.

(3) The agreement restricting the broker from the exercise of his economic activities shall be null and void to the extent that it departs from the geographic area, range of customers or type of goods specified in the brokerage contract.

Chapter XLII

Freight forwarding contract

Section 6:302 *[Freight forwarding contract]*

Under a freight forwarding contract, the freight forwarder shall conclude contracts and make juridical acts on his own behalf and for the benefit of the principal in connection with the forwarding of consignments, and the principal shall pay the fee.

Section 6:303 *[Enforcement of claims]*

The freight forwarder shall enforce the principal's claims against the carrier and the vicarious agents used by the freight forwarder, and, if instructed by the principal, he shall do so at the expense and risk of the principal. The freight forwarder shall make the statements that are necessary to protect the principal's rights, even in the absence of an instruction.

Section 6:304 *[Self-contracting]*

The freight forwarder may also perform the carriage himself.

Section 6:305 *[Commission]*

The freight forwarder shall be entitled to the subsequent carriage fee discount or business commission that was given to him by the carrier for the forwarded consignments.

Section 6:306 *[Statute of limitations]*

Claims arising from the freight forwarding contract shall lapse after one year, except in the event of damage caused intentionally or by gross negligence.

Section 6:307 *[Liability of the freight forwarder]*

(1) Provisions on the liability of the carrier shall apply to the liability of the freight forwarder, if

a) he forwarded the consignment together with the consignments of others and using the same means of transport, and the damage occurred for this reason;

b) the consignment in his possession has been lost or damaged.

(2) If the principal is a foreigner, damages to be paid by the freight forwarder shall not exceed the highest amount of damages that can be paid under the law of the principal's state.

Section 6:308 *[Liability of the principal]*

(1) The principal shall be liable for any damage arising from his instructions, the inappropriate packaging or marking of the consignment, or from the deficiency, inaccuracy or lack of data, documents or information provided by him.

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(2) If there is a risk of claims from third parties, the freight forwarder may demand adequate security from the principal. If the principal does not provide adequate security, the freight forwarder may unilaterally terminate the contract.

Section 6:309 *[Application of the rules on commission and carriage]*

Unless otherwise provided in this Chapter, the rules on commission contracts shall apply accordingly to the legal relationship between the freight forwarder and the principal, and the rules on contracts of carriage shall apply accordingly to the obligation of providing information in connection with the consignment, to the handling, protection and forwarding of the consignment, to the lien to which the freight forwarder is entitled as well as to the statute of limitations of claims arising from the contract of carriage.

Chapter XLIII

Fiduciary asset management contract

Section 6:310 *[Fiduciary asset management contract]*

(1) Under a fiduciary asset management contract, the trustee shall manage on his own behalf and for the benefit of the beneficiary the things transferred to his ownership, as well as the rights and obligations transferred to him by the settlor (hereinafter "trust property"), and the settlor shall pay the fee.

(2) The contract shall be drawn up in writing.

Section 6:311 *[Determining the beneficiary]*

(1) The settlor shall determine the beneficiary and the conditions of the establishment and termination of the beneficiary's entitlement. The beneficiary may also be determined by reference to a group of beneficiaries.

(2) The settlor may stipulate that in the case of specified circumstances occurring or upon the lapse of a specified period of time, the trust property is to pass fully or partly to him, to his legal successors or to a specified third party.

(3) If the contract entitles the trustee to appoint the beneficiary, the trustee shall have the right to determine the share of the beneficiary.

(4) The appointment of the trustee as the sole beneficiary shall be null and void.

(5) The beneficiary's entitlement shall cease to exist if the beneficiary enforces a claim against the trust property under a title different from the one determined in the contract.

Section 6:312 *[Separating property]*

(1) The trust property shall form property separated from the property of the trustee and from other properties managed by him, and the trustee shall keep a separate record of it. Any provision by the parties derogating from this shall be null and void.

(2) Unless proven to the contrary, the assets registered by the trustee as trust property separated from his property and from other trust properties held by him shall be considered to be part of the trust property.

(3) Any asset, sum insured, damages or other valuables that replace a managed asset from the trust property, and any benefits generated by these shall be part of the trust property, even if they do not appear in the records.

(4) Unless proven to the contrary, the assets not registered by the trustee as part of the trust property shall be considered to be part of the trustee's own property.

Section 6:313 *[Safeguarding trust property]*

(1) The spouse, cohabitant and personal creditors of the trustee, or creditors of other trust properties held by the trustee, shall not lay a claim against the trust property. The trust property shall not form part of the trustee's estate.

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(2) The beneficiary and the settlor may also come forward against the spouse, cohabitant and personal creditors of the trustee, or against the creditors of other trust properties held by the trustee, to request the separation of the trust property.

Section 6:314 *[Claim of the beneficiary and his creditors]*

(1) Under the contract, the beneficiary may claim that the trustee releases the trust property and its benefits.

(2) The creditors of the beneficiary may lay a claim against the beneficiary's assets from the time when the release of those assets or their benefits becomes due.

Section 6:315 *[Right of inspection]*

The settlor and the beneficiary may inspect the activities of the trustee concerning asset management. The costs of the inspection shall be borne by the settlor and the beneficiary, respectively.

Section 6:316 *[The absence of the right to instruct]*

The settlor and the beneficiary shall not instruct the trustee; instructions conflicting with this prohibition shall be null and void.

Section 6:317 *[Increased requirements regarding the trustee]*

(1) The trustee shall act in accordance with the increased requirements arising from the fiduciary nature of the legal relationship, primarily taking the interests of the beneficiary into account.

(2) The trustee shall safeguard the trust property against predictable risks, in accordance with the requirement of commercial reasonableness.

Section 6:318 *[The trustee's right of disposal]*

(1) Management of assets shall include the exercise of rights arising from the ownership and other rights and claims transferred to the trustee, and the fulfilment of obligations arising from them.

(2) The trustee may avail of the assets that are part of the trust property under the terms and limitations determined in the contract.

(3) If the trustee breaches his obligation under paragraph (2) and carries out the unauthorised transfer of any asset that is part of the trust property to a third party, the settlor and the beneficiary may claim that the asset be returned to the trust property if the third party has not been acting in good faith or has not acquired the asset reciprocally. This rule shall apply accordingly to the unauthorised encumbrance of an asset in the trust property.

Section 6:319 *[Obligation of confidentiality]*

(1) The trustee shall keep confidential all facts, information or other data of which he becomes aware in the framework of or in connection with his mandate as a trustee. This obligation is independent from the creation of the trustee relationship, and shall also stand following the termination of his fiduciary trustee mandate.

(2) The settlor and his legal successor may grant exemption from the obligation of confidentiality.

Section 6:320 *[Obligation to provide information and reporting obligation]*

(1) The trustee shall provide information on the trust property at the request of the settlor or the beneficiary. The information shall cover in particular the actual and expected growth in the trust property, the asset elements that are part of the trust property, their value, and the obligations undertaken with respect to the trust property.

(2) If requested so, the trustee shall report on his asset management activities, and shall account for the trust property to the settlor or the beneficiary.

(3) The costs of fulfilling the obligation to provide information and the reporting obligation shall be borne by the settlor or the beneficiary.

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Section 6:321 *[The trustee's liability towards the settlor and the beneficiary]*

(1) The trustee shall be liable towards the settlor or the beneficiary for infringing his obligations in accordance with the general rules on liability for damage caused by breach of contract.

(2) If the trustee performs his tasks for no consideration, his liability shall be governed by the rules on liability for damage caused by breach of gratuitous contracts.

(3) The settlor and the beneficiary may require any material gain obtained by the trustee by infringement of the asset management obligations to be managed as part of the trust property.

Section 6:322 *[The trustee's claim for costs and fees]*

(1) If the trustee performs his tasks for no consideration, he may claim the reimbursement of his costs usually arising in the context of asset management.

(2) The trustee may obtain direct satisfaction from the trust property for his fee and justified costs, and for his other claims arising from the asset management relationship.

Section 6:323 *[The trustee's liability for his obligations undertaken towards third parties]*

(1) The trustee shall be liable with the trust property for the fulfilment of his obligations.

(2) The trustee shall have unlimited liability with his own property for satisfying claims arising from obligations undertaken with respect to the trust property, if those claims cannot be satisfied from the trust property and the other party did not know and was not expected to know that the obligation undertaken by the trustee exceeded the limits of the trust property.

Section 6:324 *[Multiple trustees]*

(1) If the settlor appoints multiple trustees, the trustees shall act together and make decisions jointly.

(2) If the trustees are required to stand liable with their own property for their obligations; they shall have joint and several liability towards third parties for their joint decisions.

(3) Multiple trustees shall have joint and several liability towards the settlor and the beneficiary for infringing the obligations arising from fiduciary asset management.

Section 6:325 *[Change in the person of the parties]*

(1) The settlor may remove the trustee from his mandate at any time, with the simultaneous appointment of another trustee.

(2) If the settlor dies or terminates without succession and there is no other settlor of the trust property, the court may, at the request of the beneficiary, remove the trustee from his mandate with the simultaneous appointment of another trustee, if the trustee has committed a serious breach of contract.

(3) Multiple beneficiaries may exercise this right jointly, with the proviso that at the request made by any of them, the court shall decide on the removal of the trustee from his mandate and the appointment of a new trustee. The court shall not appoint a person against whom all beneficiaries raise an objection as trustee.

(4) In the contract, the settlor may appoint a person entitled to exercise his rights and obliged to fulfil his obligations in the event of his death or termination without succession. If the appointed person accepts the appointment by a statement issued to the trustee, he shall be entitled to the rights and subject to obligations of the settlor to the extent to which those rights and obligations were not limited in the contract.

Section 6:326 *[Termination of fiduciary asset management]*

(1) The fiduciary asset management shall terminate if

a) the trust property has been exhausted;

b) the trustee unilaterally terminates the asset management, then three months following the unilateral termination;

c) the trust property has no trustee for a period exceeding three months, then at the time when the trustee's mandate terminated;

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d) the settlor was the sole beneficiary, then at the time of his death;

e) the settlor unilaterally terminates the contract concluded for an indefinite period, unless otherwise provided in the contract.

(2) The trustee shall act primarily by taking the interests of the beneficiary into account in the event of the unilateral termination of the contract as well.

(3) A fiduciary asset management relationship created for an indefinite period or for a period longer than fifty years shall terminate after fifty years. Any clause derogating from this provision shall be null and void.

(4) The fiduciary asset management shall not terminate if the settlor becomes the legal successor of the trustee.

(5) The fiduciary asset management shall not terminate upon the death or termination of the settlor, the trustee or the beneficiary.

Section 6:327 *[Accounting obligation]*

(1) In the event of the termination of the fiduciary asset management, the trustee shall continue to be subject to the accounting obligation and the obligation to provide information in connection with the trust property, to the extent he was burdened by them over the duration of the fiduciary asset management.

(2) If the termination of the fiduciary asset management poses a threat to the trust property then, until the settlement takes place, the trustee shall take the necessary measures in accordance with the content of the fiduciary asset management.

Section 6:328 *[Releasing the trust property]*

(1) Upon the termination of his asset management mandate, the trustee shall release the trust property to the subsequent or new trustee appointed by the settlor or, in the absence of one, to the settlor himself.

(2) If the trustee terminates without a legal successor, the trust property shall pass to the subsequent or new trustee appointed by the settlor or, in the absence of one, it shall revert to the settlor upon the termination of the trustee.

(3) Obligations undertaken with respect to the trust property shall be transferred, as a part of the trust property, to the subsequent or new trustee or, in the absence of one, to the settlor.

(4) In the event of multiple settlors, they shall have rights over the reverted assets in proportion to their contribution to the trust property, and shall also have the obligations reverted to them as part of the trust property in that proportion; their liability towards the creditors of the trust property shall be joint and several.

(5) If the contract determines the release of assets in the form of legal succession in the trustee's mandate, the provisions in paragraphs (1) to (4) shall apply accordingly to the passing of rights and obligations to the trustee who is the legal successor.

Section 6:329 *[Creation of fiduciary asset management by a unilateral legal transaction]*

(1) If the settlor and the trustee are the same person, the fiduciary asset management shall be established by the irrevocable and unilateral statement of the settlor drawn up in a public deed.

(2) A fiduciary asset management relationship established by testament shall be established, with retroactive effect to the date of death of the settlor, through the trustee accepting his appointment as trustee with the content specified in the will.

(3) The rules on fiduciary asset management contracts shall apply accordingly to fiduciary asset management relationships established by a unilateral legal transaction.

Section 6:330 *[Application of the rules on agency contracts]*

Unless otherwise provided in this Chapter, the rules on agency contracts shall apply accordingly to fiduciary asset management.

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TITLE XVII

CONTRACTS FOR USE

Chapter XLIV

Lease contract

1. General rules on lease contracts

Section 6:331 *[Lease contract]*

(1) Under a lease contract, the lessor shall grant the temporary use of a specified thing, and the lessee shall take over the thing and pay the rental fee.

(2) The rules on the lease of things shall apply accordingly to granting the temporary exercise of rights for consideration to another person.

Section 6:332 *[Warranty obligation of the lessor]*

(1) The lessor shall warrant that the leased thing is fit for use as defined in the contract, and that it complies with the provisions of the contract during the entire lease period. The rules on warranty for defective performance shall apply to this warranty, with the derogation that the lessor shall have the right of unilateral termination instead of the right of cancellation, and he shall not claim replacement.

(2) The lessor shall warrant that no third party has a right related to the leased thing that would restrict the lessee in or hinder from using the thing. The rules on warranty for legal defects shall apply to this obligation, with the derogation that the lessee may unilaterally terminate the contract instead of cancelling it.

(3) If the leased thing is residential premises or other premises designated for human habitation which are in a condition that their use would endanger health, the lessee may unilaterally terminate the contract even if he knew or should have known this fact at the time of concluding the contract, or at the time of taking the thing into possession. The lessee shall not validly waive this right.

Section 6:333 *[Use of the thing]*

(1) The lessee shall use the thing in accordance with its designated use and the contract.

(2) The lessor may inspect its use without causing unreasonable nuisance to the lessee.

(3) If, despite the request of the lessor, the lessee continues to use the thing contrary to its designated use or in a way otherwise not in conformity with the contract, the lessor may unilaterally terminate the contract.

(4) If the lessee has carried out an unauthorised modification of the thing, he shall restore the original situation at the request of the lessor.

Section 6:334 *[Relinquishing the right of use to a third party]*

(1) The lessee may, with the consent of the lessor, sub-lease the leased thing, or relinquish it for use by a third party.

(2) If the lessee sub-leased the thing or relinquished it for use by another person with the consent of the lessor, he shall be liable for the conduct of the sub-lessee and the user as if he himself had used the thing.

(3) If the lessee sub-leases the thing or relinquishes it for use by another person without the consent of the lessor, he shall also be liable for any damage that would not have occurred if he had not sub-leased or relinquished the thing.

Section 6:335 *[Bearing the costs]*

(1) Modest expenses arising due to maintenance of the thing shall be borne by the lessee; other costs and encumbrances on the thing shall be borne by the lessor.

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(2) The lessee shall inform the lessor if there is a risk of damage threatening the thing, or if carrying out works for which the lessor is liable becomes necessary.

(3) The lessor shall be entitled to carry out works for which he is liable, and to take the necessary measures to prevent any damage that threatens the thing.

(4) The lessee may carry out the works for which the lessor is liable at the lessor's expense, if the lessor does not carry them out.

Section 6:336 *[Rental fee]*

(1) The lessee shall pay the rental fee each month in advance. If the lease contract is concluded for a period shorter than one month, the rental fee shall be due upon the conclusion of the contract.

(2) The rental fee shall not be due for the period during which the lessee cannot use the thing for a reason beyond his control.

(3) If the lessee fails to pay the rental fee, costs or charges that should be borne by him, the lessor may unilaterally terminate the contract, provided that he issued a payment notice to the lessee specifying an appropriate time limit and warning him of the consequences, and the lessee has not paid by the expiry of that time limit.

Section 6:337 *[Statutory lien]*

(1) To the extent of the rental fee and the costs, the lessor of the real estate shall be entitled to a lien on the assets of the lessee that can be found in the leased premises.

(2) The lessor may prevent the removal of assets encumbered with the lien during the existence of the lien to which he is entitled.

(3) If the lessee objects to the existence or extent of the lien, or to the fact that the lessor has also prevented the removal of those assets which are beyond those providing total coverage for the lessor's claim, the lessor shall enforce his lien before court within eight days. If he fails to do so, his lien shall terminate.

(4) If the lessee removes the asset encumbered with the lien without the permission of the lessor and he does not provide other adequate security, the lessor may claim to have the thing returned at the expense of the lessee. The lien shall resume upon the return of the thing.

Section 6:338 *[Termination of a lease concluded for a definite period and the perishing of the thing]*

(1) If the lessee continues to use the thing following the expiry of the period determined in the lease contract concluded for a definite period, and the lessor does not object to that within a term of preclusion of fifteen days from the expiry of the period determined in the contract, the contract concluded for a definite period shall transform into a contract concluded for an indefinite period.

(2) The contract shall terminate if the thing perishes.

Section 6:339 *[Termination of the lease relationship by ordinary unilateral termination]*

(1) The contract concluded for an indefinite period may be terminated by ordinary unilateral termination by either of the parties

a) at any time from one day to another if daily rental fee is determined;

b) for the end of the week on the first day of the week at the latest if weekly rental fee is determined*;*

c) for the end of the month on the fifteenth day of the month at the latest if monthly rental fee is determined*;*

d) for the end of the period defined in the contract on the thirtieth day preceding that date at the latest if the rental fee is determined for a longer period of time.

(2) Contracts concluded for a definite period may be terminated by ordinary unilateral termination by either of the parties, for the end of the month, by the fifteenth day of the month

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at the latest, if the right to unilaterally terminate the contract prior to a specified date with due regard to the statutory notice period is concerned.

(3) If the unilateral termination occurs in a way other than observing the time limit specified in paragraph (1), the lease relationship shall be deemed terminated for the end of the lease period following the notice on termination.

(4) The heirs of the lessee may terminate the contract concluded for a definite period by ordinary unilateral termination within thirty days. The notice period shall be calculated

a) from the death of the testator if no probate procedure takes place;

b) from the day on which the estate distribution order with full effect becomes final and binding if a probate procedure takes place;

c) from the day on which the court judgment becomes final and binding if an inheritance action takes place.

Section 6:340 *[Transfer of the leased thing]*

(1) The lessee shall allow any person who wishes to buy the thing to inspect it, without causing unreasonable nuisance to the lessee.

(2) If the lessor transfers the ownership of the leased thing following the conclusion of the lease contract, the change in the person of the owner shall mean that the new owner replaces the lessor with respect to the rights and obligations arising from the lease contract. The lessor and the new owner shall have joint and several liability towards the lessee for the fulfilment of the lessor's obligations which encumber him on the basis of the lease contract.

(3) The new owner of the leased thing may unilaterally terminate the lease concluded for a definite period if he was deceived by the lessee with respect to the existence or substantial terms of the lease relationship.

Section 6:341 *[Rights and obligations of the parties upon the termination of the lease]*

(1) Prior to the termination of the lease, the lessee shall allow any person who wishes to lease the thing to inspect it in an appropriate time and manner.

(2) Following the termination of the lease, the lessee shall return the thing to the lessor; however, he may retain the thing without using it until the settlement of his claims against the lessor arising from the lease relationship.

(3) If the lessee retains the thing in an unauthorised manner, he shall pay the rental fee determined in the contract for the period of retention; in addition, he shall be liable for any damage that would not have occurred if he had not retained the thing.

(4) The lessee may remove anything with which he equipped, at his own cost, the thing, without causing any harm to the integrity of the thing.

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2. Tenancy contract

Section 6:342 *[Tenancy contract]*

If the subject matter of the contract is real estate designated for habitation, the provisions on lease contracts shall apply with the following derogations.

Section 6:343 *[Securing the rental fee]*

If, under the agreement of the parties, the tenant is required to pay a specified amount of money to the landlord in order to secure his obligations arising from the tenancy contract, and this amount of money exceeds triple the amount of the monthly rental fee then, at the request of the tenant, the court may reduce the excessive security.

Section 6:344 *[The landlord's obligation to carry out maintenance activities]*

The landlord shall fulfil his obligation to carry out maintenance activities

a) without delay, if there are defects that cause danger to life or to the condition of the building, or if they hinder the designated use of the residential premises or the neighbouring residential premises;

b) simultaneously with the maintenance or renovation of the building, in any other event.

Section 6:345 *[The tenant's right of removal]*

(1) The tenant shall not exercise his right of removal if the landlord offers appropriate recompense as substitution for the right of removal, and that does not harm substantial legal interests of the tenant.

(2) The tenant's right of removal may be excluded or limited in the contract with the appropriate equalisation of the resulting adverse consequences. This rule shall also apply to the exclusion or limitation of the claim for reimbursement.

Section 6:346 *[The tenant's obligation to tolerate*

(1) The tenant shall be required to tolerate the landlord's necessary works carried out to preserve the condition of the building.

(2) The tenant shall not be required to tolerate necessary works carried out to modernise the residential premises, except if those works do not hinder significantly the use of the residential premises with respect to the work to be carried out, its architectural consequences and the expected expenses of the tenant.

(3) The landlord shall inform the tenant in writing and in due time of the planned works and their expected duration prior to the commencement of the works referred to in paragraph (2). The tenant may unilaterally terminate the tenancy contract until the last day of the month following the one in which he received the notification.

Section 6:347 *[Ordinary unilateral termination]*

(1) The contract concluded for an indefinite period may be unilaterally terminated by either of the parties until the fifteenth day of a given month, for the end of the subsequent month.

(2) If the unilateral termination occurs in a way other than observing the time limit specified in paragraph (1), the lease relationship shall be deemed terminated for the end of the second month following the notice on termination.

Section 6:348 *[Unilateral termination due to breach of contract]*

(1) Following a prior notice issued to the tenant, the landlord may unilaterally terminate the tenancy relationship, with a notice period of at least fifteen days, for the last day of the month following the month of unilateral termination, if the tenant or any person living with him engages in conduct flagrantly contrary to the requirements of coexistence with respect to the landlord or the neighbours, or if he uses the residential premises or the areas for common use contrary to their designated use or not in conformity with the contract.

(2) No prior notice shall be required before unilateral termination if the objected conduct is so grave that maintaining the contract in effect cannot be expected from the landlord. Unilateral termination shall be communicated within eight days of becoming aware of the facts.

Chapter XLV

Contract for usufructuary lease

Section 6:349 *[Contract for usufructuary lease]*

(1) Under a contract for usufructuary lease, the lessee shall be entitled to temporary use of a profitable thing or exercise a profitable title and collect its benefits, and shall pay a rental fee for it.

(2) Contracts for usufructuary lease shall be drawn up in writing.

Section 6:350 *[Enforcing the requirements of proper management]*

(1) The lessee may collect the benefits of the thing in accordance with the rules of proper management.

