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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 – FamFG)

Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction of 17 December 2008 (Federal Law Gazette I, p. 2586, 2587), last amended by Article 3 of the Act of 7 April 2025 (Federal Law Gazette 2025 I no. 109).

The Act was adopted by the Bundestag as Article 1 of Act 315-24/1 of 17 December 2008 (Federal Gazette I p. 2586) (Act to Reform Proceedings in Family Matters and in Matters of Non-Contentious Jurisdiction; *Gesetz zur Reform des Verfahrens in Familiensachen und in den Angelegenheiten der freiwilligen Gerichtsbarkeit*; FGG-RG). Under Article 112 (1) of this Act, it took effect on 1 September 2009.

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

Book 1 General part

Division 1 General provisions

Section 1 Scope

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

Section 2 Local jurisdiction

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

Section 3

Referral upon lack of jurisdiction

- (1) If the court seized does not have either substantive or local jurisdiction, provided it is possible to determine the competent court, it is to declare that it is not competent in the matter by way of an order and refer the matter to the competent court. Prior to the referral, the participants are to be heard.
- (2) In the event that more than one court has jurisdiction, the matter is to be referred to the court selected by the applicant. If no selection is made or if the matter was initiated ex officio, the matter is to be referred by the court seized to a court that it determines.
- (3) The order is not contestable. It is binding on the court that is designated to have jurisdiction in the matter.
- (4) The costs accrued in the proceedings before the court initially seized are to be treated as part of the costs accruing before the court designated in the order.

Section 4

Relinquishment to another court

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

Section 5

Court determination of jurisdiction

- (1) The competent court is determined by the related court of the next higher level of jurisdiction when:
 1. the court that would have jurisdiction is legally or otherwise factually unable to exercise jurisdiction in a particular matter;
 2. with respect to the borders of different court districts or for other factual reasons it is unclear which court has jurisdiction in the matter;
 3. more than one court has declared with final and binding effect that it has jurisdiction;
 4. different courts, one of which has jurisdiction in the matter, have stated with final and binding effect that they do not have jurisdiction;
 5. relinquishment for good cause (section 4) is intended to take place but the courts cannot reach agreement.
- (2) If the related court of the next higher level of jurisdiction is the Federal Court of Justice, the competent court is to be determined by the higher regional court in the district of which the court is located that was initially involved in the matter.
- (3) The order determining the competent court is not contestable.

Section 6

Disqualification and recusal of court personnel

- (1) Sections 41 to 49 of the Code of Civil Procedure (*Zivilprozessordnung*) apply accordingly to the disqualification and recusal of court personnel. Any person who worked on a preceding administrative procedure is also disqualified.
- (2) The order in which a motion for recusal is declared unjustified is contestable by a complaint subject to a time limit upon application with the necessary modifications of sections 567 to 572 of the Code of Civil Procedure.

Section 7

Participants

- (1) In application proceedings, the applicant is a participant.
- (2) Participants to be involved are:

1. persons whose rights are directly affected by the proceedings, and
 2. persons who are to be included ex officio or upon application based upon this or another statute.
- (3) The court may involve additional persons as participants ex officio or based upon the filing of an application insofar as this is provided for in this or another statute.
- (4) Those persons who must or may be involved as participants in the proceedings upon their application are to be notified of the commencement of the proceedings to the extent that they are known to the court. They are to be informed of their right to file an application.
- (5) The court decides by way of an order when it denies an application for inclusion as a participant in accordance with subsections (2) or (3). The order is contestable by a complaint subject to a time limit upon application with the necessary modifications of sections 567 to 572 of the Code of Civil Procedure.
- (6) Any person who is to be heard or who has information to provide does not thereby become a participant without fulfilling the prerequisites in subsections (2) or (3).

Section 8

Capacity to be a participant

Those with capacity to be a participant are:

1. natural persons and legal entities,
2. organisations, groups of persons, and institutions, insofar as they may be entitled to a right,
3. public authorities.

Section 9

Capacity to participate in proceedings

(1) The following have capacity to participate in proceedings:

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

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

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

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

(5) Sections 53 to 58 of the Code of Civil Procedure apply accordingly.

Section 10

Authorised representative

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

(2) The participants may also be represented by a lawyer acting as an authorised representative. In addition, to the extent that representation by lawyers is not required, only the following persons are authorised to act as representatives:

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

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

3. notaries.

(3) The court dismisses representatives who do not have proper authorisation for representation in accordance with the standards set forth in subsection (2) by way of an incontestable court order. Court actions performed by a representative who does not have the proper authorisation for representation as well as service of process and communications to him or her made prior to the order of dismissal are valid. The court may bar authorised representatives designated under subsection (2) sentence 2 nos. 1 and 2 through an incontestable court order when they are not able to appropriately represent the factual relationship and the nature of the dispute.

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

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

Section 11

Power of attorney for proceedings

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

Section 12

Advisers

Participants may appear at court hearings with advisers. A person may be an adviser when that person is authorised to act as an authorised representative in proceedings in which the participants may conduct proceedings themselves. The court may admit other persons as advisers when this is relevant and necessary in light of the circumstances of the individual case. Section 10 (3) sentences 1 and 3 and (5) applies accordingly. Statements made by the adviser are deemed to be submissions by the participant unless the participant immediately repudiates or corrects such statements.

