

Übersetzung durch Ute Reusch

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Federal Code for Lawyers

(Bundesrechtsanwaltsordnung – BRAO)

Federal Code for Lawyers in the consolidated version published in the Federal Law Gazette III, Index No. 303-8, as last amended by Article 13 of the Act of 23 October 2024 (Federal Law Gazette 2024 I No. 323)

See the Act on Statutory Instruments in the Area of Jurisdiction (*Gesetz über Rechtsverordnungen im Bereich der Gerichtsbarkeit*) of 1 July 1960 (Federal Law Gazette III, Index No. 300-7) (Where the highest *Land* authorities are authorised by law to issue statutory instruments, authorisation to issue those statutory instruments lies with the *Land* governments.)

Notwithstanding Annex I Chapter III Subject Area A Part I No. 7 of the Unification Treaty (*Einigungsvertrag*) of 31 August 1990 read in conjunction with Article 1 of the Act of 23 September 1990 (Federal Law Gazette II, p. 885, 921), the Code entered into force in the five acceded *Länder* (Article 1 (1) of the Unification Treaty) with effect from 9 September 1994 pursuant to Article 21 (1) sentence 3 in accordance with the provisions of sentence 4 and (2) to (13) of the Act of 2 September 1994 (Federal Law Gazette I, p. 2278) (Act to Reorganise the Rules Governing the Profession of Lawyer and Patent Attorney (*Gesetz zur Neuordnung des Berufsrechts der Rechtsanwälte und der Patentanwälte*)); pursuant to Part IV No. 1 Point a) of the Unification Treaty, it applies to the acceded part of the *Land* of Berlin with provisos as amended pursuant to Article 21 (1) sentence 2 of the Act of 2 September 1994 (Federal Law Gazette I, p. 2278).

Part 1

Lawyers*

Footnote *: For linguistic reasons 'lawyer' is used throughout to stand for the German professional title of '*Rechtsanwalt*'/ '*Rechtsanwältin*' [translator's note]

Section 1

Status in administration of justice

A lawyer is an independent agent of the administration of justice.

Section 2

Profession of lawyer

- (1) A lawyer exercises a liberal profession.
- (2) The activity does not constitute a trade.

Section 3

Right to give legal advice and represent clients

- (1) A lawyer is the appointed independent adviser and representative in all legal matters.

(2) A lawyer's right to appear before courts, arbitral tribunals or authorities in legal matters of any kind may be restricted only by a federal law.

(3) Every person has the right, within the bounds of statutory provisions, to receive legal advice and to be represented before courts, arbitral tribunals or authorities by a lawyer of their choice in legal matters of any kind.

Part 2

Admission and general provisions

Division 1

Admission to legal profession

Section 4

Access to profession of lawyer

Only those who

1. are qualified to hold judicial office pursuant to the German Judiciary Act (*Deutsches Richtergesetz*),
2. fulfil the requirements for integration into the profession laid down in Part 3 of the Act on the Activities of European Lawyers in Germany (*Gesetz über die Tätigkeit europäischer Rechtsanwälte in Deutschland*) or
3. hold a certificate as required under section 16a (5) of the Act on the Activities of European Lawyers in Germany

may be admitted to the legal profession. The Professional Qualifications Assessment Act (*Berufsqualifikationsfeststellungsgesetz*) does not apply.

Section 5

(repealed)

Section 6

Application for admission to legal profession

- (1) Admission to the profession of lawyer is granted upon application.
- (2) An application may be refused only for the reasons set out in this Code.

Section 7

Denial of admission

Admission to the legal profession is to be denied

1. if the person filing the application has forfeited a fundamental right by virtue of a decision of the Federal Constitutional Court;
2. if the person filing the application does not have the capacity to hold public office in consequence of a criminal conviction;
3. if the person filing the application has been disbarred by virtue of a final and binding judgment;
4. if the person filing the application has, by final decision, been dismissed from office in the administration of justice in the course of judicial impeachment proceedings or removed from office in the administration of justice in the course of disciplinary proceedings;
5. if the person filing the application is guilty of behaviour which makes him or her appear unworthy of practising the profession of lawyer;
6. if the person filing the application is fighting the free democratic order by unlawful means;

7. if, for health reasons, the person filing the application is unable to properly practise the profession of lawyer not merely on a temporary basis;

8. if the person filing the application is pursuing an activity which is incompatible with the profession of lawyer, in particular his or her status as an independent agent of the administration of justice, or which may diminish the confidence placed in his or her independence;

9. if the person filing the application is facing financial difficulties; the person filing the application is presumed to be facing financial difficulties if insolvency proceedings have been opened against that person's assets or that person has been entered in the list of debtors (section 882b of the Code of Civil Procedure (*Zivilprozessordnung*));

10. if the person filing the application is a judge, civil servant, regular soldier or fixed-term volunteer soldier, unless he or she performs the tasks assigned to him or her on a voluntary basis or the rights and duties incumbent on him or her have been suspended on the ground of sections 5, 6, 8 and 36 of the Members of the Bundestag Act (*Abgeordnetengesetz*) or the relevant legislation.

Sentence 1 no. 3 and no. 4 applies only where eight years have not yet elapsed since the decision became final. Application of sentence 1 no. 5 remains unaffected by the expiry of the period referred to in sentence 2.

Section 8 (repealed)

Section 9 (repealed)

Section 10 Stay of admission procedure

The decision on the application for admission to the legal profession may be stayed where proceedings on suspicion of a criminal offence are pending against the person filing the application in which the alleged crime raises the expectation that the person filing the application will be convicted and that conviction would result in denial of admission.

Section 11 (repealed)

Section 12 Admission

(1) Admission to the legal profession becomes effective upon delivery of a document issued by the bar association (*Rechtsanwaltskammer*).

(2) The document may not be delivered until the applicant

1. has been sworn in and

2. has furnished proof that professional indemnity insurance has been taken out or has supplied a provisional cover note.

(3) Upon admission, the lawyer becomes a member of the admitting bar association.

(4) Following admission, the lawyer is permitted to practise under the professional title of '*Rechtsanwalt*' or '*Rechtsanwältin*'.

Section 12a Swearing in

(1) The applicant is required to take the following oath before the bar association:

'I do swear before God the Omnipotent and Omniscient that I will uphold the constitutional order and conscientiously perform the duties of a lawyer. So help me God.'

(2) The oath may also be taken without the religious affirmation.

(3) If the members of a religious community are permitted by law to use a form of affirmation other than the oath, then any member of that religious community may use that form of affirmation.

(4) Whoever, for religious reasons or on grounds of conscience, does not wish to swear an oath must make the following pledge:

‘I do pledge that I will uphold the constitutional order and conscientiously perform the duties of a lawyer.’

(5) Where a female applicant takes the oath under subsection (1) or makes the pledge under subsection (4), the male form of the noun is replaced by the female form of the noun in German.

(6) A record is to be taken of the swearing in which must also document the wording of the oath, the form of affirmation other than the oath or the pledge taken. The record is to be signed by the lawyer and a member of the executive board of the bar association. It is to be added to the lawyer’s membership file.

(7) If the applicant has already taken the oath in accordance with subsection (1) or made the pledge in accordance with subsection (4), then it is generally sufficient for the applicant’s attention to be drawn to that previous oath or previous pledge.

Section 13

Expiry of admission

Admission to the legal profession expires upon the lawyer being disbarred by final and binding judgment or upon the withdrawal or revocation of admission becoming final and absolute.

Section 14

Withdrawal and revocation of admission

(1) Admission to the legal profession is to be withdrawn with effect for the future where facts subsequently come to light whose knowledge would have led to admission having to have been denied. Withdrawal of admission may be waived if the grounds on account of which the admission should have been denied no longer apply.

(2) Admission to the legal profession is to be revoked

1. if the lawyer has forfeited a fundamental right by virtue of a decision of the Federal Constitutional Court;

2. if the lawyer has lost the capacity to hold public office in consequence of a criminal conviction;

3. if, for health reasons, the lawyer is incapable not merely on a temporary basis of properly practising the profession of lawyer, save where the lawyer’s continuing to practise as a lawyer does not jeopardise the administration of justice;

4. if the lawyer has waived, in writing vis-à-vis the bar association, those rights conferred upon being admitted to the legal profession;

5. if the lawyer is appointed as a judge or civil servant for life, is commissioned as a regular soldier or is reinstated to his or her former employment as judge or civil servant for life or as a regular soldier in accordance with section 6 of the Members of the Bundestag Act or relevant legislation and does not waive those rights conferred upon being admitted to the legal profession;

6. (repealed)

7. if the lawyer is facing financial difficulties, save where this does not jeopardise the interests of consumers of legal services; the lawyer is presumed to be in financial difficulties if insolvency proceedings have been opened against the lawyer’s assets or the

lawyer has been entered in the list of debtors (section 882b of the Code of Civil Procedure);

8. if the lawyer pursues an activity which is incompatible with the profession of lawyer, in particular his or her status as an independent agent of the administration of justice, or which may diminish the confidence placed in his or her independence; this does not apply if the revocation would constitute unreasonable hardship for the lawyer;

9. if the lawyer does not maintain the required professional indemnity insurance cover (section 51).

(3) Admission to the legal profession may be revoked if the lawyer

1. does not establish a law office in the district of the bar association within three months of the obligation to do so arising;

2. does not, within three months, fulfil one of the conditions imposed upon the exemption under section 29 (1) or section 29a (2) being granted;

3. does not designate a new authorised recipient within three months of being exempt from the obligation to maintain a law office (section 29 (1), section 29a (2)) or of the previous authorised recipient no longer being available;

4. gives up his or her law office without having been exempt from the obligation under section 27 (1).

(4) If the bar association orders immediate enforcement of the decision, then section 155 (2), (4) and (5), section 156 (2), section 160 (1) sentence 2 and section 161 apply accordingly. In the case referred to in subsection (2) no. 9, the order is generally to be made.

Section 15

Medical report in event of denial and revocation of admission

(1) Where necessary in order to be able to reach a decision on the ground for refusal in section 7 sentence 1 no. 7 or on the ground for revocation in section 14 (2) no. 3, the bar association is to request the person concerned to present a medical report detailing his or her state of health. The bar association is to determine both a suitable period within which the report is to be presented and the doctor who is to issue the report. The report must be drawn up following a medical examination and, if this is deemed necessary by a public health officer, also following clinical observation of the person concerned. The costs of the medical report are to be borne by the person concerned.

(2) Orders issued in accordance with subsection (1) must be reasoned and served. The legal remedies available against administrative acts which pose a burden may be filed against such orders. They do not have suspensive effect.

(3) If the medical report is not submitted within the period set by the bar association without sufficient ground, it is assumed that, for health reasons, the person concerned is unable to properly exercise the profession of lawyer not merely on a temporary basis. The person concerned is to be informed of this consequence when the period is set.

Section 16

(repealed)

Section 17

Lapse of entitlement to use professional title

(1) Upon expiry of admission to the legal profession (section 13), entitlement to use the professional title of 'Rechtsanwalt' or 'Rechtsanwältin' ceases. The title may also not be used together with a reference to any previous entitlement.

(2) A lawyer who waives the rights conferred upon admission to the legal profession owing to his or her advanced age or on health grounds may be granted permission by the bar

association to continue to use his or her professional title with the addition '*im Ruhestand*', which may also be abbreviated to '*i.R.*'.

(3) In relation to the permission granted under subsection (2), the bar association may

1. withdraw that permission if circumstances subsequently become known which would have resulted in that permission being denied, or
2. revoke that permission if circumstances subsequently arise which would result in a lawyer's admission to the legal profession expiring or being revoked under section 14 (2) no. 1 or no. 2.

Division 2

Law office and registers of lawyers

Section 18 **(repealed)**

Sections 19 to 21 **(repealed)**

Section 22 **(repealed)**

Section 23 **(repealed)**

Section 24 **(repealed)**

Sections 25 and 26 **(repealed)**

Section 27 **Law office**

(1) A lawyer must establish and maintain a law office in the district of the bar association of which he or she is a member.

(2) If a lawyer moves his or her law office, establishes a further law office or a branch office, or if he or she closes a further law office or branch office, he or she must notify the bar association of this fact without delay. The establishment or closure of a further law office or branch office in the district of another bar association must also be notified to that bar association.

(3) If the lawyer wishes to move his or her law office to the district of another bar association, he or she must apply for membership of that bar association. The bar association admits the lawyer as soon as he or she has provided proof of the law office having been moved into its district. Upon admission to this bar association, membership of the previous bar association expires.

Section 28 **(repealed)**

Section 29 **Exemption from obligation to establish law office**

(1) The bar association may, in the interests of the administration of justice or to avoid hardship, exempt a lawyer from the obligation laid down in section 27 (1).

(2) Such exemption may be revoked if this is necessary in the interests of the administration of justice.

(3) (repealed)

(4) (repealed)

Section 29a

Law offices in other states

- (1) Lawyers may also establish or maintain law offices in other states.
- (2) The bar association exempts a lawyer who establishes law offices only in other states from the obligation under section 27, unless this is precluded by overriding interests of the administration of justice. The exemption may be revoked if this is necessary in the overriding interest of the administration of justice.
- (3) The lawyer is required to inform the bar association of the address of his or her law office in another state as well as of any change of its address.

Section 30

Authorised recipient

- (1) Where a lawyer is exempt from the obligation to maintain a law office, that lawyer is to designate to the bar association an authorised recipient who lives or has business premises in Germany. The lawyer must give the authorised recipient access to his or her special electronic legal mailbox. The authorised recipient must, at a minimum, be authorised to take note of incoming mail and provide acknowledgement of receipt electronically.
- (2) Service to the authorised recipient is also possible from lawyer to lawyer and on the lawyer himself of herself (section 173 (1) and (2), sections 175 and 195 of the Code of Civil Procedure).
- (3) If, contrary to subsection (1), no authorised recipient has been designated, service may be effected by posting (section 184 of the Code of Civil Procedure). The same applies where service to the authorised recipient is not possible.

Section 31

Registers kept by bar associations and Central Register of Federal Bar Association

- (1) The bar associations keep electronic registers of lawyers admitted to practise in their districts and of licensed professional practice companies (*Berufsausübungsgesellschaften*) whose seat is located in their district. These registers may be kept as part of the Central Register to be maintained by the Federal Bar Association. The bar associations use an automated procedure to transmit the data stored in their registers for inclusion in the Central Register. The Central Register must indicate of which bar association each lawyer and each licensed professional practice company is a member. Before making a new entry the bar associations carry out an identification procedure. They are responsible in data protection matters as regards the data entered, in particular for the accuracy and lawfulness of their data collection.
- (2) The registers of the bar associations and the Central Register serve to provide information to the authorities and courts, consumers of legal services and other persons involved in legal relations. Everyone has the right to inspect the registers and the Central Register free of charge. A search of the registers and of the Central Register is made possible by means of an electronic search system.
- (3) The bar associations enter in their registers the following information on each lawyer:
 1. the lawyer's family name and given name(s);
 2. the name and address of the lawyer's law office; if no law office is maintained, a delivery address;
 3. the name and address of any further law offices and branch offices;
 4. telecommunications data and the internet addresses of the law office and any further law offices and branch offices notified by the lawyer;
 5. the professional title and titles conferred in specialist fields of law; in the case of foreign lawyers, also the country of origin of the professional title and the legal basis for admission to the bar association;

6. the date of admission;
7. any pre-existing bans on practising law, on professional activity and on representing clients, and any pre-existing, immediately enforceable withdrawals and revocations of admission to practise law;
8. the appointment of a deputy or liquidator by the bar association, as well as the designation of an authorised recipient in accordance with section 30, stating the family name, given name(s) and address of the deputy, liquidator or authorised recipient;
9. in the cases referred to in section 29 (1) or in section 29a (2), the subject matter of the exemption;
10. a demonstrated interest on the part of the lawyer in acting as court-appointed counsel.

(4) The bar associations enter in their registers the following information on each licensed professional practice company:

1. its name or company name;
2. its legal form;
3. the address of its law office;
4. the name and address of further law offices and branch offices;
5. the telecommunications data and internet addresses of its law office and any further law offices and branch offices as indicated by the professional practice company;
6. the following information relating to the shareholders:
 - a) in the case of natural persons: their family name, given name(s) and profession practised in the professional practice company;
 - b) in the case of legal persons and partnerships with legal personality: their name or company name, their seat and, where provided for by law, the register responsible for them and their register number;
7. in the case of legal persons: the family name, given name(s) and profession of each member of a body appointed to legally represent the company;
8. in the case of partnerships with legal personality: the family name, given name(s) and profession of shareholders authorised to represent the company;
9. the date of its licensing;
10. in the case of foreign professional practice companies: the family name, given name(s) and profession of the members of the management of the German branch office, the seat, place of the main office and, where provided for under the law of the state of their seat, the register responsible for them and their register number;
11. any bans on practising their profession and bans on representing clients which are in place as well as immediately enforceable withdrawals and revocations of the company's licence which are in place;
12. the appointment of a deputy or of a liquidator by the bar association and the nomination of an authorised recipient, stating the family name, given name(s) and address of the representative, liquidator or authorised recipient;
13. in the case referred to in section 29a (2), the content of the exemption.

(5) The Federal Bar Association is, in addition, required to enter the designation of the special electronic legal mailbox in the Central Register. It is responsible for these data. In addition, the Federal Bar Association is to enable lawyers to enter their language skills and main areas of activity in the Central Register.

(6) Entries pertaining to lawyers and to licensed professional practice companies which are made in the registers kept by the bar associations as well as in the Central Register are blocked as soon as their membership of the bar association which is keeping the register ends. Entries are then deleted after an appropriate period. If the lawyer's membership ends on account of his or her becoming a member of another bar association, correction is to take the place of blocking or deletion of the entry in the Central Register. Where a liquidator has been appointed, data are not blocked; any blocking already effected is to be reversed. Data are not deleted until liquidation has been completed.

(7) Those lawyers and professional practice companies which are to be entered in the registers in accordance with subsection (1) sentence 1 are obliged immediately to

1. transmit to the competent bar association all those data which are necessary to make the register entries as required under subsections (3) and (4),
2. notify the competent bar association of facts which necessitate a change to or the deletion of any data previously entered.

Section 31a

Special electronic legal mailbox

(1) The Federal Bar Association sets up a ready-to-receive special electronic legal mailbox (*besonderes elektronisches Anwaltspostfach*) for each natural person listed in the Central Register. After setting up a special electronic legal mailbox, the Federal Bar Association communicates its designation to the relevant bar association for storage in that bar association's register.

(2) For the purpose of setting up the special electronic legal mailbox, the bar association communicates to the Federal Bar Association the family name, given name(s) and a delivery address of those persons who have filed an application for admission to the bar association. In the case of in-house lawyers, information is also to be provided as to whether the activity is pursued in the context of several employment relationships. The information communicated is to be deleted where the application is withdrawn or admission to the bar association is denied by final decision.

(3) The Federal Bar Association must ensure that access to the special electronic legal mailbox is possible only by means of a secure procedure using two separate and independent security measures. It may also enable deputies, liquidators and authorised recipients to use the special electronic legal mailbox; subsection (2) applies analogously. The Federal Bar Association may provide for different access authorisations for bar members and other persons. It is authorised to delete the messages stored in the special electronic legal mailbox after an appropriate period. The special electronic legal mailbox is, as a rule, to be accessible.

(4) As soon as membership of a bar association expires for reasons other than the lawyer becoming a member of another bar association, the Federal Bar Association revokes access authorisation to the special electronic legal mailbox. It deletes it as soon as it is no longer required.

(5) The Federal Bar Association may also set up special electronic legal mailboxes for itself and for the bar associations. Subsection (3) sentence 1 and sentence 5 applies.

(6) The person to whom a special electronic legal mailbox is assigned is required to have at his or her disposal the technical equipment needed to use the mailbox, and to take note of services effected and messages received via the special electronic legal mailbox.

(7) The Federal Bar Association is required to set up an additional special electronic legal mailbox for each further law office established by a member of a bar association which has been entered in the Central Register. If the entry concerning the additional law office is

deleted from the Central Register, the Federal Bar Association revokes access authorisation to the additional special electronic legal mailbox and deletes it as soon as it is no longer required. Subsection (1) sentence 2 and (3), (4) and (6), as well as section 31 (5) sentence 1 and sentence 2 apply accordingly to the additional special electronic legal mailbox.

Section 31b

Special electronic legal mailbox for professional practice companies

- (1) The Federal Bar Association sets up a ready-to-receive special electronic legal mailbox for each professional practice company listed in the Central Register.
- (2) For the purpose of setting up the special electronic legal mailbox, the bar associations communicate to the Federal Bar Association the name or company name, the legal form and a delivery address of each professional practice company.
- (3) The Federal Bar Association revokes access authorisation to a special electronic legal mailbox set up as required under subsection (1) if the professional practice company's membership lapses for reasons other than its becoming a member of another bar association.
- (4) The Federal Bar Association sets up a further ready-to-receive special electronic legal mailbox for the branch office of a professional practice company listed in the Central Register upon that professional practice company's application. The application referred to in sentence 1 is to be sent to the bar association to which the professional practice company has been or is to be admitted. The bar association transmits to the Federal Bar Association the name and address of the branch office for which a further special electronic legal mailbox is to be set up. The Federal Bar Association revokes access authorisation to a further special electronic legal mailbox set up as required under sentence 1 where a professional practice company declares to its competent bar association that it no longer wishes to have a further special electronic legal mailbox for the branch office or if the branch office is closed; in all other cases, subsection (3) applies accordingly.
- (5) In all other cases, section 31a (1) sentence 2, (2) sentence 3, (3), (4) sentence 2 and (6) and (7) applies accordingly to special electronic legal mailboxes set up as required under subsections (1) and (4).

Section 31c

Register of European Lawyers

In addition to a search pursuant to section 31 (2) sentence 3, the Federal Bar Association enables a search, via the electronic search system available on the website of the European Commission (Register of European Lawyers), of that information entered in the Central Register which is included in the Register of European Lawyers.

Section 31d

Authorisation to issue statutory instruments

The Federal Ministry of Justice and Consumer Protection issues statutory instruments requiring the approval of the Bundesrat to lay down specific rules concerning

1. the collection of data to be entered in the bar associations' electronic registers, the keeping of these registers and inspection of these registers,
2. the collection of data to be entered in the Central Register, the keeping of the Central Register and inspection of the Central Register,
3. the special electronic legal mailboxes, in particular details concerning
 - a) their setting up and the data which need to be communicated for this purpose,
 - b) their technical configuration, including their accessibility,
 - c) their maintenance,

- d) access authorisation and use,
 - e) the deletion of messages and
 - f) their deletion,
4. retrieval of information from the Central Register via the Register of European Lawyers.

Division 3

Administrative procedures

Section 32

Supplementary application of administrative procedure law

(1) Unless otherwise provided, then in respect of administrative procedures under this Code or under a statutory instrument issued on the basis of this Code, the Administrative Procedure Act (*Verwaltungsverfahrensgesetz*) applies to federal authorities and the administrative procedure acts of the *Länder* apply to the *Länder* authorities. The administrative procedures may be processed by a single entity in accordance with the provisions of the Administrative Procedure Act.

(2) Applications are to be considered within a period of three months; section 42a (2) sentences 2 to 4 of the Administrative Procedure Act applies accordingly. In the cases referred to in section 15, the period begins to run upon presentation of the medical report. Section 10 remains unaffected.

Section 33

Competence and jurisdiction

(1) The bar associations are competent as regards implementation of this Code and of the statutory instruments issued on its basis, unless otherwise provided.

(2) The Federal Ministry of Justice and Consumer Protection is authorised to delegate the duties and powers conferred on it under this Code to the President of the Federal Court of Justice. The *Land* governments are authorised to delegate the duties and powers conferred on the *Land* departments of justice under this Code by way of a statutory instrument to the authorities subordinate to them. The *Land* governments may delegate such authorisation by way of a statutory instrument to the *Land* departments of justice.

(3) Jurisdiction lies with that bar association

- 1. of which the lawyer is a member,
- 2. to which the lawyer has applied for admission to the legal profession, unless another bar association has jurisdiction pursuant to no. 1,
- 3. in whose district the professional practice company has its seat or its branch office or
- 4. to which the professional practice company sent an application for exemption from the obligation to establish a law office under section 59m (4) in conjunction with section 29a (2) or an application for exemption from the obligation to establish a branch office under section 59m (5) in conjunction with section 29a (2), unless another bar association is competent in accordance with no. 3.

If the application for admission is sent to another bar association (section 27 (3)), that bar association considers the application.

Section 34

Service

Administrative acts by means of which admission to the legal profession or membership of a bar association is established or denied, or on account of which such admission expires or

on account of which an exemption or permission is denied, withdrawn or revoked are to be served.

Section 35

Appointment of deputy in administrative proceedings

Where, upon the request of the bar association, a deputy is appointed for administrative proceedings, a lawyer is, as a rule, to be appointed as that deputy.

Section 36

Establishment of facts and transmission of data

(1) In admission matters, the bar association may, for the purposes of establishing the facts, obtain unrestricted information under section 41 (1) no. 11 of the Federal Central Criminal Register Act (*Bundeszentralregistergesetz*) by way of a query.

(2) Courts and authorities, including professional governing bodies, transmit to the bar association or the body responsible for taking the decision those data concerning persons and professional practice companies which the transmitting body regards as necessary with regard to

1. admission to the legal profession or licensing as a professional practice company or withdrawal or revocation of such admission or licensing,
2. the commencement or termination of membership of a bar association,
3. the withdrawal or revocation of permission or exemption, or
4. the institution or conduct of professional supervision proceedings.

(3) Transmission as required under subsection (2) is not effected where

1. it would affect the interests meriting protection of a data subject and the recipient's interest in obtaining the information does not override the data subject's interests in the information not being transmitted or
2. it is precluded by specific statutory rules pertaining to the use of the data.

Sentence 1 no. 2 does not apply to obligations to maintain confidentiality incumbent on persons working for the professional governing body of a liberal profession within the area of application of this Code and to tax secrecy under section 30 of the Fiscal Code (*Abgabenordnung*).

Section 37

Substitution of written form

Where this Act prescribes the submission of a written declaration, such declaration may also be submitted via the special electronic legal mailbox if both the person making the declaration and the recipient have such a special electronic legal mailbox. If the declaration is to be submitted by a natural person, that person's qualified electronic signature is to be added to the document or the document is to be signed and forwarded by that person himself or herself. Other mailboxes as referred to in section 130a (4) sentence 1 nos. 2 to 5 of the Code of Civil Procedure are equal to the special electronic legal mailbox referred to in sentence 1.

Sections 38 to 42 (repealed)

Part 3

Rights and duties of lawyers and professional cooperation amongst lawyers

Division 1

General matters

Section 43

General professional duty

A lawyer is required to conscientiously practise the profession of lawyer. Both when practising and when not practising his or her profession a lawyer must prove worthy of the respect and confidence which the status of a lawyer demands.