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(2) The lessee of arable land shall cultivate the land in accordance with its purpose, and in the course of that he shall arrange for the maintenance of the land's fertility.

Section 6:351 *[Rules on bearing the costs]*

(1) Renovation and repair necessary for the maintenance of the thing that is the subject of the usufructuary lease shall be the lessee's obligation; furthermore, he shall bear all encumbrances related to the thing.

(2) Extraordinary renovation and repair shall be the lessor's obligation.

Section 6:352 *[Payment of rental fee]*

(1) The rental fee shall be paid periodically and in arrears.

(2) The lessee may request the equitable reduction of or exemption from the rental fee for the year in which the yield did not reach two thirds of the average yield due to a natural disaster or another extraordinary event. He shall inform the lessor of his claim prior to harvesting.

(3) The reduced rental fee or the rental fee from which exemption was granted shall not be claimed afterwards.

Section 6:353 *[Statutory lien]*

(1) To secure the rental fee, the lessor shall be entitled to a lien on the benefits of the thing and on the things of the lessee that can be found on the land subject to usufructuary lease.

(2) The rules on the lien to which the lessor of a real estate is entitled shall apply accordingly to the lien to which the lessor of the usufructuary lease is entitled as provided in paragraph (1).

Section 6:354 *[Unilateral termination of usufructuary lease*]

(1) The contract for agricultural usufructuary lease concluded for an indefinite period may be terminated with a six-month notice period, for the end of the economic year. For a usufructuary lease of other things or rights, the rules on the unilateral termination of lease contracts shall apply to the notice period.

(2) The lessor may also unilaterally terminate the usufructuary lease if the lessee does not cultivate the arable land despite the lessor's notice, or manages the land in a way that gravely threatens the results of production, the fertility of the arable land, the livestock or the equipment.

(3) Heirs of the lessee may also unilaterally terminate the agricultural usufructuary lease within thirty days for the end of the economic year if the testator died within six months preceding the end of the economic year. The notice period shall be calculated

a) from the death of the testator if no probate procedure takes place;

b) from the day on which the estate distribution order with full effect becomes final and binding if a probate procedure takes place;

c) from the day on which the court judgment becomes final and binding if an inheritance action takes place.

Section 6:355 *[Returning the thing in the event of the agricultural usufructuary lease]*

Upon the termination of the agricultural usufructuary lease, the arable land and the other things subject to the usufructuary lease shall be returned in a condition which allows cultivation to be continued.

Section 6:356 *[Application of the rules on lease]*

Unless otherwise provided in this Chapter, the rules on lease contracts shall apply accordingly to usufructuary leases.

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Chapter XLVI

Contract of commodatum

Section 6:357 *[Contract of commodatum]*

(1) Under a contract of commodatum, the lender shall transfer, free of charge, a specific thing for temporary use, and the borrower shall take over the thing.

(2) The lender may refuse to perform the contract if he proves that, after the conclusion of the contract, a substantial change has arisen in his own or in the borrower's circumstances, or in his relationship with the borrower, due to which the performance of the contract cannot be expected of him. The lender may also refuse to perform the contract if, following the conclusion of the contract, circumstances have arisen which are eligible to justify unilateral termination.

(3) The rules on commodatum shall apply accordingly to the free of charge relinquishing of rights to another person for temporary exercise.

Section 6:358 *[Using the thing subject to commodatum and collecting its benefits]*

(1) The borrower shall use the thing in accordance with its designated use and the contract.

(2) With the consent of the lender, the borrower may relinquish the thing for use by a third party.

(3) If the borrower relinquished the thing for use by another person with the consent of the lender, he shall be liable for the conduct of the user as if he himself had used the thing.

(4) If the borrower relinquished the thing for use by another person without the consent of the lender, he shall be liable for any damage that would not have occurred if he had not relinquished the thing.

(5) The borrower shall be entitled to the benefits of the thing.

(6) The borrower shall bear the costs of maintaining the thing, and he may claim his other costs paid in connection with the thing in accordance with the rules on agency without authority.

Section 6:359 *[Termination of the commodatum]*

(1) The commodatum shall terminate

a) upon returning the thing;

b) upon the borrower's death.

(2) The lender may unilaterally terminate the contract of commodatum concluded for an indefinite period with a notice period of fifteen days. In the event of the lender's death, his heir may exercise the right to unilaterally terminate the contract even if unilateral termination would not otherwise be allowed.

(3) The borrower may at any time offer to return the thing; the lender shall not refuse to take the thing back without a reasonable cause.

(4) The lender may unilaterally terminate the contract if

a) it has become impossible to reach the specified purpose of the commodatum;

b) the borrower causes damage to the thing, or he uses the thing contrary to its designated use or not in conformity with the contract, or relinquishes the thing for use by a third party without permission, or if there is otherwise a risk that the borrower will not return the thing in its entirety;

c) the relationship between the parties has deteriorated due to the borrower's conduct;

d) the lender needs the thing for a reason not known at the time of concluding the contract.

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TITLE XVIII

DEPOSIT CONTRACTS

Chapter XLVII

General rules on deposit contract

Section 6:360 *[Deposit contract]*

Under a deposit contract, the depositary shall safekeep the movable thing specified in the contract and return it upon the termination of the contract, and the depositor shall pay the fee.

Section 6:361 *[Using the deposited thing or trusting it to another person, and the collection and management of its benefits]*

(1) The depositary shall safekeep the deposited thing separated from his own property and from other things deposited by other depositors, and shall keep records on it.

(2) The depositary shall manage the deposited thing, if it is necessary due to the nature of that thing. The rules on agency shall apply to the management of the deposited thing.

(3) The depositary shall not use the thing, nor exploit it or give it to the possession or custody of another person, except if it is necessary to protect the depositor from suffering damage. If he breaches this prohibition, he shall be liable for any damage that would not have occurred if he had not breached the prohibition.

(4) The depositary shall collect the benefits of the deposited thing if, due to its nature, it produces benefits. The depositary shall settle with the depositor with respect to the collected benefits. The depositary may devote the collected benefits to covering his costs, while the benefits exceeding that amount shall be released to the depositor.

Section 6:362 *[Refusal to take over the thing]*

The depositary may refuse to take over the thing if circumstances arise that would entitle him to unilaterally terminate the contract in the event of a deposit contract concluded for a definite period.

Section 6:363 *[Statutory lien]*

To secure his fee and costs, the depositary shall be entitled to a lien on the assets of the depositor entered into his possession as a consequence of the deposit.

Section 6:364 *[Termination of deposit]*

(1) The depositor shall be entitled to unilaterally terminate the contract at any time.

(2) If the parties agree that the depositary is required to release the deposited thing to a third party defined in the contract if certain circumstances, also determined in the contract, should arise, or in the event of the termination of the contract, the depositor may unilaterally terminate the contract only with the consent of the person defined in the contract.

(3) The deposit contract concluded for an indefinite period may be unilaterally terminated by the depositary with a notice period of fifteen days.

(4) The deposit contract concluded for a definite period may be unilaterally terminated by the depositary if the safety of the thing is in danger, or if he safekeeps the thing beyond his profession, and such circumstances have arisen of which he was not aware upon the conclusion of the contract and which make safekeeping the thing significantly more difficult for him.

(5) If the deposit terminates before the expiry of the period that can be established from the contract, the depositor shall pay the proportionate share of the fee.

(6) The depositary shall return the thing at the place where he had to safekeep it. If the depositor refuses to take back the thing, the rules on agency without authority shall apply.

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Section 6:365 *[Gratuitous deposit]*

(1) The provisions of this Chapter shall apply accordingly to deposit contracts under which the depositor is not required to provide consideration.

(2) The depositary may claim the reimbursement of the necessary costs, even if the deposit is otherwise free of charge.

(3) In the case of a gratuitous deposit, the depositary shall be liable in accordance with the rules on extra-contractual liability for any damage suffered by the depositor in connection with the loss, perishing or damage of the deposited thing.

Chapter XLVIII

Collective deposit contract and irregular deposit contract

Section 6:366 *[Collective deposit contract]*

(1) If the subject of the deposit is a fungible thing and, under the contract, the depositary is entitled to safekeep together the fungible things of the same type and quality of more than one depositor without separating them per depositor or differentiating them individually, the depositors shall have co-ownership of the fungible things of the same type and quality in deposit and, upon the termination of the deposit, the depositary shall be required to release things of a type and quality identical to that of the deposited things, in an amount equivalent to the ownership proportion of the depositor.

(2) The consent of the other co-owners shall not be required for releasing the things in an amount equivalent to the ownership proportion.

(3) The depositary may, without the consent of the depositor, sub-deposit securities held in collective deposit with an investment services provider or a clearing house entitled to provide deposit services.

Section 6:367 *[Irregular deposit contract]*

If the subject of the deposit is a fungible thing and, under the contract, the depositary is entitled to use and avail of the deposited thing, the depositary shall acquire ownership and, upon the expiry of the deposit, he shall be required to return to the depositor things of an identical type and quality and of an equivalent amount.

Section 6:368 *[Obligation to maintain account with regard to collective deposits and irregular deposits]*

If the depositary has the obligation to maintain a securities deposit account for the depositor concerning securities in collective and irregular deposit, the rules on the transfer and encumbrance of dematerialised securities shall apply accordingly to the transfer and encumbrance of the securities.

Chapter XLIX

Contract for safekeeping in hotels

Section 6:369 *[Contract for safekeeping in hotels]*

(1) The hotel shall be liable for the damage caused to things which a guest has put in a designated place or a place usually designated for that purpose in the hotel, or in his room, or has handed over to an employee of the hotel who he could have considered to be entitled to take his things over. Under the liability of the hotel, damages shall not exceed fifty times the daily room price. The exclusion of liability or its limitation to a higher extent shall be null and void.

(2) The hotel shall be liable for securities, cash or other valuables if it has taken over the thing for safekeeping, or if it refused to take the thing over for safekeeping. The liability of the hotel shall be unlimited for things deposited this way.

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Section 6:370 *[Lien of the hotel]*

The rules on the lien to which the lessor is entitled shall apply accordingly to the lien to which the hotel as depositary is entitled.

Section 6:371 *[Liability of institutions open to the public]*

The rules on the liability of the hotel shall apply to the liability of baths, cafés, restaurants, theatres and similar institutions open to the public, with the following derogations:

a) their liability shall cover things which guests usually carry with them to such institutions;

b) if there is an appropriate place available for guests to keep their things, the institution shall be liable for any damage to things that are placed there.

TITLE XIX

DISTRIBUTION CONTRACTS AND FRANCHISE CONTRACTS

Chapter L

Distribution contract

Section 6:372 *[Distribution contract]*

Under a distribution contract, the supplier shall sell certain specified movables (for the purposes of this Chapter: products) to the distributor, and the distributor shall buy the product from the supplier and sell it on his own behalf and for his own benefit.

Section 6:373 *[Protecting good reputation]*

(1) The parties shall protect the good reputation of the product.

(2) The supplier shall inform the distributor of advertisements concerning the product, and shall transfer to the distributor in exchange for a fee the advertisements necessary for distributing the thing.

Section 6:374 *[Instruction and inspection]*

(1) The supplier shall have the right to instruct with regard to the appropriate distribution of the product.

(2) If the supplier gives inappropriate or unprofessional instructions, the distributor shall warn him of this. If, despite the warning, the supplier maintains his instructions, the distributor shall be required to perform the instructions; the supplier shall have liability for any damage arising from performing the instructions. The distributor shall be required to refuse to follow the instruction if performing it would lead to the violation of a law or an authority decision, or would endanger the person or property of others.

(3) The supplier may inspect the performance of the contract and the instructions.

Section 6:375 *[Appropriate application with regard to services]*

The provisions of this Chapter shall apply accordingly with regard to providing services.

Chapter LI

Franchise contract

Section 6:376 *[Franchise contract]*

(1) Under a franchise contract, the franchisor shall grant authorisation to exploit or use subject matter under copyright or industrial property protection, or constituting know-how, and the franchisee shall produce and sell products or provide services by exploiting or using the subject matter under copyright or industrial property protection or constituting know-how, and shall pay the fee.

(2) While selling the products or providing the services, the franchisee shall act on his own behalf and for his own benefit.

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Section 6:377 *[Liability with respect to copyright, industrial property rights and know-how]*

(1) The franchisor shall, for the duration of the contract, ensure that the franchisee is able to exercise continuously and without disturbance the rights of exploitation and use necessary to operate the franchise.

(2) The franchisee shall protect the know-how made available to him.

Section 6:378 *[Supply obligation]*

If the franchisee is required to obtain the product to be sold or the basic materials necessary for the production of the product from the franchisor or a person specified by the franchisor and the franchisor does not fulfil the request of the franchisee, the franchisee may obtain the product or basic materials from elsewhere.

Section 6:379 *[Protecting good reputation]*

The parties shall protect the good reputation of the network created by means of authorisations for exploitation and use granted by the franchisor in connection with the copyright and industrial property rights and know-how under the contract, as well as the good reputation of the products and services produced or sold.

Section 6:380 *[Instruction and monitoring]*

(1) The franchisor shall have the right to instruct with regard to the production and sale of products and provision of services, and with regard to protecting the good reputation of the network and the thing produced or sold.

(2) If the franchisor gives inappropriate or unprofessional instructions, the franchisee shall warn him of this. If, despite the warning, the franchisor maintains his instructions, the franchisee shall perform the instructions; the franchisor shall be liable for any damage arising from performing the instructions. The franchisee shall refuse to follow the instruction if performing it would lead to the violation of a law or an authority decision, or would endanger the person or property of others.

(3) The franchisor may monitor the performance of the contract and the instructions.

Section 6:381 *[Termination of the contract]*

(1) The contract concluded for an indefinite period may be unilaterally terminated by either of the parties for the last day of the calendar month. The notice period shall be one month for the first year of the contract, two months for the second year of the contract and three months for the third and subsequent years of the contract.

(2) Upon termination of the contract, the franchisee shall no longer have the right of exploitation or use in connection with the subject matter under copyright and industrial property protection or constituting know-how.

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TITLE XX

CREDIT AND ACCOUNT CONTRACTS

Chapter LII

Credit contract

Section 6:382 *[Credit contract]*

(1) Under a credit contract, the creditor shall keep the credit facility available and shall conclude, up to the amount available, loan contracts, suretyship contracts, guaranty contracts or other contracts related to the performance of other credit operations, and the debtor shall pay the fee.

(2) The creditor shall conclude the contract related to credit operations at the debtor‘s request, if the conditions defined in the credit contract are fulfilled. The debtor may request

the creditor to conclude a contract in the period during which the credit is kept available in accordance with the credit contract.

(3) The debtor may unilaterally terminate the contract at any time.

(4) The creditor may unilaterally terminate the contract, if

a) substantially adverse changes have arisen in the circumstances of the debtor and he provides no adequate security despite being requested to do so;

b) the debtor has deceived the creditor, thereby affecting the conclusion or the content of the contract; or

c) the conduct of the debtor aimed at concealing assets could jeopardise the performance of the contract concluded on the basis of the credit contract.

(5) The creditor may unilaterally terminate the credit contract without requesting the debtor to provide adequate security if it is obvious that the debtor is unable to provide adequate security.

(6) The unilateral termination of the credit contract shall not terminate any contract concluded on the basis of the credit contract.

Chapter LIII

Loan contract

Section 6:383 *[Loan contract]*

Under a loan contract, the lender shall pay a specified amount of money, and the borrower shall pay that amount back to the lender at a later date specified in the contract and shall pay interest.

Section 6:384 *[Refusal to issue the loan]*

The lender may refuse to issue the loan if, after the conclusion of the contract, a substantial change has arisen in the circumstances of the borrower or in the value or enforceability of the security, due to which the performance of the contract can no longer be expected, and the borrower does not provide adequate security despite being requested to do so.

Section 6:385 *[Failure to take up the loan]*

(1) The borrower shall not be obliged to take up the loan.

(2) If the borrower does not take up the loan, he shall reimburse the lender's costs that arose in connection with concluding the contract.

Section 6:386 *[Keeping the loan available]*

(1) If, under the contract, the loan is issued within a specified period following the conclusion of the contract, or if its issue depends on specified conditions being fulfilled, the lender shall keep the loan available for the borrower until the expiry of the period or fulfilment of the conditions specified in the contract.

(2) The borrower shall pay a fee to the lender for the amount kept available and for the period during which it is kept available.

Section 6:387 *[Unilateral termination of the loan contract*]

(1) The lender may unilaterally terminate the contract, if

a) substantially adverse changes have arisen in the circumstances of the borrower and he provides no adequate security despite being requested to do so;

b) it is impossible to use the loan for the purpose specified in the contract, or the borrower does not use the loan for that purpose;

c) the borrower has deceived the lender, thereby affecting the conclusion or the content of the contract;

d) the borrower hinders the inspection concerning his solvency or the cover and security for the loan, or the fulfilment of the purpose of the loan;

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e) the conduct of the borrower aimed at concealing assets jeopardises the possibility of repaying the loan;

f) the value or enforceability of the security provided for the loan has significantly decreased, and the borrower does not remedy it, despite being requested to do so by the lender; or

g) the borrower is in default in fulfilling his payment obligations under the loan contract, and he does not remedy it despite being requested to do so.

(2) The lender may unilaterally terminate the loan contract without requesting the borrower to provide adequate security if it is obvious that the borrower is unable to provide adequate security.

Section 6:388 *[Interest-free loan]*

The borrower shall not be required to pay interest and other fees if it is expressly stipulated by the parties, or if it follows from the purpose of the contract or the circumstances of the case. In such a case, the rules on loan contracts shall apply with the following derogations:

a) the lender may refuse to pay the loan back and may reclaim the loan he already paid out on the basis of substantial changes arising in his own circumstances;

b) the borrower shall not be required to pay a fee for the loan being kept available.

Section 6:389 *[Application of the rules on loan contracts as appropriate]*

(1) The rules on loan contracts shall also apply accordingly if the lender grants no money but transfers another fungible thing to the ownership of the borrower with the proviso that the borrower is required to transfer a thing of identical type, quality and quantity to the ownership of the lender at a later date as specified in the contract. In that event, interest means the fee calculated in accordance with the rules on the calculation of interest and based on the market price represented by the borrowed thing at the time it is handed over.

(2) The rules on loan contracts shall apply accordingly in any event during which the services provided by one of the parties precedes the consideration in money to be provided by the other party, or the payment of consideration precedes the performance of the primary service.

Chapter LIV

Bank deposit contract

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Section 6:390 *[Bank deposit contract]*

(1) Under a bank deposit contract, the depositor shall be entitled to pay a specified amount of money to the bank, and the bank shall accept the amount offered by the depositor, shall pay the same amount of money back at a later date, and shall also pay interest.

(2) For a bank deposit made for a definite period, the bank shall pay back the deposited amount upon expiry or in accordance with the request of the depositor.

(3) The depositor may request that the deposited amount be repaid prior to the expiry of the period specified in the contract. In the absence of a request by the depositor, the bank shall not be entitled to repay the deposited amount prior to the expiry of the period specified in the contract.

(4) Bank deposits not taken upon expiry shall transform into bank deposits made for an indefinite period.

(5) For bank deposits made for an indefinite period, the bank shall repay the amount of the bank deposit in accordance with the request of the depositor and without delay.

Chapter LV

Current account contract

Section 6:391 *[Current account contract]*

Under a current account contract, the parties shall keep a record of and settle their claims that arise from specified legal relationships and are able to be set off.

Section 6:392 *[Establishing the balance of the current account]*

(1) The balance of the current account shall be established annually.

(2) The party maintaining the current account shall inform the other party of the balance and its derivation in writing. The other party may object in writing to the balance and the underlying claims and debts within a term of preclusion of thirty days from the written notice.

(3) Claims on the current account shall terminate and be replaced by the balance of the current account

a) in the absence of objection;

b) if the parties have agreed on the items subject to objection; or

c) if the court has adopted a decision in connection with the objection.

Section 6:393 *[Legal effects related to the balance of the current account]*

(1) Following the establishment of the balance of the current account, the parties shall not avail of the individual claims on the account, but solely of the balance of the account.

(2) Lapsing of claims covered by the current account contract shall be suspended until the establishment of the balance. The balance shall lapse in accordance with the general rules.

(3) The balance of the current account available at the time of enforcement shall be the subject of enforcement. Following the commencement of enforcement, only those claims which reduce the balance and arise from a legal basis which came into existence following the enforcement can be entered into the account.

(4) The security of claims covered by the current account contract shall secure the balance of the account.

Chapter LVI

Payment account contract

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Section 6:394 *[Payment account contract]*

Under a payment account contract, the account provider shall open and maintain a current account for the account holder with the purpose of managing his cash flow (hereinafter "payment account"), and the account holder shall pay the fee.

Section 6:395 *[Obligations of the account provider]*

(1) The account provider shall accept the account holder's regular payment and recovery orders specifying clearly the beneficiary of the payment and the amount to be paid. The acceptance of the payment order may be refused if the account holder does not provide the cover necessary for performance.

(2) The account provider shall on behalf of the account holder accept payments made by or for the account holder, and manage them as demand bank deposits or deposits.

(3) Payments made by the account provider against the claims of the account holder shall reduce the balance of the payment account, while payments recovered for the benefit of the account holder or payments otherwise granted to him shall increase that balance.

(4) The account provider shall inform the account holder each month of the amounts charged or credited to the payment account and of the balance of the payment account by way of an account statement. The account statement shall not have the legal effects connected with the balance of the payment account.

Section 6:396 *[Availing of the payment account]*

(1) The account holder or persons authorised by him and notified to the account provider shall be entitled to avail of the balance of the payment account. If the payment account has several holders, they shall be jointly entitled to avail of the payment account.

(3) The account provider shall be entitled to charge the payment account for rectifying credit falsely issued to it, and to enforce his claim due against the account holder and arising in connection with the maintenance of the account.

Section 6:397 *[Statutory lien]*

To secure his claims arising in connection with his account maintenance services, the account provider shall be entitled to a lien on the account claims of the account holder. Accordingly, the account provider may reduce the balance of the payment account by the amount of his claims arising in connection with his account maintenance. The lien shall be established upon the conclusion of the payment account contract, without registering the lien into the security interest register.

Section 6:398 *[Extending the rules on payment account contracts]*

The rules on payment account contracts shall apply to the securities account and to the securities deposit account, with the derogation that, in these cases, the ownership claim related to securities shall be settled on the account.

Section 6:399 *[Application of the rules on current accounts]*

Unless otherwise provided in this Chapter, the rules on current account contracts shall apply accordingly to payment account contracts.

Chapter LVII

Payment order contract

Section 6:400 *[Payment order contract]*

Under a payment order contract, the agent shall pay a specified amount of money to the beneficiary in accordance with the instructions of the principal, and the principal shall pay the fee.

Section 6:401 *[Refusal to perform the payment order]*

The agent may refuse to perform the payment order for as long as the principal does not provide cover for the performance of the order.