Section 13

Inspection of court files

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

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

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

(3) Insofar as inspection of the files is granted, entitled persons may request the registry to prepare duplicates, extracts and copies. Copies are to be certified upon request.

(4) The court may allow a lawyer, notary, or public authority that is a participant to take the files to official or professional offices. There is no right to allow inspection of pieces of evidence in official or professional offices. A decision under sentence 1 is not contestable.

(5) If the court files are electronically maintained, section 299 (3) and (4) of the Code of Civil Procedure applies accordingly.

(6) Drafts of orders, and rulings, the work supplied in preparing them, as well as the documents concerning votes are not made available, nor will they be communicated as copies.

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

Section 14

Electronic files; electronic documents; authorisation to issue statutory instruments

(1) Court files are maintained electronically. Section 298a (2) of the Code of Civil Procedure applies accordingly.

(2) Applications and declarations from participants as well as written information, testimonies, reports, translations, applications and declarations by third parties required to be submitted may be transmitted as electronic documents. Section 130a of the Code of Civil Procedure, statutory instruments enacted on this basis, as well as section 298 of the Code of Civil Procedure apply accordingly to the electronic document.

(3) Sections 130b and 298 of the Code of Civil Procedure apply accordingly to electronic court documents.

(4) The Federal Government and the *Land* governments determine for their areas of authority by way of statutory instrument the organisational and state-of-the-art technical framework conditions for the creation, administration and storage of the electronic files, including the applicable requirements for accessibility. The Federal Government and the *Land* governments may determine for their areas of authority by way of statutory instrument that files that were created in paper format are continued in paper format. The *Land* governments may delegate authority under sentences 1 and 2 by way of statutory instrument to the highest *Land* authorities competent for civil jurisdiction. The statutory instruments of the Federal Government are not subject to the approval of the Bundesrat.

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

(6) The Federal Government and the *Land* governments may determine for their areas of authority by way of statutory instrument that files created before 1 January 2026 in paper format are maintained, from a certain date or event, in electronic form. The admission of maintenance in electronic form may be restricted to particular courts or proceedings; if use is made of this possibility, it may be determined in the statutory instrument that it is to be determined by an administrative provision, which is to be made public, in which proceedings the case files will be maintained electronically. The statutory instrument of the Federal Government is not subject to the approval of the Bundesrat. The authorisation may be transferred by way of statutory instrument to the respective competent highest *Land* authority.

(7) Documents and parts of files which, in accordance with the instructions of the Federal Government or the *Länder* on classified documents, have a classification higher than VS-NUR FÜR DEN DIENSTGEBRAUCH (Confidential – for official use only) may be created,

maintained and transmitted in paper format until 31 December 2035. The security regulations applicable to handling classified documents remain unaffected.

(8) (repealed)

(9) The Federal Government, by way of statutory instrument subject to the approval of the Bundesrat, may determine the standards applicable to the transmission of electronic files between authorities and courts.

Section 14a

Forms; authorisation to issue statutory instruments

The Federal Ministry of Justice may introduce electronic forms by way of statutory instrument subject to the approval of the Bundesrat. The statutory instrument may determine that the information provided in the forms is to be transmitted, either in whole or in part, in structured, machine-readable format. The forms are to be made available for use on a communications platform on the internet determined in the statutory instrument. The statutory instrument may determine that, in derogation from the stipulations of section 130a (3) of the Code of Civil Procedure, the identification of the party using the form may also be effected by using the electronic identification document in accordance with section 18 of the Act on Identity Cards (*Personalausweisgesetz*), section 12 of the Electronic ID Card Act (*eID-Karte-Gesetz*) or section 78 (5) of the Residence Act (*Aufenthaltsgesetz*).

Section 14b

Forms; obligation of lawyers, notaries and public authorities to use electronic documents

(1) Petitions and declarations to be submitted in writing to a court must be transmitted as electronic documents by a lawyer, a notary, a public authority or a legal person under public law, including the cooperation groupings such persons may form by way of fulfilling their duties as governed by public law. If this is temporarily not possible for technical reasons, transmission under the general provisions of law remains admissible. Substantiation of such temporary impossibility must be provided with the substitute submission or immediately thereafter; electronic documents must be submitted subsequently upon request.

(2) As a general rule, other petitions and declarations submitted by a lawyer, notary, public authority or legal person under public law, including the cooperation groupings such persons may form by way of fulfilling their duties as governed by public law, must be submitted as electronic documents. If they are transmitted under the general provisions of law, electronic documents must be submitted subsequently upon request.

Section 15

Notifications; informal communication

(1) The participants are to be notified of documents the contents of which contain a hearing date or time limit or that cancel a time limit.

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

(3) If notification is not required, documents may be communicated informally to the participants.

Section 16

Time limits

(1) In the absence of any other provision, the time limit begins to run upon notification.

(2) Sections 222, 224 (2) and (3) and 225 of the Code of Civil Procedure apply accordingly to the time limits.

Section 17

Restoration of the status quo ante

- (1) If a person was prevented through no fault of their own from complying with a statutory time limit, he or she is to be granted restoration of the status quo ante upon a corresponding petition being filed.
- (2) Lack of fault is presumed if no instruction on available legal remedies was provided or if it was deficient.