Section 43a

Basic duties

- (1) A lawyer may enter into no relationships which jeopardise his or her professional independence.
- (2) A lawyer is bound to maintain confidentiality. This obligation applies to everything which becomes known to a lawyer in the exercise of his or her profession. It does not apply to facts which are obvious or which, by dint of their importance, do not necessitate confidentiality. A lawyer is required to oblige those persons in his or her employ, in text form, to maintain confidentiality and to advise them of the consequences under criminal law of any violation of that obligation. Further, a lawyer must take suitable measures to ensure compliance with the obligation to maintain confidentiality. Persons employed by the lawyer are equal to persons who are involved in his or her professional activities as part of preparations for their own professional activity or in another auxiliary capacity. Sentence 4 does not apply to trainee lawyers (*Referendare*) and persons employed who are subject to the same requirements as the lawyer as regards the obligation to maintain confidentiality. Where a lawyer has associated himself or herself for the joint exercise of the profession with other persons who are subject to the same requirements as regards the obligation to maintain confidentiality and employees have a single employment relationship, it is also sufficient to provide proof that one of these other persons has committed to the obligation referred to in sentence 4.
- (3) A lawyer may not behave in an unobjective manner in the exercise of his or her profession. Conduct is in particular deemed to be unobjective where it involves the conscious dissemination of untruths or such disparaging statements which other parties or the course of proceedings have given no occasion to make.
- (4) A lawyer may not act in a professional capacity if he or she has already advised or represented another client in the same legal matter as regards a conflicting interest. This ban also applies to lawyers exercising their profession jointly with a lawyer who is not permitted to act in a professional capacity as per sentence 1. A ban as referred to in sentence 2 continues to apply if the lawyer excluded on the basis of sentence 1 terminates the joint professional practice. Sentences 2 and 3 do not apply where the clients concerned have consented to the lawyer acting in a professional capacity after being given comprehensive information in text form and suitable safeguards having been put in place to ensure that the lawyer abides by the obligation to maintain confidentiality. A ban on acting in a professional capacity issued in accordance with sentence 1 against a professional practice company lapses where the conditions of sentence 4 are met. Where necessary in order to review a ban on acting in a professional capacity under sentence 1 or sentence 2, facts subject to the obligation to maintain confidentiality may be disclosed to a lawyer even without the client's consent.
- (5) Subsection (4) sentence 1 applies accordingly to the activities of trainee lawyers undergoing their preparatory service in the context of their training with a lawyer. Subsection (4) sentence 2 does not apply where a ban on acting in a professional capacity under subsection (4) sentence 1 is based on acting as a trainee lawyer as per sentence 1.
- (6) Subsection (4) sentence 1 applies accordingly to a lawyer acting in a professional capacity in a non-legal profession if a ban would be imposed in accordance with subsection (4) sentence 1 on his or her acting in a professional capacity as a lawyer.
- (7) A lawyer is obliged to apply the requisite diligence when dealing with assets entrusted to him or her. Third-party monies are to be passed on to the authorised recipient or to be paid into an escrow account without delay.
- (8) A lawyer is obliged to engage in continuing professional development.

Section 43b Advertising

A lawyer is permitted to advertise legal services only insofar as such advertising provides objective information about the form and content of the professional activity and it is not aimed at a client retaining the lawyer in a specific case.

Section 43c Specialist lawyers

- (1) A lawyer who has specialist knowledge of and experience in a field of law may be granted permission to use the professional title of '*Fachanwalt*' or '*Fachanwältin*'. A lawyer may specialise in administrative law, tax law, labour law and social law, as well as in those fields of law laid down in the rules of professional conduct pursuant to section 59a (2) no. 2
- (a). Permission may be granted for a maximum of three fields of law.
- (2) The executive board of the bar association considers a lawyer's application for permission to use one of the professional titles after a committee of that bar association has examined the proof to be furnished by the lawyer of the required specialist knowledge and experience.
- (3) The executive board of the bar association forms a committee for each field of law and appoints its members. Each committee comprises at least three lawyers; each lawyer may be a member of several committees. Sections 75 and 76 (1) and (2) apply accordingly. Several bar associations may together form joint committees.
- (4) Permission to use the professional title of '*Fachanwalt*' or '*Fachanwältin*' may be withdrawn by the executive board of the bar association with effect for the future where facts subsequently come to light whose knowledge would have led to permission having to have been denied. Permission may be revoked upon failure to undertake a course of continuing professional development as prescribed in the rules of professional conduct.

Section 43d Disclosure and information requirements in regard to collection services

(1) Upon first asserting a claim against a private individual, a lawyer performing collection services must communicate the following information in a clear and comprehensible manner in text form:

1. the name of his or her client or the name of that client's company, as well as that client's address, unless it can be shown that stating the address would interfere with the client's overriding interests worth protecting,
2. the basis of the claim, where contracts have been concluded including a precise description of the subject matter of the contract and the date of conclusion of the contract, in the case of unlawful acts stating the type and date of commission of the act,
3. if interest is being claimed, a calculation of the interest together with the claim on which interest is to be paid, the rate of interest and the period for which interest is being calculated,
4. if a rate of interest is being claimed over and above the statutory rate of default interest, special reference to that fact and information regarding the circumstances on the basis of which the higher rate of interest is being claimed,
5. if costs for collection are being asserted, information regarding the type, amount and their basis,
6. if value added tax amounts are being asserted together with the costs for collection, a declaration to the effect that the client cannot deduct these amounts as input tax.

7. if the private individual's address was not provided by the creditor but was otherwise determined, reference to that fact and to how any errors which may have occurred can be asserted,

8. the designation, address and electronic mail address of the bar association responsible for him or her.

(2) Upon the request of a private individual, a lawyer performing collection services is required to provide the following additional information in text form without delay:

1. the name or the name of the company of the person in whose name the claim arose,

2. where a contract has been concluded, the essential circumstances relating to the conclusion of the contract.

(3) If a lawyer performing collection services intends to reach an agreement with a private individual concerning deferment of payment or payment in instalments, the lawyer must first provide that individual with information, in text form, about the resulting costs.

(4) If a lawyer performing collection services requests a private individual to provide an acknowledgement of debt, then when making the request the lawyer must inform that individual, in text form, as per sentence 2 of the fact that the acknowledgement of debt generally means that he or she will no longer be able to assert those defences and objections against the acknowledged debt which were established at the point in time at which the acknowledgement of debt was provided. The information must

1. state clearly which parts of the debt are covered by the acknowledgement of debt and

2. name typical examples of defences and objections which can no longer be asserted, such as the non-existence or settlement or limitation of the acknowledged debt.

(5) A private individual within the meaning of this provision is any natural person against whom a claim is being made which is not linked to his or her commercial or independent professional activity.

Section 43e Availment of services

(1) Lawyers may give service providers access to facts to which the obligation of confidentiality in accordance with section 43a (2) sentence 1 applies to the extent that this is necessary to be able to avail themselves of such services. Service providers are other persons or agencies commissioned by lawyers with rendering services in the exercise of their profession.

(2) Lawyers are obliged to carefully select their service providers. Cooperation must be immediately terminated where it can no longer be guaranteed that the service provider will be able to fulfil the requirements set out in subsection (3).

(3) Contracts with service providers must be made in text form. Such contracts must

1. oblige the service provider to maintain confidentiality and advise of the consequences under criminal law of any violation of that obligation,

2. oblige the service provider to obtain knowledge of others' secrets only insofar as this is necessary in the fulfilment of the contract and

3. stipulate whether the service provider is authorised to involve other persons in the fulfilment of the contract; where this is the case, the service provider must be required to oblige, in text form, those persons to maintain confidentiality.

(4) When availing themselves of services which are provided abroad, lawyers may only give the service provider access to others' secrets, notwithstanding the other conditions set out in

this provision, if the level of protection of secrets in the other country is comparable to that in Germany, unless this is not a requirement of the protection of secrets.

(5) Where lawyers avail themselves of services which directly serve an individual client, they may only grant service providers access to others' secrets if the client has consented thereto.

(6) Subsections (2) and (3) also apply where lawyers avail themselves of services to which the client has consented, unless the client has expressly waived the need to observe the requirements set out in subsections (2) and (3).

(7) Subsections (1) to (6) do not apply where lawyers avail themselves of services on the basis of special statutory provisions. Subsection (3) sentence 2 does not apply if the service provider is bound by law to maintain confidentiality regarding the service to be rendered.

(8) Provisions concerning the protection of personal data remain unaffected.

Section 43f

Knowledge of laws governing legal profession

(1) Lawyers are required, within one year after first being admitted to the legal profession, to take a course dealing with the laws governing the legal profession. The course must comprise at least 10 full hours of teaching and cover the key areas of the laws governing the legal profession.

(2) The obligation under subsection (1) sentence 1 does not apply to lawyers who were first admitted to the legal profession before 1 August 2022 or to lawyers who can furnish proof that they participated in a course as referred to in subsection (1) within seven years of first being admitted to the legal profession.

Section 44

Notification of refusal to take on case

A lawyer who is approached in a professional capacity and who does not wish to take on a case must promptly state his or her reasons for refusing to take on a case. The lawyer is to pay compensation for the damage arising on account of any culpable delay in such notification.

Section 45

Prohibition of professional activity in case of prior involvement in non-legal capacity

(1) A lawyer may not act in a professional capacity if he or she

1. has already acted, in the same legal matter, as
 - a) judge, public prosecutor, member of the public service or trainee lawyer employed by such a person as part of their preparatory service,
 - b) arbitrator, conciliator or mediator, or
 - c) notary, deputy notary, administrator for a notary, trainee notary or trainee lawyer employed by a notary as part of their preparatory service,
2. is to proceed against the holder of those assets which he or she is administering in the same matter in which he or she was already involved in the capacity as insolvency administrator, administrator, executor or custodian, or in a similar capacity,
3. has already acted in a professional capacity for another party in the same matter as regards a conflicting interest outside of his or her activities as lawyer.

(2) A ban on acting in a professional capacity also applies to lawyers exercising their profession jointly

1. with a lawyer who is not permitted to act in a professional capacity in accordance with subsection (1) or

2. with a member of another profession as referred to in section 59c (1) sentence 1 who would not be permitted to act in a professional capacity if subsection (1) were to be applied accordingly.

Sentence 1 does not apply where the ban referred to in subsection (1) is based on the activities of trainee lawyers undergoing their preparatory service in accordance with subsection (1) no. 1 (a) or (c) or the activities of those working as a research assistant for a lawyer or in a professional practice company in accordance with subsection (1) no. 3. The activities of those working as a research assistant under sentence 2 include professional activities undertaken during their law studies and in the period between passing their first examination and passing the second state examination.

(3) A ban under subsection (2) sentence 1 continues to apply where the lawyer excluded in accordance with subsection (1) terminates the joint exercise of the profession. Subsection (2) sentence 1 does not apply in those cases in which the ban is based on subsection (1) no. 3 if the persons concerned have agreed to the lawyer acting in a professional capacity after being given comprehensive information in text form by the lawyer and suitable safeguards having been put in place to ensure that no confidential information is disclosed. Where necessary in order to be able to review a ban on acting in a professional capacity, facts subject to the obligation to maintain confidentiality may be disclosed to a lawyer even without the consent of the data subject.

Section 46

Salaried lawyers and in-house lawyers

(1) Lawyers may practise their profession as the salaried employees of employers who are practising as lawyers or patent attorneys or in a company for the joint practise of law or patent law.

(2) Salaried employees of persons or companies other than those referred to in subsection (1) are deemed to be practising as a lawyer if they are working as a lawyer for their employer under an employment agreement (in-house lawyer). In order to be able to exercise their profession in accordance with sentence 1, in-house lawyers must have been admitted to the legal profession pursuant to section 46a.

(3) A person is deemed to be working as a lawyer within the meaning of subsection (2) sentence 1 if the employment relationship is characterised by the professionally independent and autonomous performance of the following activities and the following features:

1. examining legal matters, including establishing the facts of a case, as well as developing and assessing possible solutions,
2. giving legal advice,
3. the activity is focused on the shaping of legal relations, in particular by independently conducting negotiations or realising rights and
4. the authority to outwardly represent the company.

(4) Anyone who is bound by instructions which preclude the independent analysis of a legal situation and the provision of individualised legal advice is not deemed to be pursuing a professionally independent activity within the meaning of subsection (3). The in-house lawyer's professional independence in the exercise of the profession is to be contractually and factually guaranteed.

(5) An in-house lawyer's right to advise and represent clients is limited to the employer's legal affairs. These also encompass

1. the legal affairs of affiliated companies within the meaning of section 15 of the Stock Corporation Act (*Aktiengesetz*),

2. those legal services to which the employer is authorised vis-à-vis its members, insofar as the employer is an association or trade union pursuant to section 7 or section 8 (1) no. 2 of the Legal Services Act (*Rechtsdienstleistungsgesetz*) and

3. those legal services to which the employer is authorised vis-à-vis third parties, insofar as the employer is a member of one of the professions referred to in section 59c (1) sentence 1 nos. 1 to 3 which are capable of forming partnerships or is a company for the joint exercise of such professions.

(6) Where an employer who is not a member of one of the professions referred to in section 59c (1) sentence 1 nos. 1 to 3 is entitled to provide legal services, these may also be provided by an in-house lawyer. In such cases, the in-house lawyer must draw attention to the fact that he or she may not provide any legal advice within the meaning of section 3 and that he or she has the right to refuse to testify in accordance with section 53 of the Code of Criminal Procedure (*Strafprozeßordnung*). Providing legal services in accordance with sentence 1 does not constitute working as a lawyer within the meaning of subsection (2) sentence 1.

Section 46a

Admission as in-house lawyer

(1) Admission to the legal profession in the capacity as in-house lawyer is to be granted upon application where

1. the general requirements for admission to the legal profession under section 4 are met,
2. none of the grounds for refusing admission referred to in section 7 applies and
3. the activity meets the requirements of section 46 (2) to (5).

Admission pursuant to sentence 1 may be granted for several employment relationships.

(2) The bar association with local jurisdiction considers an application for admission as an in-house lawyer after having heard the pension insurance fund. The decision is to be reasoned and served on the applicant as well as on the pension insurance fund. Both the applicant and the pension insurance fund are entitled to legal protection pursuant to section 112a (1) and (2) against the decision taken pursuant to sentence 1. The pension insurance fund is bound in its decision on the granting of exemption from the obligation to take out statutory pension insurance under section 6 (1) sentence 1 no. 1 and (3) of the Sixth Book of the Social Code (*Sozialgesetzbuch VI*) by the legally enforceable decision of the bar association referred to in sentence 1.

(3) The application for admission must include an original copy or an officially certified copy of the employment contract or contracts. The bar association may require submission of further proof.

(4) The admission procedure is conducted in accordance with sections 10 to 12a, with the proviso that

1. in derogation from section 12 (2), proof of having taken out professional indemnity insurance or of having supplied a provisional cover note is not necessary;
2. in derogation from section 12 (3) and notwithstanding section 12 (1), (2) no. 1 and (4), upon admission the applicant becomes a member of the bar association retroactively as from the point in time at which the bar association received the application for admission, unless the activity for which admission is granted was not commenced until after the application was made; in such cases, membership is not established until the point in time at which the activity commences;

3. in derogation from section 12 (4), the professional title of '*Rechtsanwalt* (*Syndikusrechtsanwalt*)' or '*Rechtsanwältin* (*Syndikusrechtsanwältin*)' is to be used in the pursuit of the activity.

Section 46b

Expiry of and amendment to admission as in-house lawyer

- (1) Admission to practise as an in-house lawyer expires pursuant to the provisions of section 13.
- (2) Sections 14 and 15, with the exception of section 14 (2) no. 9, apply as regards the withdrawal and revocation of admission to practise as an in-house lawyer. Admission to practise as an in-house lawyer is, further, to be revoked in full or in part if the employment contract on which an employment relationship is based or the activity which is in fact pursued no longer meets the requirements of section 46 (2) to (5). Section 46a (2) applies accordingly. Contrary to sentence 2, admission is not to be revoked if the activity which the in-house lawyer in fact pursues is interrupted, the interruption is, by its nature or contractually, limited in advance as to time and the employment relationship on which admission to practise as an in-house lawyer is based continues.
- (3) Where, following admission pursuant to section 46a, other employment relationships as in-house lawyer are commenced or an essential change is made to the activity within the context of existing employment relationships, admission pursuant to the provisions of section 46a is, upon application, to be extended to the other employment relationships or to the amended activity under the conditions referred to in section 46a.
- (4) Notwithstanding the duties of notification and submission referred to in section 56 (3), an in-house lawyer is also to give immediate notification to the body competent as referred to in section 56 (3) of any of the following changes to the employment relationship which relate to the activity:

1. any amendment to the employment agreement relating to the activity, including the commencement of a new employment relationship,
2. any essential change to the activity within the context of the employment relationship.

In the case referred to in sentence 1 no. 1, the notification is to include an original copy or an officially certified copy of the amended employment agreement. Section 57 applies accordingly.

Section 46c

Special provisions applicable to in-house lawyers

- (1) Unless otherwise provided by law, the provisions applicable to lawyers apply to in-house lawyers.
- (2) In-house lawyers may not represent their employer
 1. before regional courts, higher regional courts and the Federal Court of Justice in civil-law proceedings and in proceedings on matters of non-contentious jurisdiction if the parties or the persons concerned must be represented by a lawyer or provision has been made that submissions must be signed by a lawyer, and
 2. before the courts referred to in section 11 (4) sentence 1 of the Labour Courts Act (*Arbeitsgerichtsgesetz*), unless the employer is an authorised representative within the meaning of section 11 (4) sentence 2 of the Labour Courts Act.

In-house lawyers may not act as defence counsel or representative in criminal or regulatory fines proceedings directed against the employer or its employees; this applies where the subject matter of the criminal or regulatory fines proceedings is an alleged company-related crime, including in regard to the activity of a lawyer within the meaning of section 4.

- (3) Sections 44, 48 to 49a, 50 (2) and (3), and sections 51 to 55 do not apply to the activity of in-house lawyers.

(4) Section 27 applies to in-house lawyers with the proviso that their regular place of work is considered to be their law office. Where an in-house lawyer has also been admitted to practise as a lawyer in accordance with section 4 or that lawyer acts as an in-house lawyer under several employment relationships, a further law office is to be established and maintained for each activity, of which only one need be located within the district of the bar association of which he or she is a member.

(5) In addition to the information referred to in section 31 (3), the registers referred to in section 31 are to include the information that admission to the legal profession has been effected as an in-house lawyer. Where an in-house lawyer has also been admitted to practise as a lawyer in accordance with section 4 or acts as an in-house lawyer under several employment relationships, a separate entry is to be made for each of these activities.

(6) In-house lawyers are required to designate an authorised recipient whenever they are prevented from practising their profession for more than one week. Section 30 applies accordingly.

Section 47

Public-sector lawyers

(1) Lawyers serving as a judge or civil servant who have not been appointed for life, who are commissioned as a fixed-term volunteer soldier or who are provisionally employed as a salaried public-sector employee may not exercise the profession of lawyer unless they perform the tasks assigned to them on a voluntary basis. Upon application by the lawyer, the bar association may, however, appoint a deputy or permit the lawyer to exercise the legal profession where the interests of the administration of justice are not jeopardised as a result.

(2) Where a lawyer holds public office without having been assigned the status of civil servant and that lawyer may not exercise the profession of lawyer himself or herself in accordance with the provisions applicable to the office, the bar association may, upon the lawyer's request, appoint a deputy.

(3) (repealed)

Section 48

Obligation to take on legal representation in court

(1) A lawyer must act as representative or counsel in proceedings in court

1. if he or she has been assigned to the party on the basis of section 121 of the Code of Civil Procedure, section 4a (2) of the Insolvency Code (*Insolvenzordnung*) or other statutory provisions in order to provisionally manage the party's rights free of charge;

2. if he or she has been assigned to the party on the basis of sections 78b and 78c of the Code of Civil Procedure;

3. if he or she has been assigned as counsel to the respondent on the basis of section 138 of the Act on Proceedings in Family Matters and in Matters of Non-Contentious Jurisdiction (*Gesetz über das Verfahren in Familiensachen und in den Angelegenheiten der freiwilligen Gerichtsbarkeit*).

(2) The lawyer may apply for revocation of the assignment if there are important reasons for doing so.

Section 49

Court-appointed counsel and assisting as legal counsel

(1) A lawyer must take on a party's defence or assist as legal counsel if he or she has been appointed as defence counsel or legal counsel under the provisions of the Code of Criminal Procedure, the Act on Regulatory Offences (*Ordnungswidrigkeitengesetz*), the Act on International Mutual Assistance in Criminal Matters (*Gesetz über die internationale Rechtshilfe in Strafsachen*) or the Act on Cooperation with the International Criminal Court (*Gesetz über die Zusammenarbeit mit dem Internationalen Strafgerichtshof*).

(2) Section 48 (2) applies accordingly.

Section 49a

Obligation to render advisory assistance

(1) A lawyer is obliged to render advisory assistance as provided for under the Advisory Assistance Act (*Beratungshilfegesetz*). A lawyer may refuse to render advisory assistance in an individual case if there are good reasons for doing so.

(2) A lawyer is obliged to contribute to the work of facilities operated by the bar which advise consumers of legal services with a low income. A lawyer may refuse such involvement in an individual case if there are important reasons for doing so.

Section 49b

Remuneration

(1) It is not permissible to agree or to charge fees and expenses which are lower than those provided for in the Lawyers' Remuneration Act (*Rechtsanwaltsvergütungsgesetz*), unless otherwise provided in that Act. In an individual case a lawyer may take account of the client's special circumstances, in particular his or her measure of need, by granting a reduction or remission of fees or expenses after the case has been concluded.

(2) Agreements on the basis of which remuneration or its amount is made dependent on the outcome of the case or the lawyer's success, or based on which a lawyer is paid part of the amount recovered (contingency fee) are not permissible unless otherwise provided under the Lawyers' Remuneration Act. Agreements on the basis of which a lawyer undertakes to bear the court fees, administrative fees or costs of other parties are only permissible where a contingency fee has been agreed in the matter in accordance with section 4a (1) sentence 1 no. 2 of the Lawyers' Remuneration Act. A contingency fee within the meaning of sentence 1 does not exist where it has merely been agreed that the statutory fees are to be increased without further conditions being imposed.

(3) The payment or acceptance of a part of the fees or other benefits in return for the referral of cases, regardless of whether this occurs in a relationship with a lawyer or a third party of whatever kind, is not permissible. It is, however, permissible to pay a reasonable fee for an activity undertaken by another lawyer which goes beyond the scope of No. 3400 in Annex 1 to the Lawyers' Remuneration Act. Payment for the services must take account of the responsibility and the liability borne by the lawyers involved as well as of other circumstances. An agreement on such payment for services may not be made the precondition for the lawyer acting on behalf of a client. Where several lawyers are working on a case, they may work on the case jointly and divide the fees up amongst themselves in appropriate proportion to the services they each provided and the responsibility and the liability they each bore. Sentences 2 and 3 do not apply to counsel admitted to the Federal Court of Justice.

(4) The assignment of remuneration claims or the transferral of their collection to lawyers or to professional practice companies as defined in section 59b is permissible. In all other respects, assignment or transferral is permissible only where the client has explicitly consented thereto in text form or the claim has been settled by final decision. Before consenting, the client must be instructed about the lawyer's obligation to furnish information to the new creditor or person authorised to collect the claim. The new creditor or person authorised to collect the claim is bound to maintain confidentiality in the same manner as the retained lawyer.

(5) Where the fees are to be levied on the basis of the value in dispute, the lawyer is required to indicate this fact before taking on the case.

Section 49c

Submission of protective pleadings

Lawyers are obliged to submit protective pleadings (*Schutzschriften*) only to the central register of protective pleadings under section 945a of the Code of Civil Procedure.

Section 50

Reference files

- (1) Lawyers are required to keep reference files in order to be able to present an orderly and accurate account of their handling of their cases. They are required to retain the reference files for a period of six years. The period begins to run upon expiry of the calendar year in which the case was concluded.
- (2) Lawyers are required to hand over documents to clients which they have received from or on behalf of clients on the occasion of their professional activity. If the client does not request that any documents be handed over, the lawyer is required to keep the documents for the period referred to in subsection (1) sentence 2 and sentence 3. This obligation to keep reference files does not apply where a lawyer has requested the client to accept receipt of the documents and the client has not met this request within six months of receipt. Sentences 1 to 3 do not apply to correspondence between a lawyer and his or her client nor to documents of which the client has already received an original or a copy.
- (3) A lawyer may refuse to hand over the documents as per subsection (2) sentence 1 to a client until all the fees and expenses which the client owes the lawyer have been settled. This does not apply if the withholding of the documents would be inappropriate in the given circumstances.
- (4) Subsections (1) to (3) apply accordingly if the lawyer uses electronic data processing means to keep the reference files or store the documents.
- (5) Rules set out in other provisions concerning the obligation to keep and hand over documents remain unaffected.

Section 51

Professional indemnity insurance

- (1) A lawyer is obliged to take out professional indemnity insurance to cover the liability risks for financial losses resulting from the professional activity as lawyer and to maintain that insurance cover for the duration of his or her admission to practise. The insurance must be taken out with an insurance company which is authorised to do business in Germany at the general conditions of insurance submitted in accordance with the provisions of the Insurance Supervision Act (*Versicherungsaufsichtsgesetz*) and it must also cover those financial losses for which a lawyer is responsible pursuant to section 278 or section 831 of the Civil Code (*Bürgerliches Gesetzbuch*).
- (2) The insurance contract must guarantee insurance cover for each individual breach of duty which could lead to legal liability under civil law on the part of the lawyer; agreement may be reached to the effect that all breaches of duty connected with a single case are to be regarded as one insured event, be they based on the conduct of the lawyer or of a person called in to assist the lawyer.
- (3) The insurance cover may exclude liability
1. for claims for compensation on the ground of an intentional breach of duty,
 2. for claims for compensation resulting from activities pursued by law offices or offices established or maintained in other states,
 3. for claims for compensation resulting from activities pursued in connection with the provision of advice and dealing with non-European law,
 4. for claims for compensation resulting from activities pursued by a lawyer before non-European courts,
 5. for claims for compensation based on misappropriation by the lawyer's members of staff, relatives or co-partners.
- (4) The minimum insurance cover is 250,000 euros for each insured event. The benefits paid by the insurer for all losses incurred in one insurance year may be limited to four times the amount of the minimum insurance cover.

(5) It is permissible to agree an excess of no more than 1 per cent of the minimum insurance cover.

(6) The insurance contract must bind the insurer to inform the competent bar association, in the case of lawyers at the Federal Court of Justice also the Federal Ministry of Justice and Consumer Protection, without delay of the commencement and ending or termination of the insurance contract, as well as of each amendment to the insurance contract which affects the required insurance cover. The bar association is required, upon request, to inform third parties of the name and address of the lawyer's professional indemnity insurance provider as well as of the insurance policy number so that they can assert claims to compensation, unless the lawyer has an overriding interest meriting protection in this information not being provided; this also applies where the lawyer's admission to the legal profession has expired.

(7) The competent agency within the meaning of section 117 (2) of the Insurance Contract Act (*Versicherungsvertragsgesetz*) is the bar association.

(8) (repealed)

Section 52

Contractual limitation on claims for compensation

(1) A client's right to compensation for damage caused by negligence deriving from the contractual relationship between that client and a lawyer may be limited

1. by agreement concluded in text form in an individual case up to the amount of the minimum insurance cover;

2. by standard contractual conditions in cases of simple negligence to four times the amount of the minimum insurance cover, insofar as insurance has been taken out.