Section 6:402 *[Claiming the fee]*

The agent shall be entitled to a fee only if the amount of money

a) was handed over to the beneficiary by him;

b) was credited to the beneficiary's account by him; or

c) was made available by him to the bank maintaining the beneficiary's account.

Section 6:403 *[Unilateral termination]*

The principal may unilaterally terminate the contract until the agent has started to perform the order.

Section 6:404 *[Application of the rules on agency contracts]*

Unless otherwise provided in this Chapter, the rules on agency contracts shall apply accordingly to the payment order.

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Chapter LVIII

Factoring contract

Section 6:405 *[Factoring contract]*

Under a factoring contract, the factor shall pay a specified amount of money, and the debtor shall assign to the factor his claim existing against a third person; if the obligor does not perform at the time when the assigned claim becomes due, the debtor shall repay the money received and pay the interest, and the factor shall re-assign the claim.

Section 6:406 *[Obligation to register]*

The factor shall enter the fact of factoring and the identity of the debtor into the security interest register. In the absence of registration, the claim shall not pass to the factor despite the assignment, and the factor shall have the same rights on the claim as a pledgee whose lien established upon a claim has not been registered in the security interest register.

Section 6:407 *[Unilateral termination of the contract]*

(1) The factor shall be entitled to terminate the contract if

a) the debtor hinders the inspection concerning his solvency or the legal status of the assigned claim;

b) the substantial deterioration of the debtor's financial situation or his conduct aimed at concealing assets jeopardises the fulfilment of his reimbursement obligations;

c) the financial situation of the obligor of the assigned claim has deteriorated to such an extent that it jeopardises the fulfilment of the claim.

(2) In the event of the unilateral termination of the contract, the debtor shall pay to the factor the amount paid by the factor and interest, and the factor shall re-assign the claim to the debtor.

(3) If several claims are transferred, the factor shall be entitled to terminate the contract with regard to each individual claim.

Section 6:408 *[Application of the rules on loan contracts]*

Otherwise, the rules on the refusal to issue the loan, the failure to take up the loan and keeping the loan available shall apply accordingly to the contract.

Chapter LIX

Financial lease contract

Section 6:409 *[Financial lease contract]*

Under a financial lease contract, the lessor shall give the thing or right owned by him (hereinafter "lease object") to use for a definite period, and the lessee shall take the lease object over and pay the lease fee, if under the contract the lessee is entitled to use the lease object during its whole economic lifetime or beyond, or, if the duration of use is shorter, upon the contract terminating, the lessee is entitled to acquire the lease object for no consideration or at a price substantially lower than the market value at the time when the contract was concluded; or if the amount of the lease fee to be paid is equal to or exceeds the lease object's market value at the time when the contract was concluded.

Section 6:410 *[Obligation to register]*

(1) If the lease object is a real estate, the lessor shall have the fact of leasing and the identity of the lessee entered into the real estate register simultaneously with registering the ownership right. If the thing is in the lessor's ownership at the time when the lease contract is concluded, the entry into the register shall be carried out prior to the transfer of possession.

(2) If the lease object is a movable thing or a right, the lessor shall enter the fact of leasing and the identity of the lessee into the security interest register. If the ownership of the

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movable thing or the existence of the right is certified by a publicly certified register and, by virtue of law, pledging the thing or right is subject to an entry in the register, the lessor shall have the fact of leasing and the identity of the lessee entered into the appropriate register. In the absence of entry into the register, the third party acquiring in good faith and for consideration from the lessee

a) shall acquire by transfer the ownership of the movable thing or the right; and

b) shall acquire the lien established by the lessee on the movable thing or on the right for the benefit of the third party, even in the absence of the lessee's right of disposal.

Section 6:411 *[Warranty claims]*

(1) The lessor shall warrant that no third party has a right on the lease object that would restrict the lessee in the use of the thing or hinder the use of the lease object. The rules on warranty for legal defects shall apply to this obligation, with the derogation that the lessee shall be entitled to unilaterally terminate the contract instead of cancelling it.

(2) The lessor shall have warranty for material defects for the defects of the lease object if he has participated in choosing the lease object, or if he has waived without the lessee's consent his warranty rights arising from the contract for the acquisition of the lease object. In that event, the rules on warranty for material defects shall apply, with the derogation that the lessee shall have the right of unilateral termination instead of the right of cancellation, and he shall not claim a replacement of the lease object.

(3) With the exception of the cases described in paragraph (2), if the lease object is defective,

a) the lessee shall, as the representative of the lessor, enforce the claim for repair and replacement;

b) the lessor shall enforce the claim for the reduction of the price and for cancellation

against the obligor of the warranty for material defects.

(4) The lessee shall notify the lessor if the obligor of the warranty for material defects does not fulfil his obligation to repair or replace or if, due to the defect, price reduction or cancellation may take place.

Section 6:412 *[Benefits, encumbrances, costs and risk of damage. Use]*

(1) The lessee shall, from the time when the contract is concluded or, with respect to things, from the time of transferring its possession, collect the benefits of the lease object and shall bear charges and costs in connection with it, as well as any damage to it for which no one can be obliged to pay compensation.

(2) The rules on lease contracts shall apply accordingly to the use and transfer of the lease object.

Section 6:413 *[Relinquishing the right of use and the acquisition of right to a third party]*

(1) The lessee may, with the consent of the lessor, relinquish the use of the lease object.

(2) If the lessee relinquished the lease object for use by another person with the consent of the lessor, he shall be liable for the conduct of the user as if he himself had used the lease object.

(3) If the lessee relinquishes the lease object for use by another person without the consent of the lessor, he shall also be liable for any damage that would not have occurred if he had not relinquished the lease object.

(4) If the lessee is entitled to acquire the ownership of the leased thing or the right, he may transfer this entitlement to a third party even without the consent of the lessor.

Section 6:414 *[Lease fee]*

(1) The lessee shall pay the lease fee periodically as specified in the contract and in advance.

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(2) The lease fee shall not be due for the period during which the lessee cannot use the lease object for a reason beyond his control.

Section 6:415 *[Unilateral termination of the contract]*

(1) The lessor shall be entitled to unilaterally terminate the contract if

a) the lessee hinders the inspection concerning his solvency;

b) the substantial deterioration of the lessee's financial situation or his conduct aimed at concealing assets jeopardises the fulfilment of his obligations;

c) despite the request of the lessor, the lessee continues to use the thing contrary to its designated use or in a way otherwise not in conformity with the contract;

d) the lessee does not fulfil his obligation to enforce warranty rights despite being requested to do so;

e) the lessee failed to pay the lease fee, costs or charges that should be borne by him, and the lessor issued a payment notice to the lessee specifying an appropriate time limit and warning him of the consequences, and the lessee has not paid by the expiry of that time limit.

(2) If the lessor unilaterally terminates the lease contract, he shall settle with the lessee in accordance with the rules on the enforcement of a lien.

(3) The lessee shall be entitled to unilaterally terminate the contract if, despite being requested to do so, the lessor does not fulfil his obligation to enforce his cancellation right arising from the warranty.

TITLE XXI

CONTRACTS OF SECURED TRANSACTIONS

Chapter LX

Suretyship contract

Section 6:416 *[Suretyship contract]*

(1) Under a suretyship contract, the surety shall undertake an obligation towards the obligee to perform to him on behalf of the obligor if the obligor does not perform.

(2) Suretyship may be assumed to secure one or more, existing or future, unconditional or conditional pecuniary claims of a determined or determinable amount, or to secure another obligation of value that can be expressed in monetary terms.

(3) The contract shall be drawn up in writing.

Section 6:417 *[The accessory character of suretyship]*

(1) The obligation of the surety shall be aligned to the obligation for which he stands surety. The obligation of the surety shall not become more burdensome than it was at the time when it was assumed; however, it shall extend to the legal consequences of the obligor's breach of contract and to secondary claims becoming due following the assumption of the surety.

(2) The surety may set off his own and the obligor's counter-claims against the obligee's claims, and, besides the objections to which he is entitled in person, he may enforce those objections that can be enforced by the obligor against the obligee. If made after the assumption of the surety, the obligor's juridical act waiving his right to object shall not be effective against the surety.

(3) A claim that is not enforceable in court proceedings shall not be enforced before court against the surety of that claim.

(4) A stay of payment granted in bankruptcy proceedings instituted against the obligor shall not affect the obligation of the surety. A settlement reached in winding-up or bankruptcy proceedings instituted against the obligor shall not affect the obligation of the surety if, prior to the conclusion of the settlement, the surety was informed of its terms by the obligee.

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Following that information, the surety shall be entitled to discharge the obligor's debt; in the event of discharging the debt the surety shall replace the obligee in the winding-up or bankruptcy proceedings. If the obligee fails to inform the surety, the obligation of the surety shall reduce to the extent defined in the settlement.

(5) The surety shall be liable for the costs arising from a court action or enforcement proceedings conducted against the obligor if prior to bringing the action the obligee requested the surety to perform with no result.

Section 6:418 *[The obligee's obligation to provide information]*

(1) The obligee shall inform the surety without delay of the obligor's failure to perform his obligation, as well as of any change in the time limit for performing the secured obligation, and of any change in the circumstances of the obligor which may adversely affect the surety's claim for reimbursement against the obligor. This notification shall include the extent of the secured obligation existing at the time of notification.

(2) If the suretyship secures all the obligations of the obligor arising from one or more specified legal relationships, or all the obligations of the obligor existing against the obligee, the obligee shall also inform the surety without delay if the extent of the secured obligation has increased by twenty percent compared to the extent calculated at the time of assuming the suretyship, or at the time of the last notification.

Section 6:419 *[Defence of unexhausted remedies]*

The surety may refuse to perform for as long as the obligee does not substantiate that he has attempted to recover the claim from the principal debtor, but the recovery produced no results within a reasonable period of time. This rule shall not prevent bringing an action against the obligor and the sureties jointly.

Section 6:420 *[Directly enforceable suretyship]*

The surety shall not be entitled to the defence of unexhausted remedies if

a) the recovery of the claim from the obligor has become significantly more difficult due to the change in the place of domicile, habitual residence, establishment or seat of the obligor;

b) the obligee has conducted enforcement proceedings on the assets of the obligor in order to recover his other claim against the obligor, and his claim has not been satisfied during the enforcement;

c) a stay of payment was granted to the obligor in bankruptcy proceedings, or winding-up proceedings were instituted against him.

Section 6:421 *[Suretyship for uncollectable claims]*

If the surety has expressly assumed responsibility for the part of the claim which cannot be recovered from the obligor, the obligee may claim the surety to satisfy the secured claim if he conducted enforcement proceedings on the assets of the obligor, and his claim has not been satisfied during the enforcement.

Section 6:422 *[Performance by the surety]*

(1) The surety shall be required to perform if the obligee has requested him to perform.

(2) The surety shall notify the obligor without delay of the receipt of the payment notice and shall request information on the extent of the obligation secured by the surety, as well as on the objections and claims to which the obligor is entitled against the obligee.

(3) The surety shall, without delay,

a) perform to the obligee, and notify the obligor without delay of the performance; or

b) refuse to perform, and notify the obligor and the obligee of the refusal to perform, indicating the reasons for this.

(4) Following the performance by the surety, the obligee shall, without delay, hand over to the surety any document and provide him the information necessary for the surety to enforce his claim against the obligor.

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Section 6:423 *[Performance by the sub-surety]*

If a person assuming suretyship for the obligation of the surety satisfies the claim of the obligee then he may, up to the extent of the claim, enforce all the rights which the surety could have enforced if he would have satisfied the obligee's claim.

Section 6:424 *[Suretyship undertaken for a definite period]*

In the event of a directly enforceable suretyship assumed for a definite period, the obligor shall be discharged from his obligation following the expiry of the definite period.

Section 6:425 *[Unilateral termination of the suretyship assumed for an indefinite period]*

If the suretyship assumed for an indefinite period secures all existing or future obligations of the obligee against the obligor, the surety may terminate the suretyship contract with a notice period of three months.

Section 6:426 *[Discharge of the surety from his obligation]*

If the obligee waives any right securing the claim, or the claim becomes uncollectible from the obligor or its recovery becomes significantly more difficult due to any fault of the obligee, the surety shall be discharged inasmuch as he could have been satisfied on the basis of his claim for reimbursement against the obligor.

Section 6:427 *[Multiple sureties]*

(1) If several persons assume suretyship for the same obligation, the sureties shall be jointly and severally liable against the obligee.

(2) If several sureties assume suretyship without consideration for each other, they shall be liable for the obligation between each other in the order in which they assumed the suretyship. The surety who could have relied on the defence of unexhausted remedies against the obligee may also rely on that defence against the surety satisfying the obligee's claim.

(3) If the sureties assume suretyship with consideration for each other then they shall be liable between each other in proportion to the risk assumed.

Section 6:428 *[Suretyship and lien securing the same claim]*

If the same obligation is secured by a suretyship as well as a lien established by a person other than the obligor, the provisions on multiple sureties shall apply accordingly to the liability of the surety and the pledger, and to their relationship.

Section 6:429 *[Statutory suretyship]*

The rules on the suretyship contract shall apply accordingly to statutory suretyship.

Section 6:430 *[Suretyship assumed by a consumer]*

(1) In the case of a suretyship assumed by a consumer, prior to concluding the suretyship contract, the obligee shall give information to the consumer about

a) the rights and obligations of the surety; and

b) special risks that are known to the creditor and arising from the situation of the obligor or from the nature of the obligation.

(2) If the obligor does not fulfil his obligation under paragraph (1), the surety shall be entitled to cancel the contract without setting a time limit.

(3) If the consumer assumed suretyship for all the obligations of the obligor against the obligee, or for all the obligations of the obligor arising from a specified legal relationship, the suretyship shall be valid if the parties have determined in the contract the highest amount up to which the surety is liable for the obligee's debts.

(4)

(5) The rules on the suretyship contracts in which consumers assume suretyship shall not apply if the surety is the executive officer of, or has majority control over, the legal person obligor.

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Chapter LXI

Guaranty contract

Section 6:431 *[Guaranty contract]*

(1) The guaranty contract and the declaration of guaranty is a commitment by the guarantor, on the basis of which he shall make a payment to the obligee if certain conditions specified in the declaration are fulfilled.

(2) The contract and the declaration of guaranty shall be drawn up in writing.

Section 6:432 *[Non-accessory character]*

(1) The obligation of the guarantor under the declaration of guaranty is independent of the obligation for which he assumed the guaranty, and the guarantor shall not enforce the objections which the obligor may enforce against the obligee.

(2) A general reference to the secured obligation contained in the declaration of guaranty shall not affect the independence of the guarantor's obligation from the secured obligation.

Section 6:433 *[The personal character of the drawing right]*

The obligee shall not transfer the right to enforce the guaranty without the guarantor's consent; however, he may designate the person to whom the guarantor is required to make the payment.

Section 6:434 *[Legal succession in the person of the obligee]*

The right to draw on the guaranty shall pass to the legal successor of the obligee.

Section 6:435 *[Performance by the guarantor]*

(1) The guarantor shall be required to make the payment on the basis of the guaranty if the obligee has requested him to pay in writing and properly complying with the requirements specified in the declaration of guaranty.

(2) The guarantor shall notify the obligor without delay of the receipt of the payment notice.

(3) The guarantor may enforce all the objections to which he is entitled in person against the obligee.

(4) The guarantor, shall without delay,

a) perform to the oblige, and notify the obligor of the performance; or

b) refuse to perform, and notify the obligor and the obligee of the refusal to perform, indicating the reasons for this.

Section 6:436 *[Requesting payment obviously in an abusive way or in bad faith]*

(1) If, according to the information available to the guarantor, the obligee makes use of his drawing right obviously in an abusive way or in bad faith, the guarantor shall not be required to make the payment, and may reclaim the payments already made.

(2) In particular, the obligee acts obviously in an abusive way or in bad faith if

a) any of the documents submitted to the guarantor had been falsified;

b) the obligor fulfilled the obligation for which the guarantor assumed the guaranty, or if, for any other reason, the obligee is not entitled to draw the amount specified;

c) the fulfilment of the obligation for which the guarantor assumed the guaranty has been hindered by the intentional conduct of the obligee; or

d) the invalidity of the obligation for which the guarantor assumed the guaranty has been established by a court decision, except if the guaranty covered such an event as well.

Section 6:437 *[Unilateral termination of the guaranty assumed for an indefinite period]*

A guaranty assumed for an indefinite period may be terminated by the guarantor after three years, with a notice period of at least three months.

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Section 6:438 *[Guaranty assumed by a consumer]*

If the guarantor is a consumer, the declaration of guaranty shall qualify as a directly enforceable suretyship.

TITLE XXII

INSURANCE CONTRACTS

Chapter LXII

General rules on insurance contracts

Section 6:439 *[Insurance contract]*

(1) Under an insurance contract, the insurer shall provide cover for the risk defined in the contract, and shall provide the service defined in the contract upon the occurrence of the insured event occurring after the commencement of risk-bearing, and the party contracting with the insurer shall pay the insurance premium.

(2) The services provided by the insurer shall consist of compensating the insured person's damage in a way and to the extent specified in the contract, providing other services to the insured person (hereinafter "damage insurance"), or paying an amount specified in the contract (hereinafter "fixed-amount insurance").

Section 6:440 *[Insurable interest]*

An insurance contract may be concluded by any person who, on the basis of a financial or personal relationship, has an interest in avoiding the occurrence of the insured event, or, with respect to life insurance conditional upon reaching a certain age, birth or conclusion of marriage, has an interest in the occurrence of the insured event, or by any other person who concludes the contract for the benefit of a person having such interest. Damage insurance and fixed-amount group insurance contracts concluded in contravention of this provision shall be null and void.

Section 6:441 *[Co-insurance]*

(1) If the insurance risks are borne according to a pre-defined proportion by several insurers and they provide the insurance services jointly, each insurer taking part in the co-insurance and their respective proportion of risk coverage shall be indicated in the contract. With regard to co-insurance, the insurers' obligation to provide services shall not exceed the extent of their assumption of risk.

(2) The co-insurance contract shall be null and void if it does not specify the co-insurers' proportions of risk assumption.

(3) The insurers shall be represented before the contracting party by the lead insurer named in the contract. If the lead insurer has not been named in the contract, the contracting party may validly perform or make juridical acts to any of the insurers according to his choice.

Section 6:442 *[Group insurance]*

(1) In the case of a group insurance, the insured persons shall be defined on the basis of their belonging to a given organisation or the legal relationship or any other connection between the insured persons and the contracting party, and the insurer's risk shall be assessed and assumed with respect to that group. If the insured persons have been defined in the contract exclusively on the basis of their belonging to a group, those persons shall be considered insured persons who belonged to that group when the insured event occurred. A relative of a member of the group may also be an insured person.

(2) The insurer shall inform the contracting party, and the contracting party shall inform the insured person of the statements made to him and of the changes in the contract.

(3) The contract may limit or exclude the insured person's from joining the contract.

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(4) If provided for in the contract, the insurance coverage shall not be affected by the termination of the legal relationship between the insured person and the contracting party.

Section 6:443 *[Conclusion of the contract]*

(1) If the contract has not been concluded in writing, the insurer shall issue a document attesting the insurance coverage.

(2) If the document attesting the coverage differs from the contracting party's offer and the contracting party does not complain about the difference immediately following the receipt of the document, the contract shall be formed in accordance with the content of the document attesting the coverage. This provision shall only apply to substantial differences if the insurer drew the attention of the contracting party to that difference in writing at the time of handing over the document attesting the coverage. If such notice is not made, the contract shall be formed in accordance with the content of the offer.

(3) The party making the offer shall be bound by his offer for fifteen days from the time of making it, and if a health risk assessment is necessary in order to evaluate the offer, he shall be bound by it for sixty days.

Section 6:444 *[Implied conduct of the insurer in consumer contracts]*

(1) If the contracting party is a consumer, the contract shall be formed even if the insurer does not make a statement in connection with the offer within fifteen days from its receipt, or within sixty days if a health risk assessment is necessary to evaluate the offer, provided that the offer was made in the knowledge of the information provided, as required by the law, concerning the content of the legal relationship, and in a form regularly used by the insurer for offers, and in accordance with the insurer's tariff rates.

(2) In the event described in paragraph (1), the contract shall be formed in accordance with the content of the offer and on the day following the expiry of the risk assessment period, with retroactive effect as from the time of handing the offer over to the insurer.

(3) If the insured event occurs during the risk assessment period, the insurer may only reject the offer if he had expressly drawn attention to that possibility in the form used for offers, and it is obvious from the nature of the insurance coverage requested and the circumstances of bearing the risk that the individual assessment of risk is necessary for the acceptance of the offer.

(4) If the contract formed without the express statement of the insurer differs on a substantial issue from the standard contract terms of the insurer, the insurer may propose, within fifteen days from the formation of the contract, that the contract should be amended in accordance with the standard contract terms. If the contracting party does not accept the proposal or does not respond to it within fifteen days, the insurer may unilaterally terminate the contract in writing within fifteen days from the rejection or the receipt of the amending proposal, with a notice period of thirty days.

Section 6:445 *[Commencement of the insurer's risk-bearing]*

(1) The insurer's risk-bearing shall commence on the date determined by the parties in the contract or, in the absence of that, at the time of the formation of the contract.

(2) The parties may agree in writing that the insurer is required to bear the insurance risk separately defined already from a point in time when the contract was not yet formed between the parties (hereinafter "preliminary provision of coverage").

(3) The preliminary provision of coverage shall be valid until the conclusion of the contract or until the rejection of the offer, but for not more than ninety days.

(4) If the contract is formed, the insurance premium defined in it shall be valid for the period of the preliminary provision of coverage as well. If the conclusion of the contract does not occur, the contracting party shall pay the appropriate premium for the period of the

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preliminary provision of coverage determined by the insurer on the basis of its pre-defined risk-assumption methods.

Section 6:446 *[Significant increase in the insurance risk]*

(1) If, following the conclusion of the contract, the insurer becomes aware of substantial circumstances concerning the contract or changes to them, and these circumstances result in a significant increase in the insurance risk, the insurer may, within fifteen days of becoming aware of that fact, propose to amend the contract, or may unilaterally terminate the contract in writing with a notice period of thirty days.

(2) If the contracting party does not accept the amending proposal, or does not respond to it within fifteen days from its receipt, the contract shall terminate on the thirtieth day from communicating the amending proposal, provided that the insurer has drawn the attention of the contracting party to that consequence at the time of making the amending proposal.

(3) If the contract relates to several assets or persons simultaneously, and the significant increase in the insurance risk occurs only in connection with some of them, the insurer shall not exercise his rights defined in paragraphs (1) and (2) in relation to the other assets or persons.

Section 6:447 *[Obligation to pay a premium]*

(1) The first premium payment shall be due at the time defined by the parties or, in the absence of such, upon formation of the contract; subsequent premiums shall be due on the first day of the period to which the premium is related. A one-off premium shall be paid upon formation of the contract.

(2) The insurance period shall be one year.

Section 6:448 *[Obligation to pay a premium if the contract terminates]*

(1) If the insured event occurs and the contract terminates, the insurer may claim the payment of the premium due for the entire insurance period.