Section 18

Application for restoration of the status quo ante

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

Section 19

Decision concerning restoration of the status quo ante

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

Section 20

Consolidation and separation of proceedings

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

Section 21

Suspension of proceedings

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

Section 22

Withdrawal of application; declaration of termination

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

Section 22a

Communications to family courts and custodianship courts

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

Division 2

Proceedings in the first instance

Section 23

Application for commencement of proceedings

- (1) As a rule, an application for the commencement of proceedings must be substantiated. As a rule, the application must contain supporting facts and evidence and must designate the persons that may be participants. In suitable cases, the application, as a rule, must also contain information on whether such filing was preceded by an attempt at mediation or another proceeding to reach an out-of-court settlement, as well as a statement concerning whether there are grounds that would preclude such a proceeding. As a rule, originals or copies of documents that are referred to must accompany the application. As a rule, the application must be signed by the applicant or a person with power of attorney.
- (2) As a rule, the court must transmit the application to the remaining participants.

Section 24

Proposal to commence proceedings

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

Section 25

Petitions and declarations filed for the record with the court registry

- (1) The participants may file petitions and declarations with the competent court in writing or for the record with the court registry insofar as representation by a lawyer is not required.
- (2) Petitions and declarations that may admissibly be filed or made before the records clerk of the court registry may be so filed or made for the record with the court registry of any local court.
- (3) The records clerk of the court registry may receive petitions and declarations under subsection (2) by means of image and sound transmission. In such a case, the records clerk of the court registry may be in a place other than the court registry while receiving the petitions and declarations. A recording of the image and sound transmission is not made.
- (4) The court registry is to transmit the written record without undue delay to the court that is the addressee of the petition or declaration. The effect of an action in the proceedings does not occur before the record has been received by the court.

Section 26

Inquiry ex officio

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

Section 27

Cooperation of participants

- (1) As a general rule, the participants must cooperate in the inquiry concerning the factual circumstances.
- (2) The participants are to submit complete and truthful statements concerning the facts in the matter.

Section 28

Course of proceedings

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

Section 29

Taking of evidence

- (1) The court takes the necessary evidence in a suitable manner. In this regard it is not bound to the statements of the participants.
- (2) The provisions of the Code of Civil Procedure as to the examination of persons subject to official secrecy obligations and the right to refuse to testify apply with the necessary modifications to the questioning of informants.
- (3) The court is to put the results of the taking of evidence on record.

Section 30

Formal taking of evidence

- (1) The court decides within the scope of its discretionary power whether to establish the facts relevant to the decision by way of the formal taking of evidence in accordance with the Code of Civil Procedure.
- (2) The formal taking of evidence is to occur when it has been so prescribed in this statute.
- (3) As a general rule, the formal taking of evidence concerning the accuracy of an assertion of fact must occur when the court intends to significantly base its decision on this fact and the correctness of the assertion is explicitly contested by a participant.
- (4) The participants are to be given the opportunity to submit comments on the results of the formal taking of evidence to the extent necessary for the clarification of the matter or for ensuring a fair hearing.
- (5) In suitable cases and insofar as sufficient capacity is available, the court may, upon application or ex officio, permit the examination of a witness or expert by means of image and sound transmission. The participants, witnesses and experts have the right to submit such an application. Section 128a (1), (5) and (6) of the Code of Civil Procedure (*Zivilprozessordnung*) applies accordingly. Decisions on the permission or refusal of examination by means of image and sound transmission are incontestable.

Section 31

Credible demonstration of assertions

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

Section 32

Court hearing

- (1) The court may discuss the matters with the participants at a court hearing. Sections 219 and 227 (1), (2), and (4) of the Code of Civil Procedure apply accordingly.
- (2) As a rule, there must be a reasonable time period between the summons and the court hearing.
- (3) In suitable cases, and insofar as sufficient capacity is available, the court, upon the application of a participant or ex officio, must, as a rule, permit the participation of one, several or all participants to discuss the matter by means of sound and image transmission. Section 128a (1), (5) and (6) of the Code of Civil Procedure applies accordingly. The reasons for refusal of an application to participate by means of image and sound transmission are to be given in brief. Decisions on the permission or refusal of discussion by means of image and sound transmission are incontestable

Section 33

Personal appearance of the participants

- (1) The court may order the personal appearance of a participant at a court hearing and hear him or her when this appears relevant for clarifying the factual circumstances. If more than one participant is to be heard in person at a proceeding, the hearing of a participant is to occur in the absence of the other participants when necessary for the protection of the participant to be heard or for any other reason. Participation in a court hearing by means of image and sound transmission in accordance with section 32 (3) is also deemed to be a personal appearance.
- (2) A participant with capacity to sue or be sued is to be summoned in person even if the participant has an authorised representative; the authorised representative is to be informed of the summons. As a general rule, the court must order service of the summons when it is uncertain whether the participant will appear.
- (3) If the properly summoned participant fails to appear at the court hearing without excuse, a disciplinary fine may be imposed on him or her through an order. Imposition of the disciplinary fine may occur more than once. In the event of repeated absences without excuse, presentation of the participant may be ordered. Should a sufficient excuse subsequently be provided and if the participant credibly demonstrates to the court that he or she bears no fault in the delay in providing the excuse, the orders under sentences 1 to 3 above are rescinded. The order by which a disciplinary measure was imposed is contestable by a complaint subject to a time limit upon application of sections 567 to 572 of the Code of Civil Procedure with the necessary modifications.
- (4) The participant is to be informed in the summons of the consequences of his or her failure to appear.