Sentence 1 applies accordingly to professional practice companies.

(2) The members of a professional practice company with unlimited liability are jointly and severally liable under the contractual relationship between themselves and the client.

Personal liability for damages may also be limited by means of standard contractual conditions to individual members of a professional practice company with unlimited liability who are handling the case in the context of their own professional powers and who are referred to by name. The declaration of consent to such limitation may not contain any other declarations and must be made in text form.

Section 53

Appointment of deputy

(1) A lawyer must ensure that a deputy is available to stand in

1. if he or she is prevented from practising the profession of lawyer for more than one week, or

2. if he or she plans to be absent from the law office for more than two weeks.

(2) The deputy is, as a rule, to be another lawyer. The deputy may also be a person who is qualified to hold judicial office or who has completed at least 12 months of preparatory training under section 5b of the German Judiciary Act. In the cases referred to in sentence 2, section 7 applies accordingly.

(3) Where another lawyer is to be made deputy, the lawyer is, as a rule, to appoint that deputy himself or herself. Where another person is to be made deputy or the lawyer cannot find a deputy, the bar association is to appoint the deputy.

(4) Where, in the cases referred to in subsection (1), the lawyer has omitted to appoint a deputy or to apply for the appointment of a deputy, the bar association is, as a rule, to appoint a deputy ex officio. Before doing so, it is, as a rule, to request the lawyer to appoint the deputy himself or herself or to apply for a deputy to be appointed. A lawyer who is appointed as deputy ex officio may refuse to act as deputy only if there are important reasons for doing so.

(5) The appointment may be revoked at any time.

Section 54 **Powers of deputy**

- (1) Deputies have those powers which are conferred on the lawyer for whom he or she is deputising. Deputies act on their own responsibility, though in the interests, for the account and at the expense of the person for whom they are deputising. Sections 666, 667 and 670 of the Civil Code apply accordingly.
- (2) Lawyers being deputised for must grant a deputy whom they themselves have appointed access to their special electronic legal mailbox. Deputies must, at a minimum, be authorised to take note of incoming mail and provide acknowledgement of receipt electronically.
- (3) Deputies who are appointed ex officio are authorised to enter the premises of the law office and to take possession of, demand surrender of and have command over all the items belonging to the law office, including property held in trust by the lawyer. They are not bound by the instructions of the lawyer for whom they are deputising. The lawyer being deputised for may not interfere with the activity of a deputy.
- (4) Lawyers being deputised for must pay the appointed deputy an appropriate remuneration, for which a security is to be paid if the circumstances so require. If those concerned cannot agree on the amount of the remuneration or of the security or if the security owed is not provided, the executive board of the bar association determines the amount of the remuneration at the request of one of the parties concerned. The deputy is authorised to accept an advance on the agreed or fixed-price remuneration. The bar association is liable as guarantor for the fixed-price remuneration.

Section 55 **Appointment of liquidator for law office**

- (1) In the event of a lawyer's death, the bar association may appoint a lawyer or another person who is qualified to hold judicial office as liquidator for the law office. The same or a different liquidator may be appointed for further law offices. Section 7 applies accordingly. The liquidator is as a general rule not to be appointed for a period of more than one year. Upon application by the liquidator, the appointment is to be extended by a maximum of one year if the liquidator can substantiate that it has not yet been possible to conclude all pending matters.
- (2) The liquidator is responsible for concluding all pending matters. The liquidator continues to work on ongoing cases; within the first six months he or she is also authorised to take on new cases. The liquidator has the same powers as the deceased lawyer. The liquidator is deemed to be authorised by the party in pending matters unless these have arranged for their rights to be represented in another manner.
- (3) Section 53 (4) sentence 3 and section 54 (1) sentence 2 and 3, and (3) and (4) apply accordingly. The liquidator is authorised, though not obliged, save in the context of cost assessment proceedings, to assert the deceased lawyer's cost claims in his or her own name and for the account of the heirs.
- (4) The appointment may be revoked.
- (5) Liquidators may also be appointed for the law office and further law offices of a former lawyer whose admission to the legal profession has expired.

Section 56 **Special obligations vis-à-vis executive board of bar association**

- (1) When it comes to supervisory matters and appeals, a lawyer must provide the executive board of the bar association or a nominated member of the executive board with information and must, upon request, submit his or her reference files or appear before the executive board or the nominated member of the executive board. This does not apply if and to the extent that the lawyer would by doing so breach his or her obligation of confidentiality or answering truthfully or submitting his or her reference files would pose the risk of his or her being prosecuted for a criminal offence, a regulatory offence or a breach of professional duties and the lawyer cites these cases. The lawyer is to be informed of the right to refuse to supply information.

(2) In the bar association's mediation proceedings a lawyer must, upon request, appear before the executive board of the bar association or a nominated member of the executive board. Such appearance is, as a rule, to be ordered if the executive board or the nominated member of the executive board comes to the conclusion, after examining the matter, that this might facilitate a settlement.

(3) A lawyer is required to notify the executive board of the bar association without delay

1. that he or she will be entering an employment relationship or that a key change will be made to an existing employment relationship,
2. that he or she will permanently or temporarily be serving as a judge, civil servant, regular soldier or fixed-term volunteer soldier,
3. that he or she holds public office within the meaning of section 47 (2),
4. that he or she is a member of a management or supervisory body of a professional practice company in accordance with the Federal Code for Patent Attorneys (*Patentanwaltsordnung*) or the Tax Advisory Services Act (*Steuerberatungsgesetz*).

Upon request, documents concerning an employment relationship are to be submitted to the executive board of the bar association.

Section 57

Penalty payment for breach of special obligations

(1) The executive board of a bar association may impose a penalty payment against a lawyer, even more than once, in order to prompt the lawyer to fulfil the obligations laid down in section 56. The penalty payment may not exceed 1,000 euros in each instance.

(2) Imposition of the penalty payment must first be threatened in writing by the executive board or the president of the bar association. The threat and assessment of the penalty payment are to be served on the lawyer.

(3) The lawyer may apply for a decision from the higher lawyers' court against the threat and against the assessment of the penalty payment within one month of service thereof. The application is to be submitted to the executive board of the bar association in writing. If the executive board deems the application to be well-founded, the executive board is to grant relief; otherwise, the application is to be submitted to the higher lawyers' court without delay. Jurisdiction lies with the higher lawyers' court at the higher regional court in whose district the bar association has been established. Sections 307 to 309 and 311a of the Code of Criminal Procedure apply analogously. Submissions in response (section 308 (1) of the Code of Criminal Procedure) are rendered by the executive board of the bar association. The public prosecution office is not involved in such proceedings. The decision of the higher lawyers' court cannot be challenged. Section 116 (2) applies accordingly.

(4) The penalty payment accrues to the bar association. Payment is exacted in accordance with those provisions which are applicable to the enforcement of judgments in civil-law disputes on the basis of a certified copy of the assessment notice issued by the treasurer and accompanied by a certificate of enforceability. Section 767 of the Code of Civil Procedure applies, with the proviso that objections concerning the claim itself are permissible only if they could not be asserted in proceedings pursuant to subsection (3). Such objections are to be asserted by way of a legal action before the court designated in section 797 (5) of the Code of Civil Procedure.

Section 58

Membership files

(1) The bar associations keep files on their members (section 60 (2)) for the purpose of performing their duties. Membership files may be kept electronically in part or in full. Membership files are to include, in particular, those documents which relate to a member's admission, membership or qualification or which concern proceedings relating to that member's professional supervision.

(2) Members of the bar associations have the right to inspect their membership file. In the course of such inspection of the files, records of the content of the files or copies of the documents may be made. Where membership files are kept electronically, the bar association is required to provide access to the content of these files electronically or to make copies available. Inspection of the files may be refused for as long as the reasons referred to in section 29 (1) sentence 2 and (2) of the Administrative Procedure Act and in section 147 (2) sentence 1 of the Code of Criminal Procedure exist.

(3) Where a member applies for admission to another bar association, the previous bar association forwards that member's membership file to the other bar association. Once the member has been admitted to the new bar association, the previous bar association deletes all the member's personal data, with the exception of reference to the fact that the member has moved to another bar association and other data which it may require in the course of performing its duties.

(4) Membership files are to be destroyed 30 years following the end of that year in which membership of the bar association expired. Deviating obligations to destroy parts of the files at an earlier point in time remain unaffected. Sentence 1 does not apply if the member has consented to the file being retained for a longer period or the file is offered to a public archive. Where the member's admission was withdrawn or revoked on account of unreliability, unsuitability or unworthiness or the member was disbarred, the file may not be destroyed before the relevant entry in the Federal Central Criminal Register has been removed. Sentence 4 also applies where a member has waived admission in proceedings to withdraw or revoke admission on account of unreliability, unsuitability or unworthiness. Where the files are kept electronically, deletion of the data takes the place of destruction of the files.

(5) Following the death of one of its members, the bar association may grant inspection of that member's file for the purposes of scientific research insofar as the scientific interest overrides the personal rights and interests of the data subject and the purpose of the research cannot be achieved by any other means or only with a disproportionate effort.

(6) Subsections (1), (2), (4) and (5) apply accordingly to persons who have applied for admission as a lawyer or for licensing as a professional practice company. Subsection (2) also applies to former members.

Section 59

Training of trainee lawyers

Lawyers are, as a rule, to be involved to an appropriate degree in the training of trainee lawyers. Lawyers are required to instruct and guide those trainee lawyers they are employing as part of their preparatory service in regard to the tasks of a lawyer and to give trainee lawyers the opportunity to engage in practical work. In particular, the training is generally to encompass the activities of a lawyer pursued in and out of court, dealing with clients, the rules governing the profession of lawyer and organising a law office.

Section 59a

Competence to make rules

(1) Further details concerning professional rights and duties are set down in rules of professional conduct.

(2) Within the bounds of the provisions of this Code, the rules of professional conduct may lay down rules concerning

1. general professional duties and basic duties:

- a) conscientiousness,
- b) maintenance of independence,
- c) confidentiality,
- d) objectivity,

- e) ban on representing conflicting interests,
 - f) careful handling of third-party assets,
 - g) obligation to maintain a law office and obligations in connection with the establishment and maintenance of further law offices and branch offices,
 - h) knowledge of laws governing the legal profession;
2. specific professional duties connected with the use of the professional title of '*Fachanwalt*' or '*Fachanwältin*' when it comes to
- a) determining the fields of law in which the additional professional title of '*Fachanwalt*' or '*Fachanwältin*' may be conferred,
 - b) regulating the conditions for conferment of the professional title of '*Fachanwalt*' or '*Fachanwältin*' and the procedure for the grant, withdrawal and revocation of permission to use the title;
3. specific professional duties connected with advertising and the disclosure of self-designated areas of interest;
4. specific professional duties connected with the prohibition of professional activity;
5. specific professional duties
- a) connected with the taking on, handling and termination of a case,
 - b) towards consumers of legal services as part of advisory assistance and legal aid,
 - c) when giving legal advice to consumers of legal services with a low income,
 - d) in regard to the keeping of reference files;
6. specific professional duties vis-à-vis courts and authorities:
- a) duties when it comes to using files provided for inspection and knowledge gained therefrom,
 - b) duties in regard to the service of documents,
 - c) the wearing of professional robes;
7. special professional duties when it comes to arranging and invoicing lawyers' fees and their collection;
8. special professional duties vis-à-vis the bar association in matters concerning supervision, professional conduct towards other members of the bar association, the obligations connected with service from one lawyer to another, obligations connected with professional collaboration, the obligations connected with the employment of lawyers and training, as well as employing other persons;
9. special professional duties in cross-border legal relations.
- (3) The rules of professional conduct must comply with the requirements set out in that EU law which is applicable to them. In particular, when introducing new or amending existing provisions which fall within the scope of application of Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications (OJ L 255, 30.9.2005, p. 22; L 271, 16.10.2007, p. 18; L 93, 4.4.2008, p. 28; L 33, 3.2.2009, p. 49; L 305, 24.10.2014, p. 115), as last amended by Directive 2013/55/EU

(OJ L 354, 28.12.2013, p. 132; L 268, 15.10.2015, p. 35; L 95, 9.4.2016, p. 20), as amended, compliance must be guaranteed with the requirements set out in Directive (EU) 2018/958 of the European Parliament and of the Council of 28 June 2018 on a proportionality test before adoption of new regulation of professions (OJ L 173, 9.7.2018, p. 25), as amended.

(4) An assessment of proportionality based on the criteria set forth in Annex 1 to this statute is to be conducted in relation to a provision as referred to in subsection (3) sentence 2. The extent of the assessment must be proportionate to the nature, the content and the impact of the provision. The provision is to be accompanied by an explanation which is sufficiently detailed as to permit an appraisal of its compliance with the principle of proportionality. The reasons which indicate that it is justified and proportionate are to be substantiated by qualitative and, wherever possible and relevant, quantitative elements. At least two weeks prior to the adoption of the resolution by the Lawyers' Parliament (*Satzungsversammlung*), a draft of the provision is to be published on the Federal Bar Association's website and the opportunity to comment is to be provided. Following adoption of the provision, its compliance with the principle of proportionality is to be monitored and, in the event of circumstances changing, an assessment is to be conducted as to whether it is necessary to adapt it.

Division 2

Professional collaboration

Section 59b

Professional practice companies

(1) Lawyers are permitted to form professional practice companies for the joint exercise of their profession. They may also form professional practice companies for the exercise of their profession even if they are the sole shareholder of such a company.

(2) Professional practice companies for the joint exercise of the profession of lawyer in the Federal Republic of Germany may have the following legal forms:

1. companies under German law, including commercial partnerships,
2. European societies (*societates Europaeae*, SE) and
3. companies permitted under the law of
 - a) a Member State of the European Union or
 - b) a Contracting Party of the Agreement on the European Economic Area.

Section 207a applies to professional practice companies established under the company law of a state which is not a Member State of the European Union or a Contracting Party of the Agreement on the European Economic Area.

Section 59c

Professional practice companies involving members of other professions

(1) Lawyers are also permitted to form a professional practice company as referred to in section 59b for the joint exercise of their profession

1. with members of a bar association, members of the Chamber of Patent Attorneys, tax consultants (*Steuerberater*), tax representatives (*Steuerbevollmächtigte*), certified accountants and sworn auditors,
2. with members of legal professions from other states who would be entitled under the Act on the Activities of European Lawyers in Germany or under section 206 to practise in Germany and to practise in Germany together with members of patent attorney professions from other states who would be entitled to practise in Germany under the Act on the Activities of European Patent Attorneys (*Gesetz über die Tätigkeit europäischer Patentanwälte*) or under section 157 of the Federal Code for Patent Attorneys,

3. with tax consultants, tax representatives, certified accountants and sworn auditors from other states who are permitted to exercise their profession jointly in Germany with tax consultants, tax representatives, certified accountants or sworn auditors under the Tax Advisory Services Act or the Code for Certified Accountants (*Wirtschaftsprüferordnung*),

4. with persons exercising a liberal profession within the meaning of section 1 (2) of the Partnership Companies Act (*Partnerschaftsgesellschaftsgesetz*) in the professional practice company, unless such joint exercise is not compatible with the profession of lawyer, in particular a lawyer's status as an independent organ of the administration of justice, or it may jeopardise the trust placed in a lawyer's independence.

An association within the meaning of sentence 1 no. 4 can, in particular, be ruled out where reasons which rest with the other person would, if that person were a lawyer, lead to denial of his or her admission to the legal profession in accordance with section 7.

(2) The purpose of a professional practice company formed in accordance with subsection (1) is to advise and represent clients in legal matters. The other non-legal professions may also be practised within the professional practice company. Sections 59d to 59q only apply to professional practice companies which serve the exercise of the legal profession.

Section 59d

Professional duties in case of professional collaboration

(1) When engaging in their professional activity for the professional practice company, shareholders who are members of one of the professions referred to in section 59c (1) sentence 1 are required to observe those duties set out in this Code and in the rules of professional conduct as per section 59a which are incumbent on lawyers working in the professional practice company as well as on the professional practice company. They are, in particular, obliged to safeguard the independence of the lawyers working in the professional practice company and of the professional practice company.

(2) Shareholders who are members of one of the professions referred to in section 59c (1) sentence 1 are obliged to maintain confidentiality. This obligation refers to everything which becomes known to them in the exercise of their professional activities for the professional practice company in connection with advising and representing clients in legal matters.

Section 43a (2) sentence 3 applies accordingly.

(3) The provisions concerning bans on acting in a professional capacity under section 43a

(4) sentences 2 to 6 apply accordingly to shareholders who are members of one of the professions referred to in section 59c (1) sentence 1.

(4) Lawyers may not exercise their profession with other persons if those persons seriously or repeatedly breach duties as set out in this Code or in the rules of professional conduct as per section 59a.

(5) The articles of association must provide for the exclusion of shareholders who seriously or repeatedly breach duties as set out in this Code or in the rules of professional conduct as per section 59a.

(6) Where a lawyer is involved in a single-mandate company (section 59f (1) sentence 2 no. 2), he or she is responsible for ensuring that the single-mandate company fulfils the professional duties as set out in section 59e (1) to (3).

Section 59e

Professional duties of professional practice company

(1) Sections 43 to 43b, 43d, 43e, 44, 45 (1) nos. 2 and 3, sections 48, 49a to 50, 53, 54, 56 (1) and (2) and sections 57 to 59a apply analogously to professional practice companies.

(2) Professional practice companies are to take suitable measures to ensure that breaches of professional duties are detected early on and put to an end. Where persons are involved in a professional practice company who are members of one of the professions referred to in section 59c (1) sentence 1, suitable agreements are to be included in the articles of

association so that the professional practice company can ensure that its professional duties are fulfilled.

(3) Where non-legal professions are exercised in a professional practice company, subsections (1) and (2) only apply insofar as those professions have a bearing on advising and representing clients in legal matters.

(4) The personal responsibilities under professional law of the shareholders, members of the bodies and other members of the professional practice company remain unaffected.

(5) Where a professional practice company is involved in a single-mandate company (section 59f (1) sentence 2 no. 2), it is responsible for ensuring that the single-mandate company fulfils the professional duties as set out in subsections (1) to (3). Subsection (4) applies accordingly.

Section 59f Licensing

(1) Professional practice companies must be licensed by a bar association. Licensing in accordance with sentence 1 is not required in the case of

1. partnerships in which natural persons have unlimited liability and which exclusively have lawyers or members of one of the professions referred to in section 59c (1) sentence 1 no. 1 as shareholders and as members of the management and supervisory bodies and

2. professional practice companies which were founded as partnerships by

a) several licensed professional practice companies in accordance with this Code or

b) one or more licensed professional practice companies in accordance with this Code and one or more lawyers

for the purpose of handling a single mandate (single-mandate company).

Professional practice companies and lawyers involved in it are to report the founding of a single-mandate company to those bar associations by which the involved professional practice companies and lawyers are licensed. Sentence 2 is without prejudice to a voluntary application for licensing.

(2) The license is to be granted where

1. the professional practice company, its shareholders and the members of its management and supervisory bodies fulfil the requirements of sections 59b, 59c, 59d (5), 59i and 59j,

2. the professional practice company is not in financial difficulties and

3. proof has been furnished that professional indemnity insurance has been taken out or a provisional cover note has been supplied.

A professional practice company is presumed to be in financial difficulties as referred to in sentence 1 no. 2 if insolvency proceedings have been opened against its assets or it has been entered in the list of debtors (section 882b of the Code of Civil Procedure).

(3) Upon its licensing, the professional practice company becomes a member of the licensing bar association.

(4) The bar association notifies the professional indemnity insurance company referred to in the professional indemnity insurance or the professional cover note of the licensing.

Section 59g Licensing procedure; notification requirement

(1) The application for licensing must include the following information:

1. the legal form, name, seat and purpose of the professional practice company,

2. the business addresses of the professional practice company's branches and
3. the name and profession of the shareholders, of the members of the management and supervisory bodies and of all those persons who are directly involved in the professional practice company; where a shareholder is a licensed professional practice company, the name and profession of those persons who are directly involved in it must not be stated.

The competent bar association may, for the purpose of reviewing whether the conditions of section 59f (2) are met, request submission of suitable proof, including the professional practice company's articles of association or by-laws. Section 57 applies accordingly.

(2) The decision on the licensing application may be suspended if proceedings are being conducted against one of the shareholders or against one of the members of a management or supervisory body concerning the withdrawal or revocation of that shareholder's admission or appointment, or if a provisional ban on practising law or representing clients has been issued.

(3) The licence takes effect upon the delivery of a document issued by the bar association.

(4) A licensed professional practice company is required to notify the bar association without delay of any changes to the details to be stated as required under subsection (1) sentence 1. Subsection (1) sentence 2 and 3 applies accordingly.

Section 59h

Lapse, withdrawal and revocation of licence; liquidator

(1) A professional practice company's licence lapses upon its dissolution. In all other cases, section 13 applies accordingly.

(2) The licence is to be withdrawn with effect for the future if it transpires that the licence should have been denied. Section 14 (1) sentence 2 applies accordingly.

(3) The licence is to be revoked if the professional practice company

1. no longer meets the requirements of section 59b, 59c (1), 59d (5), section 59i, 59j, 59n or section 59o, save where it brings about the condition which corresponds to the aforementioned provisions within an appropriate period to be determined by the bar association,
2. is in financial difficulties, save where the interests of consumers of legal services are not jeopardised as a result or
3. has, in writing vis-à-vis the bar association, waived the rights arising from the licence.

A professional practice company is presumed to be in financial difficulties as referred to in sentence 1 no. 2 if insolvency proceedings have been opened against its assets or it has been entered in the list of debtors (section 882b of the Code of Civil Procedure).

(4) The licence may be revoked if the professional practice company

1. does not, in accordance with section 59m (1), establish a law office in the district in which the bar association is located within three months following its licensing,
2. does not, within three months, fulfil a condition imposed at the time of the granting of an exemption under section 59m (4) in conjunction with section 29a (2),
3. does not, within three months, appoint an authorised recipient after
 - a) it has been exempted in accordance with section 59m (4) in conjunction with section 29a (2) from the obligation to maintain a law office or
 - b) a previous authorised representative is no longer acting in that capacity or
4. closes its law office without having been exempted from the obligation under section 59m.

(5) If the bar association orders immediate enforcement, section 155 (2), (4) and (5), section 156 (2) and section 161 apply accordingly. If the professional practice company's licence is revoked because it has not taken out the required professional indemnity insurance, then immediate enforcement is generally to be ordered.

(6) Where a professional practice company has lost its licence, a liquidator may be appointed if those persons appointed to legally represent it are unable to offer sufficient guarantee that pending matters will be properly wound up. Section 55 applies accordingly. The shareholders are jointly and severally liable for the liquidator's fixed-price remuneration. Section 54 (4) sentence 4 remains unaffected.

Section 59i

Shareholder and capital structure of professional practice companies

(1) Licensed professional practice companies under this Code may be shareholders of a professional practice company. As regards the statutory conditions which shareholders or the members of the management board must personally fulfil, then in the cases referred to in sentence 1 these must be fulfilled by the shareholders and the management board of the involved professional practice company. Where lawyers, members of one of the professions referred to in section 59c (1) sentence 1 and professional practice companies which fulfil the conditions of this subsection have formed a company under civil law whose sole purpose is the holding of shares in a licensed professional practice company, then the shares in the professional practice company are allocated in that proportion which equates to their participation in the company under civil law.

(2) Any transfer of company shares requires the consent of the meeting of shareholders. In the case of stock corporations or public partly limited partnerships, these shares must be registered shares.

(3) Shares in a professional practice company may not be held for the account of third parties. Third parties may not share in the profits of a professional practice company.

(4) Shareholders who do not meet the conditions of section 59c (1) have no voting right.

(5) Shareholders may only authorise shareholders who hold voting rights to exercise their shareholder rights.

Section 59j

Management bodies; supervisory bodies

(1) Only lawyers or members of one of the professions referred to in section 59c (1) sentence 1 may be members of the management or supervisory body of a licensed professional practice company. This is without prejudice to the rules concerning codetermination. When it comes to advising and representing clients in legal matters, persons who are not lawyers are not permitted to instruct lawyers.

(2) Whoever fulfils one of the grounds for refusal set out in section 7 or against whom one of the measures referred to in subsection (5) sentence 3 has been imposed is excluded from membership of a management or supervisory body.

(3) The management board of a professional practice company must include the required number of lawyers for representation.

(4) The members of the management and supervisory body are obliged to ensure compliance with the rules of professional conduct in the professional practice company.

(5) The professional duties under section 59d (1) to (3) apply accordingly to those members of the management and supervisory body of the professional practice company who are not shareholders. Sections 74 and 74a, the provisions of Part 6 and Part 7, sections 195 to 199 and the provisions of Part 11 apply accordingly to members of the management and supervisory body who are not members of the legal profession. Disbarment (section 114 (1) no. 5) is substituted,

1. in the case of members of management bodies who are not members of the legal profession, by denial of suitability to represent the professional practice company and to manage its business and

2. in the case of members of a supervisory body who are not members of the legal profession, by denial of suitability to exercise the professional practice company's supervisory functions.

(6) The independence of lawyers who are members of the professional practice company's management body or who represent the professional practice company in another manner is to be guaranteed when they are exercising the profession of lawyer. Shareholders are not permitted to bring their influence to bear, in particular by giving instructions or by means of contractual stipulations.

(7) Subsections (1), (5) and (6) apply accordingly to a holder of commercial power of representation (*Prokurist*) and to a holder of commercial attorney (*Handlungsbevollmächtigter*).

Section 59k

Authorisation to provide legal services

Professional practice companies are authorised to provide legal services within the meaning of section 2 of the Legal Services Act. They act through their shareholders and representatives, who must in each individual case personally fulfil the statutory conditions in order to be able to provide legal services.

Section 59l

Representation before courts and authorities

(1) Professional practice companies may be appointed as legal representative or counsel. In such cases, they have the same rights and duties as a lawyer.

(2) Professional practice companies act through their shareholders and representatives, who must in each individual case personally fulfil the statutory conditions in order to be able to provide legal services.

(3) A professional practice company cannot be selected or appointed as defence counsel within the meaning of sections 137 to 149 of the Code of Criminal Procedure.

Section 59m

Professional practice company's law office

(1) A professional practice company must maintain a law office at its seat with at least one managing lawyer.

(2) Section 27 (2) applies accordingly.

(3) Where a licensed professional practice company moves its seat into the district of another bar association, section 27 (3) applies accordingly.

(4) Sections 29a and 30 apply accordingly.

(5) Professional practice companies which have no seat in Germany are obliged to establish and maintain a branch office in Germany with at least one managing lawyer. Section 29a (2) and (3) and section 30 apply accordingly as regards exemption from the requirement under sentence 1.

Section 59n

Professional indemnity insurance

(1) Professional practice companies are obliged to take out professional indemnity insurance and to maintain it for the duration of their activity.

(2) The professional indemnity insurance must cover liability risks for financial losses resulting from the provision of advice to and the representation of clients in legal matters.

Section 51 (1) sentence 2, (2), (3) nos. 2 to 5 and (5) applies accordingly; section 51 (6) and (7) applies accordingly, with the proviso that it only applies to licensed professional practice companies. If the company's liability is not limited on account of its legal form and no limitation of liability of natural persons applies, then section 51 (3) no. 1 also applies accordingly.