(2) In other cases of contract termination, the insurer may claim the payment of the premium that is due until the day on which its risk-bearing ends. If a premium higher than the time-proportionate premium has been paid, the insurer shall reimburse the additionally paid premium.

Section 6:449 *[Consequences of failing to pay the premium]*

(1) If an insurance premium that is due is not paid, the insurer shall request the contracting party in writing to perform, setting a grace period of thirty days from sending the notice and with a warning with respect to the consequences. In the event of non-compliance with the grace period, the contract shall terminate with retroactive effect as from the due date, except if the insurer enforces the claim without delay before court.

(2) In the event of contract termination on the basis of paragraph (1) due to unpaid subsequent premiums, the contracting party may request the insurer in writing and within one hundred and twenty days from the day of termination to restore the risk-bearing. The insurer may restore the insurance coverage in accordance with the terms of the terminated contract, provided that the insurance premium which became due earlier has been paid.

Section 6:450 *[The contracting party's obligation to provide information]*

If the contract has been concluded by a person other than the insured person then, until the occurrence of the insured event or until the insured person joins the contract, the contracting party shall inform the insured person of the statements made to him and of the changes in the contract.

Section 6:451 *[Joining the contract]*

(1) If the contract has been concluded by a person other than the insured person, the insured person may join the contract by a written statement made to the insurer; joining the contract

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shall not be subject to the consent of the insurer. Upon joining the contract, all the rights and obligations of the contracting party shall pass to the insured person.

(2) If the insured person joins the contract, he and the contracting party shall have joint and several liability for the premium that is due in the insurance period concerned. The insured person who joins the contract shall reimburse the contracting party for the costs paid in connection with the contract, including the insurance premium.

Section 6:452 *[Obligation to provide information and report changes]*

(1) At the time of concluding the contract, the contracting party shall provide information to the insurer of every circumstance he knew or should have known, which is relevant with respect to undertaking the insurance. The contracting party fulfils his obligation to provide information by giving truthful responses to the insurer's written questions. Not giving responses to the questions shall not mean in itself the breach of the obligation to provide information.

(2) The contracting party shall notify the insurer in writing of any change in substantial circumstances.

(3) If the obligation to provide information and report changes is breached, the insurer's obligations shall not arise, except if the contacting party proves that the circumstance concealed or not notified was known by the insurer at the time of concluding the contract, or that it has not contributed to the occurrence of the insured event.

(4) If the contract relates to several assets or persons, and the breach of the obligation to provide information and report changes arises only in connection with some of them, the insurer shall not rely on the breach of the obligation to provide information and report change in relation to the other assets or persons.

(5) The contracting party and the insured person shall both be the subject of the obligation to provide information and report change; neither of them shall rely on circumstances that either of them failed to notify to the insurer, although he should have known of that circumstance and should have provided information of it or reported it.

Section 6:453 *[Obligation to report the occurrence of the insured event]*

The obligation of the insurer shall not arise if the contracting party or the insured person does not report the occurrence of the insured event to the insurer within the time limit determined in the contract, or does not provide the necessary information or does not allow the inspection of the content of the information, and as a consequence of this, it becomes impossible to ascertain a circumstance which is relevant with respect to the obligation of the insurer.

Section 6:454 *[The contract becoming impossible; loss of interest]*

(1) The contract or its related part shall terminate if, prior to the commencement of the insurer's risk-bearing, the insured event has occurred, or its occurrence has become impossible, or the insurable interest no longer exists.

(2) The contract or its related part shall terminate if, during the insurer's risk-bearing, the occurrence of the insured event has become impossible, or the insurable interest no longer exists.

(3) The legal consequences arising from the loss of insurable interest shall not apply if the loss of interest is exclusively a consequence of the passing of ownership of the insured asset, and that asset has already been in the possession of the new owner under another legal title. In that event, the insurance coverage shall also pass together with the ownership, and the previous and new owner shall have joint and several liability for the insurance premium due at the time of the passing of the ownership. The contract may be unilaterally terminated by any of the parties within thirty days from becoming aware of the passing of the ownership, with a notice period of thirty days.

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Section 6:455 *[Unilaterally mandatory rules of consumer insurance contracts]*

If the contracting party is a consumer, the contract may only derogate in favour of the contracting party, the insured person and the beneficiary from provisions of this Title which relate to

a) the conclusion of contracts by the implied conduct of the insurer;

b) the significant increase in the insurance risk;

c) the consequences of not paying the premium;

d) replenishing the coverage;

e) the obligation of preventing and mitigating damage;

f) the obligation to provide information, to report changes and to report the occurrence of the insured event;

g) the settlement between the insured person and the injured party;

h) the obligation to pay the premium in the event of the contract's termination;

i) the discharge of the insurer from his obligation to provide services;

j) the claim for reimbursement.

Section 6:456 *[Unilaterally mandatory rules of fixed-amount consumer insurance and healthcare insurance contracts]*

If the contracting party is a consumer, the contract may only derogate from the mandatory fixed-amount and health insurance provisions in favour of the contracting party, the insured person and the beneficiary.

Section 6:457 *[Extending the scope of the rules on insurance contracts]*

The provisions of this Title shall also apply to insurance relationships based on association membership.

Chapter LXIII

Damage insurance contract

1. General rules on damage insurance contract

Section 6:458 *[Prohibition of over-insurance]*

(1) The sum insured shall not exceed the value of the insured asset. The agreement on the sum insured shall be null and void in its part exceeding the value of the insured interest, and the premium shall therefore be lowered accordingly. Notwithstanding this provision, insurance contracts may be concluded up to the expected value of an asset, or up to the value of its restoration or the value of purchasing it as new.

(2) The upper limit of the insurer's obligation to provide services upon the occurrence of the insured event shall be the sum insured.

Section 6:459 *[Multiple insurance]*

(1) If the same interest is insured by several insurers independently of each other, the insured person may submit his claim to one or more of them.

(2) The insurer to which the claim was submitted shall make a payment in accordance with the terms described in the document attesting the coverage which was issued by it, up to the sum insured specified therein, by reserving its right to enforce a proportionate claim for reimbursement against the other insurers.

(3) The damage paid on the basis of the claim for reimbursement referred to in paragraph (2) shall be borne by the insurers between each other in accordance with the terms and proportionate to the sum insured they would be liable for individually towards the insured person.

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Section 6:460 *[Underinsurance]*

If the sum insured is lower than the value of the insurable interest, the insurer shall compensate for the damage in accordance with the ratio of the sum insured compared to the value of the asset.

Section 6:461 *[Replenishing the coverage]*

(1) The sum insured for a given insurance period shall be decreased by the amount paid for the insured event occurred in the same insurance period, except if the contracting party suitably replenishes the premium.

(2) The legal consequence referred to in paragraph (1) may only be applied by the insurer if it has drawn the attention of the contracting party to them in writing at the time of providing the service at the latest, and has communicated the amount of the fee for replenishment.

(3) If the contracting party does not make use of his right to replenish the coverage, for the insurance period concerned, the contract shall remain in effect with the sum insured decreased by the amount paid.

Section 6:462 *[Performance by the insurer]*

If the insured event occurs, the insurer shall perform his services within the time limit determined in the contract by taking into account the time necessary for preparing for the performance

Section 6:463 *[Obligation of preventing and mitigating damage]*

(1) In order to prevent damage, the contracting party and the insured person shall act in accordance with the generally expected standard of conduct under the given circumstances. This requirement of the generally expected standard shall also apply if the contract sets forth the responsibilities of the contracting party and the insured person to prevent damage, as well as the means, procedures and professional qualification criteria aimed at preventing or mitigating damage.

(2) The contracting party and the insured person shall mitigate the damage in accordance with the requirements of the insurer and its instructions given when the damage event occurs or, in the absence of such, in accordance with the requirement of the generally expected standard of conduct under the given circumstances.

(3) The necessary costs of mitigating damage shall be borne, up the sum insured, by the insurer, even if the mitigation of damage was unsuccessful.

(4) In the event of underinsurance, the insurer shall reimburse the costs of mitigating damage in accordance with the ratio of the sum insured to the value of the asset.

Section 6:464 *[Discharge from the obligation to provide services]*

(1) The insurer shall be discharged from its obligation to provide services if it proves that the damage was caused unlawfully, by the intentional or grossly negligent conduct of

a) the contracting party or the insured person;

b) their relative living in the same household, their member entitled to manage the business or their employee, member or agent having a scope of activities defined in the standard contract terms; or

c) the executive officer of the insured legal person determined in the standard contract terms, or its member, employee or agent entitled to manage the insured asset.

(2) The provision under paragraph (1) shall also apply to the breach of the obligation to prevent and mitigate damage.

Section 6:465 *[Obligation to preserve the condition]*

(1) Following the occurrence of the insured event, within the time limit set in the contract, the insured person shall be allowed to alter the condition of the insured asset only to the extent that is necessary to mitigate the damage.

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(2) The insurer's obligation to provide services shall not arise if the alterations exceeding the allowed limit made it impossible to ascertain the circumstances relevant for assessing the insurer's obligation to provide services.

Section 6:466 *[Ordinary unilateral termination]*

(1) The contract concluded for an indefinite period may be unilaterally terminated by the parties for the end of the insurance period, with a notice period of thirty days.

(2) The right of unilateral termination may be excluded for three years at most. Excluding the right of unilateral termination for a period of more than three years shall be null and void for the part exceeding three years.

(3) If the contract is concluded for a period longer than three years and the parties have not stipulated that it may be unilaterally terminated prior to the expiry of that period, either of the parties may unilaterally terminate the contract as of the fourth year.

(4) If the contract is unilaterally terminated by the contracting party, the insurer may claim the payment of the premium discount which it provided with respect to the longer period of the contract (hereinafter "discount for long term insurance").

Section 6:467 *[Partial payment of the premium]*

(1) If only a part of the premium that is due has been paid, and the insurer requested the contracting party, by duly applying the rules on the failure to fulfil the obligation to pay the premium, to supplement the payment but with no result, the contract shall be maintained with an unchanged sum insured but for a period proportional to the premium paid.

(2) If the contract terminates because the premium was not paid, the insurer may claim the time-proportionate payment of the discount for long term insurance.

Section 6:468 *[Claim for reimbursement]*

(1) The insurer shall be entitled to claim reimbursement from the person causing damage up to the extent of the damage compensated by the insurer, except if that person is a relative of the insured person living in the same household. Security for a terminated claim shall remain and secure the claim.

(2) If the insurer has not reimbursed the entire damage and he brings an action against the person who caused the damage, he shall inform the insured person of this and, at the request of the insured person, it shall enforce the claim of the insured person as well. The insurer may make the enforcement of the insured person's claim conditional upon paying the costs in advance. The insured person's claim shall be the first to be satisfied from the amount reimbursed.

Section 6:469 *[Reappearance of the insured asset]*

If the insured asset reappears, the insured person may claim it; in that event, he shall reimburse the services provided by the insurer.

2. Liability insurance

Section 6:470 *[Liability insurance contract]*

(1) Under a liability insurance contract, the insured person may claim to be discharged by the insurer from the statutory obligation to compensate for any damage or pay a grievance award, in the way and to the extent defined in the contract.

(2) The insurance shall cover procedural costs if they arose from the guidance, or with the prior consent of the insurer. At the request of the insured person, the insurer shall pay costs in advance.

(3) The insurer shall reimburse the costs of legal representation of the insured person causing damage, and the interest as well, even if those, together with the amount of damages, exceed the sum insured.

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Section 6:471 *[Reporting the insured event]*

Within the time limit set in the contract and subject to the legal consequences determined for the breach of the reporting obligation, the insured person shall report in writing to the insurer if a claim for damages has been communicated against him in connection with his activity determined in the contract, or if he becomes aware of circumstances that may serve as a basis for such a claim for damages. A time limit of at least thirty days shall be provided for reporting the insured event.

Section 6:472 *[Services of the insurer]*

(1) The insurer shall perform his services to the injured party. The insured person may require the insurer to perform to him, if he has satisfied the claim of the injured party.

(2) If the insured person argues, in an obviously unjustified way, his liability for claims for damages formulated against him or the extent of his liability expressed in pecuniary terms, the insurer shall be entitled to perform to the injured party. The additional costs of unjustified denial shall be borne by the insured person; if the costs had been borne by the insurer, the insured person shall reimburse them.

Section 6:473 *[Enforcement of the injured party's claim]*

(1) Unless otherwise provided by law, the injured party shall not enforce his claim for damages directly against the insurer.

(2) This rule shall not prevent the injured party from bringing an action against the insurer to have the court decide whether the insured person's liability insurance covered the damage of the injured party at the time when the damage was caused.

Section 6:474 *[Effect of the insured person's acknowledgement, performance and settlement towards the insurer]*

(1) The insured person's acknowledgement, performance and settlement made in connection with the injured party's claim for damages shall be effective against the insurer if the insurer has given its prior consent to them or has acknowledged them afterwards.

(2) The insurer shall not rely on the fact that the insured person's acknowledgement, performance or settlement made in connection with the injured party's claim for damages is not effective against him if the claim is obviously well-founded.

(3) The court's finding against the insured person shall be effective against the insurer if it participated in the court procedure, arranged for the representation of the insured person or has renounced to avail of these possibilities.

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Chapter LXIV

Fixed-amount insurance contracts

1. General rules on fixed-amount insurance contracts

Section 6:475 *[The insurable interest with regard to fixed-amount insurance]*

For fixed-amount insurance, the insured person's written consent shall be needed to form or amend the contract, if it is concluded by another person. If the insurance contract is concluded without the consent of the insured person, its part designating the beneficiary shall be null and void; in that event, the insured person or his heir shall be considered the beneficiary, who, except with regard to group insurance, shall reimburse the contracting party for the insurance premium paid and his costs paid on the contract.

Section 6:476 *[Multiple insurance]*

The parties may validly take out several insurances for the same insurable interest and insurance risks, and may accumulate the insurers' services.

2. Life insurance contract

Section 6:477 *[Life insurance]*

Under a life insurance contract, the insurer shall undertake to pay the sum insured determined in the contract upon the death of the insured natural person or his reaching a certain age or point in time, or upon the occurrence of another event, or shall grant a lifelong annuity or an annuity for a certain time period. In particular, life insurance may be:

a) pure risk insurance with no post-expiry services or cash surrender value; or

b) a life insurance not qualifying as pure risk insurance, including life insurance linked to investment units where, in accordance with the contract, the investment risk is borne by the contracting party himself.

Section 6:478 *[The beneficiary]*

(1) The beneficiary shall be

a) the person named in the contract;

b) the holder of the bearer bond;

c) in the absence of such persons, or if the designation of the beneficiary was not valid at the time of the insured event, the insured person or his heir.

(2) The contracting party may designate the beneficiary by means of a written statement addressed and submitted to the insurer, and may in the same way revoke the designation or may name another beneficiary instead of the designated beneficiary at any time until the occurrence of the insured event. If the contracting party is not the insured person, the insured person's written consent shall be needed for the above. In the event of issuing a bearer bond, the designation of the beneficiary at a later point in time shall come into effect if the bond was destroyed and a new one was issued.

(3) If the contracting party undertakes, by means of a written statement addressed to the insured person or the beneficiary, that he will maintain continuously the designation of the beneficiary in effect, the designation shall not be revoked or amended without the consent of the person towards whom the commitment was undertaken. The insurer shall be informed of the statement of the contracting party.

(4) The designation of the beneficiary shall cease to have effect if the beneficiary dies or terminates without succession prior to the occurrence of the insured event.

Section 6:479 *[Special rules for concluding the contract]*

(1) If the insured person is a minor and the contract is concluded by a person other than his parents exercising statutory representation, the approval of the guardianship authority shall be required for the contract to be valid. The contract shall also be valid with the approval of the guardianship authority if the insured person is an adult having partially limited capacity to act with respect to his juridical acts in property matters, or having no capacity to act.

(2) The insured person may revoke at any time and in writing the consent he gave to the conclusion of the contract. Group life insurance contracts may provide otherwise. As a result of revocation, the contract shall terminate upon the end of the insurance period, except if the insured person joins the contract.

Section 6:480 *[Waiting period]*

The parties may stipulate in the contract that the insurer will only bear the risk of a given insured event from a point in time subsequent to the formation of the contract, or that it may reduce the services if the insured event occurs within the determined waiting period. The waiting period shall not be longer than 6 months; the determined waiting period shall be null and void for its part exceeding six months.

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Section 6:481 *[Consequences of the failure to pay the premium]*

(1) In the first year, the insurer may enforce the premium due for the entire insurance period before court; subsequently, he may only exercise that right if the contracting party has already begun to pay the premium in the year concerned, or if the parties agreed to postpone payment.

(2) In the event of a failure to pay the premium, the life insurance contract not qualifying as pure risk insurance shall be maintained with a sum insured reduced accordingly (hereinafter "free reduction"). Instead of this legal consequence, the contracting party may choose an ordinary unilateral termination of the contract.

(3) No free reduction shall occur if the repurchase amount has not yet been formulated at the time of the free reduction. In that event, the contract shall terminate due to the absence of a service amount.

Section 6:482 *[Consequences of breaching the obligation to provide information and report changes]*

(1) If, following the conclusion of the contract, the insurer becomes aware of a substantial circumstance which already existed at the time when the contract was concluded, the insurer may exercise the rights arising from it in the first five years of the existence of the contract.

(2) The obligation of the insurer shall arise despite the breach of the obligation to provide information if five years have already lapsed from the conclusion of the contract until the occurrence of the insured event.

(3) The provisions of paragraphs (1) and (2) shall also apply accordingly to the consequences of breaching the obligation to report changes with respect to substantial circumstances as defined in the contract. The five-year period for the insurer to exercise its relevant rights shall commence on the day following the expiry of the time limit to report the changes.

Section 6:483 *[Unilateral termination]*

(1) If the insurance premium has been paid for the first year, the contracting party may unilaterally terminate the life insurance contract in writing, for the last day of the insurance period, with a notice period of thirty days.

(2) The insurer shall not terminate the life insurance contract unilaterally, except if the insurance risk increases significantly.

Section 6:484 *[Non-forfeiture provision]*

(1) If the life insurance contract terminates for any reason without paying the sum insured, the insurer shall pay the repurchase amount defined in the contract.

(2) The insurer shall be discharged from paying the sum insured if the insured person lost his life due to the intentional conduct of the beneficiary; in that event, the heirs shall be entitled to the repurchase amount, and the beneficiary shall not benefit from it.

(3) The contract shall terminate without paying the sum insured and the insurer shall reimburse the repurchase amount if the insured person lost his life due to a serious criminal offence committed intentionally by the insured person, or in connection with it, or due to his suicide committed within two years from the conclusion of the contract.

3. Accident insurance contract

Section 6:485 *[Accident insurance]*

Under an accident insurance contract, the insurer shall undertake to pay a sum insured or to grant an annuity or to provide other services, as specified in the contract, in particular upon the insured person's death, damage to his health or invalidity caused by an accident.

Section 6:486 *[Applicable rules]*

(1) The rules on life insurance shall apply to accident insurance in the following issues:

a) revocation of the insured person's statement of consent;

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b) designation and rights of the beneficiary; and

c) discharge of the insurer if the insured person's death was caused by the person entitled to the sum insured.

(2) The parties shall not limit the right of unilateral termination.

(3) The rules on damage insurance shall otherwise apply to accident insurance, with the following derogations:

a) the insurer shall not enforce a claim against the person liable for the accident based on his claim for reimbursement;

b) the insured person shall have no obligation to preserve the condition of the thing in the event of the occurrence of the insured event.

Chapter LXV

Healthcare insurance contract

Section 6:487 *[Healthcare insurance contract]*

Under a healthcare insurance contract, the insurer undertakes the obligation to provide services specified in the contract if the insured person should fall ill. Furthermore, the services of the insurer may also cover costs that arise in the event of a healthy person taking up the health services specified in the contract.

Section 6:488 *[Applicable rules]*

(1) The rules on life insurance shall apply to healthcare insurance in the following issues:

a) group insurance;

b) the required consent of the insured person, if he is not the contracting party;

c) revocation of the insured person's statement of consent; and

d) the insurer's obligation arising in the event of a breach of the obligation to provide information.

(2) If healthcare insurance has been concluded as damage insurance, the rules on damage insurance shall apply with the following derogations:

a) during the application of the rules on the obligation of mitigating damage, the insured person not giving his consent to medical intervention on the basis of his statutory right of self-determination shall not be considered a reason discharging the insurer; and

b) the insured person shall have no obligation to preserve the condition of the thing in the event of the occurrence of the insured event.

Section 6:489 *[Waiting period]*

(1) In the event of long-term care insurance, or if both parties were aware of the chronic illness of the person to be insured at the time when the contract was concluded, the parties may determine in the healthcare insurance contract a waiting period of not more than three years with respect to the illness mentioned.

(2) The period during which the insured person was continuously entitled to healthcare services based on a previous healthcare insurance contract which terminated within not more than sixty days before the conclusion of the healthcare contract shall be included in the waiting period.

Section 6:490 *[Unilateral termination in the event of healthcare insurance]*

(1) The possibility of the natural degradation of health due to the progression of the insured person's age shall not be considered a significant increase in the insurance risk.

(2) The healthcare insurance shall not be terminated by ordinary unilateral termination by the insurer.

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TITLE XXIII

MAINTENANCE CONTRACT AND LIFE ANNUITY CONTRACT

Chapter LXVI

Maintenance contract

Section 6:491 *[Maintenance contract]*

(1) Under a maintenance contract, the person obliged to provide maintenance shall provide care for the person entitled to maintenance in accordance with his circumstances and needs, and the person entitled to maintenance shall provide consideration.

(2) Maintenance contracts shall be drawn up in writing.

Section 6:492 *[Obligation of the person obliged to provide maintenance]*

The obligation of the person obliged to provide maintenance shall cover the provision of accommodation, food, clothing, care and nursing for the person entitled to maintenance and his treatment in the event of his sickness, and decent burial upon his death.

Section 6:493 *[Termination of the contract]*

(1) The contract shall terminate upon death of the person entitled to maintenance.

(2) With respect to contracts concluded for the benefit of several obligees, unless it follows otherwise from the circumstances, the surviving obligee may still claim the indivisible performances, including the services needed to continue to lead the life to which he is accustomed, and may claim the share *pro rata* of the divisible performances.

(3) In the event of the death of the person obliged to provide maintenance, his maintenance obligation shall pass to his heir in accordance with the rules on liability for the testator's debts, insofar as the maintenance provided up to the death of the person obliged to provide maintenance does not cover the consideration.

Section 6:494 *[Transferring the ownership of real estate for maintenance]*

(1) If the ownership of a real estate is transferred to the person obliged to provide maintenance against his maintenance obligation, and the person obliged to provide maintenance, despite being requested to do so by the person entitled to maintenance, provides no adequate security for his obligation, at the request of the person entitled to maintenance, the maintenance rights shall be registered in the real estate register as encumbrances on the transferred real estate.