Section 34

In-person hearing

- (1) The court is to conduct an in-person hearing:
 1. when necessary to ensure a fair legal hearing for the participants, or
 2. when so required by the provisions of this or another statute.
- (2) The in-person hearing of a participant need not occur when there is concern of significant health disadvantages to the participant or when the participant is obviously not in a position to make his or her wishes known.

- (3) If the participant is absent without excuse from the court hearing, the proceeding may be concluded without hearing him or her in person. The participant is to be informed of the consequences of his or her failure to appear.
- (4) Within the scope of section (1) no. 1, the court may permit the personal hearing of a party by means of image and sound transmission. Section 32 (3) applies accordingly.

Section 35

Coercive measures

- (1) When there is a need for enforcement of an obligation to perform or refrain from performing an action based upon a court order, the court may impose a coercive fine on the person obliged by way of an order unless a statutory provision provides otherwise. In the event that this cannot be recovered, the court may order coercive detention. If an order imposing a coercive fine is likely to be unsuccessful, the court must, as a rule, order coercive detention.
- (2) The court decision ordering the obligation to perform or refrain from performing an action is to provide information on the consequences of contravening the decision.
- (3) A single coercive fine may not exceed the sum of 25,000 euros. Together with the establishment of the coercive measure, the costs of this procedure are also to be imposed upon the person obliged. Section 802g (1) sentence 2 and (2), section 802h and section 802j (1) of the Code of Civil Procedure apply to the enforcement of detention accordingly.
- (4) If an obligation to surrender or produce an object or to perform a reasonable action is to be enforced, the court, in addition to or instead of a measure under subsections (1) or (2) above, may order the measures provided for in sections 883, 886 and 887 of the Code of Civil Procedure unless a statutory provision provides otherwise. Sections 891 and 892 of the Code of Civil Procedure apply accordingly.
- (5) The order by way of which a coercive measure is ordered is contestable by a complaint subject to a time limit in analogous application of sections 567 to 572 of the Code of Civil Procedure.

Section 36

Settlement

- (1) The participants may conclude a settlement to the extent they have the right of disposition over the object of the proceeding. As a rule, the court must facilitate an amicable settlement between the participants, except in matters concerning protection from violence.
- (2) If a settlement is reached during a court hearing, it is to be set forth in writing in the court record. The provisions of the Code of Civil Procedure in respect of the written record of a settlement apply accordingly.
- (3) An admissible settlement under subsection (1) sentence 1 may also be concluded in writing in accordance with section 278 (6) of the Code of Civil Procedure.
- (4) Errors in the written record or in the order concerning the settlement may be corrected in accordance with section 164 of the Code of Civil Procedure.
- (5) The court may refer the participants for an attempt at an out-of-court resolution to a conciliation judge delegated for this purpose who is not authorised to take a decision in the matter (conciliation judge). The conciliation judge may avail himself or herself of all methods of conflict resolution including mediation. Subsections (1) to (4) apply accordingly to the proceedings before the conciliation judge.

Section 36a

Mediation, out-of-court conflict resolution

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

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

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

Section 37 **Basis of decision**

(1) The court decides at its freely-formed conviction derived from the total contents of the proceedings.

(2) The court may base a decision that adversely affects the rights of a participant only on the facts and evidence on which this participant was able to comment.

Division 3 **Order**

Section 38 **Decision by way of an order**

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

(2) The order contains:

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

(3) The order must state the reasons on which it is based. It is to be signed. The date upon which the order is transmitted to the court registry or upon which the operative provisions of the order were notified by a reading (*Erläss*) is to be noted on the order.

(4) No grounds for the decision need to be stated to the extent that:

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

(5) Subsection (4) is not applicable:

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

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

Section 39 **Instructions on legal remedies**

Every order is to contain instructions concerning the available appellate remedies, protest, objection, or reminder as a legal remedy, as well as the court to which such legal remedies are to be directed, its seat, and the form and time limits to be adhered to. Instructions concerning a leap-frog complaint on points of law are not required.

Section 40 **Effectiveness**

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

Section 41 **Notification of the order**

- (1) The order is notified to the participants as a certified copy; duplicates are issued only upon application and only in paper format. An order that is contestable is to be served upon those participants whose stated position it contravenes.
- (2) The order may also be notified to those present by a reading of the operative provisions. This is to be noted in the file. In such a case, the grounds for the decision are to be subsequently given without delay. In cases under sentence 1, the order is also to be notified in writing.
- (3) An order, the object of which is the approval of a legal transaction, is also to be notified to the individual for whom the legal transaction was approved.

Section 42 **Correction of order**

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

Section 43 **Amendment of order**

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

Section 44 **Redress upon violation of a participant's right to a fair legal hearing**

(1) Upon the complaint of a participant negatively impacted by a decision, the proceedings are to be continued, when:

1. there is no available appeal or redress as to the decision, nor is there another option for amending the decision, and
2. the court violated the right of this participant to a fair legal hearing in a manner significant to the decision.

There is to be no complaint against a decision preceding the final decision.

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

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

(4) If the complaint is not lodged in the statutory form or within the time limit, it is to be overruled as inadmissible. If the complaint has no basis, the court dismisses it. The decision is to be made by an order that is not contestable. As a rule, the order must provide a brief statement of the grounds.