(3) Where the professional indemnity insurance is not maintained or is not maintained to the extent prescribed, the professional practice company as well as its shareholders and the members of its management body are personally liable for the shortfall in insurance cover.

Section 59o

Minimum insurance cover and maximum annual benefits

(1) In the case of professional practice companies in which, by dint of their legal form, no natural person is liable for any obligations of the professional practice company resulting from damage caused by the erroneous exercise of a profession or in which the liability of natural persons is limited, the minimum insurance cover of the professional indemnity insurance referred to in section 59n is, subject to subsection (2), 2,500,000 euros for each insured event.

(2) In the case of professional practice companies as referred to in subsection (1) in which no more than 10 persons are employed as lawyers or actively engage in one of the professions referred to in section 59c (1) sentence 1, the minimum insurance cover is 1,000,000 euros.

(3) In the case of professional practice companies which, by dint of their legal form, do not rule out liability and make no provision for any limitation of the liability of natural persons, the minimum insurance cover is 500,000 euros for each insured event.

(4) The benefits paid by the insurer for all losses incurred in one insurance year may be limited to the amount of the applicable minimum insurance cover multiplied by the number of shareholders who are lawyers and licensed or practising in Germany and directors who are lawyers and not shareholders. Where a professional practice company is a shareholder, when calculating the maximum annual benefits it is not the shareholding professional practice company which is relevant but the number of shareholders who are lawyers and licensed or practising in Germany and directors who are lawyers and not shareholders. If the professional practice company is a single-mandate company, sentence 2 does not apply and the number of its shareholders is decisive when it comes to calculating the maximum annual benefits. The maximum annual benefits must, however, at any rate at least amount to four times the amount of the minimum insurance cover.

Section 59p

Rechtsanwaltsgesellschaft

Professional practice companies in which lawyers hold the majority of voting rights and in which the majority of the members of the management body are lawyers may use the designation '*Rechtsanwaltsgesellschaft*'.

Section 59q

Office share

(1) Lawyers may join together to form a company which serves the joint organisation of the shareholders' professional activity and the shared use of operating resources but which is not itself to act as a contractual partner in client contracts concluded by lawyers ('office share').

(2) Lawyers may also partner in an office share with persons who are not admitted to the legal profession, unless such an association is not compatible with the profession of lawyer, in particular a lawyer's status as an independent organ of the administration of justice and it may jeopardise the trust placed in a lawyer's independence. An office share as defined in sentence 1 may, in particular, be ruled out where reasons which rest with the other person would lead to a lawyer being denied admission to the legal profession in accordance with section 7 no. 1, 2 or 6.

(3) The lawyers partnering in an office share are obliged to take appropriate organisational, personnel and technical measures to ensure compliance with their professional duties.

(4) Section 59d (1), (2), (4) and (5) applies accordingly to the shareholders of an office share as defined in subsection (2).

Part 4
Bar associations

Division 1
General matters

Section 60
Formation and composition of bar associations

(1) A bar association is formed for the district of each higher regional court. It has its seat at the place of the higher regional court.

(2) The membership of a bar association comprises

1. persons who have been admitted to or accepted by that bar association,
2. professional practice companies which have been admitted by that bar association,
3. members of the management and supervisory bodies of professional practice companies as referred to in no. 2 who are not already
 - a) members of a bar association as referred to in no. 1 or
 - b) members of the Chamber of Patent Attorneys or of a chamber of tax consultants and
4. members of the management of German branches of foreign professional practice companies (section 207a (1) no. 4) which are not already members of a bar association as per no. 1.

(3) Membership of the bar association lapses

1. in the cases referred to in subsection (2) no. 1 if the conditions of section 13 or of section 27 (3) sentence 3 are met,
2. in the cases referred to in subsection (2) no. 2 if the conditions of section 59h (1) to (3) or of section 59m (3) read in conjunction with section 27 (3) sentence 3 are met,
3. in the cases referred to in subsection (2) no. 3 if
 - a) the professional practice company meets the conditions of no. 2,
 - b) a final and binding decision within the meaning of section 59j (5) sentence 3 has been issued against a member of the management or supervisory body or
 - c) a director is no longer acting in that capacity for the professional practice company or is no longer a member of the supervisory body.

Section 61
(repealed)

Section 62
Status

(1) A bar association is a corporation under public law.

(2) The *Land* department of justice exercises state supervision over the bar association. Such supervision is limited to ensuring compliance with the law and with the by-laws, in particular the duties assigned to the bar association.

Division 2
Constituent bodies of bar association

Subdivision 1
Executive board

Section 63
Composition

- (1) Each bar association has an executive board.
- (2) The executive board comprises seven members. The assembly of the bar association (*Kammerversammlung*) may determine a larger number.
- (3) The executive board establishes its rules of procedure.

Section 64
Elections to executive board

- (1) The members of the executive board are elected by the members of the bar association in a secret and direct ballot by postal vote. It may be provided that the votes may also be cast at the assembly of the bar association. The ballot may also be held by electronic vote. Those candidates who gain the most votes are deemed to be elected.
- (2) Further details are set down in the rules of procedure of the bar association.

Section 65
Eligibility for election

Only those who

1. are members of the bar association and
 2. have practised as a lawyer for at least five years without interruption
- may be elected as members of the executive board.

Section 66
Loss of eligibility for election

(1) A person

1. who has been banned from practising law or representing clients (sections 150 and 161a),
2. against whom the immediate enforcement of withdrawal or revocation of admission has been ordered,
3. who has been issued with a written reprimand (*Verweis*) (section 114 (1) no. 2) or who has incurred a fine (section 114 (1) no. 3) within the last five years,
4. who has been banned from representing clients (section 114 (1) no. 4) within the last 10 years,
5. who has been disbarred within the last 15 years (section 114 (1) no. 5) or
6. against whom the imposition of penalties in lawyers' disciplinary proceedings was dispensed with in accordance with section 115b within the last five years, unless a reprimand or fine would presumably have been imposed if no other penalty was imposed elsewhere

cannot be elected as a member of the executive board.

- (2) The bar association's rules of procedure may set out other grounds for exclusion.

Section 67
Right to refuse to stand for election

Anyone who

1. is at least 65 years of age;
2. has been a member of the executive board over the last four years;

3. for health reasons which are not merely of a temporary nature cannot duly serve on the executive board
may refuse to stand for election.

Section 68

Term of office

- (1) Members of the executive board are elected for a four-year term of office. Re-election is permissible.
- (2) Every two years half of the members retire from the executive board. In the event of there being an uneven number of members, the larger number retire first. The members who are to retire first are drawn by lots.
- (3) If the number of members of the executive board is increased, subsection (2) sentence 2 applies accordingly to the newly elected members who retire at the end of the second year.
- (4) Where an election which is necessary owing to the number of members of the executive board having been increased is held at the same time as a new election, the two elections are to be held separately.

Section 69

Premature retirement from office

- (1) A lawyer retires from the executive board
 - 1. if the lawyer is no longer a member of the bar association or loses eligibility for the reasons referred to in section 66 (1) nos. 3, 4 and 6;
 - 2. if the lawyer resigns his or her office.
- (2) A lawyer resigns from office by submitting a written declaration to the executive board. The declaration cannot be revoked.
- (3) Where a member of the executive board retires from office prematurely, that member is to be replaced by a new member for the remainder of that member's term of office. This may be dispensed with if the number of members of the executive board does not fall below seven. The member may be replaced by means of a person who was not elected during the last ballot moving up or by means of a new ballot. The bar association's rules of procedure regulate further details.
- (4) Where one of the measures referred to in section 66 (1) no. 1 or 2 is imposed or ordered against a member of the executive board, that member's membership is suspended for the duration of the measure. Where a suspicion of culpable breach of professional duties has been raised against a member of the executive board, that member is to be prohibited from acting on behalf of the bar association in this matter.
- (5) The bar association's rules of procedure may provide for further grounds leading to a member having to retire from the executive board or to a member's membership of the executive board being suspended.

Section 70

Meetings

- (1) The executive board is convened by the president.
- (2) The president must convene a meeting if one quarter of the members of the executive board apply in writing for such a meeting and must indicate the matter which is to be discussed.
- (3) Further details are laid down in the rules of procedure of the executive board.

Section 71

Quorum

The executive board has a quorum when at least half of its members are present.

Section 72

Resolutions

- (1) The resolutions of the executive board are passed by a simple majority. The same applies to elections to be conducted by the executive board. In the event of a tied vote, the chair has the casting vote, in the case of elections there is to be a drawing of lots.
- (2) Members may not vote on matters concerning their own affairs. This does not, however, apply to elections.
- (3) Minutes are to be taken to record the resolutions passed by the executive board and the results of its elections, and the minutes are to be signed by the chair and the secretary.
- (4) Resolutions of the executive board may also be taken without a meeting being held if no member of the executive board raises an objection thereto and at least half of the members of the executive board participate in the vote. Votes outside of meetings are to be taken in writing.

Section 73 Tasks

- (1) The executive board is to perform the tasks assigned to it by law. It is also responsible for discharging the duties and powers assigned to the bar association under this Code. It is to protect and promote the interests of the bar association.
- (2) In particular, the executive board is responsible for
 1. advising and instructing the members of the bar association in matters relating to their professional duties;
 2. mediating, upon request, between members of the bar association in the event of a dispute; this includes the power to make settlement proposals;
 3. mediating, upon request, between members of the bar association and their clients in the event of a dispute; this includes the authority to make settlement proposals;
 4. monitoring the performance of the duties incumbent on the members of the bar association and managing the right to issue a reprimand (*Rüge*);
 5. proposing lawyers to be appointed as members of the lawyers' disciplinary court and of the higher lawyers' court;
 6. submitting proposals pursuant to sections 107 and 166 to the Federal Bar Association;
 7. rendering annual account to the assembly of the bar association concerning the administration of its assets;
 8. rendering expert opinions requested by a *Land* department of justice, a court or an administrative authority of a *Land*;
 9. being involved in the training and examination of students and of trainee lawyers, in particular proposing qualified team leaders and the members of the legal examination boards who are lawyers.

Where a member of the chamber is also a member of a management or supervisory body of a professional practice company in accordance with the Federal Code for Patent Attorneys or the Tax Advisory Services Act, the tasks of the executive board as per sentence 1 nos. 1 to 4 also encompass the professional duties of the member of the chamber as a member of that management or supervisory body (section 52d (1) to (3) and section 52j (4) and (5) sentence 1 of the Federal Code for Patent Attorneys or section 51 (1) to (3) and section 55b (4) and (5) sentence 1 of the Tax Advisory Services Act).

(3) In appeal proceedings, the executive board notifies the person who filed the appeal of its decision. Notification is made following the conclusion of the proceedings, including opposition proceedings, and is to include a brief description of the essential grounds for the decision. Section 76 (1) remains unaffected. The notification is not subject to appeal.

(4) The executive board may transfer the tasks referred to in subsection (1) sentence 2, subsection (2) sentence 1 nos. 1 to 3 and subsection (3) to individual members of the executive board.

(5) Where, in the event of a dispute between a member of a bar association and his or her client, the client files for mediation proceedings, these are instituted without the member needing to consent thereto. A settlement proposal is binding only where it is accepted by both sides.

Section 73a **Single entity**

The *Länder* may delegate the tasks of a single entity within the meaning of the Administrative Procedure Act by law to the bar associations either individually or jointly. Such legislation regulates supervision and may provide that the bar associations may also act for applicants who do not wish to practise as a lawyer.

Section 73b **Administrative authority regarding regulatory offences**

(1) The bar association is the administrative authority within the meaning of section 36 (1) no. 1 of the Act on Regulatory Offences when it comes to regulatory offences under section 6 of the Ordinance on Information Requirements in the Services Sector (*Dienstleistungs- Informationspflichten-Verordnung*) and under section 56 of the Money Laundering Act (*Geldwäschegesetz*) which are committed by its members.

(2) The fines imposed for the prosecution of regulatory offences pursuant to subsection (1) accrue to the treasury of the administrative authority which issued the fining order.

(3) Notwithstanding section 105 (2) of the Act on Regulatory Offences, the treasury which is competent pursuant to subsection (2) is to bear the necessary expenses. It is also liable to pay compensation within the meaning of section 110 (4) of the Act on Regulatory Offences.

Section 74 **Right to issue reprimands**

(1) The executive board may reprimand the conduct of a lawyer on account of which that lawyer has breached duties incumbent on him or her if the lawyer's guilt is minor and it does not appear necessary to request the institution of lawyers' disciplinary proceedings. Section 113 (2) and (4), section 115b, section 118 (1) and (2) and sections 118a and 118b apply accordingly. Section 115 (1) sentences 1 and 3 and (2) applies to the statute of limitations and its suspension. The lawyer's first hearing interrupts the statute of limitations in the same way as the public prosecution office's first examination does in lawyers' disciplinary proceedings.

(2) A reprimand may not be issued

1. where lawyers' disciplinary proceedings have been instituted against the lawyer or

2. whilst proceedings under section 123 are pending.

(3) The lawyer is to be heard before the reprimand is issued.

(4) The executive board's notice of reprimand regarding the lawyer's conduct must be reasoned. It is to be served on the lawyer. A copy of the notice is to be notified to the public prosecution office at the higher regional court.

(5) The lawyer may file an objection with the executive board within one month of service of the notice of reprimand. The executive board considers the objection; subsection (4) applies accordingly.

(6) Subsections (1) to (5) apply accordingly to licensed professional practice companies if, in the cases referred to in section 113 (3), the breach of duty is of minor significance and filing an application for the institution of lawyers' disciplinary proceedings is not deemed necessary. Section 113 (5), section 113b, section 118c (2) and sections 118d to 118f apply accordingly.

Section 74a

Application for decision from lawyers' disciplinary court

- (1) If the executive board of the bar association rejects the objection to the notice of reprimand, the lawyer may apply to the lawyers' disciplinary court for a decision within one month of service of the rejection. Jurisdiction lies with the lawyers' disciplinary court at the seat of the bar association whose executive board issued the reprimand.
- (2) The application is to be submitted to the lawyers' disciplinary court in writing. Sections 308, 309 and 311a of the Code of Criminal Procedure apply analogously to the proceedings. Submissions in response (section 308 (1) of the Code of Criminal Procedure) are to be rendered by the executive board of the bar association. The public prosecution office is not involved in such proceedings. A hearing is held if the lawyer files an application therefor or the lawyers' disciplinary court deems it to be necessary. The executive board of the bar association, the lawyer and his or her defence counsel are to be informed of the time and place of the hearing. The manner and extent of the taking of evidence is determined by the lawyers' disciplinary court. However, in establishing the truth it is, ex officio, to extend the taking of evidence to all the facts and evidence which are relevant to the decision.
- (3) The notice of reprimand may not be revoked on account of the executive board of the bar association having wrongly assumed that the lawyer's guilt was minor and that it was not necessary to apply for the institution of lawyers' disciplinary proceedings. If the conditions under which a lawyers' disciplinary court is to refrain from imposing a measure pursuant to section 115b are met or the conditions under which lawyers' disciplinary proceedings cannot be instituted or continued pursuant to section 118 (2) do not arise until after the executive board has issued the reprimand, the lawyers' disciplinary court revokes the notice of reprimand. The decision must be reasoned. It is not subject to appeal.
- (4) The lawyers' disciplinary court with which the application for a decision was filed without delay issues the public prosecution office at the higher regional court with a copy of the application. The public prosecution office is also to be issued with a copy of the decision on the application.
- (5) Where the public prosecution office institutes lawyers' disciplinary proceedings on account of the same conduct which the executive board of the bar association reprimanded before the decision on the application for a decision from the lawyers' disciplinary court on the notice of reprimand has been issued, the proceedings on the application are stayed until the disciplinary proceedings have been concluded by final and binding decision. In the cases referred to in section 115a (2), the lawyers' disciplinary court declares the reprimand void once the stay of proceedings has ended.
- (6) Subsections (1) to (5) apply accordingly to licensed professional practice companies. Section 113b, section 118c (2) and sections 118d to 118f apply accordingly.
- (7) Section 116 (2) applies accordingly.

Section 75

Honorary capacity

The members of the executive board perform their activities without remuneration. However, they receive appropriate compensation for expenses incurred in connection with their activities and reimbursement of their travel expenses. Sentences 1 and 2 also apply to lawyers whose services are enlisted by the bar association.

Section 76

Obligation of confidentiality; availment of services

- (1) The members of the executive board are bound to maintain confidentiality concerning those matters relating to lawyers and other persons which become known to them whilst serving on the executive board. This also applies after they retire from the executive board. The obligation to maintain confidentiality does not apply to facts

1. which need to be passed on in the course of the performance of duties,

2. which the data subject has agreed may be passed on,
3. which are obvious or
4. which, by dint of their importance, do not necessitate confidentiality.

Sentences 1 to 3 also apply to the bar associations' employees and to persons whose services are enlisted by the bar associations or the members of their executive board. The persons referred to in sentence 4 are to be instructed, in text form, about their obligation to maintain confidentiality.

(2) In proceedings before courts and authorities, the persons referred to in subsection (1) may not, without having been granted permission to do so, testify on such matters which are subject to their obligation to maintain confidentiality. Permission to testify is granted at the reasonable discretion of the executive board of the bar association. Permission is, as a rule, only to be denied where this is irrefutably necessary on account of having to take account of the status or the tasks of the bar association or the legitimate interests of the persons about whom facts have become known. Section 28 (2) of the Federal Constitutional Court Act (*Bundesverfassungsgerichtsgesetz*) remains unaffected.

(3) Section 43e (1) to (4), (7) and (8) applies analogously where the bar associations enlist the services of others in relation to matters which are subject to a lawyer's obligation to maintain confidentiality under section 43a (2).

Section 77

Sections

(1) The executive board may establish several sections where permitted under the rules of procedure of the bar association. It delegates those matters to the sections which they manage independently.

(2) Each section must comprise at least three members of the executive board. The members of each section elect one person from amongst their midst to chair the section, one person to keep the minutes of the meetings of the section and one person to deputise each of those two.

(3) Before the start of each calendar year the executive board determines the number of sections and their members, delegates business to the sections and determines the members of the individual sections. Each member of the executive board may be a member of several sections. These arrangements may be altered in the course of the year only if this becomes necessary on account of a work overload on the part of the section or as a result of new members joining the section or individual members being permanently unable to perform their duties.

(4) Within their respective area of competence the sections have the same rights and duties as the executive board.

(5) The executive board decides in lieu of a section if it deems this appropriate or if the section or its chair makes an application therefor.

Subdivision 2

Presiding board

Section 78

Composition and election of presiding board

(1) The executive board elects a presiding board from amongst its midst.

(2) The presiding board comprises

1. the president,
2. the vice-president,
3. the secretary,
4. the treasurer.

- (3) The executive board may increase the number of members of the presiding board.
- (4) The election of the presiding board takes place directly after each ordinary election of the executive board. Where a member of the presiding board retires prematurely, a new member is elected within three months for the remainder of that member's term of office.

Section 79

Presiding board's tasks

- (1) The presiding board conducts that business of the executive board which is assigned to it under this Code or by resolution of the executive board.
- (2) The presiding board passes resolutions concerning the administration of the bar association's assets. It reports to the executive board on this matter once every quarter.

Section 80

President's tasks

- (1) The president represents the bar association both in and out of court.
- (2) The president facilitates the course of business of the bar association and of the executive board. The president executes the resolutions of the executive board and of the bar association.
- (3) The president chairs the meetings of the executive board and of the assembly of the bar association.
- (4) Further tasks may be assigned to the president in the rules of procedure of the executive board and of the bar association.

Section 81

Reports on activities of bar association and election results

- (1) The president submits an annual report to the *Land* department of justice concerning the activities of the bar association and those of the executive board.
- (2) The president directly notifies the *Land* department of justice and the Federal Bar Association of the results of the elections to the executive board and to the presiding board.

Section 82

Secretary's tasks

The secretary takes the minutes of the meetings of the executive board and of the assemblies of the bar association. The secretary conducts the correspondence of the executive board, unless the president reserves the right to do so.

Section 83

Treasurer's tasks

- (1) The treasurer manages the bar association's assets in accordance with the instructions of the presiding board. The treasurer is authorised to take receipt of monies.
- (2) The treasurer monitors the receipt of membership dues.

Section 84

Collection of outstanding membership dues

- (1) Outstanding membership dues, levies, fees and expenses are collected on the basis of requests for payment issued by the treasurer together with a certificate of enforceability in accordance with the provisions applicable to the enforcement of judgments in civil-law disputes.
- (2) Enforcement may not, however, begin until two weeks following service of the enforceable request for payment.
- (3) Section 767 of the Code of Civil Procedure applies, with the proviso that objections concerning the claim itself are permissible only if they could not be asserted by way of contesting an enforceable request for payment in proceedings in accordance with section 112a (1). Such objections are to be asserted by way of a legal action before the court designated in section 797 (5) of the Code of Civil Procedure.

Subdivision 3
Assembly of bar association

Section 85
Convocation of assembly of bar association

- (1) The assembly of the bar association is convened by its president.
- (2) The president must convene the assembly of the bar association if one tenth of the members make a written or electronic application therefor and must indicate the matter which is to be dealt with at the assembly of the bar association.
- (3) Unless otherwise provided under the rules of procedure of the bar association, the assembly of the bar association is, as a rule, to be held at the place where the bar association has its seat.

Section 86
Invitation and convening period

The assembly of the bar association is to be convened at least two weeks in advance by written or electronic invitation. If the member has one of the mailboxes referred to in section 37 sentence 1 or sentence 3, an electronic invitation is, as a rule, to be sent via this mailbox. The day on which the invitation is sent out and the day on which the assembly is to be held are not included when calculating this convening period. In urgent cases the assembly of the bar association may be convened at shorter notice.

Section 86a
Conduct of assembly of bar association

- (1) Subject to subsection (2), the assembly of the bar association is held in the presence of all those involved at the place of assembly.
- (2) The bar association's rules of procedure may provide that the assembly of the bar association may also be conducted as follows:

1. in person and concurrently online (hybrid assembly of the bar association) or
2. only online (virtual assembly of the bar association).

Further details concerning hybrid and virtual assemblies of the bar association are set out in the rules of procedure. The rules of procedure may also provide that certain matters may not be discussed in hybrid or virtual assemblies of the bar association. The rules of procedure are, as a rule, in particular to regulate whether and, if so, under what conditions it is permissible to record the assembly. Unless the rules of procedure provide for a deviating rule, the president determines the form of the assembly of the bar association upon its convocation.

- (3) If the bar association's rules of procedure provide for hybrid or virtual assemblies of the bar association, these may only be conducted if the following conditions are met:

1. it must be stated upon convocation how members can log on to the assembly,
2. the entire assembly must be transmitted audio-visually,
3. members taking part online must be able to exercise their right to vote either electronically during the assembly or by casting their vote in writing following the assembly and
4. the rights of members under this Code and under the bar association's rules of procedure must be safeguarded.

In the case of a virtual assembly of the bar association, it must be indicated upon convocation that the assembly will only be conducted online. In the case of the assembly of the bar association being conducted online, section 85 (3) does not apply.

Section 87
Announcement of agenda

- (1) The subject matter on which a resolution is to be passed at the assembly of the bar association is to be indicated upon convocation of the assembly of the bar association.
- (2) No resolutions may be taken on matters which have not been properly announced.

Section 88
Elections and resolutions of assembly of bar association

- (1) The conditions under which the assembly of the bar association has a quorum are laid down in the bar association's rules of procedure.
- (2) Members must exercise their voting right in person.
- (3) The resolutions of the assembly of the bar association are taken by simple majority. The same applies to elections to be conducted by the assembly of the bar association. If this majority is not achieved in two ballots, the person who obtains the majority of votes in another ballot is deemed to be elected. In the event of a tied vote, the chair has the casting vote, in the case of elections there is to be a drawing of lots.
- (4) Members may not vote on matters concerning their own affairs. This does not, however, apply to elections.
- (5) Minutes are to be taken to record the resolutions passed and the results of elections, which are to be signed by the chair and the secretary.

Section 89
Assembly of bar association's tasks

- (1) The assembly of the bar association is to perform the tasks assigned to it by law. It is required to discuss matters which are of general significance to the legal profession.
- (2) In particular, the assembly of the bar association is responsible for
 1. establishing the assembly of the bar association's rules of procedure;
 2. fixing the amount and due date of the membership dues, levies, fees and expenses;
 3. establishing welfare institutions for lawyers and their surviving dependants;
 4. approving the funds needed to cover expenses associated with matters of common interest;
 5. drawing up guidelines on the reimbursement of those expenses and travel expenses which
 - a) are to be granted to the persons referred to in section 43c (3) and in sections 75, 95, 140 and 191b;
 - b) are to be granted in accordance with section 40 (6) and section 77 (3) of the Vocational Training Act (*Berufsbildungsgesetz*) for the activities referred to therein;
 6. auditing the executive board's accounts of the bar association's receipts and expenditures and the administration of its assets, and approving these accounts.

Sections 90 and 91
(repealed)

Part 5
Courts in matters pertaining to lawyers and court procedure in administrative matters
pertaining to lawyers

Division 1
Lawyers' disciplinary courts

Section 92

Formation

- (1) A lawyers' disciplinary court (*Anwaltsgericht*) is to be established for the district of each bar association. It has its seat at the same place as the bar association.
- (2) Several divisions are formed, as required, at a lawyers' disciplinary court. The *Land* department of justice determines the number of divisions. Before doing so, the executive board of the bar association is to be heard.
- (3) The *Land* department of justice exercises supervision over the lawyers' disciplinary court.

Section 93

Composition

- (1) A lawyers' disciplinary court has the requisite number of presiding judges and other members. Where several presiding judges have been appointed, one of them is appointed as managing presiding judge. The presiding judge and one further member of the bar association must be qualified to hold judicial office.
- (2) The *Land* department of justice is to hear the executive board of the bar association before appointing the presiding judges and the managing presiding judge.

Section 94

Appointment of members

- (1) Only lawyers may be appointed as members of a lawyers' disciplinary court. They must be members of the bar association for which the lawyers' disciplinary court has been established.
- (2) The members of a lawyers' disciplinary court are appointed by the *Land* department of justice. They are taken from the list of proposed candidates which the executive board of the bar association submits to the *Land* department of justice. The *Land* department of justice determines how many members are necessary; before doing so, it is to hear the executive board of the bar association. The list of proposed candidates drawn up by the executive board of the bar association must contain at least 50 per cent more than the required number of lawyers.
- (3) Only lawyers who are eligible for election to the executive board of a bar association (section 65 and section 66) may be appointed as members of a lawyers' disciplinary court. Members of a lawyers' disciplinary court may not simultaneously be
 1. a member of the executive board of a bar association or of the Lawyers' Parliament,
 2. employed by a bar association, the Federal Bar Association or the Lawyers' Parliament as their primary or secondary occupation or
 3. a member of another court of the lawyers' disciplinary jurisdiction.
- (4) The members of a lawyers' disciplinary court are appointed for a five-year term of office; they may be re-appointed after the end of their term of office.