(2) In the event of breach of the contract by the person obliged to provide maintenance, the person entitled to maintenance may seek satisfaction from the security provided by the person obliged to provide maintenance, or from the real estate, if the maintenance rights were entered into the register.

Section 6:495 *[Amendment and dissolution of the maintenance contract]*

(1) The court may amend the maintenance contract at the request of any of the parties and by taking their interests into account, if maintaining the contract with unchanged content is unreasonable in particular because the relationship between the parties has deteriorated.

(2) If maintenance in kind has become impossible due to the conduct or circumstances of any of the parties, any of them may request the court to turn the contract into a life annuity contract permanently or until the aforementioned circumstances cease to exist. In the event of the amendment of the contract, the court shall determine in its judgment the services to be provided by the person obliged to provide maintenance.

(3) If the purpose of the contract cannot be reached through its amendment, any of the parties may request the court to dissolve the contract.

(4) The court shall not be bound by the request of the parties; however, it shall not apply a legal consequence to which both parties object.

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Section 6:496 *[Maintenance contract free of charge]*

(1) The provisions of this Chapter shall apply accordingly to maintenance contracts under which the person entitled to maintenance is not required to provide consideration.

(2) Unless it follows otherwise from the circumstances, the fulfilment of obligations arising from a maintenance contract concluded between close relatives shall not serve as a basis for consideration.

(3) The free of charge maintenance contract shall terminate upon death of the person obliged to provide maintenance.

(4) If the performance of the contract or its turning into a life annuity contract would be too excessive a burden for the person obliged to provide maintenance due to a change in his financial circumstances occurring after the conclusion of the contract, the person obliged to provide maintenance may request the court to dissolve the contract.

(5) With regard to free of charge maintenance, the rules on gifting contracts shall apply accordingly to the refusal to fulfil the maintenance obligations, and the rules on the liability for gratuitous contracts shall apply accordingly to the liability of the person providing the maintenance.

Chapter LXVII

Life annuity contracts

Section 6:497 *[Life annuity contract]*

(1) Under a life annuity contract, the person obliged to provide an annuity shall provide, until the death of the person entitled to the annuity, periodically a specified amount of money or another fungible thing to the person entitled to the annuity, and the person entitled to the annuity shall provide consideration.

(2) The life annuity shall be provided each month in advance. The person entitled to the annuity shall not claim before court the annuity that is overdue for more than six months and was, without a reasonable cause, not enforced.

(3) The rules on maintenance contracts shall otherwise apply to life annuity contracts.

TITLE XXIV

CONTRACT FOR CIVIL LAW PARTNERSHIP

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Section 6:498 *[Contract for civil law partnership]*

In the contract for civil law partnership, the parties (hereinafter the "members") undertake to cooperate to achieve a common goal, to provide the monetary or in-kind contribution needed to achieve that goal and to bear the risks of their activities jointly.

Section 6:499 *[Monetary or in-kind contribution]*

(1) The monetary or in-kind contribution shall be provided by the members, each with an equal share.

(2) The subject of the monetary or in-kind contribution may be money, things of pecuniary value, rights of pecuniary value or any other services, in particular work performed in person.

(3) Contributions not provided in cash shall be assessed by the members, on the basis of which they shall establish the ratio of contributions compared to each other.

Section 6:500 *[The form of contribution]*

(1) Non-consumable things provided as contributions shall be used jointly, and consumable things shall become co-owned.

(2) Members shall not avail individually of the ownership proportion of things subject to co-ownership.

Section 6:501 *[Enforcement of a claim against a member]*

(1) If a member does not provide the contribution undertaken in the contract, any of the members may require him to perform in conformity with the contract. This right of the members shall not be validly excluded.

(2) If any of the members engages in conduct which threatens the success of the common activity or the goal of the contract then any of the members may demand that he refrains from doing so.

Section 6:502 *[Profit and losses, debts]*

(1) Profit and losses of the common activity shall be distributed among the members in proportion to their respective contribution.

(2) Agreements exempting a member from bearing the losses or excluding him from benefiting from the profit shall be prohibited.

(3) If, under a contract concluded with a third party, the members are required to be liable to an extent that is different from their share in losses, they shall settle accounts with each other in accordance with the contract.

Section 6:503 *[Conduct of affairs]*

(1) The members shall be jointly entitled to conduct affairs.

(2) The members may also set forth that they authorise a specified member or members to conduct affairs; in that event, members with no express authorisation shall not conduct affairs.

(3) If several members are jointly authorised to conduct affairs, they shall adopt their decisions on conducting affairs unanimously.

(4) Persons without membership shall not be authorised to conduct affairs. Conducting affairs shall be carried out in person. Contract clauses that are contrary to these provisions shall be null and void.

Section 6:504 *[Opposition]*

The measures taken in conducting affairs by the member having the authorisation to independently conduct affairs may be opposed by any of the members, while measures taken by the members jointly authorised to conduct affairs may be opposed by any of the members excluded from conducting affairs. The opposition shall be decided on jointly by the members. Planned measures shall not be implemented prior to the members adopting their decision. The right to opposition shall not be validly excluded.

Section 6:505 *[Termination of the right to conduct affairs]*

(1) If affairs are not conducted jointly by all the members, the right to conduct affairs may be withdrawn from the member authorised to conduct affairs by the unanimous decision of the other members; in that event, the members shall decide on the future way of conducting affairs. The exclusion or limitation of this right shall be null and void.

(2) A member authorised by the contract to conduct affairs may waive this right. The waiver shall not take place at an inconvenient time.

(3) If no member with authorisation to conduct affairs remains, all members shall be entitled to the right to conduct affairs.

Section 6:506 *[Representation]*

In the contract, the members may authorise one of them to represent them before third parties.

Section 6:507 *[Relationship of members towards each other]*

Every member shall have the right to know the course of affairs, in particular to inspect the relevant files and books. Any agreement between the parties derogating from this provision shall be null and void.

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Section 6:508 *[The member's creditor]*

(1) The creditor of a member may claim the settlement proportion of that member upon the termination of the contract.

(2) If the creditor conducts an enforcement procedure on that proportion, he may exercise the right of ordinary unilateral termination to which the member is entitled; however, even in that event, he shall not claim the member's proportion to be released in kind.

(3) If the contract has been concluded for a definite period, the creditor of a member shall be entitled to the right of unilateral termination with a notice period of three months, provided that more than one year remains of that definite period.

Section 6:509 *[Ordinary unilateral termination]*

(1) A contract concluded for an indefinite period may be unilaterally terminated by any of the members with a notice period of three months. The right of unilateral termination shall not be validly excluded.

(2) If anyone exercises his right of unilateral termination at an inconvenient time, he shall compensate the resulting damage, provided that other members have drawn his attention to the inconvenient nature of the time and he upheld his unilateral termination despite that warning.

Section 6:510 *[Extra-ordinary unilateral termination]*

(1) The contract may be terminated by extra-ordinary unilateral termination for an important reason. The exclusion of this right shall be null and void.

(2) It shall in particular be considered an important reason if a member was at fault in breaching a substantial obligation originating from the contract.

Section 6:511 *[Death or termination of a member]*

(1) The contract shall terminate upon the death or termination of any member.

(2) The remaining members may unanimously decide that the contract remains in effect without the deceased or terminated member.

(3) If the legal successor of the deceased or terminated member requests so and the remaining members give their consent thereto, the legal predecessor shall be replaced by the legal successor in the contract.

Section 6:512 *[Exclusion]*

(1) The contract may provide that a member may be excluded from membership by the unanimous decision of the other members, if another member would have the right of extra-ordinary unilateral termination due to a circumstance arising in the sphere of interest of the member to be excluded.

(2) Accounts shall be settled with the excluded member.

(3) The excluded member shall not claim the co-owned assets to be released in kind. However, upon their choice, the other members may release the claimed asset in kind or its value.

Section 6:513 *[Settlement]*

(1) Following the termination of the contract, the members shall settle accounts with each other. Agreements excluding the settlement in advance shall be null and void.

(2) In the course of the settlement, the common property shall be distributed among the members in proportion to their contribution.

(3) Things granted for joint use shall be returned to the owner.

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TITLE XXV

COHABITATION

Section 6:514 *[Commencement and termination of cohabitation]*

(1) A cohabitation relationship exists between two persons who are living, without concluding a marriage, in the same household, in emotional and economic community (hereinafter "community of life"), and neither of them is in a community of life in the form of marriage, registered partnership or cohabitation relationship with another person, and they are neither lineal relatives, nor siblings.

(2) If the conditions in paragraph (1) are fulfilled, cohabitation shall commence upon the establishment of the community of life, and shall terminate if the cohabitants conclude marriage with each other, start a registered partnership or their community of life ends.

Section 6:515 *[Cohabitation property contract]*

(1) The cohabitants may settle their property relations between each other for the duration of the cohabitation by contract. This contract shall be valid if drawn up as a public deed or a private deed countersigned by an attorney-at-law.

(2) The cohabitants may determine any property provisions in that contract that can be validly determined between spouses under a contract or this Act.

(3) The contract shall be effective against third parties if it is entered into the register of cohabitation property contracts, or if the cohabitants prove that the third party knew or should have known of the existence and the content of that contract.

(4) The provisions related to the registration of matrimonial property contracts shall apply accordingly to the registration of cohabitation property contracts.

Section 6:516 *[Statutory property regime between cohabitants]*

(1) Unless otherwise provided in the cohabitation property contracts, they shall be independent acquirers while living together. Upon the termination of the community of life, either of the cohabitants may require the other to divide the increase in property generated while they were living together. The property qualifying as separate property between spouses shall not be calculated in the increase in property.

(2) A cohabitant shall be entitled to a share in the increase in property in proportion to his contribution to its acquisition, primarily in kind. Any work performed in the household, in the upbringing of children or in the other cohabitant's undertaking shall qualify as contribution to the acquisition.

(3) If the proportion of the contribution to the acquisition cannot be established, it shall be considered as equal, except if that would mean an unequitable financial loss for either of the cohabitants.

(4) Unless otherwise provided in this Act, the provisions on the property regime of community of accrued gains, which regime may be determined by the spouses in a contract, shall apply to the protection of the cohabitants' share in the increase in property, as well as to the division of the increase in property between the cohabitants.

Section 6:517 *[Arranging by contract the right to use the home]*

(1) Upon commencement of or during the cohabitation relationship, the cohabitants may settle in advance and in contract the subsequent use of the home used by them together in case their community of life ends. This contract shall be valid if drawn up as a public deed or a private deed countersigned by an attorney-at-law.

(2) In the event of arranging in advance and in a contract the right to use the common home, the provisions on the use of the common home of spouses shall apply accordingly when taking into consideration the child's right to use the home.

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(3) The cohabitants may agree on the subsequent use of the common home even following the termination of the community of life. This agreement shall not be subject to any form-related requirements.

PART FOUR

EXTRA-CONTRACTUAL LIABILITY

TITLE XXVI

GENERAL RULE AND COMMON RULES ON LIABILITY FOR DAMAGES

Section 6:518 *[General prohibition of causing damage]*

Causing damage unlawfully shall be prohibited by law.

Section 6:519 *[General rule on liability]*

A person causing unlawfully damage to another shall compensate for the damage caused. The person causing damage shall be exempted from liability if he proves that he was not at fault.

Section 6:520 *[Unlawfulness]*

Causing damage shall always be unlawful, except if the damage was caused

a) with the consent of the injured party;

b) to the attacker in order to avert an unlawful attack or a threat assumed to be an unlawful and imminent attack, and the person causing damage did not go beyond the extent necessary;

c) under necessity and to a proportionate extent;

d) by conduct allowed by law, and that conduct does not harm the interests of others protected by law, or the law obliges the person causing damage to provide recompense.

Section 6:521 *[Foreseeability]*

No causal link shall be established in connection with any damage which the person causing it could not foresee and should not have foreseen.

Section 6:522 *[The scope of the liability for damage]*

(1) The person causing damage shall compensate the injured party for his entire damage.

(2) When providing full compensation, the person causing damage shall compensate for

a) the diminution in the value of the assets of the injured party;

b) the loss of profit; and

c) the costs necessary to eliminate the pecuniary losses of the injured party.

(3) Damages shall be reduced by the material gain of the injured party arising from the damage caused to him, except if it is not justified, taking the circumstances of the case into account.

(4) In circumstances deserving special consideration, the court may establish the extent of damages at an amount lower than the value of the entire damage.

Section 6:523 *[Risk of damage]*

In the event of a risk of damage, the party at risk may request that the court, in accordance with the circumstances of the case:

a) prohibit the person causing the risk from the risky conduct;

b) oblige the person causing the risk to take the measures necessary to prevent damage;

c) oblige the person causing the risk to provide adequate security.

Section 6:524 *[Causing damage jointly by several persons]*

(1) If several persons cause damage jointly, they shall have joint and several liability towards the injured party.

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(2) The court may refrain from applying joint and several liability if the injured party has himself contributed to the damage, or if it is justified due to circumstances deserving special consideration. If refraining from applying joint and several liability, the court shall find against the persons causing damage in proportion to their degree of fault or, if this cannot be established, in proportion to their contribution. If the proportion of contribution cannot be established either, the court shall find against the persons causing damage to an equal extent.

(3) Persons causing damage jointly shall bear the damage between each other in proportion to their degree of fault, or, if this cannot be established, in proportion to their contribution. If the proportion of contribution cannot be established either, the persons causing damage shall share the damage between each other equally.

(4) The rules on causing damage jointly by several persons shall also apply if the damage could have been caused by any of the simultaneously undertaken activities alone, or if the activity that caused the damage cannot be identified.

Section 6:525 *[Contribution by the injured party]*

(1) The injured party shall have the obligation to prevent, avert or mitigate the damage. The person causing damage shall not be required to compensate for the damage if the injured party was at fault in breaching these obligations.

(2) The person causing damage and the injured party shall bear the damage with each other in proportion to their degree of fault, or, if this cannot be established, in proportion to their contribution. If the proportion of contribution cannot be established either, the person causing damage and the injured party shall bear the damage between each other equally.

(3) The injured party shall bear liability with respect to the omissions of those whose conduct he is liable for.

Section 6:526 *[Limitation and exclusion of liability for causing damage]*

Contract clauses limiting or excluding liability for intentionally causing damage, as well as for harming human life, physical integrity and health shall be null and void.

Section 6:527 *[Form of compensation]*

(1) The person causing damage shall provide pecuniary compensation, except if the circumstances of the case justify compensation in kind.

(2) The court may define a fixed-amount annuity to be paid periodically and in advance in order to compensate for the damage that will occur regularly in the future.

(3) The court shall not be bound by the request of the injured party when establishing the form of compensation; however, the court shall not apply a form of compensation objected by all parties.

Section 6:528 *[Annuity to supplement the income]*

(1) A person whose capacity to work has been reduced by the damage may request an annuity to supplement his income if, following the harmful event, it does not reach the income he had for the period preceding the harmful event for a reason for which he is not at fault.

(2) The annuity to supplement the income shall be established by assessing the reduction in the capacity to work together with the extent of the loss of income.

(3) The loss of income of the injured party shall be determined on the basis of his average monthly income earned in the year preceding the damage. If there has been a permanent change in the income during the year preceding the damage, the average of the income following that change shall be taken into account.

(4) If the loss of income cannot be established in accordance with paragraph (3), the average monthly income of persons carrying out identical or similar activities shall be taken into account.

(5) While determining the loss of income, the future changes that can be expected shall be taken into account as well.

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(6) While determining the loss of income, the income earned by the injured party due to carrying out extraordinary work shall not be taken into account, despite the reduction in his capacity to work.

Section 6:529 *[Annuity to supplement the maintenance]*

(1) An annuity to supplement the maintenance shall be granted to the person who would be entitled to maintenance from the person who died due to the damage. The person causing damage shall pay an annuity to supplement the maintenance even if this consequence of his conduct was not foreseeable.

(2) The person causing damage shall pay an annuity to supplement the maintenance even if the deceased person did not provide the maintenance *de facto* and thus breached his maintenance obligation, or if the person claiming the annuity did not enforce his claim for maintenance for an excusable reason.

(3) While determining the extent of the annuity to supplement the maintenance, the maintenance lost and the income of the person claiming the annuity shall be taken into account.

(4) While determining the extent of the annuity it shall be taken into account if the person claiming the annuity has no adequate income for a reason for which he is at fault and whether he may enforce a claim against those who were obliged to provide him with maintenance in the same rank as the deceased person.

(5) The rules on calculating the annuity to supplement the income shall otherwise apply accordingly to the calculation of the annuity to supplement the maintenance.

Section 6:530 *[Modification or dissolution of the annuity]*

In the event of significant changes in the circumstances taken into account while determining the annuity, any of the parties may request the extent and payment period of the annuity to be modified, or the obligation to pay annuity to be dissolved.

Section 6:531 *[General damages]*

If the extent of damage cannot be established, the person causing damage shall pay damages in an amount that is appropriate for compensating the damage of the person suffering it.

Section 6:532 *[Due date of the damages]*

The damages shall become due instantly upon the occurrence of the damage.

Section 6:533 *[Statute of limitations]*

(1) The rules on the statute of limitations shall apply to damages, with the derogation that, with respect to a damage caused by a criminal offence, the claim shall only lapse at the time when that criminal offence becomes no longer subject to punishment due to the lapse of time, if this period of time is longer than five years.

(2) The limitation period of a claim for annuity shall commence uniformly with respect to the entire claim at the time when the damage giving rise to the claim first occurs.

Section 6:534 *[Taking into account the changes in value conditions while determining the extent of damage]*

(1) If, due to the lapse of time or other circumstances, significant changes in value conditions have occurred in the period between the damage caused and the adoption of the judgment, the court may determine the extent of the damage caused in accordance with the value conditions applicable at the time of the judgment. In that event, the person causing damage shall pay the default interest from when the value was determined.

(2) If the injured party is at fault in delaying the enforcement of his claim, he shall bear the risk of change in the price and value conditions.

MINISTRY OF JUSTICE HUNGARY

TITLE XXVII

SPECIAL CASES OF LIABILITY

Chapter LXVIII

Liability for hazardous activities

Section 6:535 *[Liability for hazardous operations]*

(1) A person carrying out hazardous activities shall compensate for the resulting damage. He shall be exempted from liability if he proves that the damage was caused by an unavertable event outside the scope of the hazardous activity.

(2) A person who causes damage by his activity endangering the human environment shall be liable according to the rules on liability for hazardous operations.

(3) The exclusion or limitation of liability shall be null and void; however, this prohibition shall not apply to damage caused to things.

Section 6:536 *[The operator]*

(1) The person in whose interest the hazardous operations are carried out shall be considered a person carrying out the hazardous activity.

(2) If the hazardous operations are linked to several operators, they shall be considered persons causing damage jointly.

Section 6:537 *[Rules on the contribution by the injured party]*

(1) The operator shall not be required to compensate for damage to the extent that it resulted from the fault of the injured party. While apportioning liability for damages, the hazardous nature of the activity shall be taken into account against the operator.

(2) If a non-culpable person has contributed to causing the damage by his avoidable conduct, the operator shall have full liability towards the non-culpable person suffering damage. The operator may enforce a claim for reimbursement against the caregiver of the non-culpable person by applying paragraph (1) accordingly.

Section 6:538 *[Statute of limitations]*

The claim for damages arising from the liability for hazardous operations shall lapse after three years.

Section 6:539 *[Concurrence of hazardous operations and the relationship between the operators if causing damage jointly]*

(1) If hazardous operations cause damage to each other, the operators shall compensate for the damage caused to each other in proportion to their degree of fault. If damage has been caused *de facto* by a person other than the operator, the operator shall be liable for damages based on the fault of the person causing damage *de facto*.

(2) If neither party is at fault for causing the damage, compensation for damages shall be paid by the person in whose scope of hazardous activities the irregularity resulting in the damage occurred.

(3) If damage caused to each other can be traced back to an irregularity that occurred in the scope of hazardous activities of both parties, or if no such irregularity can be established for either of the parties then, in the absence of fault, each party shall bear his own damage.

(4) The provisions of this section shall also apply to the relationship between operators if the damage is caused by several hazardous operations jointly; however, in the absence of fault and irregularity, damage shall be borne in equal proportions.

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Chapter LXIX

Liability for damage caused by another person

Section 6:540 *[Liability for damage caused by employees or by the members of a legal person]*

(1) If an employee causes damage to a third party in connection with his employment relationship, his employer shall be liable towards the injured party.

(2) If a member of a legal person causes damage to a third party in connection with his membership relationship, the legal person shall be liable towards the injured party.

(3) The employee and the member shall have joint and several liability with the employer or the legal person, respectively, if the damage was caused intentionally.

Section 6:541

Section 6:542 *[Liability for damage caused by an agent]*

(1) If an agent causes damage to a third party in his capacity as an agent, the agent and the principal shall have joint and several liability towards the injured party. The principal shall be exempted from liability if he proves that he cannot be at fault with respect to selecting the agent, providing him with instructions and supervising him.

(2) In the case of an agency relationship of a permanent nature, the injured party may also enforce his claim for damages in accordance with the rules on liability for damage caused by employees.

Section 6:543 *[Liability for damage caused by the obligor of another contract]*

The obligee of another contract shall be liable for damage caused to a third party by the obligor, who is in a contractual relationship with the obligee, in the framework of the performance of the contract, unless the names the person causing damage being unknown to the injured party.

Chapter LXX

Liability for damage caused by non-culpable persons

Section 6:544 *[Liability for damage caused by non-culpable persons]*

(1) A person whose sound mind is limited to such an extent that he is unable to evaluate the consequences of his actions in connection with causing damage shall not be liable for damage caused by him.

(2) The person who is considered by law to be the caregiver of the non-culpable person shall be liable instead of the non-culpable person. The person exercising supervision over the non-culpable person at the time of causing damage shall also be considered a caregiver.

(3) The caregiver shall be exempted from liability if he proves that he cannot be at fault with respect to education and supervision.

(4) The rules on causing damage jointly by several persons shall apply to the liability of several caregivers.

Section 6:545 *[Damages based on equity]*

If the person causing damage has no caregiver, or if the liability of the caregiver cannot be established then, as an exception, the non-culpable person causing damage may also be obliged to compensate for the damage in whole or in part, provided that it is obviously justified by the circumstances of the case and the property relations of the parties.

Section 6:546 *[Own fault]*

The non-culpable person causing damage shall not rely on the absence of his sound mind or on his disability if he was at fault in causing that condition.

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Section 6:547 *[Liability for damage caused by a culpable minor]*

If the damage has been caused by a culpable minor who has a caregiver obliged to supervise him, and the injured party proves that the caregiver was at fault in breaching his obligation, the caregiver and the person causing damage shall have joint and several liability for the damage caused.

Chapter LXXI

Liability for damage caused in the course of exercising public authority

Section 6:548 *[Liability for damage caused in the course of exercising administrative powers]*

(1) Liability may be established for damage caused in the course of exercising administrative powers if the damage has been caused by exercising public authority or by failing to exercise it, and the damage could not be averted by an ordinary legal remedy or an administrative court action.