(5) If the complaint is well-founded, the court remedies it by continuing the proceedings insofar as required on the basis of the complaint.

Section 45

Formal final and binding effect

An order does not become final and binding prior to the expiration of the time limit for lodging an admissible appeal or an admissible protest, objection, or reminder as a legal remedy. The final and binding effect is suspended upon the lodging in due time of an appeal, protest, objection, or reminder as a legal remedy.

Section 46

Certificate of final and binding effect

A certificate as to the final and binding effect of an order is to be issued based upon the file of the proceedings by the court registry of the court of first instance. During the time that the matter is pending before a higher court, the court registry of such court issues the certificate. In marital and parentage matters, the participants are issued ex officio a duplicate of the certificate of the final and binding effect without the grounds. A decision by the court registry is contestable by way of reminder as a legal remedy upon application with the necessary modifications of section 573 of the Code of Civil Procedure.

Section 47

Continuing validity of legal transactions

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

Section 48

Modification and reopening of proceedings

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

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

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

Division 4 Interlocutory orders

Section 49 Interlocutory orders

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

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

Section 50 Jurisdiction

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

(2) In particularly urgent cases, the local court in the district of which the need for court action becomes known or in which the person or object related to the interlocutory order is located may also decide. It is to relinquish the matter ex officio to the court with jurisdiction under subsection (1) without delay.

Section 51 Proceedings

(1) An interlocutory order is only issued upon the filing of an application when a corresponding main action may only be initiated by an application. The applicant is to state the reasons for the application and credibly demonstrate the prerequisites for the interlocutory order.

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

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

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

Section 52 Commencement of the main action

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

(2) In proceedings that are only initiated upon application, the court, upon application, must order that the participant who obtained the interlocutory order apply to the court within a certain time limit for the commencement of the main action or file an application for the

approval of legal aid for the main action. The time limit may not exceed three months. If the participant does not comply with this order, the interlocutory order is to be rescinded.

Section 53

Enforcement

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

Section 54

Revocation or modification of a decision

- (1) The court may revoke or modify the decision in an interlocutory order matter. Revocation or modification only takes place upon application if the corresponding main action may only be initiated upon application. This does not apply if the decision was issued without conducting a prior hearing necessary in accordance with the statute.
- (2) If the decision in a family matter is made without an oral hearing, the matter is to be decided a second time based upon an oral hearing upon application.
- (3) The court that issued the interlocutory order has jurisdiction. If the court previously relinquished or referred the matter to another court, that court has jurisdiction.
- (4) While an interlocutory order matter is pending before the appellate court, revocation or modification of the contested decision by the court of first instance is inadmissible.

Section 55

Suspension of enforcement

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

Section 56

Expiration

- (1) Unless the court has determined an earlier point in time, the interlocutory order expires upon the effectiveness of a different provision. If this is the final decision in a family dispute matter, its final and binding effect is determinative, insofar as it does not become effective at a later point in time.
- (2) In cases that are only initiated upon application, the interlocutory order also expires when:
 1. the application in the main action is withdrawn;
 2. the application in the main action has been rejected with final and binding effect;
 3. the main action is declared to be terminated by mutual agreement; or
 4. the main action has been terminated in some other way.
- (3) Upon application, the court that made the most recent decision in the interlocutory order matter in the first instance is to pronounce by order the effect set forth in subsections (1) and (2). A complaint may be filed against the order.

Section 57

Appellate remedies

Decisions in proceedings on interlocutory orders in family matters are not contestable. This does not apply in proceedings under section 151 nos. 6 and 7, nor does it apply when the court of first instance reached a decision based upon an oral discussion:

1. concerning parental custody for a child;
2. concerning surrender of a child to the other parent;
3. concerning an application for a child to remain with a curator or a person to whom he or she relates closely;
4. concerning an application under sections 1 and 2 of the Act on Protection against Violence (*Gewaltschutzgesetz*); or
5. in a matter concerning the marital home regarding an application for allocation of the home.

Division 5 Appellate remedies

Subdivision 1 Complaint

Section 58 Availability of complaint as a remedy

- (1) A complaint may be lodged against final decisions in the first instance by the local courts and regional courts in matters under this statute to the extent no statute provides otherwise.
- (2) The decisions reached prior to the final decision that may not be contested independently are also subject to evaluation by the court handling the complaint.

Section 59 Persons entitled to file a complaint

- (1) Any person whose rights are adversely affected by an order may file a complaint.
- (2) When an order may only be issued upon the filing of an application and the application has been dismissed, a complaint is only available to the applicant.
- (3) The right of public authorities to file a complaint is governed by the special provisions in this or other statutes.

Section 60 Rights of minors to a complaint

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

Section 61 Value of complaint; leave to file a complaint

- (1) In pecuniary matters, a complaint is admissible only when the value of the object of the complaint exceeds 600 euros.
- (2) If the object of the complaint does not exceed the value set forth in subsection (1), the appeal is admissible when the court of first instance has admitted the complaint.
- (3) The court of first instance admits the complaint when:
 1. the legal matter is of fundamental significance or the further development of the law or the interest in ensuring uniform adjudication requires a decision by the court hearing the complaint, and
 2. the participant is not encumbered with a sum greater than 600 euros by the order.

The court hearing the complaint is bound by the admission of the complaint.