Section 95

Legal status of members

- (1) The members of a lawyers' disciplinary court are honorary judges. For the duration of their office as honorary judge at the lawyers' disciplinary court they have the status of professional judges. They receive from the bar association compensation for expenses incurred in connection with their activity and reimbursement of their travel expenses.
 - (1a) The office of a member of the lawyers' disciplinary court ends as soon as membership of the bar association ends or where a circumstance subsequently arises which precludes appointment in accordance with section 94 (3) sentence 2 and the member consents in each case. The member and the bar association are required to inform the *Land* department of justice and the lawyers' disciplinary court without delay of the circumstances referred to in sentence 1. The lawyers' disciplinary court takes a decision to terminate the office pursuant

to sentence 1 upon application by the *Land* department of justice if the member concerned has not consented thereto; subsection (2) sentence 3 and sentence 4 applies accordingly.

(2) A member of a lawyers' disciplinary court is to be removed from office upon application by the *Land* department of justice

1. if it subsequently becomes known that the member should not have been appointed;
2. if a circumstance subsequently arises which precludes the appointment;
3. if the member commits a gross breach of official duty.

The application is considered by the higher lawyers' court. Before a decision is taken, the lawyer and the executive board of the bar association are to be heard. The decision is final.

(3) The *Land* department of justice may dismiss a member of a lawyers' disciplinary court from office upon application by that member if the member is prevented, for health reasons, from continuing to hold office for an unforeseeable period of time or the member cannot for substantial personal reasons reasonably be expected to continue to hold office.

(4) (repealed)

Section 96

Composition of divisions

The divisions of a lawyers' disciplinary court sit in a composition of three members, including the presiding judge.

Section 97

Allocation of business

The provisions of Title 2 and section 70 (1) of the Courts Constitution Act (*Gerichtsverfassungsgesetz*) apply accordingly to the allocation of business at the lawyers' disciplinary court.

Section 98

Court registry and rules of procedure

(1) A court registry is established at each lawyers' disciplinary court.

(2) The bar association provides the requisite clerical staff, rooms and funding for other materials.

(3) The president of the lawyers' disciplinary court exercises disciplinary supervision over the court registry; in the case referred to in section 92 (2), supervision is exercised by the managing presiding judge.

(4) The course of business at the lawyers' disciplinary court is governed by rules of procedure to be adopted by the members of the lawyers' disciplinary court. The rules of procedure must be approved by the *Land* department of justice.

Section 99

Administrative and legal assistance

(1) Lawyers' disciplinary courts are required to render one another administrative and legal assistance.

(2) Upon request, other courts and administrative authorities are also required to render the lawyers' disciplinary courts administrative and legal assistance. Lawyers' disciplinary courts are under the same obligation vis-à-vis other courts and authorities.

(3) Requests for mutual assistance may be dealt with by an individual member of the lawyers' disciplinary court.

Division 2

Higher lawyers' courts

Section 100

Formation

- (1) A higher lawyers' court (*Anwaltsgerichtshof*) is to be established at each higher regional court. Section 92 (3) applies accordingly.
- (2) Where there are several higher regional courts in one *Land*, the *Land* government may, by way of a statutory instrument, establish the higher lawyers' court for the districts of all or of several higher regional courts at one or at several higher regional courts, or at the highest regional court, if such aggregation serves the administration of justice in matters pertaining to lawyers, in particular to ensure consistency in court decisions. Before doing so, the executive boards of the bar associations concerned are to be heard.
- (3) The tasks assigned to the higher lawyers' court under this Code may, by agreement of the *Länder* concerned, also be delegated to that higher lawyers' court of a *Land* which is competent pursuant to such agreement in respect of the territory of another *Land*.
- (4) Several *Länder* may agree to establish a joint higher lawyers' court at a higher regional court or at the highest regional court.

Section 101 **Composition**

- (1) A higher lawyers' court is composed of a president, the requisite number of additional presiding judges, as well as lawyers and professional judges as further members. The president and the additional presiding judges must be qualified to hold judicial office.
- (2) Where required, several divisions may be formed at the higher lawyers' court. The *Land* department of justice lays down further details concerning its organisational structure. Before doing so, the executive board of the bar association is to be heard.
- (3) Members of the higher lawyers' court who are lawyers are to be appointed as president of the higher lawyers' court and as presidents of the divisions. Section 93 (2) applies analogously.

Section 102 **Appointment of professional judges as members**

- (1) The members of a higher lawyers' court who are professional judges are appointed for a five-year term of office by the *Land* department of justice from amongst the number of permanent members of the higher regional court. In the cases referred to in section 100 (2), the professional judges may also be appointed from amongst the number of permanent members of other higher regional courts or of the highest regional court.
- (2) The members of a joint higher lawyers' court who are professional judges are appointed from amongst the number of permanent members of the higher regional courts of the involved *Länder* pursuant to the agreement reached between the *Länder* (section 100 (4)).

Section 103 **Appointment of lawyers as members**

- (1) The members of the higher lawyers' court who are lawyers are appointed by the *Land* department of justice for a five-year term of office.
- (2) Sections 94 and 95 (1) apply accordingly to the appointment of the members of the higher lawyers' court who are lawyers and to their status.
- (3) Section 95 (1a) sentence 1 and sentence 2 applies accordingly in respect of the end of the office of a member of the higher lawyers' court who is a lawyer, provided that the member's admission to one of the bar associations in the district of the higher regional courts for whose districts the higher lawyers' court was established has expired.
- (4) Section 95 (1a) sentence 3, (2) and (3) applies in respect of removal from office and dismissal from office, with the proviso that a division of the higher lawyers' court of which the member who is a lawyer was not a member decides in respect of removal from office.
- (5) In the case referred to in section 100 (2), the relevant number of members who are lawyers is, as a rule, to be proportionate to the number of members of the individual bar associations. The members of a joint higher lawyers' court who are lawyers are appointed from amongst the members of the bar associations in the involved *Länder* pursuant to the agreement reached between the *Länder* (section 100 (4)).

(6) The members who are lawyers receive compensation from the Public Treasury for expenses incurred in connection with their activity, which amounts to one and a half times the highest amount quoted in No. 7005 of Annex 1 to the Lawyers' Remuneration Act. Further, the members who are lawyers are entitled to reimbursement of their travel and accommodation expenses pursuant to Nos. 7003, 7004 and 7006 of Annex 1 to the Lawyers' Remuneration Act.

Section 104 **Composition of divisions**

The divisions of a higher lawyers' court sit in a composition of five members, including the presiding judge, unless the law provides that the presiding judge or the reporting judge is to rule instead of the division. Two further members who are lawyers and two professional judges act as associate judges.

Section 105 **Allocation of business and rules of procedure**

- (1) The provisions of Title 2 and section 70 (1) of the Courts Constitution Act apply accordingly to the allocation of business at a higher lawyers' court.
- (2) The course of business is governed by the rules of procedure, which are to be adopted by the members of each higher lawyers' court; the rules of procedure must be approved by the *Land* department of justice.

Division 3 **Federal Court of Justice in matters pertaining to lawyers**

Section 106 **Composition of Panel for Matters Pertaining to Lawyers**

- (1) A Panel for Matters Pertaining to Lawyers is to be established at the Federal Court of Justice to handle matters assigned to the Federal Court of Justice under this Code. Where the provisions of the Code of Administrative Court Procedure (*Verwaltungsgerichtsordnung*) apply accordingly to the proceedings the Panel acts as a civil panel and where the provisions of the Code of Criminal Procedure apply accordingly to the proceedings it acts as a criminal panel within the meaning of section 132 of the Courts Constitution Act.
- (2) The Panel is composed of the President of the Federal Court of Justice plus two members of the Federal Court of Justice and two lawyers as associate judges. The President of the Federal Court of Justice presides or, in the absence of the President, a presiding judge to be determined by the Presiding Committee of the Federal Court of Justice.

Section 107 **Lawyers as associate judges**

- (1) The associate judges who are lawyers are appointed by the Federal Ministry of Justice and Consumer Protection for a five-year term of office. They may be re-appointed on expiry of their term of office.
- (2) The lawyers acting as associate judges are chosen from a list of candidates drawn up by the Presiding Board of the Federal Bar Association on the basis of proposals made by the bar associations to the Federal Ministry of Justice and Consumer Protection. After hearing the Federal Bar Association, the Federal Ministry of Justice and Consumer Protection determines how many members are necessary. The list of proposed candidates is, as a rule, to contain the names of at least twice as many lawyers as are required.
- (3) Where a lawyer acting as associate judge leaves office prematurely, a successor is appointed for the remainder of that lawyer's term of office.
- (4) (repealed)

Section 108 **Eligibility for appointment as associate judge and right to refuse appointment**

- (1) Only a lawyer who can be elected onto the executive board of the bar association (section 65 and section 66) may be appointed as associate judge. Section 94 (3) sentence 2 applies accordingly.
- (2) A lawyer may refuse to accept the office of associate judge for the reasons referred to in section 67.

Section 109

Terminating office of associate judge

- (1) Section 95 (1a) sentence 1 and sentence 2 applies accordingly in respect of the end of the office of a lawyer acting as associate judge provided that the lawyer is no longer a member of a bar association.
- (2) Section 95 (1a) sentence 3, (2) and (3) applies to the removal from office and dismissal from office of an associate judge, with the proviso that the Federal Ministry of Justice and Consumer Protection takes the place of the *Land* department of justice and a civil panel at the Federal Court of Justice rules in respect of removal from office. The members of the Panel for Matters Pertaining to Lawyers may not participate in this decision. The lawyer and the Federal Bar Association are to be heard before a decision is taken.
- (3) (repealed)

Section 110

Status of lawyers acting as associate judges and obligation of confidentiality

- (1) Lawyers acting as associate judges are honorary judges. During those sessions which they are called to participate in they have the status of professional judges.
- (2) The lawyers are bound to maintain confidentiality concerning those matters which become known to them in their capacity as associate judge. Section 76 (1) and (2) applies accordingly. Permission to testify is granted by the President of the Federal Court of Justice.

Section 111

Order of participation

Lawyers appointed as associate judges are to be called to participate in individual sessions in the order in which they appear in a list which the Chair of the Panel draws up before the beginning of each business year after having heard the two eldest lawyers appointed as associate judges.

Section 112

Compensation for lawyers acting as associate judges

Section 103 (6) applies accordingly to compensation for expenses paid to lawyers acting as associate judges and to reimbursement of their travel expenses.

Division 4

Court procedure in administrative matters pertaining to lawyers

Section 112a

Legal process and competence

- (1) The higher lawyers' court rules at first instance on all public-law disputes under this Code, under a statutory instrument issued on the basis of this Code or under the by-laws of a bar association or of the Federal Bar Association, unless the disputes must be brought before a lawyers' disciplinary court or are expressly assigned to another court (administrative matters pertaining to lawyers).
- (2) The Federal Court of Justice rules on
1. an appeal on points of fact and law (*Berufung*) against judgments handed down by the higher lawyers' court,
 2. a complaint lodged under section 17a (4) sentence 4 of the Courts Constitution Act.
- (3) The Federal Court of Justice rules at first and last instance on

1. actions concerning decisions taken by the Federal Ministry of Justice and Consumer Protection or the Bar at the Federal Court of Justice or for which the Federal Ministry of Justice and Consumer Protection or the Bar at the Federal Court of Justice is responsible,
2. the invalidity of the elections of and resolutions passed by the Federal Bar Association and the Bar at the Federal Court of Justice.

Section 112b

Local jurisdiction

Local jurisdiction lies with the higher lawyers' court established for the district of the higher regional court in which the administrative act was issued or should have been issued; the same applies analogously to sovereign acts which interfere with or realise professional rights and duties of those concerned. In all other matters, local jurisdiction lies with the higher lawyers' court established for the higher regional court in which the respondent has his or her seat, his or her law office or, alternatively, his or her place of residence.

Section 112c

Application of Code of Administrative Court Procedure

- (1) Unless this Code contains deviating provisions on court procedure, the provisions of the Code of Administrative Court Procedure apply accordingly. The higher lawyers' court is equal to a higher administrative court; section 112e remains unaffected.
- (2) The provisions of the Code of Administrative Court Procedure concerning the involvement of honorary judges and sections 35, 36 and 47 of the Code of Administrative Court Procedure do not apply. The periods stipulated in section 116 (2) and section 117 (4) of the Code of Administrative Court Procedure is five weeks in each case.
- (3) Notwithstanding section 80b of the Code of Administrative Court Procedure, the suspensive effect of the rescissory action ends upon the administrative act becoming final.

Section 112d

Opposing party and representative

- (1) Actions are to be brought against the bar association, the Federal Bar Association or the authority
 1. which issued or should have issued the administrative act; the same applies analogously to sovereign acts which interfere with or realise professional rights and duties of those concerned;
 2. whose decision is the subject matter of the proceedings.
- (2) In proceedings between a member of the presiding board or executive board and the bar association or the Federal Bar Association, the bar association or the Federal Bar Association is represented by one of its members, who is to be specifically appointed by the president of the competent court.

Section 112e

Appeal on points of fact and law

The parties have the right to file an appeal on points of fact and law against judgments, including part-judgments, judgments as to the merits of a claim and interlocutory judgments on admissibility, provided they are admitted by the higher lawyers' court or by the Federal Court of Justice. Part 12 of the Code of Administrative Court Procedure applies to the appeal proceedings, with the proviso that the higher lawyers' court takes the place of the administrative court and the Federal Court of Justice takes the place of the higher administrative court.

Section 112f

Legal actions against elections and resolutions

(1) The following may be declared invalid or null and void if they were founded on a violation of the law or of by-laws, or if their content is incompatible with the law or by-laws:

1. elections and resolutions of the constituent bodies of the bar associations and of the constituent bodies of the Federal Bar Association, with the exception of the Lawyers' Parliament, and
2. elections of the constituent bodies of the bar associations and of the Federal Bar Association.

(2) A legal action may be brought

1. by the authority exercising state supervision and
2. by a member of a bar association in the case of an action against a bar association and by a bar association in the case of an action against the Federal Bar Association.

In the cases referred to in sentence 1 no. 2, the action brought against a resolution is admissible only where the claimant asserts that the resolution violates his or her rights.

(3) In the cases referred to in subsection (2) sentence 1 no. 2, the action must be filed within one month of the election or of the passing of the resolution.

Section 112g

Legal redress for excessive length of proceedings

The provisions of Title 17 of the Courts Constitution Act apply to legal redress for excessive length of court proceedings. The provisions of this Code concerning the composition of the Panel for Matters Pertaining to Lawyers at the Federal Court of Justice do not apply.

Section 112h

Use of forged proof of professional qualification

If the higher lawyers' court or the Federal Court of Justice establishes that a lawyer used forged proof of professional qualification when filing an application for recognition of his or her professional qualification pursuant to Directive 2005/36/EC, as amended, the court is required to transmit its decision to the bar association at the latest on the day after it becomes final and binding.

Part 6

Penalties for breaches of duty imposed in lawyers' disciplinary proceedings

Section 113

Penalties for breach of duty

(1) A disciplinary measure is imposed against a lawyer who culpably breaches duties which have been set down in this Code or in the rules of professional conduct as per section 59a. The same applies where a lawyer, in the case referred to in section 73 (2) sentence 2 of this Code, breaches professional duties under section 52d (1) to (3) or section 52j (4) or (5) sentence 1 of the Federal Code for Patent Attorneys or against professional duties under section 51 (1) to (3) or section 55b (4) or (5) sentence 1 of the Tax Advisory Services Act.

(2) Conduct on the part of a lawyer outside of his or her professional work which constitutes an unlawful act or an act incurring a fine is considered a breach of duty which is subject to imposition of a measure by the lawyers' disciplinary court if, based on the circumstances of the individual case, such conduct is particularly suited to undermining the trust and confidence of consumers of legal services in a manner which is significant to the practice of the profession of lawyer.

(3) A disciplinary measure is imposed against a licensed professional practice company where

1. a manager in the professional practice company culpably breaches duties set out in this Code or in the rules of professional conduct as per 59a or

2. a person who is not a manager breaches duties in the exercise of matters relating to the professional practice company which are set out in this Code or in the rules of professional conduct as per section 59a if the breach of duty could have been prevented or rendered considerably more difficult if appropriate organisational, personnel or technical measures had been taken.

(4) A disciplinary measure may not be imposed if the lawyer or the professional practice company was not subject to the lawyers' disciplinary jurisdiction at the time of the commission of the act.

(5) Disciplinary measures may be imposed in parallel against a lawyer and against the professional practice company to which that lawyer belongs.

Section 113a Managers

'Managers' in a professional practice company are

1. the members of a body of a legal person which is authorised to represent it,
2. the shareholders of a partnership with legal personality who are authorised to represent it,
3. its general agents,
4. the holders of general commercial power of representation and of commercial power of attorney, insofar as they hold a managerial role and
5. persons not referred to in nos. 1 to 4 who act in a managerial capacity on behalf of the professional practice company, which also includes overseeing the management or exercising other powers of oversight in a managerial capacity.

Section 113b Successor in title

In the event of universal succession or partial universal succession by means of division (section 123 (1) of the Transformation Act (*Umwandlungsgesetz*)), disciplinary measures may be imposed against the successor(s) in title.

Section 114 Measures imposed in lawyers' disciplinary proceedings

(1) The following measures may be imposed against lawyers in lawyers' disciplinary proceedings:

1. a warning,
2. a written reprimand,
3. a fine of no more than 50,000 euros,
4. a ban on acting as representative or counsel in specific fields of law for a period of no less than one year and no more than five years,
5. disbarment.

(1a) In the case referred to in section 73 (2) sentence 2, disbarment is replaced,

1. in the case of members of management bodies, by denial of suitability to represent a professional practice company and to manage its business and
2. in the case of members of supervisory bodies, by denial of suitability to exercise a professional practice company's supervisory functions.

(2) The following measures may be imposed against professional practice companies in lawyers' disciplinary proceedings:

1. a warning,
 2. a written reprimand,
 3. a fine of no more than 500,000 euros,
 4. a ban on acting as representative or counsel in specific fields of law for a period of no less than one year and no more than five years,
 5. disqualification from providing legal services.
- (3) A written reprimand and a fine may be imposed in parallel.

Section 114a

Effects of ban on representing clients and contravention

- (1) A lawyer who has been banned from representing clients (section 114 (1) no. 4) may not act as representative or counsel before a court, before authorities, an arbitral tribunal or vis-à-vis other persons in the field of law to which the ban applies, nor may that lawyer grant or delegate powers of attorney. However, the lawyer may represent the interests of his or her spouse or life partner and his or her own underage children, unless such representation must be undertaken by a lawyer.
- (2) The ban on the lawyer representing clients does not affect the effectiveness of legal acts undertaken by this lawyer. The same applies to legal acts undertaken vis-à-vis the lawyer.
- (3) A lawyer who knowingly contravenes a ban on representing clients is disbarred, unless a more lenient disciplinary measure appears sufficient under the specific circumstances. Courts or authorities are to refuse to hear a lawyer who appears before them in contravention of a ban on representing clients.
- (4) Subsection (1) sentence 1 and (2) and (3) apply accordingly to professional practice companies. Disbarment is substituted by disqualification from providing legal services.

Section 115

Limitation for breaches of duty

- (1) The limitation on the prosecution of a breach of duty is five years. In derogation therefrom, the limitation is
1. 10 years if the breach of duty justifies imposing a measure as referred to in section 114 (1) no. 4 or (2) no. 4,
 2. 20 years if the breach of duty justifies imposing a measure as referred to in section 114 (1) no. 5 or (2) no. 5.

The limitation period begins to run as soon as the act is completed.

- (2) Section 78b (1) to (3) of the Criminal Code (*Strafgesetzbuch*) applies accordingly to the suspension of limitation. The limitation period is likewise suspended for the duration of

1. criminal or regulatory fines proceedings initiated on account of the same conduct,
2. professional supervision proceedings taking precedence initiated on account of the same conduct and
3. any suspension of proceedings under section 118b.

- (3) Section 78c (1) to (4) of the Criminal Code applies accordingly to the suspension of limitation.

Section 115a

Reprimand and measure imposed in lawyers' disciplinary proceedings

- (1) The institution of lawyers' disciplinary proceedings is not precluded by the fact that the executive board of the bar association has already issued a reprimand (section 74) for the same conduct. Where the lawyers' disciplinary court has revoked the notice of reprimand

(section 74a) because it has not found a breach of duty in accordance with section 113 (1) to (3), lawyers' disciplinary proceedings may be instituted on account of the same conduct only on the basis of such facts or evidence which were not known to the lawyers' disciplinary court upon its issuing its decision.

(2) The reprimand becomes ineffective upon the judgment handed down by a lawyers' disciplinary court becoming final if the judgment was issued on account of the same conduct against a lawyer or professional practice company and the finding is one of acquittal or imposition of a disciplinary measure. The reprimand also becomes ineffective where the opening of the main proceedings has been refused by final decision because no breach of duty in accordance with section 113 (1) to (3) has been found.

Section 115b **Penalties imposed elsewhere**

The imposition of penalties in lawyers' disciplinary proceedings is to be dispensed with where

1. a court or an authority has already imposed a penalty, a fine under the Act on Regulatory Offences or a measure under the law of professional supervision on account of the same conduct or
2. the conduct can no longer be prosecuted as a less serious criminal offence (*Vergehen*) under section 153a (1) sentence 5, also in conjunction with subsection (2) sentence 2, of the Code of Criminal Procedure.

Sentence 1 does not apply where a disciplinary measure is necessary in addition in order to prompt the lawyer or professional practice company to fulfil a duty incumbent on him or her or it. The need to impose a measure as referred to in section 114 (1) nos. 4 and 5 or (2) nos. 4 and 5 is not precluded by a penalty having been imposed elsewhere.

Part 7 **Lawyers' disciplinary proceedings**

Division 1 **General matters**

Subdivision 1 **General procedural rules**

Section 116 **Procedure and legal redress for excessive length of court proceedings**

- (1) The provisions set forth below apply to lawyers' disciplinary proceedings. The Courts Constitution Act and the Code of Criminal Procedure also apply analogously.
- (2) The provisions of Title 17 of the Courts Constitution Act apply to legal redress for excessive length of court proceedings. The provisions of this Code concerning the composition of the Panel for Matters Pertaining to Lawyers at the Federal Court of Justice do not apply.

Section 117 **Protection from arrest**

A lawyer may neither be provisionally detained, nor arrested or brought before a judge in order for lawyers' disciplinary proceedings to be conducted. A lawyer may not be taken to a psychiatric clinic for the purposes of preparing an expert opinion on his or her mental state.

Section 117a **Defence**

Section 140 (1) nos. 1 to 3, 6, 7 and 9 of the Code of Criminal Procedure does not apply to defence counsel in lawyers' disciplinary proceedings.

Section 117b **Inspection of files**

The executive board of the bar association and the member of the bar association accused of a breach of duty are authorised to inspect the files which are available to the court or which would have to be submitted in the event of an accusation having been filed, as well as to view officially impounded items of evidence. Section 147 (2) sentence 1, (3), (5) and (6) of the Code of Criminal Procedure applies accordingly to inspection of the files by the member.

Section 118 **Relationship between lawyers' disciplinary proceedings and criminal proceedings and proceedings to impose regulatory fine**

(1) Where public charges have been preferred in criminal proceedings or a regulatory fine order has been made on account of the same conduct for which a member of a bar association has been accused of a breach of duty, then lawyers' disciplinary proceedings may be instituted against the member, but they must be stayed until the criminal or regulatory fines proceedings have been concluded. Likewise, lawyers' disciplinary proceedings which have already been instituted must be stayed if, in the course of those proceedings, public charges are preferred in criminal proceedings or a regulatory fine order is made. In the cases referred to in sentences 1 and 2, the lawyers' disciplinary proceedings are to continue until the criminal or regulatory fines proceedings have been concluded where it appears that the facts of the case have been established to the extent that contradictory decisions are not to be expected or if no hearing can be held in the criminal or regulatory fines proceedings for reasons which rest with the person of the member of the bar association.

(2) If the member of the bar association is acquitted, in court proceedings, of a criminal offence or of a regulatory offence, then lawyers' criminal proceedings based on the facts which were the subject of that court decision may be instituted or continued only if these facts contain a breach of the member's duties without the conditions of a criminal provision or of a regulatory fine provision having been fulfilled.

(3) The factual findings in the judgment issued in the criminal or regulatory fines proceedings on which the court's decision was based are binding on the decision in the lawyers' disciplinary proceedings. However, in lawyers' disciplinary proceedings a court may order that such findings be reviewed once more if the majority of its members doubt their accuracy; this is to be included in the statement of reasons for the decision taken in the lawyers' disciplinary proceedings.

(4) Where lawyers' disciplinary proceedings continue pursuant to subsection (1) sentence 3, it is also permissible to reopen lawyers' disciplinary proceedings which have been concluded by final decision if the factual findings on which the conviction or acquittal in the lawyers' disciplinary proceedings is based contradict the findings in the criminal or regulatory fines proceedings. The application to reopen such proceedings may be filed by the public prosecution office or by the member of the bar association within one month of the judgment in the criminal or regulatory fines proceedings becoming final.

Section 118a **Relationship between lawyers' disciplinary proceedings and professional supervision proceedings under other professional rules**

(1) A decision is first taken in lawyers' disciplinary proceedings concerning a breach of duty by a member of a bar association which also breaches the duties of another profession to whose professional oversight that member is subject and if the breach of duty was predominantly connected with the exercise of the profession of lawyer. Where it is impossible to identify the main focus of the breach of duty or there is no link between the breach of duty and the exercise of a profession, then a decision is first to be given in lawyers' disciplinary proceedings if the main activity engaged in is that of lawyer.

(2) Where imposition of a measure as referred to in section 114 (1) no. 4 or no. 5 or (2) no. 4 or 5 is considered a possibility, a decision is always to be given in lawyers' disciplinary proceedings.

(3) The sole subject matter of the decision in the lawyers' disciplinary proceedings is the breach of the duties of a lawyer incumbent on the member in question.

Section 118b

Suspension of lawyers' disciplinary proceedings

Lawyers' disciplinary proceedings may be suspended where a decision is to be taken in other proceedings prescribed by law on a matter whose assessment is of significant importance to the decision in the lawyers' disciplinary proceedings.

Subdivision 2

Lawyers' disciplinary proceedings against professional practice companies

Section 118c

Lawyers' disciplinary proceedings against managers and professional practice companies

(1) Lawyers' disciplinary proceedings against a manager may be consolidated with lawyers' disciplinary proceedings against a professional practice company.

(2) The imposition of disciplinary measures against a professional practice company may be dispensed with if, taking account of all the facts and circumstances of the individual case, in particular the nature of the breach of duty, the frequency and uniformity of its commission and the main focus of blameworthiness, this is not deemed necessary in addition to the imposition of a disciplinary measure against the manager.

Section 118d

Representation of professional practice companies

(1) Subject to section 118e (1) sentence 2, a professional practice company is represented by its statutory representatives in lawyers' disciplinary proceedings.

(2) Persons who are accused of committing a breach of duty are excluded from such representation.

(3) Section 51 (2) of the Code of Civil Procedure applies accordingly.

Section 118e

Special representative

(1) Where a professional practice company has no statutory representative or all of a professional practice company's special representatives are excluded from such representation, the president of the court seised of the case appoints a special representative for the professional practice company. The special representative has the status of a statutory representative in the lawyers' disciplinary proceedings up until that point where a statutory representative joins the proceedings.

(2) Up until that point in time where the bill of accusation is submitted, the special representative is appointed upon application by the public prosecution office. The president of the lawyers' disciplinary court is responsible for making such an appointment.