(2) The legal person exercising public authority shall be liable for the damage caused in the course of exercising administrative powers. If the person exercising public powers is not a legal person, the administrative organ with legal personality under the auspices of which the proceeding administrative organ operates shall be liable for the damage.

Section 6:549 *[Liability for damage caused in the course of exercising judicial, prosecutorial, notarial and enforcement powers]*

(1) The rules on liability for damage caused in the course of exercising administrative powers shall apply accordingly to the damage caused in the course of exercising judicial and prosecutorial powers, with the proviso that the claim for damages shall be enforced against the court in the event of damage caused in the course of exercising judicial powers, and against the Office of the Prosecutor General, if the damage was caused in the course of exercising prosecutorial powers. If the court concerned is not a legal person, the claim for damages shall be enforced against the court the president of which exercises the general employer's rights with respect to the judges of the court without legal personality. The action for damages shall be conditional upon the exhaustion of ordinary legal remedies.

(2) The rules on liability for damage caused in the course of exercising administrative powers shall apply accordingly to the damage caused in the course of exercising notarial and enforcement powers. The action for damages shall be conditional upon the exhaustion of ordinary legal remedies.

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Chapter LXXII

Product liability

Section 6:550 *[Liability for damage caused by a defective product]*

The producer of the defective product shall be liable for the damage caused by that product.

Section 6:551 *[Product]*

Product means all movables, even if later it became a component of another thing.

Section 6:552 *[Damage caused by a defective product]*

Damage caused by a defective product means

a) damage occurring due to death, physical harm or damage to health that was caused by the defective product; and

b) damage caused to other things by the defective product with a damage value that is, upon occurrence of the damage, higher than five hundred euros converted to forints at the official exchange rate of the Hungarian National Bank, provided that the damaged thing is designed for private use or consumption, and it was normally used for that purpose by the injured party.

Section 6:553 *[Producer]*

(1) For the purposes of this Chapter, producer means the manufacturer of the finished product, component part or raw material, or the person who presents himself as the producer of the product by indicating his name, trademark or other distinguishing features on the product.

(2) With respect to imported products, the person who imports the product to the territory of the European Economic Area within the scope of his economic activity shall also be considered a producer. This rule shall be without prejudice to the importer's right of redress against the producer.

(3) If it cannot be established who the producer of the product is, every distributor of the product shall be considered producer unless the distributor discloses to the injured party the name of the producer or the distributor from whom he purchased the product. This rule shall apply accordingly to imported products even if the producer of the product was indicated, but it cannot be established who the importer was.

(4) The distributor may make that statement within thirty days from the written request made by the injured party.

Section 6:554 *[Defect of the product]*

(1) A product shall be considered defective if it does not provide the safety that may generally be expected, taking into account in particular the purpose of the product, its reasonably expected use, the information concerning the product, the time of placing it on the market and the state of the scientific and technical knowledge.

(2) A product may not be considered defective by the sole fact that another product providing a higher level of safety is placed on the market later on.

(3) The defect of the product shall be proved by the injured party.

Section 6:555 *[Exemption from liability]*

(1) The producer shall be exempted from liability if he proves that

a) he has not placed the product on the market;

b) the product was not produced for businesslike distribution, or was not produced or distributed in the course of businesslike economic activity;

c) the product was free of defects at the time of placing it on the market by the producer, and the cause that led to the defect has occurred later;

d) in accordance with the state of the scientific and technical knowledge, the defect was not recognisable at the time the product was placed on the market by the producer; or

e) the defect of the product was due to compliance with law or a mandatory provision of an authority.

(2) The producer of a raw material or a component part shall be exempted from liability if he proves that

a) the defect was caused by the structure or composition of the finished product; or

b) the defect arose as a consequence of the instructions issued by the producer of the finished product.

(3) In the event of damage caused by the administration of pharmaceuticals in accordance with their prescriptions, the producer shall not be exempted from liability by relying on paragraph (1) *d)*.

Section 6:556 *[Contribution by third parties]*

The producer shall not be exempted from liability by relying on the fact that the activity of a third party has also contributed to the damage. This rule shall be without prejudice to the claim that can be enforced by the producer against third parties.

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Section 6:557 *[Limitation and exclusion of liability]*

Any limitation and exclusion of the producer's liability towards the injured party shall be null and void.

Section 6:558 *[Time limit for enforcing the claim]*

(1) The injured party may enforce his claim for damages within a three-year period.

(2) The statute of limitations shall commence when the injured party has become or could have become aware of the damage, the defect of the product and the identity of the producer.

(3) The producer shall be liable under this Chapter for ten years from the time he placed the product on the market. Failure to meet this time limit shall result in the forfeiture of rights.

Section 6:559 *[Miscellaneous provisions]*

(1) While applying the provisions of this Chapter, there shall be no way of establishing the extent of damages in an amount lower than the value of the entire damage, even in circumstances deserving special consideration.

(2) The provisions of this Chapter shall not apply to the types of damage defined in the Act on nuclear energy, or to damage caused by nuclear accidents governed by international agreements ratified by the Republic of Hungary.

Chapter LXXIII

Liability for damage caused by defective buildings

Section 6:560 *[The liability of the owner of the building]*

(1) The owner of the building shall be liable for damage caused to another person by parts falling off the building, or by the defects of the building, except if he proves that the rules on constructions and maintenance have not been violated, and he was not at fault in connection with preventing damage during the construction and maintenance.

(2) The rule laid down in paragraph (1) shall apply to the liability for damage caused by falling objects which are placed on the building, with the derogation that the person in whose interest the object was placed shall have joint and several liability with the owner of the building towards the injured party.

(3) These rules shall be without prejudice to the right of the person being liable to claim compensation for damage from the person causing damage.

Section 6:561 *[Liability for damage caused by throwing, dropping or pouring out objects]*

(1) The tenant of the residential or other premises, or the person using those premises under another legal title, shall be liable towards the injured party for the damage caused by throwing, dropping or pouring objects out of the residential or other premises.

(2) The tenant or the user shall be liable as a surety if he names the person causing damage. He shall be exempted from liability if he proves that the person causing damage had been staying unlawfully in the premises.

(3) The owner of the building shall be liable towards the injured party for the damage caused by throwing, dropping or pouring objects out of the premises of the building designed for collective use. The owner shall be liable as a surety if he names the person causing damage.

(4) These rules shall be without prejudice to the right of the person being liable to claim compensation for damage from the person who is otherwise liable for the damage.

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Chapter LXXIV

Liability for damage caused by animals

Section 6:562 *[Damage caused in the course of keeping animals]*

(1) A person keeping animals shall be liable for the damage caused by the animal to another person, except if he proves that he was not at fault in connection with keeping the animal.

(2) Keepers of dangerous animals shall be liable in accordance with the rules on liability for hazardous operations.

Section 6:563 *[Liability for damage caused by huntable animals]*

(1) The person entitled to hunt and in whose hunting area the damage was caused shall be liable for the damage caused by the huntable animal. If the damage was caused outside the hunting area, the person entitled to hunt from whose hunting area the game came out shall be liable for the damage.

(2) The person entitled to hunt shall be exempted from liability if he proves that the damage was caused by an unavoidable circumstance beyond his control.

(3) Claim for damages shall lapse after three years.

TITLE XXVIII

RECOMPENSE FOR CAUSING DAMAGE LAWFULLY

Section 6:564 *[Recompense]*

If the obligation to provide recompense for damage caused lawfully is set forth by law, the rules on damages shall apply accordingly to the form and extent of the recompense.

PART FIVE

SECURITIES

TITLE XXIX

CONCEPT OF SECURITIES AND THEIR EFFECT OF FORMAL LEGITIMATION

Section 6:565 *[Concept of securities]*

(1) Securities are unilateral juridical acts which either as a paper-form instrument or a set of data created, recorded, registered and transmitted in another form specified by law (dematerialised securities) represent the entitlement included therein in such a way that the exercise of and disposal over that entitlement is only possible through and in possession of the securities.

(2) If the law specifies mandatory elements for certain types of securities, only instruments or dematerialised securities complying with those requirements shall be considered securities belonging to the given type of securities.

(3) If the mandatory elements for certain types of securities are not specified by another law, they may be considered securities only if their issuer indicates at least the following information:

a) the issuer's name and address;

b) the fact that the statement qualifies as securities;

c) the entitlement represented by the securities;

d) with respect to securities issued in series, the indication of the series of securities, the securities code of the series and the number of securities in that series;

e) the date and place of issue;

f) with respect to certificated securities, the signature of the issuer.

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(4) Certificated securities shall be produced as securities issued individually or in series. Instruments qualifying as securities shall be issued as bearer or registered securities.

(5) Dematerialised securities shall be produced as registered securities issued in series.

(6) Securities shall be transferable. The issuer may prohibit the transfer of the securities by indicating that prohibition on the securities.

(7) The obligation represented by the securities shall not be terminated by the fact that the securities are acquired by their issuer.

Section 6:566 *[The effect of the formal legitimation of securities and errors in their issue]*

(1) The issuer shall be bound by the obligations indicated in the securities towards the securities' holder acting in good faith, even if the securities have been offered without being issued or through an invalid transaction.

(2) The entitlement of the securities' holder acting in good faith, embodied by the securities, shall not be affected by the fact that an earlier transfer or other acquisition of ownership had no legal title, or that legal title was invalid or ineffective.

(3) With respect to bearer securities, the possessor of the securities shall be considered the person entitled to exercise the right represented by the securities.

(4) With respect to registered securities, the person indicated in the securities as holder, or the person attested as holder by the consecutive chain of endorsements, shall be considered the person entitled to exercise the right represented by the securities. If the last endorsement is blank, the possessor of the securities shall be considered the holder, provided that the chain of endorsements is consecutive. If an additional endorsement follows a blank one, the signatory of the former shall be considered to have acquired the securities by way of a blank endorsement.

(5) If the holder of registered securities is changed by means other than transfer, the new holder shall attest his acquisition of rights. After the acquisition of rights by means other than transfer, the consecutive chain of endorsements entered on the securities shall attest the possessor of the securities as holder, depending on the attestation of acquisition of rights by means other than transfer. If a specified person is entitled by law to indicate on the chain of endorsements the attested acquisition of rights by means other than transfer, such registration shall ensure the consecutive nature of the chain of endorsements, and the absence, invalidity or ineffectiveness of the acquisition of rights shall not affect the entitlement arising from the securities with respect to the third party acting in good faith who shall be considered the holder of the securities.

(6) Unless proven to the contrary, the holder of dematerialised securities shall be considered the holder of the securities account on which the dematerialised securities are registered.

Section 6:567 *[Limitation of objections]*

The obligor of the securities shall not rely against the holder acting in good faith on objections based on a legal relationship with a previous holder other than those appearing from the content of the securities or the securities account.

Section 6:568 *[Possibility of derogation from the rules of this part]*

Derogations from the provisions of this Part shall be possible in so far as they are allowed by another law.

TITLE XXX

MEANS OF TRANSFERRING SECURITIES AND THEIR ANNULMENT

Section 6:569 *[Means of transferring securities]*

(1) Certificated securities which do not contain the name of the holder, or which contain that name but, according to the content of the securities, the obligor is required to perform not

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only to the person indicated but to any bearer of the securities, may be transferred by way of transfer of possession based on the legal title to transfer.

(2) Certificated securities which indicate the name of the holder and do not contain a clause, according to which the obligor is required to perform to any bearer of the securities, shall be transferred by way of transfer of possession based on a legal title to transfer, together with a special or blank endorsement.

(3) A special endorsement shall be a written statement entered on the certificated securities or on the sheet attached thereto (hereinafter "addendum") and signed by the transferor, stating the intention to transfer the securities and indicating the person to whom the securities are transferred.

(4) A blank endorsement shall be a written statement entered on the reverse of the certificated securities or on the addendum and signed by the transferor, stating the intention to transfer the securities but not indicating the person to whom the securities are transferred. The signature of the transferor appearing on the reverse of the securities or on the addendum shall also be considered a blank endorsement.

(5) In the event of transferring registered certificated securities with a blank endorsement, the possessor of the securities

a) may fill out the blank endorsement with his own name or another person's name;

b) may transfer the securities with a special or blank endorsement;

c) may transfer the possession of the securities to a third party without filling out the blank endorsement and attaching a new endorsement to the securities.

(6) If, upon authorisation by law, the issuer excludes in a written statement entered on the registered certificated securities the possibility to transfer via endorsement (hereinafter "non-transferability clause"), the certificated securities may be transferred with the effect of the assignment of claims.

(7) For the transfer of dematerialised securities, a contract or another legal title of transfer, the charging of the transferor's securities account and the crediting of the dematerialised securities to the new holder's securities account shall be required.

Section 6:570 *[The legal effect of transferring securities]*

Except for registered securities containing a non-transferability clause, the rights represented by the securities shall pass to the new holder of the securities upon the transfer of the securities, irrespective of whether the transferor had those rights or not.

Section 6:571 *[Annulment of securities]*

(1) If the securities become unidentifiable, are lost, destroyed or damaged to the extent that their content cannot be recognised, the securities may be annulled as a result of a procedure instituted for that purpose.

(2) If the securities are annulled, the annulled securities shall no longer produce the legal effects of securities law; rights represented by the securities may be enforced in accordance with the general rules governing those rights.

Section 6:572

TITLE XXXI

Sections 6:573 to **6:578**

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PART SIX

OTHER FACTS GIVING RISE TO AN OBLIGATION

TITLE XXXII

UNJUSTIFIED ENRICHMENT

Section 6:579 *[Unjustified enrichment]*

(1) A person obtaining, without legal grounds, material gain at the expense of another, shall make restitution of that gain.

(2) A person who lost the enrichment before it being reclaimed shall not be obliged to make restitution of it, except if

a) he obtained the enrichment while acting in bad faith; or

b) he is at fault for losing the enrichment.

Section 6:580 *[Reimbursement of value]*

If the material gain cannot be returned in kind, its value shall be reimbursed.

Section 6:581 *[Reclaiming benefits granted for subsistence]*

Benefits granted and used for subsistence shall not be reclaimed as unjustified enrichment, except if the benefit was obtained through a criminal offence.

Section 6:582 *[Persons enriched jointly]*

If several persons are, without legal grounds, enriched jointly, they shall have joint and several liability for the restitution of their enrichment.

TITLE XXXIII

AGENCY WITHOUT AUTHORITY

Section 6:583 *[Agency without authority]*

If a person acts on behalf of another in a given affair without being authorised to do so by a mandate or otherwise, he shall manage that affair as required by the interest and presumable intent of the person in whose favour he intervened.

Section 6:584 *[Appropriateness of the intervention]*

(1) Unauthorised intervention in an affair of another person shall be considered appropriate if it serves the presumable interest and intent of that person, in particular if the intervention protects him from damage.

(2) Intervention shall be allowed to avert a threat to life, to prevent or avert widely threatening danger or to fulfil a maintenance obligation, even against the will of the person whose life is in danger, or against the will of the owner and other persons having the right of disposal, or against the will of the person obliged to provide maintenance, respectively.

Section 6:585 *[Agent without authority]*

(1) The agent without authority shall, without delay, inform the person in whose interest he intervened of his intervention; otherwise he shall have the same obligations as an agent.

(2) If the intervention of the agent without authority has been appropriate, he shall be entitled to the rights of the agent, irrespective of whether his intervention was successful or not.

(3) If his intervention has not been appropriate, the agent without authority shall have no claim for reimbursement, but may claim the reimbursement of his costs in accordance with the rules on unjustified enrichment, and shall be liable for any damage that would not have occurred without his intervention.

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(4) The rules on fiduciary asset management contracts shall apply accordingly to the separation, safekeeping, settlement and release obligations burdening the agent without authority in connection with another person's assets entered into his possession.

Section 6:586 *[Managing the affair of another person as his own affair]*

If a person manages the affair of another person while knowing that he has no authorisation to do so, the rights arising from the agency without authority may be enforced against him. If those rights are enforced, the person managing the affair may set off his costs in accordance with the rules on unjustified enrichment.

TITLE XXXIV

IMPLIED CONDUCT

Section 6:587 *[Implied conduct]*

The person whose intentional conduct has, for a reasonable cause, led another person acting in good faith to show conduct which caused damage to that person without any fault on his part, may be obliged by the court to compensate for the damage in whole or in part.

TITLE XXXV

PROMISE OF REWARD

Section 6:588 *[Promise of reward]*

(1) If a person publicly promises a reward for providing a performance or producing a result, he shall hand over the reward to the person who was the first in providing the performance or producing the result. He shall be required to do so even if the performance or result was provided or produced irrespective of the promised reward.

(2) If the performance or result has been provided or produced by several persons jointly, the reward shall be distributed among them in proportion to their contribution. If the proportion of the contribution cannot be established, or the performance or result has been provided or produced by several persons independently, the reward shall be distributed among them equally.

(3) The withdrawal of the promise of reward shall be valid if the person making the promise explicitly reserved the right of withdrawal, and the withdrawal has taken place with the same publicity as the promise of reward. The withdrawal of a promise of reward shall be ineffective towards the person providing the performance or producing the result if it takes place after the provision of the performance or production of the result.

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TITLE XXXVI

COMMITMENT FOR A PURPOSE OF PUBLIC INTEREST

Section 6:589 *[Undertaking an obligation for a purpose of public interest]*

If a person undertakes an obligation according to which he provides a pecuniary service free of charge for a purpose of public interest specified by him, he may establish the conditions upon which the service is to be used for the specified purpose, and may designate the person in favour of whom the service has to be used.

Section 6:590 *[Designation of an organ]*

(1) If the obligor has not designated the organ which uses the service for the specified purpose, the court shall decide on its designation based on the action brought by the prosecutor.

(2) If the designated organ does not use the service for the specified purpose, the prosecutor shall be entitled to enforce the resulting claims.

Section 6:591 *[Withdrawal]*

(1) Undertaking the obligation for a one-off service may be validly withdrawn prior to the performance of the service if substantial changes have occurred in the obligor's circumstances after undertaking the obligation, as a consequence of which the performance of the obligation can no longer be expected.

(2) Undertaking the obligation for services to be provided regularly for an indefinite period may be withdrawn by the obligor at any time.

(3) In the event of withdrawing the undertaking of the obligation, the services already provided shall not be reclaimed.

Section 6:592 *[Termination of the obligation]*

(1) The obligation shall terminate

a) upon the obligor's death;

b) upon achieving the purpose of the obligation; or

c) if the purpose of the obligation becomes impossible.

(2) If the obligation terminated due to the achievement or becoming impossible of the purpose, the unused services shall be returned to the obligor.

BOOK SEVEN

LAW OF SUCCESSION

PART ONE

GENERAL RULES

TITLE I

SUCCESSION

Section 7:1 *[Succession]*

Upon a person's death, his estate shall pass as a whole to his heir.

Section 7:2 *[Inheritance claim]*

Inheritance claims shall not lapse.

Section 7:3 *[Legal titles of succession]*

(1) Succession shall be based upon testamentary disposition or upon the law.

(2) If the testator left a testamentary disposition, the order of succession shall be governed by it.

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TITLE II

DISQUALIFICATION FROM INHERITANCE

Section 7:4 *[Disqualification from inheritance]*

(1) A person not surviving the testator shall be disqualified from succession. Persons died in the same accident or in the same emergency shall be considered disqualified from inheritance after each other, irrespective of the order of their death.

(2) A person shall also be disqualified from inheritance

a) if he is unworthy to inherit;

b) if he is excluded from succession or disinherited by the testator;

c) if he has renounced his inheritance;

d) if he has disclaimed his inheritance.

Section 7:5 *[Disqualification from usufruct, compulsory share, legacy and testamentary burden]*

Rules on disqualification from inheritance shall apply accordingly to the succession of usufruct, compulsory share, legacy and testamentary burden, except that the disqualification of the beneficiary of legacy and testamentary burden, in the absence of substitution, results in the exemption of the obligor of legacy or testamentary burden.

Section 7:6 *[Unworthiness]*

(1) A person shall be unworthy to inherit

a) if he sought the testator's life;

b) if he, acting deliberately, prevented the testator from stating his last will freely, negated the enforcement of the last will or attempted at either;

c) if, in order to benefit from the estate, he sought the life of a person entitled to inherit under intestate succession or a person benefiting from the testamentary disposition of the testator.

(2) Unworthiness shall be disregarded if the conduct resulting in unworthiness, be it against any person, has been forgiven by the testator or the person against whom it was directed.

(3) Unworthiness may be invoked by a person who, as a result of the disqualification of the unworthy person, would inherit himself or would be exempted from an obligation or another burden imposed on him by the testamentary disposition.

(4) A person disqualified from inheritance due to unworthiness shall not be entitled to manage, as statutory representative, the inheritance of the person replacing him. The rules on the management of property withdrawn from the management of property by the parents shall apply accordingly to the management of such property.

Section 7:7 *[Renunciation of inheritance]*

(1) A person entitled to intestate succession may renounce his inheritance, wholly or partially, under a written contract concluded with the testator.

(2) The renunciation may be challenged in accordance with the rules on challenging wills due to lack or deficiencies of intent to contract.

Section 7:8 *[Personal effects of the renunciation]*

(1) The renunciation shall not affect the descendants of the renouncing person, unless the contract provides so or unless it was done against a satisfaction the amount of which equals the compulsory share.

(2) Unless otherwise agreed by the parties, renunciation in favour of a specific person shall apply to the case when the specific person inherits from the testator. Unless otherwise agreed by the parties, a renunciation by a descendant of the testator shall be in favour of the other descendants.

Section 7:9 *[Extent of the renunciation]*

(1) Unless otherwise agreed by the parties, the renunciation of inheritance shall include the renunciation of the compulsory share as well. The renunciation of the compulsory share shall not cover the assets that the renouncing party is granted under another legal title of succession.

(2) Unless otherwise agreed by the parties, the renunciation shall also cover the part of the estate that is added to the share of the renouncing person as a result of another person's disqualification.

(3) Unless otherwise agreed by the parties, the renunciation shall also cover the property that the testator acquired after the renunciation was made, except for such exceptional increase in the property in the knowledge of which the renunciation would not have been likely to be made.

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PART TWO

TESTATE SUCCESSION

TITLE III

TYPES, VALIDITY REQUIREMENTS AND INTERPRETATION OF THE WILL

Section 7:10 *[Freedom of testation]*

The testator shall be free to arrange for his property or a part of it upon his death.

Section 7:11 *[Personal character of the will]*

Wills shall be made in person.

Section 7:12 *[Will]*

For a document to qualify as a will, it shall contain an arrangement for property upon the death of the testator and it shall seem to originate from the testator.

Section 7:13 *[Types of wills]*

Wills may be made either as a public will or private written will; oral wills may be made in the cases provided for in this Act.

Section 7:14 *[Public will]*

(1) Public wills may only be made before a notary. The rules on validity as to form of notarial deeds shall apply to the validity as to form of public wills.

(2) Public wills made before a person who is a relative, guardian or custodian of the testator or of the testator's spouse or cohabitant shall not be valid.