Section 62

Availability of complaint as a remedy after conclusion of the main action

- (1) If the contested decision was concluded in the main action, the court hearing the complaint declares upon application that the court's decision in the first instance violated the complainant's rights when the complainant has a legitimate interest in this determination.
- (2) In general, a legitimate interest exists when:

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

(3) In custody pending deportation proceedings, detention pending removal proceedings and detention pending exit from the federal territory proceedings, a legitimate interest also exists when the conditions of section 70 (2) sentence 1 have been met.

(4) If the guardian ad litem for minors (*Verfahrensbeistand*) or the guardian ad litem (*Verfahrenspfleger*) filed the complaint, subsections (1) and (2) apply accordingly.

Section 63

Time limit for complaint

- (1) Insofar as no other statutory time limit has been set, the time limit for filing a complaint is one month.
- (2) The complaint is to be filed within two weeks when it is directed toward one of the following types of decisions:

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

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

Section 64

Filing of the complaint

(1) The complaint is to be filed with the court that issued the contested order. Applications for the granting of legal aid as to an intended complaint are to be filed with the court that issued the contested order.

(2) The complaint is filed by the submission of a written complaint signed by the complainant or his or her authorised representative or by filing for the record with the court registry. The filing of a complaint for the record of the court registry is excluded in cases involving marital matters and family disputes. The complaint must designate the contested order and must contain a statement that a complaint is lodged against such order. Section 25 (2) to (4) applies accordingly.

(3) The court hearing the complaint may issue an interlocutory order prior to a decision; it may in particular order that enforcement of the contested order is suspended.

Section 65

Grounds for complaint

- (1) As a general rule, the grounds for filing the complaint must be provided.
- (2) The court hearing the complaint or the presiding judge may set a time limit by which the complainant must submit the grounds for the complaint.
- (3) The complaint may be supported by new facts and evidence.
- (4) The complaint may not be based on the fact that the court of first instance was wrong in assuming that it had jurisdiction.

Section 66

Joined complaint

A participant may join the complaint even when he or she waived the filing of a complaint or when the deadline for filing a complaint has lapsed; joining the complaint takes place by the submission of notice of joining the complaint with the court hearing the complaint. The joining ceases to have effect when the complaint is withdrawn or rejected as inadmissible.

Section 67

Waiver of complaint; withdrawal of complaint

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

Section 68

Course of proceedings on complaint

- (1) If the court that issued the contested order deems the complaint to be well-founded, it is to redress the matter; otherwise it is to submit the complaint to the court hearing the complaint without delay. The court is not authorised to provide redress when the complaint at issue relates to a final decision in a family matter.
- (2) The court hearing the complaint is to examine whether the complaint is available and whether it has been submitted in compliance with the statutory form and time limit. If there is a deficiency with respect to these requirements, the complaint is to be overruled as inadmissible.
- (3) The complaint proceedings in all other cases are to comport with the provisions governing the proceedings in the first instance. The court hearing the complaint may refrain from conducting a court hearing, oral hearing, or individual procedural actions when these have previously been conducted in the first instance and no additional knowledge is to be expected from repeating them.
- (4) The court hearing the complaint may transfer the matter by way of a court order to one of its members for him or her to decide as a judge sitting alone; section 526 of the Code of Civil Procedure applies accordingly with the proviso that transfer to a probationary judge is excluded. Furthermore, the court hearing the complaint may transfer the in-person hearing of the child by way of a court order to one of its members as a delegated judge if it considers this to be appropriate in the best interests of the child or if the child is obviously not in a position to make his or her preferences and desires known. The same applies to obtaining a personal impression of the child.
- (5) Subsection (3) sentence 2 and subsection (4) sentence 1 do not apply if the complaint concerns proceedings of the main action in which one of the following judgments is under consideration:
 1. part or complete removal of care for the person of the child in accordance with sections 1666 and 1666a of the Civil Code,
 2. exclusion of the right of contact in accordance with section 1684 of the Civil Code or
 3. order for the child to remain where he or she currently is in accordance with section 1632 (4) or section 1682 of the Civil Code.

Section 69

Decision on complaint

- (1) The court hearing the complaint is to decide the matter itself. It may only refer the matter back to the court of first instance upon overruling a contested order and the proceedings when that court had not yet reached a decision in the matter. The same applies insofar as the proceedings contained a significant error and a more intensive or extensive gathering of evidence would be necessary for a decision and a participant applies for referral back to the court of first instance. The court of first instance is to base its decision on the legal assessment on which the court hearing the complaint based its decision to overrule.
- (2) Reasons are to be stated for the order by the court hearing the complaint.
- (3) In all other cases, the provisions concerning the order in the first instance apply accordingly to the decision on the complaint.

Subdivision 2

Complaint on points of law

Section 70

Availability of complaint on points of law as a remedy

- (1) A complaint on points of law by a participant is available as a remedy when the court hearing the complaint or the higher regional court in the first instance admitted it in the order.
- (2) A complaint on points of law is to be admitted when

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

The court hearing the complaint on points of law is bound to the admission.

- (3) A complaint on points of law against an order by the court hearing the complaint is available without admission by the court in

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

In cases under sentence 1 nos. 2 and 3, this only applies when the complaint on points of law is directed against the order imposing the placement measure or the deprivation of liberty. In cases under sentence 1 no. 3, in derogation from sentence 2, a complaint on points of law is also available without admission by the court if it is directed against an order rejecting or denying a deprivation of liberty in proceedings set forth in section 417 (2) sentence 2 no. 5.