Section 118f

Successors in title's joining proceedings

In the case of succession in title (section 113b), a professional practice company's successors in title join the lawyers' disciplinary proceedings at that stage which the proceedings were at when the succession in title entered into effect.

Section 118g

Examination of statutory representative

(1) A professional practice company's statutory representative is free to testify in lawyers' disciplinary proceedings or not to testify in the matter. Section 133 (1) and sections 136 and

136a of the Code of Criminal Procedure apply accordingly to the examination of a professional practice company's statutory representative.

(2) In other proceedings, a professional practice company's statutory representative may also refuse to answer such questions in his or her capacity as a witness if answering those questions would place the professional practice company in danger of being held liable for a breach of professional duty. Section 55 (2) and section 56 of the Code of Criminal Procedure apply accordingly.

Division 2

Proceedings at first instance

Subdivision 1

General matters

Section 119

Jurisdiction

(1) Jurisdiction over lawyers' disciplinary proceedings at first instance lies with the lawyers' disciplinary court.

(2) Local jurisdiction of the lawyers' disciplinary court is determined on the basis of the location of the bar association of which the member of the bar association is a member upon institution of the proceedings.

Section 120

Involvement of public prosecution office

The public prosecution office at the higher regional court in whose district the lawyers' disciplinary court has its seat (section 119 (2)) acts as public prosecutor in the lawyers' disciplinary proceedings.

Subdivision 2

Institution of proceedings

Section 121

Institution of lawyers' disciplinary proceedings

Lawyers' disciplinary proceedings are instituted by means of the public prosecution office filing an accusation with the lawyers' disciplinary court.

Section 122

Court decision on institution of proceedings

(1) If the public prosecution office does not allow an application made by the executive board of a bar association to institute lawyers' disciplinary proceedings against a member of a bar association or it orders the proceedings to be terminated, it is required to notify the executive board of the bar association thereof, stating reasons.

(2) The executive board of the bar association may apply for a decision from the higher lawyers' court against the public prosecution office's notice within one month of notification. The application must indicate the facts supposedly justifying the institution of the lawyers' disciplinary proceedings as well as the reasons. Sentence 1 does not apply where the lawyers' disciplinary court has consented to the termination.

(3) Sections 173 to 175 of the Code of Criminal Procedure apply accordingly to proceedings before the higher lawyers' court.

(4) Section 172 of the Code of Criminal Procedure does not apply.

Section 123

Lawyer's application for institution of lawyers' disciplinary proceedings

(1) Members of a bar association may file with the public prosecution office to have lawyers' disciplinary proceedings instituted against them in order that they may clear themselves of the suspicion of a breach of duty. Members may not file such motion based on conduct on

account of which a penalty payment has been threatened or imposed (section 57) or which the executive board of the bar association has reprimanded (section 74).

(2) Where the public prosecution office does not allow the member's application and it orders the proceedings to be discontinued, it is required to notify the member of its decision, stating reasons. The member may apply to the higher lawyers' court for a ruling if those reasons

1. indicate that a breach of duty in accordance with section 113 (1) to (3) has been found but lawyers' disciplinary proceedings are not instituted or

2. the question of whether there has been a breach of duty in accordance with section 113 (1) to (3) is left unanswered.

The application must be made within one month of publication of the public prosecution office's decision.

(3) Section 173 (1) and (3) of the Code of Criminal Procedure applies accordingly to proceedings before the higher lawyers' court. The higher lawyers' court rules by way of an order whether the member of the bar association is to be found guilty of a breach of duty in accordance with section 113 (1) to (3). The order must be reasoned. Where the higher lawyers' court deems that there is a sufficient suspicion that the member has committed a breach of duty on account of which a penalty must be imposed by a lawyers' disciplinary court, it orders that the lawyers' disciplinary proceedings be instituted. The public prosecution office is responsible for carrying out the order.

(4) Where the higher lawyers' court finds that there has been no breach of duty in accordance with section 113 (1) to (3), an application to institute lawyers' disciplinary proceedings on account of the same conduct may be made or a reprimand issued by the executive board of the bar association only on the basis of new facts or evidence.

Sections 124 to 129 (repealed)

Section 130

Content of notice of accusation

The notice of accusation (section 121 of this Code and section 207 (3) of the Code of Criminal Procedure) must indicate the breach of duty of which the member of the bar association is accused, stating the facts establishing that breach (accusation). Further, the means of evidence must be cited where evidence is to be taken in the main hearing. The notice of accusation contains the application to open the main proceedings before the lawyers' disciplinary court.

Section 131

Decision to open main proceedings before lawyers' disciplinary court

(1) In the order to open the main proceedings the lawyers' disciplinary court admits the accusation to the main hearing.

(2) The member of the bar association is not permitted to contest the order to open the main proceedings.

(3) An order refusing to open the main proceedings must be reasoned. The public prosecution office has the right to file a complaint subject to a time limit (*sofortige Beschwerde*) against the order.

Section 132

Res judicata effect of negative decision

Where the opening of the main proceedings has been refused by an order which is no longer contestable, the application to institute lawyers' disciplinary proceedings may be filed anew only on the basis of new facts or evidence and only within five years of the order becoming final.

Section 133

Service of order to open main proceedings

The order to open the main proceedings is to be served on the member of the bar association at the latest together with the summons. The same applies accordingly in the cases referred to in section 207 (3) of the Code of Criminal Procedure regarding an accusation submitted at a later date.

Subdivision 3

Main hearing before lawyers' disciplinary court

Section 134

Main hearing despite member of bar association's failure to appear

The main hearing may be conducted against a member of a bar association who fails to appear in court if that member was properly summoned and reference was made in the summons to the fact that the hearing may be held in his or her absence. A public summons is not permissible.

Section 135

(repealed)

Section 136

(repealed)

Section 137

Taking of evidence by delegated or requested judge

The lawyers' disciplinary court may task one of its members with examining witnesses or experts. It may also request another lawyers' disciplinary court or the local court to conduct such an examination. However, upon application by the public prosecution office or of the member of the bar association, witnesses or experts are to be examined in the main hearing, unless they are likely to be prevented from appearing at the main hearing or cannot reasonably be expected to appear given the great distance they would have to travel.

Section 138

Reading out of transcripts

(1) The lawyers' disciplinary court rules at its due discretion on whether statements made by witnesses or by experts who have already been examined in the lawyers' disciplinary proceedings or in other proceedings prescribed by law are to be read out.

(2) Before the court takes its decision, the public prosecution office or the member of the bar association may apply for witnesses or experts to be examined in the main hearing. Such an application must be granted, unless the witnesses or experts are likely to be prevented from appearing at the main hearing or cannot reasonably be expected to appear given the great distance they would have to travel. If the application is granted, the transcript of the earlier examination may not be read out.

(3) If witnesses or experts were examined by a delegated or requested judge (section 137), then no objections can be raised to the transcript being read out. The public prosecution office or the member of the bar association may, however, object to the transcript being read out if an application pursuant to section 137 sentence 3 was refused and the reasons for refusing the application no longer apply.

Section 139

Lawyers' disciplinary court ruling

(1) The main hearing concludes with the pronouncement of judgment following the deliberations.

(2) The verdict is acquittal, conviction or termination of the proceedings.

(3) Except in the case referred to in section 260 (3) of the Code of Criminal Procedure, the lawyers' disciplinary proceedings are to be terminated

1. if admission to the legal profession (section 13) or a professional practice company's licence (section 59h (1)) has expired (section 13);
2. if the lawyers' disciplinary court is required to dispense with imposing penalties pursuant to section 115b.

Section 140 **Recording clerk**

- (1) In the main hearing before the lawyers' disciplinary court the tasks of the recording clerk are performed by a lawyer. The recording clerk is appointed by the presiding judge or, if the lawyers' disciplinary court has several divisions, by the managing presiding judge. The recording clerk is obliged to accept the appointment. Section 75 applies accordingly
- (2) Before the first service, the presiding judge of the division of the lawyers' disciplinary court obliges the recording clerk, by means of a handshake, conscientiously to undertake the duties of a recording clerk.
- (3) Recording clerks are bound to maintain confidentiality regarding all matters which become known to them in the course of performing these duties. Section 76 (1) and (2) applies accordingly. The presiding judge of the division of the lawyers' disciplinary court grants recording clerks permission to testify.

Section 141 **Execution copy of decisions**

Execution copies of and extracts from lawyers' disciplinary court rulings are issued by the presiding judge of the division of the lawyers' disciplinary court.

Division 3 **Legal remedies**

Subdivision 1 **Legal remedies against lawyers' disciplinary court rulings**

Section 142 **Complaint**

Insofar as the orders of a lawyers' disciplinary court may be challenged by means of a complaint, jurisdiction for hearing and ruling on this remedy lies with the higher lawyers' court.

Section 143 **Appeal on points of fact and law**

- (1) An appeal on points of fact and law (*Berufung*) may be filed with the higher lawyers' court against a judgment issued by the lawyers' disciplinary court.
- (2) An appeal on points of fact and law must be filed with the lawyers' disciplinary court in writing within one week of pronouncement of the judgment. If the member of the bar association was not present at the pronouncement, this period begins to run upon service of the decision.
- (3) The appeal on points of fact and law must be substantiated in writing.
- (4) Section 134 and sections 137 to 139 apply analogously to the appeal proceedings; section 134 is without prejudice to analogous application of section 329 (1) of the Code of Criminal Procedure .

Section 144 **Involvement of public prosecution office before higher lawyers' court**

In proceedings before the higher lawyers' court the tasks of the public prosecution office are performed by the public prosecution office at the higher regional court or highest regional court at which the higher lawyers' court has been established.

Subdivision 2
Legal remedies against higher lawyers' court rulings

Section 145
Appeal on points of law

(1) An appeal on points of law (*Revision*) may be filed with the Federal Court of Justice against a judgment of the higher lawyers' court

1. if the judgment orders imposition of a measure as referred to in section 114 (1) no. 4 or no. 5 or (2) no. 4 or no. 5;
2. if, contrary to an application made by the public prosecution office, the higher lawyers' court did not order a measure as referred to in section 114 (1) no. 4 or no. 5 or (2) no. 4 or no. 5;
3. if the higher lawyers' court allows an appeal on points of law in the judgment.

(2) The higher lawyers' court may grant the appeal on points of law only where it issued a decision on legal matters or matters concerning the professional duties of a lawyer which are of fundamental importance.

(3) The decision not to allow an appeal on points of law may be challenged separately by means of an appeal within one month of service of the judgment. The appeal is to be filed with the higher lawyers' court. The notice of appeal must expressly indicate the point of law which is of fundamental importance.

(4) The appeal suspends the legal force of the judgment.

(5) If legal redress is not made, the Federal Court of Justice decides by way of an order. The order does not require reasons if the appeal was rejected or dismissed by unanimous vote. Upon the Federal Court of Justice rejecting the appeal, the judgment becomes final. If the appeal is granted, the time limit for an appeal on points of law begins to run upon service of the notice of appeal.

Section 146
Lodging of appeal on points of law and procedure

(1) An appeal on points of law is to be lodged in writing with the higher lawyers' court within one week. The period begins to run upon pronouncement of the judgment. If the member of the bar association was not present at the pronouncement, this period begins to run for the lawyer upon service of the judgment.

(2) The member of the bar association must submit the notice of and reasons for the appeal on points of law in writing.

(3) Section 139 (3) applies analogously to proceedings before the Federal Court of Justice. In the cases referred to in section 354 (2) of the Code of Criminal Procedure, the matter may also be remitted to the higher lawyers' court of another *Land*.

Section 147
Involvement of public prosecution office before Federal Court of Justice

In proceedings before the Federal Court of Justice the tasks of the public prosecution office are performed by the Federal Public Prosecutor General.

Division 4
Securing of evidence

Section 148
Order for securing of evidence

(1) Where lawyers' disciplinary proceedings are terminated because the member of the bar association's admission to the legal profession has expired, then, upon application by the public prosecution office, the court may also order the securing of evidence where there are urgent grounds for believing that its finding would have been one of disbarment or disqualification from providing legal services. The order is not subject to appeal.

(2) The evidence is taken by the lawyers' disciplinary court. The lawyers' disciplinary court may delegate the taking of evidence to one of its members.

Section 149 Procedure

(1) The lawyers' disciplinary court is, ex officio, required to take all the evidence which may justify a decision on whether the terminated proceedings would have led to disbarment or disqualification from providing legal services. The lawyers' disciplinary court determines the extent of the proceedings at its due discretion without being bound by applications; its orders are thus not subject to appeal.

(2) Unless exceptions are prescribed or permitted, witnesses are to be heard under oath.

(3) The public prosecution office and the former member of the bar association are to be involved in such proceedings. The former member is entitled to be notified of the dates of the hearings set for the purpose of the securing of evidence only if the court is aware of an address to which service can be made in a Member State of the European Union, another Contracting Party of the Agreement on the European Economic Area or Switzerland.

(4) (repealed)

Division 5 Provisional ban on practising law and representing clients

Section 150 Conditions for issuing ban

(1) Where there are urgent grounds for believing that a member of a bar association will be disbarred or disqualified from providing legal services, a provisional ban on practising law or representing clients may be imposed against that member by order. Section 118 (1) sentence 1 and sentence 2 does not apply.

(2) The public prosecution office may apply for the imposition of the ban on practising law or representing clients prior to the institution of lawyers' disciplinary proceedings. The application is to include a statement of the breach of duty of which the member of the bar association is accused as well as the supporting evidence.

(3) That court is competent to hear and rule on the matter which was responsible for the decision to open the main proceedings against the member of the bar association or before which the lawyers' disciplinary proceedings are pending.

Section 150a Procedure to force application from public prosecution office

Where the executive board of the bar association has applied to the public prosecution office for it to file an application for the imposition of a ban on practising law or representing clients, section 122 applies accordingly.

Section 151 Hearing

(1) The order on the basis of which a ban on practising law or representing clients is imposed may only be issued following a hearing.

(2) Those provisions which are relevant to the main proceedings before the court of decision apply accordingly to the summons and to the hearing, unless otherwise determined in the provisions set forth below.

(3) The first summons is to designate the breach of duty of which the member of the bar association is being accused by listing the facts establishing that breach of duty; the evidence is, further, to be indicated. This is not, however, necessary if the notice of accusation has already been communicated to the member.

(4) The court determines the extent of the taking of evidence at its due discretion without being bound by the applications of the public prosecution office or of the member of the bar association.

Section 152

Vote on ban

A two-thirds majority of the votes cast is required for a ban on practising law or on representing clients to be imposed.

Section 153

Ban imposed following main hearing

Where the court has ordered disbarment or disqualification from providing legal services, it may hold a hearing and decide on the imposition of the ban on practising law or representing clients without delay following the main hearing. This also applies where the member of the bar association did not appear at the main hearing.

Section 154

Service of decision

Reasons are to be given for the decision. It is to be served on the member of the bar association. If the member was not present when the decision was pronounced, the decision, without reasons, is in addition to be served on the lawyer without delay after pronouncement.

Section 155

Effects of ban

- (1) The decision becomes effective upon pronouncement.
- (2) A lawyer against whom a ban on practising law has been imposed is not permitted to practise the profession of lawyer. A professional practice company against which a ban on practising law has been imposed is not permitted to provide legal services.
- (3) A member of a bar association against whom a ban on representing clients (section 150 (1)) has been imposed is permitted neither to act as representative or counsel before a court, before authorities, an arbitral tribunal or vis-à-vis other persons, nor to grant or delegate powers of attorney.
- (4) A member of a bar association against whom a ban on practising law or representing clients has been imposed is, however, permitted to represent his or her own interests, unless such representation must be undertaken by a lawyer. Sentence 1 also applies to a lawyer in relation to the interests of his or her spouse or life partner and of his or her own underage children.
- (5) The ban on practising law or representing clients does not affect the effectiveness of legal acts undertaken by the member of the bar association. The same applies to legal acts undertaken vis-à-vis the lawyer.

Section 156

Contravention of ban

- (1) A measure as referred to in section 114 (1) no. 5 or (2) no. 5 is imposed against a member of a bar association who knowingly contravenes a ban on practising law or representing clients imposed against him or her, unless a more lenient disciplinary measure appears sufficient owing to the special circumstances.
- (2) Courts or authorities are required to refuse to hear a member of a bar association who appears before them in contravention of a ban on practising law or representing clients.

Section 157

Appeal

- (1) An appeal subject to a time limit may be filed against an order of the lawyers' disciplinary court or the higher lawyers' court banning the lawyer from practising law or representing clients. The appeal does not have suspensive effect.
- (2) The public prosecution office is entitled to file an appeal subject to a time limit against the order of the lawyers' disciplinary court or of the higher lawyers' court refusing to impose a ban on practising law or representing clients.

(3) If the challenged order was issued by the lawyers' disciplinary court, the higher lawyers' court rules on the appeal subject to a time limit, and if it was issued by the higher lawyers' court, the Federal Court of Justice rules. In addition to the provisions of the Code of Criminal Procedure on an appeal, section 151 (1), (2) and (4) and sections 152 and 154 of this Code apply accordingly to the proceedings.

Section 158 **Expiry of ban**

The ban on practising law or representing clients ceases to have effect

1. if a judgment is rendered not to impose a measure as referred to in section 114 (1) no. 5 or (2) no. 5 or
2. if the opening of the main proceedings before the lawyers' disciplinary court is refused.

Section 159 **Reversal of ban**

- (1) The ban on practising law or representing clients is reversed where it transpires that the conditions on which its imposition were based are not or are no longer met.
- (2) The court competent under section 150 (3) rules on reversing the ban.
- (3) Where the member of the bar association applies to have the ban reversed, a new court hearing may be ordered. The application may not be made whilst a decision on the member of the bar association's appeal subject to a time limit pursuant to section 157 (1) is still pending. No appeal may be filed against the decision to reject the application.

Section 159a **Three-month time limit**

- (1) For as long as lawyers' disciplinary proceedings have not yet been instituted, a ban on practising law or representing clients may be upheld for longer than three months only if the especial difficulty or special scope of the investigations or another important reason do not yet permit institution of lawyers' disciplinary proceedings and justify the continuation of the ban.
- (2) In the cases referred to in subsection (1), the ban is to be lifted after the expiry of three months if the higher lawyers' court does not order its continuation.
- (3) Where the files are submitted to the higher lawyers' court before the expiry of the period referred to in subsection (2), the time limit is suspended until a decision is taken.

Section 159b **Review of continuation of ban**

- (1) In the cases referred to in section 159a, the lawyers' disciplinary court submits the files, through the mediation of the public prosecution office, to the higher lawyers' court for a decision if it deems it necessary to continue the ban or the public prosecution office applies therefor.
- (2) The member of the bar association is to be heard before the higher lawyers' court takes its decision.
- (3) For as long as lawyers' disciplinary proceedings have not yet been instituted, the higher lawyers' court must, at the latest after every three months, conduct a renewed review of whether the ban is to continue.

Section 160 **Notification of ban**

- (1) A certified copy of the order imposing a ban on practising law or representing clients is to be directly notified to the president of the bar association. In the case of a lawyer commissioned as a notary (*Anwaltsnotar*), a certified copy is also to be sent at once to the *Land* department of justice and to the chamber of notaries.

(2) If the ban on practising law or representing clients ceases to have effect or is reversed or amended, subsection (1) applies accordingly.

Section 161
Appointment of deputy

(1) Where necessary, the bar association appoints a person to deputise for a member of a bar association against whom a ban on practising law or representing clients has been imposed. Before making the appointment, the member is to be heard. The member may propose a deputy.

(2) Section 53 (2), (4) sentence 3 and (5) and section 54 (1), (3) and (4) apply accordingly.

Section 161a
Restricted scope of ban on representing clients

(1) Where there are urgent grounds for believing that a measure as referred to in section 114 (1) no. 4 or (2) no. 4 will be imposed against a member of a bar association, that member may, by way of an order, be provisionally banned from acting as representative or counsel in specific fields of law.

(2) Section 150 (1) sentence 2, (2), (3), sections 150a to 154, section 155 (1), (3) to (5) and sections 156 to 160 apply accordingly.

Part 8
Lawyers at Federal Court of Justice

Division 1
General matters

Section 162
Application of specific provisions

Parts 1 to 7 of this Code apply to lawyers admitted to the Federal Court of Justice, unless the provisions set forth below indicate a specific case.

Section 163
Competence

As regards the tasks which are assigned to a bar association under the provisions of Parts 1 to 7 of this Code, the Federal Ministry of Justice and Consumer Protection performs those tasks concerning admission to the legal profession and licensing as a professional practice company and their expiry, concerning law offices and the appointment of a deputy or liquidator. The Federal Ministry of Justice and Consumer Protection is the competent agency as referred to in section 51 (7). It also performs those tasks assigned to the *Land* department of justice. The Bar at the Federal Court of Justice is responsible for the remaining tasks. In proceedings to impose penalties for breaches of duty, the Federal Court of Justice takes the place of the lawyers' disciplinary court and the higher lawyers' court. The Public Prosecutor General of the Federal Court of Justice performs the tasks of the public prosecution office.

Division 2
Admission as lawyer at Federal Court of Justice

Section 164
Special admission requirement

A lawyer may be admitted to the Federal Court of Justice only if he or she has been nominated by the Judicial Selection Committee of the Federal Court of Justice.

Section 165
Judicial Selection Committee of Federal Court of Justice

(1) The Judicial Selection Committee comprises the President and the Presidents of the Civil Panels of the Federal Court of Justice as well as members of the Presiding Board of the

Federal Bar Association and of the Presiding Committee of the Bar at the Federal Court of Justice.

(2) The President of the Federal Court of Justice chairs the Judicial Selection Committee.

The President convenes the Judicial Selection Committee.

(3) The invitation must contain the agenda for the meeting of the Judicial Selection Committee and must reach members at least one week before the meeting.

(4) Meetings are not public.

(5) Minutes are taken of each meeting.

Section 166

Lists of proposed candidates for election

(1) Elections are based on lists of proposed candidates.

(2) The following may submit lists of proposed candidates:

1. the Federal Bar Association, based on proposals made by the bar associations,

2. the Bar at the Federal Court of Justice.

(3) A person may be included in one of the lists of proposed candidates only if he or she is at least 35 years of age and has practised as a lawyer for at least five years without interruption.

Section 167

Review by Selection Committee

(1) The Selection Committee reviews whether the persons proposed fulfil the substantive and personal requirements for acting as a lawyer at the Federal Court of Justice.

(2) The Selection Committee appoints two of its members as rapporteurs to prepare elections.

Section 167a

Inspection of files

(1) A lawyer whose name is included in a list of proposed candidates has the right to inspect the minutes of the meetings of the Selection Committee.

(2) The lawyer's personal, professional and economic circumstances are set out in a separate report, which the lawyer may inspect.

(3) Section 58 (2) applies accordingly.

Section 168

Decision of Selection Committee

(1) The Selection Committee has a quorum when the majority of both the members of the Federal Court of Justice and the members of the presiding boards of the Federal Bar Association and of the Bar at the Federal Court of Justice are present. It takes its decisions by simple majority. Voting is by secret ballot.

(2) The Selection Committee nominates twice the number of lawyers from the lists of proposed candidates whom it regards as suited to being admitted to the Federal Court of Justice.

(3) Nomination does not entitle applicants to be admitted to the Bar at the Federal Court of Justice.

Section 169

Notification of result of election

(1) The Chair of the Selection Committee notifies the Federal Ministry of Justice and Consumer Protection of the result of the elections.

(2) The applications of the lawyers nominated by the Selection Committee for admission to the Federal Court of Justice are to be attached to the notification.

Section 170

Decision on applications for admission

- (1) The Federal Ministry of Justice and Consumer Protection considers applications for admission as a lawyer to the Federal Court of Justice. Admission may be subject to a suspensive time limit. The time limit is not, as a rule, to exceed three months.
- (2) Decisions on applications for admission may be stayed for the reasons set out in section 10.
- (3) The Executive Board of the Bar at the Federal Court of Justice is to be heard only if concerns are raised against admission.
- (4) Section 166 (3) applies accordingly as regards admission.

**Section 171
(repealed)**

**Division 3
Special rights and duties of and professional collaboration between lawyers at
Federal Court of Justice**

**Subdivision 1
Special rights and duties of lawyers at Federal Court of Justice**

**Section 172
Restriction on appearing before other courts**

- (1) Lawyers admitted to the Federal Court of Justice may only appear before the Federal Court of Justice, the other federal supreme courts, the Joint Panel of the Supreme Courts and the Federal Constitutional Court. The right to appear before international or joint intergovernmental courts is not affected hereby.
- (2) In proceedings before a requested judge they may also appear before another court if the request was made by one of the courts referred to in subsection (1).

**Section 172a
Law office**

Lawyers admitted to the Federal Court of Justice must establish and maintain their law office at the seat of the Federal Court of Justice. Section 14 (3) applies, with the proviso that a lawyer's admission to the Federal Court of Justice may be revoked.

**Section 173
Appointment of deputy and of liquidator for law office**

- (1) The Federal Ministry of Justice and Consumer Protection is, as a rule, to appoint as deputy a lawyer who is admitted to the Federal Court of Justice. It may also appoint a lawyer who is at least 35 years of age and has practised law for at least five years without interruption.
- (2) Subsection (1) applies accordingly to the appointment of a liquidator for the law office (section 55). If the Bar at the Federal Court of Justice can prove that provision has been made in respect of ongoing cases so that consumers of legal services are not any worse off than under the application of section 55, then a liquidator need not be appointed.
- (3) A fee of 25 euros is levied for the appointment of a deputy (section 47 (2), section 53 (3) sentence 2 and (4), section 161 (1) sentence 1 and section 163 sentence 1). The fee is due upon completion of the official act. It may be claimed at an earlier point in time.

**Subdivision 2
Professional collaboration between lawyers at Federal Court of Justice**

**Section 173a
Professional practice companies involving lawyers at Federal Court of Justice**

- (1) Lawyers admitted to the Federal Court of Justice may only form a professional practice company within the meaning of section 59b (1) with other lawyers admitted to the Federal Court of Justice. Such professional practice companies may only comprise two lawyers.

- (2) Section 59h (2) and (3) applies with the proviso that admission may also be withdrawn or revoked if the conditions of subsection (1) are not met.
- (3) Section 59m applies with the proviso that the professional practice company is required to set up and maintain its law office at the seat of the Federal Court of Justice. Section 59m (2) to (4) does not apply.
- (4) Section 173 applies accordingly.

Division 4
Bar at Federal Court of Justice

Section 174
Composition and Executive Board

- (1) Lawyers and professional practice companies admitted to the Federal Court of Justice form the Bar at the Federal Court of Justice. Membership of their previous bar association is suspended for the duration of their membership of the Federal Court of Justice.
- (2) The number of members of the Executive Board is determined in the rules of procedure of the Bar. Section 63 (2) does not apply.

Part 9
Federal Bar Association

Division 1
General matters

Section 175
Composition and seat

- (1) The bar associations together constitute the Federal Bar Association.
- (2) The seat of the Federal Bar Association is determined in its by-laws.

Section 176
Status

- (1) The Federal Bar Association is a corporation under public law.
- (2) The Federal Ministry of Justice and Consumer Protection exercises state supervision over the Federal Bar Association. Such supervision is limited to ensuring compliance with the law and by-laws, in particular performance of those tasks which are delegated to the Federal Bar Association.