(3) Benefits granted to persons contributing to making the public will or their relatives, or those under their guardianship or custodianship shall be invalid.

(4) Minors having limited capacity to act and adults having partially limited capacity to act as regards their juridical acts in property issues may make public wills only. For that will to be valid, the consent of the statutory representative and the approval of the guardianship authority shall not be necessary.

(5) Blind or illiterate persons or those unable to read or to sign their names may make a valid written will as a public will only.

Section 7:15 *[Private written will]*

For a private written will to be valid, it shall be drafted in a language that the testator understands and, with respect to a will written in his own hand, in which he writes and, with respect to a will written by another person, which he reads.

Section 7:16 *[Wills written in the testator's own hand or by another person]*

(1) A private written will may either be written by the testator himself or the testator may have another person write it.

(2) A type-written will shall not qualify as one written in own hand even if it had been drafted by the testator himself.

(3) Private wills written in shorthand or symbols or digits other than ordinary writing shall be invalid.

Section 7:17 *[Form-related validity requirements of private written wills]*

(1) Private written wills shall be valid as to form if the date of the will is indicated in the document, and if the testator,

a) for a will written in own hand, writes it from the beginning to the end and signs it in his own hand;

b) for a will written by another person, signs it in the simultaneous presence of two witnesses or, if he has already signed it, acknowledges the signature as his own in the

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simultaneous presence of two witnesses; and, in both cases, the will is signed by the witnesses as well, indicating this quality of theirs; or

c) signs the will written in his own hand or by another person and deposits it personally with a notary, either as an open or a closed document, stating that it is a will.

(2) A private written will written in the testator's own hand consisting of several separate pages shall be valid if all the pages are numbered consecutively.

(3) A private written will written by another person consisting of several separate pages shall be valid if all the pages are numbered consecutively and are signed by the testator and both witnesses.

Section 7:18 *[Witness to a private written will]*

(1) No person can be witness to a private written will, who

a) is not able to attest the identity of the testator;

b) is a minor, an adult having no capacity to act or a person who is not eligible to contribute as a witness according to the partial limitation of his capacity to act;

c) is illiterate.

(2) For a private written will to be valid, the witness shall not be required to be aware of the content of the will or of that fact that he has contributed to making a will.

Section 7:19 *[Benefit granted to a witness or another contributor]*

(1) A benefit granted to the witness of a private written will, a person contributing to making the will or to a relative of them shall be invalid, unless this part of the will was written in the testator's own hand and signed by the testator.

(2) A benefit granted to a witness or to his relative shall not be invalid either if, apart from the witness concerned, two other witnesses contributed to making the will.

(3) Persons drafting, editing, and writing the will and all those who, on the basis of their activity, have the possibility of substantially influencing the contents of the will shall qualify as contributors.

(4) If a legal person is granted a benefit, the members, executive officers, representatives, members of the supervisory board and the employees of the legal person may not be witnesses. The contribution of such a person to making the will shall make the benefit left to the legal person invalid.

Section 7:20 *[Exceptional character of the oral will]*

An oral will may be made by a person who is under extraordinary circumstances threatening his life that do not make it possible to make a written will.

Section 7:21 *[Validity requirements of the oral will]*

The oral will shall be valid if the testator, in the simultaneous presence of two witnesses and in a language understood by the witnesses, presents his whole last will orally or, if he uses sign language, in sign language, and simultaneously declares that his oral statement contains his will.

Section 7:22 *[Witness to an oral will]*

Limitations relating to the person of a witness of a private written will and limitations regarding the interests of a witness's relatives shall apply accordingly to the oral will, except that the witness is not required to be literate for an oral will to be valid.

Section 7:23 *[Joint will]*

(1) The will of two or more persons contained in any form in the same document shall be invalid.

(2) The will of spouses drawn up during their community of life in the same document shall be valid if,

a) for a will written in the testators own hand, the document is written, from the beginning to the end, and signed by one of the testators, while the other testator declares in the one and

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same document in a statement written and signed in his own hand, that the document also includes his last will;

b) for a will written by another person, the testators sign the document in the simultaneous presence of both of them and of the witnesses; or the two testators separately acknowledge, in the simultaneous presence of both of them and of the witnesses, the signatures on the document as their own; or

c) the spouses made a public will.

(3) A joint will written by another person, consisting of several separate pages shall be valid if all the pages are numbered consecutively and are signed by the testators and both witnesses. A joint will written by one of the testators' in his own hand shall be valid if all the pages are numbered consecutively, and are signed by the other testator.

Section 7:24 *[Interpretation of the will]*

In case of doubt, the will shall be interpreted in accordance with the presumable intent of the testator and in a way that the intent of the testator is enforced where possible. This rule may not give rise to remedying a form-related error in the will.

TITLE IV

CONTENTS OF THE WILL

Section 7:25 *[Naming heirs]*

(1) The testator may name one or more heirs in his will.

(2) An heir is a person to whom the testator bequeaths his estate or a certain share or part of it.

(3) In case of doubt, a person to whom the testator grants one or more specific assets amounting to a significant part of the value of the whole estate shall also qualify as an heir if, according to the presumable intent of the testator, the beneficiary is obliged to share the burdens of the estate as well.

(4) A foundation left by the founder upon his death, if entered into the register, shall acquire the property granted to it by the founder from the estate as if the foundation had existed upon the opening of succession.

Section 7:26 *[Determination of the share of the inheritance]*

If the testator designated more than one heir to the estate, a part of it or a certain asset of the estate without determining their shares, the beneficiaries shall inherit in equal shares.

Section 7:27 *[Naming a substitute heir]*

(1) For the event that an heir disqualifies from succession, the testator may name another person as his heir.

(2) Unless otherwise provided in the will, if the named heir is also an intestate heir of the testator, then his descendant shall be considered a substitute heir for him in the event of his disqualification if the descendant, according to the order of intestate succession, would replace the disqualified named heir.

Section 7:28 *[Naming a subsequent heir]*

(1) The testamentary arrangement of the testator according to which an heir is replaced by another person in the inheritance or a part of it from a certain event or date shall be invalid.

(2) Naming an heir for the event of the death of the primary named heir shall be considered as naming a substitute heir if the conditions for the latter are met.

(3) The testator may name, for the event of the death of testator’s spouse who was named as his primary heir, a subsequent heir to inherit the estate that has been passed to the spouse. Naming a subsequent heir shall be without prejudice to the spouse's right to dispose of the

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estate in reciprocal transactions and to grant donations of a value not exceeding that of a gift of modest value.

(4) The testator may name a subsequent heir to inherit the estate passed to the testator's descendant having been named as the testator's primary heir if, upon the opening of succession, that descendant has no testamentary capacity and dies without acquiring this capacity. Naming a subsequent heir shall be without prejudice to the right of disposal of the descendant named as primary heir, as limited by the rules on the capacity to act.

Section 7:29 *[Exclusion from succession]*

(1) The testator may exclude his intestate heir or a person who might become his intestate heir from intestate succession by naming another person as his heir or by an explicit statement in his will. Exclusion needs not be justified.

(2) A person entitled to a compulsory share of the inheritance may be excluded from the share of the inheritance under intestate succession in excess of the compulsory share.

Section 7:30 *[Estate not covered by the will]*

If the share of the named heirs does not cover the whole estate, the remaining part shall be subject to intestate succession unless otherwise provided in this Act or unless the will implies otherwise.

Section 7:31 *[Leaving a legacy]*

(1) Legacy is granting a certain asset of the estate to a specified person, unless such benefiting qualifies as inheritance (specific legacy).

(2) If the testator obliges his heir to perform an obligation of pecuniary nature to the legatee, it shall also qualify as leaving a legacy (indirect legacy).

(3) A legacy may also be left to the benefit of the heir. A legatee may also be obliged to serve a legacy. In case of doubt, the legacy shall oblige the heir.

Section 7:32 *[Leaving a subsequent legacy]*

(1) The testamentary arrangement by the testator, according to which a beneficiary is replaced by another person in the legacy from a certain event or date, shall be valid.

(2) Unless otherwise provided by the testator, naming a subsequent legatee shall be without prejudice to the legatee's right to dispose of the estate in reciprocal transactions or to grant donations of a value not exceeding that of a gift of modest value.

Section 7:33 *[Testamentary burden]*

(1) If the testator imposes an obligation on the person benefiting from the estate in favour of a third person, the person designated in the will shall become entitled to claim the performance of that obligation. If, under the will, no one is entitled to claim the performance of the obligation under the testamentary burden, the performance may be claimed by the executor of the will or those benefiting from the estate. The performance of obligations under a testamentary burden of public interest may be claimed by the competent authority as well.

(2) In case of doubt, the testamentary burden shall oblige the heir.

(3) If it can be assumed that the testator wished to bind the benefiting to the performance of the obligation under testamentary burden, the obligor shall distribute the benefit in accordance with the rules on unjustified enrichment if he does not fulfil that obligation or the performance becomes impossible due to his fault. The distribution of the benefit may be claimed by the executor of the will or other persons benefiting from the estate. The value of the asset distributed shall be spent on performing the obligation under the testamentary burden.

(4) In case of doubt, an arrangement of the testator to benefit a certain person from the property shall be considered a legacy.

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Section 7:34 *[Application of the rules on testamentary succession to legacy and testamentary burden]*

Unless otherwise provided in this Act, the rules on testamentary succession shall apply to legacy and testamentary burden.

Section 7:35 *[Right of accretion]*

(1) If the testator designated more than one heir to the estate or a part of it in a way that excludes intestate succession, and a named heir is disqualified without a substitute heir, the shares of the other heirs designated to this part of the estate shall accrue proportionally.

(2) If the disqualified named heir would also be an intestate heir of the testator, under the right of accretion, the share of the inheritance of the other named heirs who also have an intestate succession relationship with the testator shall accrue proportionally provided that the disqualified heir has no substitute heir and unless the will implies otherwise.

(3) An heir designated to a certain asset from the estate shall be entitled to a right of accretion, with regard to this asset, upon the disqualification of another heir who was named to the same asset.

Section 7:36 *[Right of accretion on legacy and testamentary burden]*

Legatees designated jointly to the same asset or service and the beneficiaries of a testamentary burden in favour of more than one person shall be entitled to the right of accretion under the same condition as heirs named to a certain asset of the estate.

TITLE V

INVALIDITY AND INEFFECTIVENESS OF THE WILL

Section 7:37 *[Challenging the will]*

(1) Invalidity and ineffectiveness of the will may be established on the basis of a statement of challenge. In the statement of challenge, the reason for invalidity or ineffectiveness shall be indicated.

(2) The will may be challenged by those who, upon the establishment of invalidity or ineffectiveness of the will, would inherit or would be exempted from an obligation or another burden imposed on them by the testamentary disposition.

(3) Invalidity or ineffectiveness of the will may only be established for a reason invoked in the challenge and in favour of the challenging person.

(4) The right to challenge shall lapse after five years from the opening of succession.

(5) The right to challenge shall terminate if the person entitled to challenge waives this right following the opening of succession. A juridical act in which the person entitled to challenge acknowledges the will as valid and effective shall be considered a waiver.

Section 7:38 *[Invalidity of testamentary provisions]*

(1) Conditions that are obviously contrary to good morals, as well as incomprehensible, impossible or inconsistent conditions shall be invalid. The invalidity of a condition shall not affect the validity of the testamentary arrangement, unless it can be established that the testator would not have made the arrangement without that condition.

(2) Testamentary benefits subject to an unlawful suspensory condition shall be invalid; and unlawful resolutive conditions shall be disregarded.

Section 7:39 *[Validity of the will of persons under custodianship]*

The will of a person under custodianship shall be valid if the reason for placement under custodianship has already ceased at the time of making the will.

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Section 7:40 *[Error in the testator's intention]*

(1) A testamentary provision shall be invalid if

a) the testator made a mistake in the content of his statement or did not want to make a statement of such content at all;

b) the testator was led to make it by an erroneous assumption or a subsequently failed expectation;

c) the testator was forced to make the provision under unlawful threats or by someone using unfair influence;

provided that the testator would not have made the arrangement otherwise.

(2) An invalid provision shall become valid if it is subsequently approved by the testator in the form specified for wills.

Section 7:41 *[Revocation of the will]*

(1) Upon revocation, the will shall become ineffective. Unless otherwise provided in this Act, the rules on making a will shall apply to revoking it.

(2) If the testator makes another written will, the previous will shall be considered revoked. Provisions of the former will that are not contrary to the provisions of the new will shall remain effective unless a different intent by the testator can be established.

Section 7:42 *[Destruction of a written will]*

(1) A private written will shall become ineffective if destroyed by the testator having his testamentary capacity or another person acting with the consent of the testator. If the private written will remained in the possession of the testator but has not been found, it shall be assumed, until proven to the contrary, that the testator destroyed it.

(2) A public will and a private written will shall not become ineffective if the document containing the will is destroyed for a reason beyond the testator's intent or if it cannot be found, unless the testator has accepted its destruction.

Section 7:43 *[Ineffectiveness and revocation of the joint will]*

(1) The joint will of spouses shall become ineffective if, following the will being made, their community of life was disrupted and it was not restored until the opening of succession.

(2) Unless otherwise provided in the will, the joint will shall become ineffective if, following the will being made, a child is born to the testators or to one of them. Adoption shall have the same effect.

(3) The unilateral revocation of a provision of the joint will shall be invalid if revocation is excluded by the will or the other testator has not been notified of it.

(4) If one of the spouses revokes his disposition contained in the joint will unilaterally, the will of the other spouse shall remain effective unless it can be concluded from the will that none of the parties would have made his disposition without the other's disposition.

Section 7:44 *[Reclaim of a will in notarial deposit]*

A private will in notarial deposit shall become ineffective upon being reclaimed by the testator.

Section 7:45 *[Ineffectiveness of the oral will]*

An oral will shall become ineffective if the testator could have made a written will without any difficulty for thirty consecutive days following the termination of the circumstances allowing the oral will to be made.

Section 7:46 *[Ineffectiveness of a will in favour of a spouse or cohabitant]*

A will made in favour of a spouse or cohabitant during the community of life shall be ineffective if the community of life no longer exists at the time of the opening of succession; and it is evident from the circumstances of the case that the community of life between them could not have been restored and the testator no longer wished to benefit his spouse or cohabitant.

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Section 7:47 *[Partial invalidity and partial ineffectiveness of the will]*

If any of the provisions of the will are invalid or ineffective, the other provisions shall remain valid or effective unless otherwise provided by the testator, and if partial validity or effectiveness of the will is not contrary to the assumed intent of the testator.

TITLE VI

CONTRACT OF INHERITANCE

Section 7:48 *[Contract of inheritance]*

(1) In a contract of inheritance, the testator names the party contracting with him as his heir to inherit his property, a certain part of it or specific assets against maintenance, life annuity or care provided for the testator or a third party indicated in the contract; and the other party commits himself to perform maintenance, life annuity or care.

(2) If the obligation of the party contracting with the testator against a third person continues even after the testator's death, the real estate, before being distributed in the probate procedure, shall be encumbered with the maintenance right held by the third party, and the right to maintenance shall be registered in the real estate register at the request of the notary carrying out the probate procedure.

(3) The testator may make any testamentary arrangement in the contract of inheritance. Any testamentary arrangement made by the party contracting with the testator in the contract of inheritance shall be invalid.

Section 7:49 *[Validity requirements of the contract of inheritance]*

(1) The rules on written wills shall apply to the validity of contracts of inheritance, except that the contract shall in all cases comply with the form-related validity requirements of wills written by another person, even if it was drawn up by one of the parties in his own hand.

(2) For contracts of inheritance of minors having limited capacity to act or adults having partially limited capacity to act as regards juridical acts in financial affairs to be valid, the consent of the statutory representative and the approval of the guardianship authority shall be required.

Section 7:50 *[Safeguarding succession]*

(1) Unless agreed otherwise by the parties, the arrangement of the testator that alienates or encumbers, *inter vivos* or for the event of his death, an asset that is subject to a contract of inheritance shall be null and void. This provision shall be without prejudice to the right of a third party acting in good faith that was acquired in a reciprocal transaction.

(2) Unless agreed otherwise by the parties, the party contracting with the testator may, without the consent of the testator, apply for registering in the real estate register a prohibition of alienation and encumbrance regarding the real estate subject to the contract of inheritance.

Section 7:51 *[Joint contract of inheritance of spouses]*

(1) Spouses as testators may enter into a contract of inheritance in the same document during their community of life.

(2) Unless agreed otherwise by the parties, the surviving spouse shall be entitled to lifelong usufruct on the residential premises and on related furniture and equipment inherited by the party contracting with the testators if the spouse used them together with the testator.

Section 7:52 *[Amendment and dissolution of the contract of inheritance]*

(1) The rules on maintenance contracts and life annuity contracts shall apply to the amendment and dissolution of the contract of inheritance.

(2) The rules on formation of contracts of inheritance shall apply to the form-related requirements of amending and dissolving such contracts. The dissolution of the contract shall be valid without the mandatory form-related validity requirements having been satisfied if,

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upon the mutual intent of the parties, the state of affairs corresponding to the termination has occurred.

TITLE VII

GIFTING UPON DEATH. DISPOSING OF EXPECTED INHERITANCE

Section 7:53 *[Gifting upon death]*

(1) If the gifting was subject to the condition that the recipient survives the gifter, the rules on gifting shall apply to the contract with the derogation that to the form-related requirements of the contract the form-related requirements of contracts of inheritance shall apply.

(2) For a gifting upon death to be valid, the subject of it shall be a benefit that would be deemed a specific legacy if provided under a will.

Section 7:54 *[Disposing of expected inheritance]*

(1) Descendants of the testator may enter into a contract with each other on their expected inheritance even while the testator is alive.

(2) The contract shall be drawn up in writing.

PART THREE

INTESTATE SUCCESSION

TITLE VIII

GENERAL ORDER OF INTESTATE SUCCESSION

Section 7:55 *[Succession of descendants]*

(1) The primary intestate heir shall be the child of the testator.

(2) More than one child shall each inherit in equal shares.

(3) The share of inheritance of a child or a more distant descendant disqualified from inheritance shall be inherited, in equal shares, by the children of the disqualified person.

Section 7:56 *[Obligation of collation]*

(1) If more than one descendant inherits jointly, all co-heirs shall add the value of the donations granted to them by the testator in his life to the value of the estate, provided that addition was stipulated by the testator or if it can be concluded from the circumstances that the testator granted the benefit subject to the obligation of addition.

(2) Descendants inheriting jointly shall also be subject to the obligation of collation if they inherit the shares that correspond to their shares based on intestate succession under the testamentary disposition of the testator.

(3) A donation of modest value and maintenance provided to a descendant in need of maintenance shall not be collated, even if the testator explicitly stipulated it.

Section 7:57 *[Enforcement of collation]*

(1) The share of the inheritance of a co-heir shall be determined by dividing, proportionally and corresponding to the shares based on intestate succession, the joint net value of the estate and the collated donations and by deducting the value collated by the co-heir.

(2) When determining the collated value, the value of the donation at the time of benefiting shall be taken into account. An interested party for whom using the value at the time of benefiting is grossly unfair may request the court to determine another value by taking the circumstances into consideration.

(3) The descendant of a person disqualified from succession shall collate the donation received by the disqualified person. The donation received by the ascendant shall be deducted

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from the shares of the inheritance of more than one descendant which have been calculated with regard to the collated values, in proportion to their share of the estate.

(4) If the value collated by a co-heir equals to or exceeds the value of his share of the inheritance that has been calculated with regard to the collated values, the co-heir shall be deemed satisfied from the estate to be divided but shall not be obliged to reimburse the surplus. In such a case, the estate shall be divided between the other co-heirs, disregarding the co-heir who does not benefit from the estate and his donation.

Section 7:58 *[Succession by a spouse and descendants]*

(1) If there is a descendant heir, the spouse of the testator shall be entitled to

a) lifelong usufruct on the residential premises where the spouse and the testator lived together and on the related furniture and equipment; and

b) a share equal to that of a child from the remainder of the estate.

(2) Usufruct may not be restricted and its redemption may not be claimed against the spouse.

(3) In an allocation agreement, the spouse may be granted lifelong usufruct on the whole estate instead of receiving a share equal to that of a child.

Section 7:59 *[Redemption claim of the spouse]*

(1) The spouse may claim the redemption of usufruct any time as regards the future. Usufruct shall be redeemed with regard to the fair interests of the spouse and the descendant.

(2) The spouse shall be entitled to a share equal to that of a child in kind or in money from the property to be redeemed.

Section 7:60 *[Succession by a spouse and the testator's parents]*

(1) In the absence of descendants or if the descendant may not inherit, the spouse of the testator shall inherit the residential premises where the spouse and the testator lived together and the related furniture and equipment.

(2) The half of the estate not covered by paragraph (1) shall be inherited by the spouse of the testator; and the other half shall be inherited by the parents of the testator in equal shares. When replacing a parent disqualified from succession, the other parent and the spouse of the testator shall both inherit equal shares.

Section 7:61 *[Sole succession of the spouse]*

In the absence of descendants and parents or if they may not inherit, the spouse of the testator shall be the sole heir.

Section 7:62 *[Disqualification of a spouse from intestate succession]*

(1) The spouse of the testator may not inherit if the spouses did not live together in community of life upon the opening of succession and it is evident from the circumstances of the case that there was no prospect of restoring their community of life.

(2) Disqualification of the spouse of the testator may be invoked by a person who, as a result of the disqualification, would inherit himself or would be exempted from an obligation or another burden imposed on him by the testamentary disposition.

Section 7:63 *[Succession of parents and their descendants]*

(1) In the absence of descendants and a spouse or if they may not inherit, the parents of the testator shall both inherit in equal shares.

(2) When replacing a parent disqualified from succession, his descendants shall inherit in the same way as the descendants of a child when replacing the latter.

(3) In the absence of descendants of the disqualified parent or if they may not inherit, the other parent or, if he is also disinherited, his descendants shall be the sole heirs to inherit.

Section 7:64 *[Succession of grandparents and their descendants]*

(1) In the absence of descendants, a spouse, parents or descendants of the parent or if they may not inherit, the grandparents of the testator shall all be intestate heirs in equal shares.

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(2) When replacing a grandparent disqualified from succession, his descendants shall inherit in the same way as the descendants of a disqualified parent replacing the latter.

(3) In the absence of descendants of the disqualified grandparent or if they may not inherit, the other grandparent in that pair of grandparents or, if he is also disqualified, his descendant shall inherit.

(4) If either pair of grandparents is disqualified and they have not descendant to be replaced by or the descendants may not inherit, the other pair of grandparents or their descendants shall inherit the whole estate.

Section 7:65 *[Succession of great-grandparents and their descendants]*

(1) In the absence of grandparents and descendants of the grandparents, the great-grandparents of the testator shall all be intestate heirs in equal shares.

(2) When replacing a great-grandparent disqualified from succession, his descendants shall inherit in the same way as the descendants of a disqualified grandparent when replacing the latter.