- (4) There is to be no complaint on points of law against orders in proceedings concerning the order, modification or revocation of an interlocutory order or an arrest.

Section 71

Time limit and formal requirements of the complaint on points of law

- (1) The complaint on points of law is to be filed within a period of one month following the written notification of the order by submitting a notice regarding the complaint on points of law to the court hearing the complaint on points of law. The notice regarding the complaint on points of law must include:

1. the designation of the order against which the complaint on points of law is directed, and
2. the declaration that a complaint on points of law was filed against this order.

The notice regarding the complaint on points of law is to be signed. As a rule, a duplicate or certified copy of the contested order must be enclosed with the notice regarding the complaint on points of law.

(2) Unless the notice regarding the complaint on points of law sets out its reasons, the reasons for filing the complaint on points of law are to be stated within a period of one month. The period begins to run upon the written notification of the contested order. Section 551 (2) sentences 5 and 6 of the Code of Civil Procedure applies accordingly.

(3) The grounds for the complaint on points of law must include:

1. the declaration as to the extent to which the order is contested and its reversal is petitioned (petitions under the complaint on points of law);
2. the grounds for the complaint on points of law, these being
 - a) the specific description of the circumstances from which the violation of law is apparent;
 - b) insofar as the complaint on points of law is based on the allegation that the law has been violated with reference to the proceedings, the designation of the facts that reflect this irregularity.

(4) The complaint on points of law and the written grounds are to be notified to the other participants.

Section 72

Grounds for filing the complaint on points of law

(1) A complaint on points of law may only be lodged on the grounds that the contested decision is based on a violation of the law. There is a violation of the law when a legal standard has not been applied or has been applied incorrectly.

(2) The complaint on points of law may not be based on the grounds that the court of first instance was wrong in assuming that it had jurisdiction.

(3) Sections 547, 556, and 560 of the Code of Civil Procedure apply accordingly.

Section 73

Cross appeal under a complaint on points of law

A participant may join the complaint on points of law prior to the expiry of one month following the notification of the brief setting out the reasoning for the complaint on points of law by submitting the notice of cross appeal under a complaint on points of law to the court hearing the complaint on points of law, and may do so also in those cases in which he or she has waived a complaint on points of law, in which the period within which such a complaint on points of law must be filed has lapsed or in which no leave has been granted to file a complaint on points of law. The reasons for filing a cross appeal under a complaint on points of law are to be stated in the notice of cross appeal and the latter is to be signed. The joinder ceases to be effective where the complaint on points of law is retracted, overruled as inadmissible or dismissed under section 74a (1).

Section 74

Decision on the complaint on points of law

(1) The court hearing the complaint on points of law is to review whether the complaint on points of law as such is an available remedy and whether or not it has been filed in keeping with statutory requirements as to form and time and whether reasoning was provided. Should one of these requirements not have been met, the complaint on points of law is to be overruled as inadmissible.

(2) In cases where the reasoning provided for the contested decision indicates that the law has been violated, but the decision itself appears to be correct based on other grounds, leave to file the complaint on points of law is to be denied.

(3) Solely the petitions filed by the participants are subject to review by the court hearing the complaint on points of law. The court hearing the complaint on points of law is not bound to the grounds being asserted in the complaint on points of law. The decision contested in the proceedings may only be reviewed for irregularities that are not to be taken into account ex officio if such irregularities have been objected to under section 71 (3) and section 73 sentence 2. Sections 559 and 564 of the Code of Civil Procedure apply accordingly.

(4) Unless otherwise provided for in the present subdivision, the rules applying to the proceedings in the first instance are to be applied with the necessary modifications to the further proceedings.

(5) To the extent the complaint on points of law is well-founded, the contested order is to be reversed.

(6) The court hearing the complaint on points of law decides on the matter itself when the matter is at the stage for a final decision. Otherwise, upon suspending the contested order and the proceedings, it refers the matter back to the court hearing the complaint on points of law for further proceedings and a renewed decision or, if there are exceptional reasons to do so, it refers the matter back to the court of first instance. The referral may be made to a different body of the court than that which reached the contested decision. The court to which the matter is referred back is to base its decision on the legal assessment on which the reversal of the judgment was based.

(7) Such reasoning may be foregone where this would not be suitable for contributing to clarification of legal questions of fundamental significance or for the further development of the law or the interest in ensuring uniform adjudication.

Section 74a

Court order denying leave to lodge a complaint on points of law

(1) The court hearing the complaint on points of law dismisses by unanimous order the complaint on points of law admitted by the court hearing the complaint without a hearing or discussion meeting at a court hearing if it is convinced that the prerequisites for admitting the complaint on points of law have not been met and the complaint on points of law has no chance of success.

(2) The court hearing the complaint on points of law or the presiding judge is to inform the participants in advance of the intention to dismiss the complaint on points of law, stating the grounds therefor and setting a specific time limit within which the appellant may provide comments.

(3) Reasons are to be stated for the order under subsection (1) to the extent the reasons for the dismissal have not already been set forth in the information provided in accordance with subsection (2).