Section 177
Tasks

- (1) The Federal Bar Association performs the tasks assigned to it by law.
- (2) In particular, it is incumbent on the Federal Bar Association to
 - 1. determine the opinions of the individual bar associations when it comes to issues which affect the bar associations as a whole and establish the opinion held by the majority by way of joint discussions;
 - 2. draw up guidelines for the welfare institutions of the bar associations (section 89 (2) no. 3);
 - 3. bring the opinion of the Federal Bar Association to bear vis-à-vis the competent courts and authorities in matters which affect the bar associations as a whole;
 - 4. represent the bar associations as a whole vis-à-vis authorities and organisations;
 - 5. render expert opinions requested by an authority or federal body involved in the legislative process or by a federal court;
 - 6. promote the continuing professional development of lawyers;

7. support electronic communications between lawyers and courts, authorities and other third parties;
8. support the bar associations and lawyers in the performance of their duties in relation to the combating of money laundering.

Section 178 Membership dues

- (1) The Federal Bar Association levies dues from the bar associations which serve to cover its personnel and material requirements.
- (2) The amount of the dues is determined by the General Assembly.
- (3) The General Assembly may grant relief to individual economically disadvantaged bar associations.

Division 2 Constituent bodies of Federal Bar Association

Subdivision 1 Presiding Board

Section 179 Composition

- (1) The Federal Bar Association has a Presiding Board.
- (2) The Presiding Board comprises
 1. the President,
 2. at least three Vice-Presidents,
 3. the Treasurer.
- (3) The Presiding Board adopts its rules of procedure.
- (4) The General Assembly may designate further Vice-Presidents.

Section 180 Elections

- (1) The General Assembly of the Federal Bar Association elects the Presiding Board from amongst its midst. Only members of the executive board of a bar association may be re-elected to the Presiding Board.
- (2) Further details are set down in the by-laws of the Federal Bar Association.

Section 181 Right to refuse to stand for election

Anyone who

1. is at least 65 years of age;
 2. has been a member of the presiding board for the previous four years
- may refuse to stand for election as a member of the Presiding Board.

Section 182 Term of office and premature retirement

- (1) The members of the Presiding Board are elected for a four-year term of office.
- (2) Where a member retires before the end of his or her term of office, a new member is elected for the remainder of that member's term of office.
- (3) A lawyer retires prematurely from the Presiding Board
 1. if he or she is no longer a member of the executive board of a bar association;
 2. if he or she resigns from office.

A lawyer must declare his or her resignation in writing to the Presiding Board. The declaration cannot be revoked.

(4) Membership of the Presiding Board is suspended for as long as membership of the executive board of a bar association is suspended.

Section 183

Honorary capacity

Members of the Presiding Board perform their activities without remuneration. However, they receive appropriate compensation for expenses incurred in connection with their activities and reimbursement of their travel expenses.

Section 184

Obligation of confidentiality; availment of services

(1) Section 76 (1) and (2) applies accordingly to the obligation to maintain confidentiality on the part of the members of the Presiding Board, the salaried employees of the Federal Bar Association and persons whose services are enlisted by the Federal Bar Association or by members of its Presiding Board.

(2) Section 43e (1) to (4), (7) and (8) applies analogously where the Federal Bar Association enlists the services of others in relation to matters which are subject to a lawyer's obligation to maintain confidentiality under section 43a (2).

Section 185

President's tasks

(1) The President represents the Federal Bar Association in and out of court.

(2) The President facilitates the business of the Federal Bar Association and of the Presiding Board. The President implements the resolutions of the Presiding Board and of the General Assembly.

(3) The President chairs Presiding Board meetings and the General Assembly.

(4) The President submits an annual report concerning the activities of the Federal Bar Association and of the Presiding Board to the Federal Ministry of Justice and Consumer Protection. The President, further, notifies the result of elections to the Presiding Board.

(5) Further tasks may be assigned to the President under the by-laws of the Federal Bar Association.

Section 186

Treasurer's tasks

(1) The Treasurer manages the assets of the Federal Bar Association in accordance with the instructions of the Presiding Board. The Treasurer is authorised to take receipt of monies.

(2) The Treasurer is required to render annual account to the General Assembly regarding receipts and expenditure as well as regarding the management of the Federal Bar Association's assets.

Subdivision 2

General Assembly

Section 187

Assembly of members

The Federal Bar Association regularly adopts its resolutions at an assembly of its members (General Assembly).

Section 188

Representatives of bar associations at General Assembly

(1) The bar associations are represented at the General Assembly by their presidents.

(2) The president of a bar association may be represented by another member of the executive board.

Section 189

Convocation of General Assembly

- (1) The General Assembly is convened in writing by the President. The President must convene the General Assembly if at least three bar associations apply in writing therefor, stating the subject matter to be dealt with at the General Assembly.
- (2) Upon convocation the subject matter on which a resolution is to be passed at the General Assembly is to be indicated.
- (3) The General Assembly is to be convened at least three weeks before the date on which it is to be held. The day on which the invitation is sent out and the day of the General Assembly are not included when calculating this convocation period.
- (4) In urgent cases the President may convene the General Assembly at shorter notice.
- (5) The by-laws of the Federal Bar Association may, applying section 86a (2) accordingly, provide that the General Assembly may also be conducted as a hybrid or virtual General Assembly. If that is the case, section 86a (3) applies accordingly.

Section 190

Resolutions of General Assembly

- (1) The votes of the bar associations are weighted as follows at the General Assembly:
 1. the vote of a bar association with up to 1,000 members: multiplied by 1,
 2. the vote of a bar association with up to 3,000 members: multiplied by 2,
 3. the vote of a bar association with up to 5,000 members: multiplied by 3,
 4. the vote of a bar association with up to 7,000 members: multiplied by 4,
 5. the vote of a bar association with up to 9,000 members: multiplied by 5,
 6. the vote of a bar association with up to 12,000 members: multiplied by 6,
 7. the vote of a bar association with up to 15,000 members: multiplied by 7,
 8. the vote of a bar association with up to 20,000 members: multiplied by 8,
 9. the vote of a bar association with more than 20,000 members: multiplied by 9.

Professional practice companies are not included when counting the number of members. The number of members as per 1 January of each year is decisive.

- (2) The conditions under which the General Assembly has a quorum are laid down in the by-laws.
- (3) Unless otherwise provided in the by-laws, the resolutions of the General Assembly are passed by a simple majority vote. However, a resolution is deemed not to have been passed if at least 17 bar associations cast a dissenting vote. Sentence 1 applies accordingly to the elections to be conducted by the General Assembly. In the event of a tied vote in the elections, there is to be a drawing of lots.
- (4) Resolutions of the General Assembly which impose an economic burden on the individual bar associations require a unanimous vote. This does not, however, apply to resolutions to set the amount of the bar associations' dues, the amount of the compensation for expenses paid and travel expenses reimbursed to the members of the Presiding Board.
- (5) A record is to be kept of the resolutions of the General Assembly and of the results of the elections, which is to be signed by the Chair and by a Vice-President acting as Secretary.

Section 191 (repealed)

Subdivision 3 Lawyers' Parliament

Section 191a **Establishment and task**

- (1) A Lawyers' Parliament (*Satzungsversammlung*) is to be established at the Federal Bar Association.
- (2) The Lawyers' Parliament enacts the rules of professional conduct governing the practice of the profession of lawyer, taking account of professional duties and in accordance with the provisions of section 59a.
- (3) The Lawyers' Parliament adopts its rules of procedure.
- (4) The Lawyers' Parliament is composed of:
 1. the members of the Presiding Board of the Federal Bar Association and the presidents of the bar associations, each of whom have no voting right;
 2. the members elected in accordance with section 191b, each of whom have a voting right.

Section 191b **Election of members of Lawyers' Parliament with voting rights**

- (1) The number of members of the Lawyers' Parliament with voting rights corresponds to the number of members of the bar associations. One member is to be elected to the Lawyers' Parliament for every 2,000 members, or parts thereof. The number of members of the bar on 1 January of that year in which the election is held is decisive. Professional practice companies are not included when counting the number of members in accordance with sentence 2.
- (2) The members of the Lawyers' Parliament with voting rights are elected in a secret and direct ballot by postal vote by the members of the bar associations from amongst the proposed members. The ballot may also be conducted by electronic vote. The proposals must be signed by at least 10 members; proposals for the members of the Bar at the Federal Court of Justice must be signed by at least three members of the Bar. Those candidates who gain the majority of the votes are elected.
- (3) Sections 65 to 68 (1), section 69 (1), (2), (4) and (5) and sections 75 and 76 (1) and (2) apply accordingly. Where a member of the Lawyers' Parliament with voting rights retires from office, that non-elected member of the bar who has the next highest number of votes joins the Lawyers' Parliament.

Section 191c **Convocation and voting rights**

- (1) The Lawyers' Parliament is convened in writing by the President of the Federal Bar Association.
- (2) The President of the Federal Bar Association must convene the Lawyers' Parliament if at least five bar associations or one quarter of the members of the Lawyers' Parliament with voting rights apply therefor in writing, citing the subject matter to be dealt with by the Lawyers' Parliament. In all other respects, section 189 (2) to (4) applies accordingly.
- (3) The rules of procedure of the Lawyers' Parliament may, applying section 86a (2) accordingly, provide that the Lawyers' Parliament may also be conducted as a hybrid or virtual Lawyers' Parliament. If that is the case, section 86a (3) applies accordingly.

Section 191d **Chair and decision-making**

- (1) The President of the Federal Bar Association chairs the Lawyers' Parliament. The Chair determines the Secretary from amongst the members of the Lawyers' Parliament.
- (2) The Lawyers' Parliament has a quorum when three fifths of its members with voting rights are present.
- (3) Resolutions on the rules of professional conduct are passed by a majority of all the voting members and other resolutions by a majority of the members with voting rights who are

present. Members each have one vote, are not bound by instructions and must exercise their vote in person. Voting by proxy is not possible.

(4) The wording of the resolutions passed by the Lawyers' Parliament is to be recorded in minutes, which are to be signed by the Chair and by the Secretary and kept at the office of the Federal Bar Association.

(5) (repealed)

Section 191e

Review of resolutions by supervisory authority

(1) The Chair of the Lawyers' Parliament is required to forward resolutions concerning the rules of professional conduct passed by the Lawyers' Parliament to the Federal Ministry of Justice and Consumer Protection. The Federal Ministry may, within the context of its exercise of state supervision (section 176 (2)), revoke the resolutions or parts thereof within three months of receipt thereof. If the Federal Ministry intends to effect a revocation, it is, as a rule, to first give the Federal Bar Association the opportunity to comment.

(2) The Federal Ministry of Justice and Consumer Protection is required to conduct an assessment of compliance with the requirements set out in Directive (EU) 2018/958, as amended. To that end, the Chair of the Lawyers' Parliament is required to forward those documents which indicate compliance with the requirements. In particular, the reasons on the basis of which the Lawyers' Parliament considered that the resolutions regarding the rules of professional conduct which were passed were justified, necessary and proportionate must be forwarded.

(3) Resolutions passed by the Lawyers' Parliament are to be made permanently available on the Federal Bar Association's website following the end of the supervisory review process, stating the date of their entry into force, provided they were not revoked in the course of supervisory review process. They enter into force on the first day of the third month following publication.

Division 3 Arbitration

Section 191f

Lawyers' Arbitration Board

(1) An independent body responsible for resolving disputes between members of the individual bar associations and their clients is to be established at the Federal Bar Association. The body is to be called '*Schlichtungsstelle der Rechtsanwaltschaft*'.

(2) The President of the Federal Bar Association appoints one arbitrator or several arbitrators to act either on their own or as a collegial body. Only those who are qualified to hold judicial office, neither are nor were a lawyer in the three years prior to taking office, and are employed or were employed in the last three years by the Federal Bar Association, a bar association or an association of lawyers neither as their primary nor secondary occupation may act alone as an arbitrator. Where arbitration is provided by a collegial body, at least one of the arbitrators must be qualified to hold judicial office; no more than half of its members may be lawyers. Only those who have not been a lawyer in the last three years prior to taking office and who are in the employ of the Federal Bar Association, a bar association or an association of lawyers neither as their primary nor secondary occupation or were in their employ in the last three years prior to taking office may be members of the collegial body who are not lawyers. Members of the collegial body who are lawyers may not be a member of the executive board of a bar association or of an association of lawyers or be in the employ of the Federal Bar Association, a bar association or an association of lawyers as their primary or secondary occupation.

(3) An Advisory Board is to be formed, which must comprise representatives of the Federal Bar Association, of the bar associations, associations of lawyers and consumer associations. Other persons may be appointed to the Advisory Board. No more than half of the members of the Advisory Board may be lawyers. Before arbitrators are appointed and before its by-

laws are enacted or amended, the Advisory Board is to be given the opportunity to comment. It may make its own suggestions as regards the appointment of arbitrators and the form of its by-laws.

(4) The Arbitration Board is a consumer arbitration board within the meaning of the Act on Dispute Resolution for Consumer Disputes (*Verbraucherstreitbeilegungsgesetz*). The Act on Dispute Resolution for Consumer Disputes applies where this Code does not contain any regulations on resolving disputes in accordance with subsection (1) sentence 1. The Federal Ministry of Justice and Consumer Protection provides the Point of Contact for Consumer Dispute Resolution with the information referred to in section 32 (3) and (4) of the Act on Dispute Resolution for Consumer Disputes. The Federal Ministry of Justice and Consumer Protection sends the Arbitration Board's evaluation reports to the Point of Contact for Consumer Dispute Resolution; section 35 (2) of the Act on Dispute Resolution for Consumer Disputes does not apply.

(5) The General Assembly of the Federal Bar Association lays down details concerning the organisation of the Arbitration Board, the establishment of the Advisory Board, including the appointment of further members to the Advisory Board, the tasks of the Advisory Board, the appointment of arbitrators, the allocation of business and the arbitration procedure by way of by-laws based on the following principles:

1. the arbitration procedure must be free of charge to all the parties;
2. arbitration must at any rate be permissible when it comes to proprietary disputes up to a value of 15,000 euros;
3. conduct of the arbitration procedure must not be made dependent on whether the parties have availed themselves of the possibility of conducting mediation proceedings under section 73 (2) sentence 1 no. 3.

Part 10

Costs in matters pertaining to lawyers

Division 1

Costs in bar associations' administrative proceedings

Section 192

Fees and expenses

A bar association may charge fixed-rate fees as well as expenses to cover the administrative expenses of official acts under this Code. Sentence 1 also applies to those of the Federal Bar Association's administrative expenses which arise in relation to the setting up and operation of the special electronic legal mailbox and which it charges to the bar association. The Administrative Expenses Act (*Verwaltungskostengesetz*), as applicable until 14 August 2013, is applicable, with the proviso that the general principles concerning charges (sections 2 to 7 of the Administrative Expenses Act, as applicable until 14 August 2013) apply accordingly when enacting by-laws on the basis of section 89 (2) no. 2.

Division 2

Costs in court proceedings in administrative matters pertaining to lawyers

Section 193

Court fees

In administrative matters pertaining to lawyers, fees are charged pursuant to the Fee Schedule in Annex 2 to this statute. In all other respects, the provisions of the Court Fees Act (*Gerichtskostengesetz*) applicable to costs in proceedings before the courts of the administrative jurisdiction apply accordingly, unless otherwise provided in this Division.

Section 194

Value in dispute

(1) The value in dispute is determined as required under section 52 of the Court Fees Act. It is determined ex officio.

(2) In proceedings concerning actions for admission to the legal profession or for the withdrawal or revocation of admission, the value in dispute is assumed to be 50,000 euros. Taking account of the circumstances of the individual case, in particular the extent and the importance of what is at stake, as well as the claimant's asset and income situation, the court may determine a higher or a lower value.

(3) The assessment is non-appealable; section 63 (3) of the Court Fees Act remains unaffected.

Division 3

Costs in lawyers' disciplinary proceedings and in proceedings when applying for decision from lawyers' disciplinary court

Section 195

Court fees

In lawyers' disciplinary proceedings, in proceedings on an application for a decision from a lawyers' disciplinary court concerning a reprimand (section 74a (1)) and in proceedings on an application for a decision from the higher lawyers' court against the threat or imposition of a penalty payment (section 57 (3)), fees are charged pursuant to the Fee Schedule in Annex 2 to this statute. In all other respects, the provisions of the Court Fees Act regarding costs in criminal proceedings apply accordingly.

Section 196

Costs of applications for institution of lawyers' disciplinary proceedings

(1) A member of a bar association who withdraws an application for a decision on an order issued by the public prosecution office (section 123 (2)) is to be charged the costs arising in these proceedings.

(2) Where an application by the executive board of a bar association for a decision in the cases referred to in section 122 (2), section 150a or section 161a (2) is rejected, the bar association is to be charged the costs occasioned by the procedure on the application.

Section 197

Convicted person's liability to pay costs

(1) A member of a bar association who is convicted in lawyers' disciplinary proceedings is likewise to be charged the costs arising in the proceedings in full or in part. The same applies if the lawyers' disciplinary proceedings are terminated owing to admission having expired and, based on the result of the previous proceedings, imposition of a disciplinary measure would have been justified; the costs of the lawyers' disciplinary proceedings in such cases also include those arising in the subsequent proceedings for the purpose of the securing of evidence (section 148 and section 149). If the proceedings are terminated pursuant to section 139 (3) no. 2, the court may charge to the member the costs arising in the proceedings in full or in part if this is deemed appropriate.

(2) A member of a bar association who withdraws a legal remedy in lawyers' disciplinary proceedings or files an unsuccessful remedy is also to be charged the fees arising in these proceedings. If the legal remedy was partially successful, the member may be charged an appropriate share of these costs.

(3) Subsection (2) applies accordingly to those costs arising on account of an application to reopen proceedings which have been concluded by final and binding judgment.

Section 197a

Liability to pay costs in proceedings on applications for decision from lawyers' disciplinary court

(1) Where an application for a decision from a lawyers' disciplinary court against the threat or imposition of a penalty payment or on a reprimand is rejected as unfounded, section 197 (1) sentence 1 applies accordingly. If the lawyers' disciplinary court finds that the reprimand is

ineffective on account of a measure being imposed in lawyers' disciplinary proceedings (section 74a (5) sentence 2) or if it revokes the notice of reprimand as per section 74a (3) sentence 2, it may charge to the member of the bar association the costs arising in the proceedings in full or in part if this is deemed appropriate.

(2) Where the member of the bar association withdraws the application for a decision from a lawyers' disciplinary court or the application is rejected as unfounded, section 197 (2) sentence 1 applies accordingly.

(3) Where the threat or the imposition of a penalty payment is lifted, the member of the bar association's necessary expenses are to be charged to the bar association. The same applies if the notice of reprimand, except in the case referred to in section 74a (3) sentence 2, is revoked or if the ineffectiveness of the reprimand is established on account of the member's acquittal in the lawyers' disciplinary proceedings or on the grounds cited in section 115a (2) sentence 2 (section 74a (5) sentence 2).

Section 198

Bar association's liability

(1) Expenses which can neither be charged to the member of the bar association nor to a third party or which cannot be collected from the member are to be charged to the bar association of which that person is a member.

(2) In proceedings before the lawyer's disciplinary court the bar association is liable for the witnesses and experts to the same extent as the Code of Criminal Procedure establishes the liability of the Public Treasury. Where the persons summoned live far away, they are to be granted an advance upon application.

Section 199

Assessment of costs of proceedings before lawyers' disciplinary court

(1) The costs which a member of a bar association is required to bear in proceedings before the lawyers' disciplinary court are set by order of the presiding judge of the division of the lawyers' disciplinary court.

(2) The member may file a reminder against the order assessing the costs within a peremptory term of two weeks, which begins to run upon service of the order. The lawyers' disciplinary court whose presiding judge issued the order rules on the reminder. The member may file an appeal subject to a time limit against the lawyers' disciplinary court ruling. The proceedings are free of charge. Costs are not reimbursed.

Sections 200 to 203

(repealed)

Part 11

Enforcement of measures imposed in lawyers' disciplinary proceedings, costs and deletion

Section 204

Enforcement of measures imposed in lawyers' disciplinary proceedings

(1) Disbarment (section 114 (1) no. 5) and disqualification from providing legal services (section 114 (2) no. 5) become effective upon the judgment becoming final.

(2) A warning and a written reprimand (section 114 (1) nos. 1 and 2 and (2) nos. 1 and 2) are deemed to have been enforced upon the judgment becoming final.

(3) A fine (section 114 (1) no. 3 and (2) no. 3) is enforced on the basis of a certified copy of the operative part of the decision issued by the presiding judge of the division of a lawyers' disciplinary court, which is furnished with a certification of its legal force pursuant to the provisions applicable to the enforcement of judgments in civil-law disputes. Section 767 of the Code of Civil Procedure applies, with the proviso that objections which concern the claim itself are permissible only if they could not be asserted in lawyers' disciplinary proceedings. Such objections are to be asserted by way of a legal action before the court designated in

section 797 (5) of the Code of Civil Procedure. The fine accrues to the bar association. Enforcement is effected by the bar association.

(4) Recovery of the fine is not prevented on account of the member of the bar association's admission having expired after the proceedings were concluded by final judgment.

(5) A ban on acting as representative or counsel in specific fields of law (section 114 (1) no. 4 and (2) no. 4) becomes effective upon the judgment becoming final. The effective period of the ban includes the effective period of a provisional ban ordered pursuant to section 150 or section 161a.

Section 205 **Recovery of costs**

(1) Costs arising in proceedings before a lawyers' disciplinary court are recovered in accordance with section 204 (3) on the basis of the assessment order (section 199).

(2) Costs arising in proceedings before a higher lawyers' court or the Federal Court of Justice are collected in accordance with the provisions applicable to the recovery of court costs. The costs arising in proceedings before a higher lawyers' court are recovered by the enforcement authority responsible for the higher regional court at which the higher lawyers' court has been established.

(3) Section 204 (4) applies accordingly.

Section 205a **Deletion**

(1) Entries made in the files kept on a member of a bar association concerning the measures and decisions referred to in sentences 4 and 5 are to be deleted after the end of the period set in sentences 4 and 5. The records linked to such measures and decisions are to be removed from the files and destroyed. Sentences 1 and 2 apply analogously where the files on the member are kept in electronic form. The period is as follows:

1. five years in the case of
 - a) warnings,
 - b) reprimands,
 - c) instructions,
 - d) rulings in proceedings concerning a breach of professional duties under this Code which did not lead to measures being imposed in lawyers' disciplinary proceedings or in a reprimand,
 - e) decisions as well as measures which are not subject to sentence 5 in proceedings on account of criminal offences or regulatory offences or in professional supervision proceedings relating to other professions;
2. 10 years in the case of written reprimands and fines, even if they are imposed in parallel;
3. 20 years in the case of bans on acting as representative (section 114 (1) no. 4 and (2) no. 4) and in the case of disbarment or disqualification from providing legal services after which the member was readmitted.

As regards measures taken in proceedings on account of criminal offences or regulatory offences or in professional supervision proceedings relating to other professions and in which the conduct on which those proceedings are based simultaneously breached the professional duties of a lawyer, the periods relevant to the deletion of the respective measure apply accordingly.

(2) The period begins to run on that day on which the measure or decision becomes incontestable. In the case of readmission following disbarment or disqualification from

providing legal services, the period begins to run upon readmission. After the expiry of the time limit, removal and destruction as referred to in subsection (1) sentence 2 may be suspended until the end of the calendar year.

(3) Except in the cases referred to in subsection (1) sentence 4 no. 1 (d) and (e), the period does not end as long as

1. another entry concerning a criminal conviction, a regulatory offence or a supervisory measure can be taken into consideration,
2. proceedings are pending which may result in an entry as designated in no. 1 being made or
3. a judgment imposing a fine handed down by a lawyers' disciplinary court has not yet been enforced.

(4) After the end of the period set, the member of the bar association is deemed not to be affected by the measures.

(5) (repealed)

(6) (repealed)

Part 12

Foreign legal professions and professional practice companies

Section 206

Foreign legal professions; authorisation to issue statutory instruments

(1) Members of those foreign professions which are listed in the statutory instrument as referred to in subsection (2) are permitted to practise in the Federal Republic of Germany in order to provide legal services if they

1. are authorised, under the law of their home country, to exercise their profession in their home country and
2. have been admitted, upon application, to the bar association competent at the place of their establishment.

(2) The Federal Ministry of Justice and Consumer Protection may, by statutory instrument not requiring the approval of the Bundesrat, determine those professions from Member States of the World Trade Organization, with the exception of

1. the Member States of the European Union,
2. the Contracting Parties of the Agreement on the European Economic Area and
3. Switzerland,

which correspond, in respect of professional training and professional powers, to the profession of lawyer (*Rechtsanwalt*) under this Code. The Federal Ministry of Justice and Consumer Protection may, by statutory instrument not requiring the approval of the Bundesrat, determine those professions from states which are not Member States of the World Trade Organization which, in respect of professional training and professional powers, correspond to the profession of lawyer (*Rechtsanwalt*) under this Code and for which reciprocity is also guaranteed.

(3) The authorisation to provide legal services in accordance with subsection (1) encompasses,

1. in respect of members of those professions referred to in subsection (2) sentence 1, the fields of law of their home country and international law,
2. in respect of members of those professions referred to in subsection (2) sentence 2, the fields of law of their home country.

Section 207

Admission procedure and professional status; withdrawal and revocation

(1) The application for admission to a bar association (section 206 (1) no. 2) must include certification of membership of the profession issued by the authority competent in the applicant's home country. Certification as required under sentence 1 must be resubmitted annually to the bar association. The bar association may dispense with requiring submission of certification as referred to in sentences 1 and 2 if the foreign lawyer credibly demonstrates and proves, as far as possible, that he or she

1. has, despite undertaking all reasonable efforts, not been able to obtain certification from the authority competent in his or her home country and
2. belongs to the legal profession in his or her home country; in doing so, the applicant must affirm vis-à-vis the bar association by declaration in lieu of an oath that he or she belongs to the legal profession.

(2) Admission to the bar association is to be revoked if

1. the practising foreign lawyer does not fulfil the duties under subsection (1) sentence 2 or
2. the conditions of section 206 (1) are no longer met.

(3) In all other cases, the following apply to the decision on the application, to legal status after admission to the bar association and to withdrawal or revocation of admission to the bar association:

1. Part 2, with the exception of sections 4, 12 (2) no. 1 and (4), sections 12a and 17, Part 3, with the exception of section 59j (3), Part 4, Part 5 Division 4, Parts 6, 7, 10, 11 and 13 analogously and
2. the statutory instrument enacted on the basis of section 31d.

Section 7 (1) and (2) of the Act on the Activities of European Lawyers in Germany applies accordingly as regards professional indemnity insurance. Bans on representing clients under section 114 (1) no. 4 and under sections 150 and 161a are to be issued for the area of application of this Code. A ban on providing legal services on foreign legal matters in the area of application of this Code takes the place of disbarment (section 114 (1) no. 5); the convicted person loses his or her membership of the bar association upon this decision becoming final.