(3) In the absence of descendants of the disqualified great-grandparent or if they may not inherit, the other great-grandparent of that pair of great-grandparents or, if he is also disqualified, his descendant shall inherit.

(4) If any pair of great-grandparents is disqualified and they have no descendants to be replaced by or the descendants may not inherit, the other pairs of great-grandparents shall inherit the whole estate in equal shares.

(5) If a great-grandparent inheriting under paragraph (4) is disqualified, the rules laid down in paragraphs (2) and (3) shall apply.

Section 7:66 *[Succession of remote ascendants]*

In the absence of great-grandparents and descendants of great-grandparents or if they may not inherit, the remote ascendants of the testator shall be all intestate heirs in equal shares.

TITLE IX

LINEAL INHERITANCE

Section 7:67 *[Lineal property]*

(1) If the intestate heir is not a descendant of the testator, the assets passed to the testator from one of his ascendants through succession or gifting shall be subject to lineal inheritance.

(2) Lineal inheritance shall apply to assets inherited or gifted from a sibling or a descendant of a sibling if the asset was inherited by or gifted to the sibling or the descendant of the sibling from an ascendant he shared with the testator.

(3) The person who would inherit the asset under this title shall prove that the asset is subject to lineal inheritance.

Section 7:68 *[Lineal heirs]*

(1) Assets passed to the testator from his parents or a parent's ascendant shall be inherited by the parent. When replacing a disqualified parent, his descendants shall inherit in accordance with the general rules of intestate succession.

(2) If both the parent who is entitled to inherit the lineal property and his descendant are disqualified, the grandparent or, if the grandparent is also disqualified, a remote ascendant of the testator shall inherit the asset having been passed to the testator from him or his ascendant.

(3) In the absence of a lineal heir, the lineal property shall be treated as other property of the testator.

Section 7:69. *[Usufruct of a spouse on lineal property]*

(1) The spouse shall be entitled to lifelong usufruct on the lineal property.

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(2) Both the spouse and the lineal heir may claim the redemption of usufruct any time as regards the future. Redemption of usufruct regarding the residential premises where the spouse and the testator lived together and the related furniture and equipment may not be claimed against the spouse.

(3) The spouse shall be entitled to one-third of the lineal property in the event of redemption.

(4) Usufruct shall be redeemed with regard to the fair interests of the holder of the usufruct right and the heir.

Section 7:70 *[Property not covered by the inheritance of the ascending lineage]*

(1) Rules on lineal inheritance shall not apply to gifts of modest value.

(2) Rules on lineal inheritance shall not apply to assets that are no longer available upon the death of the testator but shall apply to assets replacing such assets or those purchased from their proceeds.

(3) Furniture and equipment of modest value may not be subject to inheritance claim under lineal inheritance against the spouse of the testator.

Section 7:71 *[Lineal inheritance]*

Lineal assets shall be inherited in kind by the heir. If inheritance in kind is impossible or inexpedient, the court may, at the request of any party concerned, order monetary compensation for the value of the lineal asset.

TITLE X

RULES ON SUCCESSION RELATING TO ADOPTION

Section 7:72 *[Succession of an adopted person]*

(1) For the duration of the adoption, adopted persons shall inherit as lineal descendants of the adoptive parent after the adoptive parent and their blood relatives.

(2) Adoption shall not affect the adopted person's right to inherit under intestate succession after his biological relatives if the adopted person was adopted by his lineal ascendant or sibling or another descendant of his lineal ascendants.

Section 7:73 *[Succession after adopted persons]*

(1) Primary heirs of an adopted person shall be his descendants and his spouse; his spouse and adoptive parents if the adopted person has no descendants; his adoptive parents and the blood relatives of his adoptive parents if the adopted person has no descendants, in accordance with the rules of intestate succession. The adoptive parents and their blood relatives shall inherit if adoption prevails until the opening of succession.

(2) If the persons determined in paragraph (1) do not inherit after the adopted person, his intestate heirs shall be his biological relatives in accordance with the rules of intestate succession, provided that the adopted person was adopted by his lineal ascendant, sibling or another descendant of his lineal ascendant.

TITLE XI

SUCCESSION BY THE STATE

Section 7:74 *[Ultimate intestate succession by the State]*

(1) In the absence of any heirs, the intestate heir shall be the State.

(2) The State as an intestate heir shall not be entitled to disclaim the inheritance.

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PART FOUR

COMPULSORY SHARE

TITLE XII

ENTITLEMENT TO THE COMPULSORY SHARE

Section 7:75 *[Beneficiaries of the compulsory share]*

The descendant, spouse and parent of the testator shall be entitled to a compulsory share if, upon the opening of the succession, they are or, in the absence of a testamentary disposition, they would be intestate heirs of the testator.

Section 7:76 *[Limitation period of claims for the compulsory share]*

A claim for compulsory share shall lapse after five years.

Section 7:77 *[Disinheritance]*

A person validly disinherited by the testator in his testamentary disposition shall not be entitled to a compulsory share. Disinheritance shall be valid if the testamentary disposition explicitly indicates its grounds.

Section 7:78 *[Grounds for disinheritance]*

(1) Disinheritance shall apply if the person entitled to a compulsory share

a) would be unworthy to inherit after the testator;

b) committed a criminal offence against the testator;

c) sought the life of or committed another serious criminal offence against a lineal relative, spouse or cohabitant of the testator;

d) seriously breached his statutory maintenance obligation towards the testator;

e) carries on an immoral lifestyle;

f) in case he was sentenced to enforceable imprisonment has not yet served the punishment;

g) did not provide the assistance that could be reasonably expected from him when the testator needed it.

(2) An adult descendant may be disinherited by the testator also for gross ingratitude against him.

(3) A parent may be disinherited by the testator also for conducts carried out against him that give rise to the termination of parental custody.

(4) The spouse may be disinherited by the testator also for conducts grossly breaching matrimonial obligations.

(5) A person disqualified from inheritance upon disinheritance shall not be entitled to manage, as statutory representative, the inheritance of the person replacing him. The rules on the management of property withdrawn from the management of property by the parents shall apply accordingly to the management of such property.

Section 7:79 *[Forgiveness]*

(1) If the testator forgave the reasons for disinheritance before making his testamentary disposition, disinheritance shall be invalid and the heir may claim the compulsory share.

(2) If the testator forgave the reasons for disinheritance after making his testamentary disposition, disinheritance shall become ineffective without withdrawing the testamentary disposition.

Section 7:80 *[Base of the compulsory share]*

(1) The base of the compulsory share shall be the net value of the estate and the net value at the time of benefiting of the donations granted *inter vivos* by the testator to any person, including the value of the property entrusted to fiduciary asset management by the testator (hereinafter “donation”).

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(2) A person for whom the using of the value at the time of benefiting of the donation at the time of benefiting is grossly unfair may request the court to determine another value by taking the circumstances into consideration.

(3) When calculating the net value of the estate, legacies and testamentary burdens shall not be taken into consideration as encumbrances.

(4) If succession opens within two years following the conclusion of the contract, the part of the value of the asset alienated by the contract of inheritance, maintenance, life annuity or care that has not been covered by the value of the maintenance, life annuity or care actually provided shall be counted in the base of the compulsory share. The value of the transferred property, the maintenance provided and care, as well as the amount of the life annuity shall be taken into consideration at the value calculated at the time of the opening of succession.

Section 7:81 *[Donations deducted from the base of the compulsory share]*

(1) The base of the compulsory share shall not include

a) the value of a donation granted to any person by the testator earlier than within the ten years preceding his death;

b) the value of a donation granted by the testator before the relationship giving rise to entitlement to compulsory share was constituted;

c) the value of a donation of a value not exceeding that of a gift of modest value;

d) the value of the maintenance provided for the spouse or cohabitant or the descendant;

e) the value of the maintenance provided for free for a person in need, to the extent necessary for his subsistence.

(2) The date of constituting the relationship giving rise to entitlement to a compulsory share shall be the date of the marriage with respect to children born from marriage and to children adopted jointly by the spouses and, the date of the adoption with respect to other adopted children; and otherwise, the date of the conception of children.

(3) A donation, the inclusion of which was foregone by the testator, shall not be included in the base of the compulsory share of the beneficiary receiving the donation.

Section 7:82 *[Rate of the compulsory share]*

(1) The person entitled to a compulsory share shall be entitled to one-third of the share which he would receive as intestate heir calculated according to the base of the compulsory share.

(2) If the spouse, as intestate heir, is entitled to usufruct as well; the compulsory share in this respect shall be a usufruct limited to a degree that ensures his personal needs, taking the assets inherited by him into account.

(3) The spouse inheriting a usufruct as intestate inheritance may claim his compulsory share as if the usufruct had been redeemed.

TITLE XIII

SATISFACTION OF THE COMPULSORY SHARE

Section 7:83 *[Inclusion]*

(1) Everything the beneficiary is granted from the estate under any title and that he received from the testator as donation, provided that the latter shall be included in the base of the compulsory share, shall be subject to satisfying the compulsory share.

(2) If the descendant entitled to a compulsory share is disqualified from inheritance, the compulsory share of his descendant shall include the value of all donations that he and his disqualified ascendant received. More than one descendant shall include the donation in proportion to their share in the estate.

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(3) The testator may waive the inclusion by an explicit statement. Waiving the inclusion may not prejudice the compulsory share of another beneficiary.

Section 7:84 *[Liability for the satisfaction of the compulsory share]*

(1) Granting or complementing the compulsory share may be claimed in the following order:

a) the satisfaction of the compulsory share shall primarily be the liability of persons benefiting from the estate;

b) for the part of the compulsory share that cannot be satisfied from the estate, the persons who have received donations from the testator within ten years preceding his death shall be liable irrespective of the chronological order of their donations.

(2) The share of the liability of more than one person shall be determined according to the value of their benefits to be considered.

(3) A person who lost the benefit with no own fault on his part shall not be liable for the compulsory share.

Section 7:85 *[Limited liability of the person entitled to a compulsory share of his relatives]*

(1) A person receiving a benefit shall be liable, with the whole value of his benefit, for the satisfaction of the compulsory share. The liability of a person entitled to a compulsory share shall be limited to the part of the benefit that exceeds his share based on intestate succession.

(2) The spouse and the descendant of the person entitled to a compulsory share and the spouse of the descendant shall be exempt from liability in so far as the value of the benefits of all of them, including the value of the benefit of the person entitled to compulsory share, does not exceed the share of the inheritance under intestate succession of the person entitled to compulsory share. This rule shall not apply if the person entitled to a compulsory share enforces his claim against his spouse, descendant or the spouse of his descendant.

(3) In such cases, the share of the inheritance under intestate succession shall be calculated according to the base of the compulsory share.

Section 7:86 *[Distributing the compulsory share]*

(1) The compulsory share shall be distributed free of encumbrances and restriction. If, upon distributing the compulsory share, the remaining property would not ensure even restricted usufruct for the spouse of the testator, the part of the compulsory share that ensures the limited usufruct shall be distributed after the termination of usufruct.

(2) If the property left by the testator to the person entitled to a compulsory share is subject to limitation or encumbrance, the limitation shall be effective on the value exceeding the compulsory share. The testator may provide that only the compulsory share be distributed to the beneficiary, unless he accepts the limitation or encumbrance with regard to the compulsory share, too.

(3) The person entitled to a compulsory share may request that his compulsory share be distributed in money. Compulsory share, with the exception of usufruct, may be claimed to be distributed in kind if this was the intent of the testator as declared in his testamentary disposition or *inter vivos*.

(4) If distributing the compulsory share in money is detrimental to either the beneficiary or the obligor, the court may order, upon taking all circumstances into consideration, that the compulsory share be distributed, in whole or in part, in kind.

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PART FIVE

LEGAL EFFECTS OF SUCCESSION

TITLE XIV

OBTAINING INHERITANCE

Section 7:87 *[Opening of succession]*

(1) Succession shall open upon the death of the testator.

(2) Upon the opening of the succession, the heir shall obtain without acceptance or any other legal act, the estate, the part of the estate or a certain object of the estate granted to him.

Section 7:88. *[Distributing an asset encumbered with usufruct]*

If the asset is encumbered with usufruct to which the spouse of the testator is entitled as an heir, the asset shall be distributed after the termination of usufruct.

Section 7:89. *[Disclaiming inheritance]*

(1) The heir may disclaim inheritance following the opening of succession.

(2) The heir, if not professionally engaged in agricultural production, may separately disclaim inheritance of the land used for agricultural production and the related equipment, installations, livestock and work equipment.

(3) The heir who inherits under a testamentary disposition and by the law as well may specifically disclaim the part obtained by him under one of these legal titles.

(4) Disclaiming subject to a condition, time or restrictions, as well as partial disclaiming other than those authorised, shall be invalid.

Section 7:90 *[Waiving the right to disclaim]*

(1) If the heir waived the right to disclaim, either explicitly or implicitly, after the opening of succession, he may not disclaim the inheritance any later.

(2) Taking into possession the inheritance or performing any other act concerning the estate which demonstrates the evident intent of the heir to accept the inheritance shall be deemed a waiver of the right to disclaim. It shall be deemed a waiver too, if the heir, within the time limit set by the notary at the request of any of those interested, does not make a statement on disclaiming inheritance.

Section 7:91 *[Obtaining the legacy and the fulfilment of the obligation under testamentary burden]*

The rules on obtaining inheritance shall apply accordingly to legacy and testamentary burden.

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TITLE XV

STATUS OF THE HEIR

Section 7:92 *[Status of co-heirs]*

(1) More than one heir shall be entitled to the estate jointly before the division of the estate (hereinafter “division of inheritance”).

(2) The general rules on co-ownership shall apply to the community of co-heirs, with the proviso that, before the division of inheritance, claims under the estate shall be enforced in the name and to all of the heirs, and the debtor shall satisfy all of the heirs.

(3) The community of co-heirs shall terminate upon the division of inheritance. The testator may determine in his testamentary disposition how to divide the inheritance; unless otherwise provided in the testamentary disposition, the rules on terminating co-ownership shall apply accordingly to the division of inheritance.

Section 7:93 *[Allocation agreement]*

The heirs may divide the estate, but only with regard to the assets of the estate, between them by an agreement concluded by them in the probate procedure. If an allocation agreement has been concluded, the estate shall be distributed under the legal title of succession, in accordance with the agreement.

TITLE XVI

DEBTS OF THE ESTATE AND THEIR SATISFACTION

Section 7:94 *[Debts of the estate]*

(1) Debts of the estate are

a) the costs of a decent funeral for the testator;

b) the necessary costs relating to obtaining, safeguarding and managing the estate (hereinafter "costs of the estate"), and the costs of the probate procedure;

c) the debts of the testator;

d) the obligations based on the compulsory share;

e) the obligations based on legacy and testamentary burden.

(2) Such characteristics and the existence of the debts of the estate shall not be affected by the fact that the debts, incurred either before or after the opening of succession, are owed to the heir as creditor.

Section 7:95 *[Order of satisfying the debts of the estate]*

(1) When satisfied, debts belonging to a group that is the first regarding satisfaction shall have priority over debts that belong to a group which are preceded by it.

(2) In a group where it is not possible to satisfy all debts in full, satisfaction shall be in proportion to the claims.

Section 7:96 *[Liability for debts of the estate]*

(1) The heir shall be liable for the debts of the estate with the assets of the estate and their fruits. If the assets of the estate or their fruits are not in the possession of the heir when the claim is enforced, the heir shall be liable with his other assets up to the value of his inheritance.

(2) When determining the liability of the heir, assets which were not taken into possession by the heir, as well as claims and other rights which could not have been enforced, and the fruits of the assets received that he does not have may be taken into consideration in so far as the heir was at fault in dispensing with them.

(3) The heir shall be liable for the costs of the estate and of the probate procedure with his property as well.

(4) The spouse shall be obliged to accept the satisfaction of the claims of the creditors from the property subject to the usufruct of the spouse, except for claims based on legacy and testamentary burden.

(5) In a fiduciary asset management relationship established by a will, the trustee shall be liable for the debts of the estate using the managed property as if he had received a specific legacy.

Section 7:97 *[Liability of co-heirs]*

(1) Co-heirs shall have joint and several liability for joint debts of the estate before and after the division of inheritance as well.

(2) The heir to whom the testator granted a specific asset from the estate not exceeding the value of a gift of modest value shall be liable for the claim of the creditors of the estate if the debt cannot be collected from the other co-heirs.

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Section 7:98 *[Satisfaction by an heir]*

(1) The heir may satisfy the debts without keeping the order of satisfaction until he can presume that the debts of the estate are covered by the estate in full, if the obligations undertaken gratuitously by the testator *inter vivos* and those based on legacy and testamentary burden are disregarded. Otherwise, he may only satisfy the debts in their order.

(2) The creditor who holds a lien on an asset belonging to the estate may seek full satisfaction, up to the value of the security, irrespective of his ranking in the order of the debts of the estate.

(3) If the heir is at fault in breaching these rules, he shall be liable with his whole property against the creditor whose claim was thus left unsatisfied.

Section 7:99 *[Liability of the legatee]*

(1) A legatee whose satisfaction was detrimental to another creditor of the estate shall be liable against that creditor in accordance with the rules of unjustified enrichment if the creditor could not be satisfied by the heir.

(2) A legatee shall be liable with regard to his legacy and testamentary burden as an heir.

Section 7:100 *[Calling the creditors of the estate]*

(1) If there is a reason to suppose that there are debts of the estate yet unknown, the heir may ask the notary to call upon the creditors of the estate to notify their claims.

(2) A creditor who failed to report his claims within the time limit set in the notification of the notary may not object to satisfactions that were granted until he made his report, on grounds of compliance with the order and the proportion of satisfaction of those belonging to his group. After the division of inheritance, the creditor may claim from the co-heirs to satisfy his claim in proportion to their shares of the inheritance, unless the heir was aware of the claim without notification in either case.

BOOK EIGHT

FINAL PROVISIONS

PART ONE

INTERPRETATIVE PROVISIONS

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Section 8:1 *[Interpretative provisions]*

(1) For the purposes of this Act,

1. *close relative* means the spouse, the lineal relative, the adopted child, the stepchild and the foster child, the adoptive parent, the step-parent and the foster parent and the sibling;
2. *relative* means the close relative, the cohabitant, the spouse of a lineal relative, the lineal relative and the sibling of the spouse, and the spouse of the sibling;
3. *consumer* means a natural person acting outside his profession, independent occupation or business activity;
4. *undertaking* means a person acting within its profession, independent occupation or business activity;
5. *asset* means a thing, a right, or a claim;
6. *bank* means a person entitled to collect deposits and maintain payment accounts;
7. *contracting authority* means a contracting entity in accordance with the Act on public procurement even if it is not obliged to carry out a public procurement procedure.

(2) For the purposes of this Act, legal acts of the European Union of general scope which are directly applicable shall also qualify as laws.

(3) For the purposes of this Act, orders for payment shall also qualify as court procedures.

(4) For the purposes of this Act, half-siblings shall also qualify as siblings.

(4) For the purposes of this Act, a market authorised by the surveillance authority of the state of domicile where securities are traded shall qualify as a stock exchange.

(6) Provisions of Ptk. on buildings shall apply accordingly to other constructions as well.

Section 8:2 *[Control]*

(1) Majority control is a relationship through which a natural person or a legal person (controlling shareholder) alone has more than half of the votes or a dominant influence in a legal person.

(2) The controlling shareholder shall have a dominant influence over a legal person if he is its member or shareholder and

a) is entitled to elect or remove the majority of the executive officers or members of the supervisory board of this legal person; or

b) other members or shareholders of the legal person vote in the same way as the controlling shareholder do or exercise their voting rights through the controlling shareholder provided that they have more than half of the votes together.

(3) Majority control also prevails if the controlling shareholder has the entitlements under paragraphs (1) to (2) through indirect control.

(4) A person having control in another legal person (intermediate legal person) having a voting right in the legal person shall have indirect control in the legal person. The extent of indirect control shall be the same share of control of the intermediate legal person that the controlling shareholder has in the intermediate legal person. If the controlling shareholder has a control exceeding half of the votes in the intermediate legal person, the control of the intermediate legal person in the legal person shall be fully considered as the indirect control of the controlling shareholder.

(5) Direct and indirect shares of ownership or voting rights of close relatives shall be counted together.

Section 8:3 *[Calculation of time limits]*

(1) A time limit set in days for making a juridical act or carrying on another conduct shall not include the starting day.

(2) A time limit set in weeks, months or years shall expire on the day which, due to its name or numbering, corresponds to the starting day. If there is no such day in the last month, the time limit shall expire on the last day of the month.

(3) If the last day of the time limit is a public holiday, the time limit shall expire on the following working day.

(4) Acquisition of a right bound to a certain day shall occur at the beginning of the day.

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PART TWO

ENTRY INTO FORCE AND TRANSITIONAL PROVISIONS

Section 8:4 *[Entry into force]*

This Act shall enter into force on 15 March 2014.

Section 8:5 *[Transitional provisions]*

Transitional provisions shall be laid down in an Act.

PART THREE

COMPLIANCE WITH THE LAW OF THE EUROPEAN UNION

Section 8:6 *[Compliance with the law of the European Union]*

(1) This Act serves the purpose of compliance with the following:

a) Council Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products and Directive 1999/34/EC of the European Parliament and of the Council amending it;

b) Council Directive 86/653/EEC of 18 December 1986 on the coordination of the laws of the Member States relating to self-employed commercial agents;

c) Directive (EU) 2015/2302 of the European Parliament and of the Council of 25 November 2015 on package travel and linked travel arrangements, amending Regulation (EC) No 2006/2004 and Directive 2011/83/EU of the European Parliament and of the Council and repealing Council Directive 90/314/EEC;

d) Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts;

e) Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market;

f) Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements;

g) Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids;

h) Directive 2007/36/EC of the European Parliament and of the Council of 11 July 2007 on the exercise of certain rights of shareholders in listed companies;

i) Directive 2009/44/EC of the European Parliament and of the Council of 6 May 2009 amending Directive 98/26/EC on settlement finality in payment and securities settlement systems and Directive 2002/47/EC on financial collateral arrangements as regards linked systems and credit claims;

j) Directive 2009/102/EC of the European Parliament and of the Council of 16 September 2009 in the area of company law on single-member private limited liability companies;

k) Directive 2011/7/EU of the European Parliament and of the Council of 16 February 2011 on combating late payment in commercial transactions;

l) Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council;

m) Directive (EU) of 2017/1132 of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law;

n) Directive (EU) of 2017/828 of the European Parliament and of the Council of 17 May 2017 amending Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement;

o) Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees.

(2) This Act contains provisions for the implementation of Regulation (EU) 2021/23 of the European Parliament and of the Council of 16 December 2020 on a framework for the recovery and resolution of central counterparties and amending Regulations (EU) No 1095/2010, (EU) No 648/2012, (EU) No 600/2014, (EU) No 806/2014 and (EU) 2015/2365 and Directives 2002/47/EC, 2004/25/EC, 2007/36/EC, 2014/59/EU and (EU) 2017/1132.

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