(4) Practising foreign lawyers must use their professional title in accordance with the law of their home country. They must state the name of their home country in German when using their professional title. If they were admitted to the bar association as an in-house lawyer, they must add the designation '(Syndikus)' after their professional title. Practising foreign lawyers are authorised to also use the designation '*Mitglied der Rechtsanwaltskammer*' in the course of professional dealings.

(5) Practising foreign lawyers are equal to German lawyers (*Rechtsanwälte* and *Anwälte*) as regards application of the following provisions of the Criminal Code:

1. exemption from punishment for not reporting planned criminal offences (section 139 (3) sentence 2 of the Criminal Code),
2. violation of private secrets (section 203 (1) no. 3, (3) to (6), sections 204 and 205 of the Criminal Code),
3. demanding excessive fees (section 352 of the Criminal Code) and
4. betrayal of a client (section 356 of the Criminal Code).

Section 207a

Foreign professional practice companies

(1) A professional practice company whose seat is located in a Member State of the World Trade Organization is permitted to provide legal services in accordance with subsections (3) and (4) through a branch office in the Federal Republic of Germany if

1. the purpose of the company is to advise and represent clients in legal matters,
2. it is authorised to provide legal services under the law of its state of establishment,
3. its shareholders are lawyers or members of one of the professions referred to in section 59c (1) sentence 1 no. 1 and no. 2,
4. the German branch office has its own management which is able to represent the company and has sufficient powers to ensure that professional rights in respect of the German branch office will be safeguarded and
5. it has been licensed by the bar association competent at the place where its German branch office is located.

(2) Section 59c (2), sections 59d to 59j and 59m to 59o apply accordingly to professional practice companies as referred to in subsection (1). Section 59j applies with the proviso that the management of the German branch office must comprise lawyers who are entitled to manage and represent the company or the required number of foreign lawyers for representation who are practising as specified in section 206 (1). Section 59o applies with the proviso that it is not the number of members of the management which is to be taken into account but the number of directors in accordance with subsection (1) no. 4.

(3) A licensed professional practice company is entitled to provide legal services in the Federal Republic of Germany through practising foreign lawyers authorised in accordance with section 206 (3) no. 1 in the fields of law of the home countries of the practising foreign lawyers acting on behalf of the professional practice company and in international law.

(4) A licensed professional practice company is entitled to the powers referred to in sections 59k and 59l if at least one lawyer is a shareholder of that company and the management of the German branch office includes the required number of lawyers for representation who are entitled to manage and represent the company. It may only act through its shareholders and representatives who must, in the individual case, personally meet the statutory conditions for providing legal services.

(5) A professional practice company is obliged to make reference in its business correspondence of whatever form to its foreign legal form, indicating its seat and the relevant legal system and to explain the liability regime.

(6) Subsections (1) to (3) and (5) apply to professional practice companies whose seat is not located in a Member State of the World Trade Organization if reciprocity with the home country is assured. The authorisation to provide legal services in accordance with subsection (3) is limited to the field of law of the home country of the practising foreign lawyer acting on behalf of the professional practice company.

(7) Foreign professional practice companies established in the Federal Republic of Germany in accordance with subsections (1) and (6) are to be entered in the registers referred to in section 31 (4). Section 31 (4) no. 6 applies, with the proviso that only information relating to those shareholders is to be entered which are authorised to provide legal services in the Federal Republic of Germany.

Part 13

Transitional and final provisions

Section 208

Limitations under *Land* law concerning representation of parties and acting as counsel

Where *Land* legislation provides for the exclusion of authorised representatives or counsel in proceedings before arbiters or before other arbitral and conciliation bodies, that legislation may also be extended to include lawyers. Lawyers may not be rejected as authorised representative or counsel on the basis of *Land* regulations.

Section 209

Bar association membership of holders of licence under Legal Advice Act (*Rechtsberatungsgesetz*)

(1) Natural persons in possession of an unlimited licence to provide legal services on a commercial basis or a licence to provide legal services on a commercial basis from which only social and social insurance law are excluded, are to be admitted, upon application, to the bar association competent at the place of their establishment. They may also use the designation '*Mitglied der Rechtsanwaltskammer*' in the course of professional dealings. Part 2, with the exception of sections 4 and 12 (2) no. 1 and (4), section 12a, and Parts 3 and 4, Part 5 Division 4, Parts 6, 7, 10, 11 and 13 of this Code apply analogously to the decision on the application, to legal status after admission to the bar association, and to the revocation or lapse of such licence, as does the statutory instrument enacted on the basis of section 31d. The holder of the licence may make reference to specialist knowledge in one of the fields referred to in section 43c (1) sentence 2 by means of the additional designation of '*Fachgebiet*' for a maximum of two of the specialist fields referred to in section 43c (1) sentence 2.

(2) Admission to the bar association is revoked upon application by the holder of the licence. The decision on the revocation is suspended as long as lawyers' disciplinary proceedings are pending against the holder of the licence.

(3) In the event of the establishment moving to another location, then upon application by the holder of the licence only the place cited in the licence is to be amended. The amendment is ordered by the bar association in whose district the new establishment is located. The amendment has the effect that the holder of the licence becomes a member of the competent bar association.

(4) (repealed)

Section 209a

Licensing and powers of existing professional practice companies

(1) A company which was licensed as a *Rechtsanwaltsgesellschaft* before 1 August 2022 is deemed to have been licensed as a professional practice company as defined in section 59f (1).

(2) Professional practice companies which

1. existed on 1 August 2022,
2. are subject to licensing under section 59f (1) and
3. are not already deemed to have been licensed as specified in subsection (1)

must apply for licensing by 1 November 2022. They are accorded the powers set out in sections 59k and 59l until the competent bar association gives a decision on the licensing application.

Section 210

Continued existence of bar associations

A bar association established prior to 1 September 2009 whose seat is not at a higher regional court continues to exist.

Section 211

Exemption from requirement of qualification to hold judicial office

(1) Those persons who fulfilled the professional requirements for admission to the legal profession pursuant to section 4 of the Lawyers' Act (*Rechtsanwaltsgesetz*) of 13 September 1990 (Law Gazette I No. 61, p. 1504) up until 9 September 1996 are also qualified to practise as a lawyer.

(2) Lawyers who were already admitted under the Lawyers' Act of 13 September 1990 or are admitted on the basis of subsection (1) fulfil the requirement of being qualified to hold judicial office pursuant to section 93 (1) sentence 3 and section 101 (1) sentence 2.

Section 212

Transitional provision concerning supervisory review processes following lapse of double membership of a bar association and chamber

On 1 January 2025, competence for supervisory review processes pending on 1 January 2025 against a member of a management or supervisory body of a company for the joint practise of law who is also a member of the Chamber of Patent Attorneys or a chamber of tax consultants transfers to that body which is competent, as from that date, for the process under the Federal Code for Patent Attorneys or the Tax Advisory Services Act.

Annex 1

(to section 59a (4) sentence 1)

Proportionality test before adoption of new regulation of professions

(Publication source: Federal Law Gazette 2024 I No. 12 pp. 1–3)

I. Terminology

For the purposes of this Annex,

1. 'regulated profession' means a professional activity or group of professional activities and the taking up, the pursuit of or one of the modes of pursuit of such activity or activities is linked, directly or indirectly, by virtue of legislative, regulatory or administrative provisions, to the possession of specific professional qualifications; a mode of pursuit is, in particular, the use of a protected professional title which is limited to persons holding a specific qualification;
2. 'professional qualification' means a qualification of which proof can be furnished by means of formal qualifications, an attestation of competence within the meaning of Article 11 (a) (i) of Directive 2005/36/EC or by means of professional experience;
3. 'protected professional title' means a form of regulating a profession and the use of the title in a professional activity or group of professional activities is linked, directly or indirectly, by virtue of legislative, regulatory or administrative provisions, to the possession of a specific professional qualification, and where the improper use of that title is subject to sanctions;
4. 'reserved activities' means a form of regulating a profession and that access to a professional activity or group of professional activities is reserved, directly or indirectly, by virtue of legislative, regulatory or administrative provisions, to members of a regulated profession holding a specific professional qualification, including where the activity is shared with other regulated professions.

II. Assessment criteria

A provision as referred to in section 59a (3) sentence 2

1. may be neither directly nor indirectly discriminatory on the basis of nationality or residence;
2. must be objectively justified by overriding public interest objectives; whilst purely economic reasons or purely administrative reasons are ruled out, consideration may, in particular, be given to the following:

- a) public security and public policy,
- b) public health,
- c) the proper administration of justice,
- d) the protection of consumers and other recipients of services,
- e) the protection of employees,
- f) the fairness of trade transactions,
- g) the combating of fraud,
- h) the prevention of tax evasion and avoidance, including safeguarding the effectiveness of fiscal supervision,
- i) the protection of intellectual property,
- j) the protection of the environment,
- k) social policy, including the financial equilibrium of social security systems and
- l) cultural policy, including the protection of cultural heritage;

3. must be suitable to attain the public interest objective pursued and may not go beyond what is necessary to attain that objective; consideration is thereby to be given to

- a) the nature of the risks related to the public interest objective pursued, in particular the risks to consumers and other recipients of services, to professionals and third parties;
- b) the suitability of existing rules of a specific or general nature, such as those contained in consumer protection law, for the attainment of the objective pursued;
- c) the suitability of the provision to appropriately, coherently and systematically attain the objective pursued, whereby particular attention is to be paid to how the risks identified in a similar way as in comparable activities are to be addressed;
- d) the impact on the free movement of persons and services within the European Union, the other Contracting Parties of the Agreement on the European Economic Area and Switzerland;
- e) the impact on consumer choice;
- f) the impact on the quality of the services provided;
- g) the possibility of using less restrictive means to achieve the public interest objective; for these purposes, where the provision is justified by consumer protection only and the risks identified are limited to the relationship between professionals and consumers and therefore do not negatively affect third parties, the assessment is, in particular, to include whether the objective can be attained by means which are less restrictive than reserved activities;
- h) the positive or negative impact of the provision when combined with other provisions restricting access to, or the pursuit of, regulated professions; the assessment is, in particular, to include how the provision, combined with other requirements, contributes to, and whether it is necessary for, the achievement of

the same public interest objective; this in particular applies to the following requirements:

- aa) reserved activities, protected professional titles and other forms of regulation within the meaning of Article 3 (1) (a) of Directive 2005/36/EC;
- bb) obligations to undergo continuous professional development;
- cc) rules relating to the organisation of the profession, professional ethics and supervision;
- dd) compulsory membership of a professional organisation or body and registration and authorisation schemes, in particular where those requirements imply the possession of a specific professional qualification;
- ee) quantitative restrictions, in particular requirements limiting the number of authorisations to practise, or fixing a minimum or a maximum number of employees, managers or representatives who must or may hold specific professional qualifications;
- ff) specific legal form requirements or requirements which relate to the shareholding or management of a company, to the extent those requirements are directly linked to the exercise of the regulated profession;
- gg) territorial restrictions, including where the profession is regulated in parts of Germany's territory in a manner which is different to the way in which it is regulated in other parts;
- hh) requirements restricting the exercise of a regulated profession jointly or in partnership;
- ii) incompatibility rules;
- jj) requirements concerning insurance cover or other means of personal or collective protection with regard to professional liability;
- kk) language knowledge requirements, to the extent necessary to practise the profession;
- ll) fixed minimum or maximum tariff requirements;
- mm) requirements on advertising;

i) the following criteria, insofar as they are relevant to the mode or content of the new or amended provision:

- aa) the connection between the scope of activities covered by a regulated profession or reserved to it and the professional qualification required;
- bb) the connection between the complexity of the tasks concerned and the need for those carrying them out to possess a specific professional qualification, in particular as regards the level, the nature and the duration of the training or experience required;
- cc) the possibility of obtaining the professional qualification by alternative routes;
- dd) the suitability of activities reserved to a certain profession being shared with other professions;

ee) the degree of autonomy in exercising a regulated profession and the impact of organisational and supervision arrangements on the attainment of the objective pursued, in particular where the activities relating to a regulated profession are pursued under the control and responsibility of a duly qualified professional;

ff) the scientific and technological developments which may reduce or increase the asymmetry of information between professionals and consumers;

4. must, insofar as specific requirements are related to the temporary or occasional provision of services as provided under Title II of Directive 2005/36/EC, in particular also be proportionate as regards those requirements, unless they are measures which are to guarantee compliance with applicable terms and conditions of employment and which are applied in line with the law of the European Union; the proportionality test primarily includes

a) any automatic temporary registration with or pro forma membership of a professional organisation or body as referred to in Article 6 (1) (a) of Directive 2005/36/EC;

b) declarations to be made in advance pursuant to Article 7 (1) of Directive 2005/36/EC, documents required under Article 7 (2) of Directive 2005/36/EC and other equivalent requirements;

c) fees and charges levied by the service provider for administrative procedures related to access to, or the pursuit of, a regulated profession.

Annex 2

(to section 193 sentence 1 and section 195 sentence 1)

Fee Schedule

(Publication source: Federal Law Gazette 2006 I, pp. 3418–3420)

Part 1

Lawyers' disciplinary proceedings

No.	Chargeable act	Fee amount or fee rate – Nos. 1110 to 1112
<p><i>Preliminary remark 1</i></p> <p>(1) Court fees in lawyers' disciplinary proceedings are calculated for all instances on the basis of the measure imposed by final decision and subject to subsection (2).</p> <p>(2) Where a legal remedy or an application for a decision from a lawyers' disciplinary court is rejected or revoked only in part, the court is required to reduce the fee if it would be inequitable to charge it to the member of the bar association.</p> <p>(3) The same fees are charged in proceedings after the reopening of a case as were charged for reopened proceedings. If, after the reopening of the proceedings has been ordered, the earlier judgment is revoked, the fees are calculated on the basis that each instance in the new proceedings together with the respective instance in the earlier proceedings is regarded as one instance. Fees are also charged for those instances which were addressed only in the earlier proceedings.</p> <p style="text-align: center;">Division 1 Proceedings before lawyers' disciplinary court</p>		

No.	Chargeable act	Fee amount or fee rate – Nos. 1110 to 1112
<p style="text-align: center;"><i>Subdivision 1</i> <i>Lawyers' disciplinary proceedings at first instance</i></p>		
1110	<p>Proceedings with judgment imposing one or more of the following disciplinary measures:</p> <ol style="list-style-type: none"> 1. a warning, 2. a written reprimand, 3. a fine 	240 euros
1111	Proceedings with judgment issuing a ban on acting as representative or counsel pursuant to section 114 (1) no. 4 or (2) no. 4 of the Federal Code for Lawyers	360 euros
1112	Proceedings with judgment of disbarment or disqualification from providing legal services	480 euros
<p style="text-align: center;"><i>Subdivision 2</i> <i>Application for court decision on reprimand</i></p>		
1120	<p>Proceedings on an application for a court decision on a reprimand under section 74a (1) of the Federal Code for Lawyers:</p> <p>The application is rejected or dismissed...</p>	160 euros
<p style="text-align: center;">Division 2 Proceedings before higher lawyers' court</p>		
<p style="text-align: center;"><i>Subdivision 1</i> <i>Appeal on points of fact and law</i></p>		
1210	Appeal proceedings with judgment	1.5
1211	<p>Appeal proceedings terminated without judgment</p> <p>The fee is not charged if the appeal is withdrawn before the expiry of the time limit for the statement of grounds.</p>	0.5
<p style="text-align: center;"><i>Subdivision 2</i> <i>Complaint</i></p>		
1220	<p>Proceedings on complaints in lawyers' disciplinary proceedings which are not free of charge under other provisions:</p> <p>The complaint is rejected or dismissed...</p> <p>The member of the bar association is only charged a fee if a disciplinary measure has been imposed by final decision.</p>	50 euros

No.	Chargeable act	Fee amount or fee rate – Nos. 1110 to 1112
<p style="text-align: center;"><i>Subdivision 3</i> <i>Application for court decision concerning threat or imposition of penalty payment</i></p>		
1230	Proceedings on an application for a court decision concerning the threat or imposition of a penalty payment under section 57 (3) of the Federal Code for Lawyers: The application is rejected or dismissed...	200 euros
<p style="text-align: center;">Division 3 Proceedings before Federal Court of Justice</p>		
<p style="text-align: center;"><i>Subdivision 1</i> <i>Appeal on points of law</i></p>		
1310	Appeal proceedings with judgment or an order under section 116 (1) sentence 2 of the Federal Code for Lawyers read in conjunction with section 349 (2) or (4) of the Code of Criminal Procedure	2.0
1311	Appeal proceedings terminated without judgment and without an order under section 116 (1) sentence 2 of the Federal Code for Lawyers read in conjunction with section 349 (2) or (4) of the Code of Criminal Procedure No fee is charged if the appeal on points of law is withdrawn before the expiry of the time limit for the statement of grounds.	1.0
<p style="text-align: center;"><i>Subdivision 2</i> <i>Appeal</i></p>		
1320	Proceedings on an appeal against the denial of leave to file an appeal on points of law: The appeal is rejected or dismissed...	1.0
1321	Proceedings on other appeals in lawyers' disciplinary proceedings which are not free of charge under other provisions: The appeal is rejected or dismissed... The member of the bar association is charged no fee if a disciplinary measure was imposed by final decision.	50 euros
<p style="text-align: center;"><i>Subdivision 3</i> <i>Proceedings against lawyers or professional practice companies admitted to Bar at Federal Court of Justice</i></p>		
1330	Lawyers' disciplinary proceedings with judgment imposing a measure	1.5

No.	Chargeable act	Fee amount or fee rate – Nos. 1110 to 1112
1331	Proceedings on an application for a court decision concerning the threat or imposition of a penalty payment under section 57 (3) read in conjunction with section 163 sentence 2 of the Federal Code for Lawyers: The application is rejected or dismissed...	240 euros
1332	Proceedings on an application for a court decision on a reprimand under section 74a (1) read in conjunction with section 163 sentence 2 of the Federal Code for Lawyers: The application is dismissed or rejected...	240 euros
Division 4 Complaint of violation of right to hearing in accordance with law		
1400	Proceedings on a complaint of a violation of the right to a hearing in accordance with the law: The complaint is rejected or dismissed in full...	50 euros

Part 2

Court proceedings in administrative matters pertaining to lawyers

No.	Chargeable act	Fee amount or fee rate pursuant to section 34 of the Court Fees Act
Division 1 Court of first instance		
<i>Subdivision 1</i> <i>Higher lawyers' court</i>		
2110	Proceedings in general	4.0

No.	Chargeable act	Fee amount or fee rate pursuant to section 34 of the Court Fees Act
2111	<p>Proceedings as a whole terminated by way of</p> <ol style="list-style-type: none"> 1. withdrawal of the action <ol style="list-style-type: none"> a) before the end of the hearing, b) if no hearing is held, before the end of the day on which the judgment, court decision or decision on the main issue is transmitted to the court registry, c) in the case referred to in section 112c (1) sentence 1 of the Federal Code for Lawyers read in conjunction with section 93a (2) of the Code of Administrative Court Procedure, before the expiry of the time to answer under section 93a (2) sentence 1 of the Code of Administrative Court Procedure, 2. judgment based on an acknowledgement by the defendant or based on a waiver, 3. court settlement or 4. declarations regarding disposal of the matter pursuant to section 112c (1) sentence 1 of the Federal Code for Lawyers read in conjunction with section 161 (2) of the Code of Administrative Court Procedure if no decision is issued on costs or the decision concurs with a settlement previously notified by the parties on who will bear the costs or a declaration by one of the parties that they will bear the costs, <p>unless a decision other than one of those judgments referred to in no. 2, a court decision or decision on the main issue has already been issued: Fee No. 2110 is reduced to...</p> <p>The fee is also reduced if several conditions meriting a reduction are met.</p> <p style="text-align: center;"><i>Subdivision 2 Federal Court of Justice</i></p>	2.0
2120	Proceedings in general	5.0

No.	Chargeable act	Fee amount or fee rate pursuant to section 34 of the Court Fees Act
2121	<p>Proceedings as a whole terminated by way of</p> <ol style="list-style-type: none"> 1. withdrawal of the action <ol style="list-style-type: none"> a) before the end of the hearing, b) if no hearing is held, before the end of the day on which the judgment or court decision is transmitted to the court registry, c) in the case referred to in section 112c (1) sentence 1 of the Federal Code for Lawyers read in conjunction with section 93a (2) of the Code of Administrative Court Procedure before the end of the time to answer under section 93a (2) sentence 1 of the Code of Administrative Court Procedure, 2. judgment based on an acknowledgement by the defendant or based on a waiver, 3. court settlement or 4. declarations regarding disposal of the matter pursuant to section 112c (1) sentence 1 of the Federal Code for Lawyers read in conjunction with section 161 (2) of the Code of Administrative Court Procedure if no decision is issued on costs or the decision concurs with a settlement previously notified by the parties on who will bear the costs or a declaration by one of the parties that they will bear the costs, <p>unless a decision other than one of those judgments referred to in no. 2, a court decision or decision on the main issue has already been issued: Fee No. 2120 is reduced to...</p> <p>The fee is also reduced if several conditions meriting a reduction are met.</p>	3.0
Division 2 Admissibility and conduct of appeal on points of fact and law		
2200	<p>Proceedings on the admissibility of an appeal on points of fact and law: If the application is rejected...</p>	1.0
2201	<p>Proceedings on the admissibility of an appeal on points of fact and law: If the application is withdrawn or the proceedings are declared terminated by other means</p> <p>No fee is charged if the appeal on points of fact and law is granted.</p>	0.5
2202	Proceedings in general	5.0

No.	Chargeable act	Fee amount or fee rate pursuant to section 34 of the Court Fees Act
2203	<p>Proceedings as a whole terminated after the appeal on points of fact and law or action is withdrawn before the court is in receipt of the statement of grounds for the appeal: Fee No. 2202 is reduced to...</p> <p>Declarations regarding disposal of the matter pursuant to section 112c (1) sentence 1 of the Federal Code for Lawyers read in conjunction with section 161 (2) of the Code of Administrative Court Procedure are equal to withdrawal if no decision is issued on costs or the decision concurs with a settlement previously notified by the parties on who will bear the costs or a declaration by one of the parties that they will bear the costs.</p>	1.0
2204	<p>Proceedings as a whole terminated, unless No. 2203 is fulfilled, by way of</p> <ol style="list-style-type: none"> 1. withdrawal of the appeal on points of fact and law or of the action <ol style="list-style-type: none"> a) before the end of the hearing, b) if no hearing is held, before the end of the day on which the judgment or decision on the main issue is transmitted to the court registry, c) in the case referred to in section 112c (1) sentence 1 of the Federal Code for Lawyers read in conjunction with section 93a (2) of the Code of Administrative Court Procedure before the expiry of the time to answer under section 93a (2) sentence 1 of the Code of Administrative Court Procedure, 2. judgment based on an acknowledgement by the defendant or on a waiver, 3. court settlement or 4. declarations regarding disposal of the matter pursuant to section 112c (1) sentence 1 of the Federal Code for Lawyers read in conjunction with section 161 (2) of the Code of Administrative Court Procedure if no decision is issued on costs or the decision concurs with a settlement previously notified by the parties on who will bear the costs or a declaration by one of the parties that they will bear the costs, <p>unless a decision other than one of those judgments referred to in no. 2 or a decision on the main issue has already been issued: Fee No. 2202 is reduced to...</p> <p>The fee is also reduced if several conditions meriting a reduction are met.</p>	3.0

Division 3

No.	Chargeable act	Fee amount or fee rate pursuant to section 34 of the Court Fees Act
Temporary relief		
<i>Preliminary remark 2.3</i>		
(1) The provisions of this Division apply to interim measures and to proceedings pursuant to section 112c (1) sentence 1 of the Federal Code for Lawyers read in conjunction with section 80 (5) and section 80a (3) of the Code of Administrative Court Procedure.		
(2) In proceedings on an application for issuance and in proceedings on an application for revocation of an interim measure, the fees are each charged separately. Several proceedings pursuant to section 112c (1) sentence 1 of the Federal Code for Lawyers read in conjunction with section 80 (5) and (7) and section 80a (3) of the Code of Administrative Court Procedure count as one set of proceedings either before the court of first instance or appellate court.		
<i>Subdivision 1 Higher lawyers' court</i>		
2310	Proceedings in general	2.0
2311	Proceedings as a whole terminated by way of	
	1. withdrawal of the motion	
	a) before the end of the hearing or	
	b) if no hearing is held, before the end of the day on which the ruling is transmitted to the court registry,	
	2. court settlement or	
	3. declarations regarding disposal of the matter pursuant to section 112c (1) sentence 1 of the Federal Code for Lawyers read in conjunction with section 161 (2) of the Code of Administrative Court Procedure if no decision is issued on costs or the decision concurs with a settlement previously notified by the parties on who will bear the costs or a declaration by one of the parties that they will bear the costs,	
	unless a decision has already been issued on the motion: Fee No. 2310 is reduced to...	0.75
	The fee is also reduced if several conditions meriting a reduction are met.	
<i>Subdivision 2 Federal Court of Justice as appellate court on main issue</i>		
2320	Proceedings in general	1.5

No.	Chargeable act	Fee amount or fee rate pursuant to section 34 of the Court Fees Act
2321	<p>Proceedings as a whole terminated by way of</p> <ol style="list-style-type: none"> 1. withdrawal of the motion <ol style="list-style-type: none"> a) before the end of the hearing or b) if no hearing is held, before the end of the day on which the ruling is transmitted to the court registry, 2. court settlement or 3. declarations regarding disposal of the matter pursuant to section 112c (1) sentence 1 of the Federal Code for Lawyers read in conjunction with section 161 (2) of the Code of Administrative Court Procedure if no decision is issued on costs or the decision concurs with a settlement previously notified by the parties on who will bear the costs or a declaration by one of the parties that they will bear the costs, <p>unless a decision has already been issued on the motion: Fee No. 2320 is reduced to...</p> <p>The fee is also reduced if several conditions meriting a reduction are met.</p> <p style="text-align: center;"><i>Subdivision 3 Federal Court of Justice</i></p> <p><i>Preliminary remark 2.3.3</i> The provisions of this Subdivision apply if the Federal Court of Justice is also competent as the court of first instance on the main issue.</p>	<p style="text-align: center;">0.5</p>
2330	Proceedings in general	2.5

No.	Chargeable act	Fee amount or fee rate pursuant to section 34 of the Court Fees Act
2331	<p>Proceedings as a whole terminated by way of</p> <ol style="list-style-type: none"> 1. withdrawal of the motion <ol style="list-style-type: none"> a) before the end of the hearing or b) if no hearing is held, before the end of the day on which the ruling is transmitted to the court registry, 2. court settlement or 3. declarations regarding disposal of the matter pursuant to section 112c (1) sentence 1 of the Federal Code for Lawyers read in conjunction with section 161 (2) of the Code of Administrative Court Procedure if no decision is issued on costs or the decision concurs with a settlement previously notified by the parties on who will bear the costs or a declaration by one of the parties that they will bear the costs, <p>unless a decision has already been issued on the motion: Fee No. 2330 is reduced to...</p> <p>The fee is also reduced if several conditions meriting a reduction are met.</p>	1.0
<p style="text-align: center;">Division 4 Complaint of violation of right to hearing in accordance with law</p>		
2400	<p>Proceedings on a complaint of a violation of the right to a hearing in accordance with the law: The complaint is rejected or dismissed in full...</p>	50 euros