Section 75

Leap-frog complaint on points of law

(1) Upon application, there is to be a direct complaint on points of law bypassing the complaint instance (leap-frog complaint on points of law) against orders issued in the first instance which are subject to complaint without admission by the court when:

1. the participants agree to a direct complaint on points of law bypassing the complaint instance, and
2. the court hearing the complaint on points of law admits such leap-frog complaint on points of law.

An application requesting the admission of a leap-frog complaint on points of law and a statement of consent are deemed to be waivers of a complaint.

(2) The leap-frog complaint on points of law is to be submitted within the time limit set in section 63. As to the remainder of the proceedings, section 566 (2) to (8) of the Code of Civil Procedure apply accordingly.

Division 6
Legal aid

Section 76
Prerequisites

- (1) The provisions of the Code of Civil Procedure concerning legal aid apply accordingly to the approval of assistance with court costs insofar as none of the following provisions provides otherwise.
- (2) An order issued in the proceedings on assistance with court costs is contestable by a complaint subject to a time limit upon application with the necessary modifications of sections 567 to 572 and section 127 (2) to (4) of the Code of Civil Procedure.

Section 77
Approval

- (1) Prior to an approval of assistance with court costs, the court may grant the other participants the opportunity to comment. In proceedings initiated by the filing of an application, the opposing participant is to be given the opportunity to comment on whether he or she considers the prerequisites to have been fulfilled for the approval of assistance with court costs, unless this is deemed inappropriate for special reasons.
- (2) The approval of assistance with court costs for enforcement concerning movable property encompasses all enforcement actions in the district of the enforcement court including the proceedings for the submission of information on financial status and assets and the making of a statutory declaration in lieu of an oath.

Section 78
Assignment of a lawyer

- (1) If representation by a lawyer is compulsory, the participant is assigned a lawyer of his or her choice who is willing to represent him or her.
- (2) If representation by a lawyer is not compulsory, upon an application therefor, the participant is assigned a lawyer of his or her choice who is willing to represent him or her when representation by a lawyer appears necessary based upon the complexity of the factual and legal circumstances.
- (3) A lawyer who is not established in the judicial district of the court handling the proceedings may only be assigned when no further costs would thereby accrue.
- (4) If particular circumstances so require, upon application of the participant, a lawyer of his or her choice who is willing to represent him or her may be assigned to appear at a court hearing for the taking of evidence before the examining judge or for facilitating communications with the authorised representative in the proceedings.
- (5) If the participant does not find a lawyer willing to represent him or her, the presiding judge assigns him or her a lawyer upon application.

Section 79
(repealed)

Division 7
Costs

Section 80
Scope of the obligation to bear costs

Costs are the court costs (fees and expenditures) and those expenses of the participants necessary for the implementation of the proceedings. Section 91 (1) sentence 2 of the Code of Civil Procedure applies accordingly.

Section 81
Principle of the obligation to bear costs

(1) The court may impose the costs of the proceedings at its equitably exercised discretion upon the participants in whole or in part. In addition, it may refrain from imposing costs. In family matters, a decision is always to be taken on costs.

(2) The court, as a general rule, must impose the costs of the proceedings upon one participant in whole or in part when:

1. it was the gross negligence of the participant that gave rise to the court case;
2. the application of the participant had no prospect of success from the outset and the participant must have recognised this;
3. the participant culpably submitted false information concerning a significant matter;
4. the participant significantly delayed the proceedings by culpably violating his or her duty to cooperate;
5. the participant did not comply with a judicial order to participate in a free informational interview concerning mediation or another option for an out-of-court resolution of the dispute under section 156 (1) sentence 3 or a court order to participate in counselling under section 156 (1) sentence 4, insofar as the participant does not have a sufficient excuse therefor.

(3) A minor participant may not have costs of proceedings imposed on him or her in parent and child matters concerning him or her.

(4) Costs of the proceedings may only be imposed upon a third party insofar as the court's action was prompted by him or her and he or she was grossly negligent.

(5) Provisions of federal law that regulate the obligation to bear costs in a manner different from the above provisions remain unaffected.

Section 82

Time of decision on costs

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

Section 83

Obligation to bear costs upon settlement, conclusion and withdrawal

(1) If the action is concluded by a settlement and the participants did not reach an agreement on the costs, the court costs are to be imposed equally on the participants. Each participant bears his or her own out-of-court costs.

(2) If the action is otherwise concluded or if the application is withdrawn, section 81 applies accordingly.

Section 84

Costs of appellate remedies

As a rule, the court must impose the costs of an unsuccessful appellate remedy on the participant that lodged the remedy.

Section 85

Assessment of costs

Sections 103 to 107 of the Code of Civil Procedure concerning the assessment of costs to be reimbursed apply accordingly.

Division 8

Enforcement

Subdivision 1

General provisions

Section 86

Enforcement instruments

(1) Enforcement takes place based upon:

1. judicial orders;
2. judicially approved settlements (section 156 (2));
3. further enforcement instruments within the meaning of section 794 of the Code of Civil Procedure insofar as the participants have the right of disposal over the object of the proceedings.

(2) Orders are enforceable upon becoming effective.

(3) Enforcement instruments only require an enforcement clause when the enforcement is not carried out by the court that issued the instrument.

Section 87

Proceedings; complaint

(1) In matters that may be commenced by the court ex officio, the court is to act ex officio and determine the enforcement measures to be undertaken in the event of non-compliance. The person entitled may apply for enforcement action to be taken; if the court does not allow the application, it is to set forth its decision in an order.

(2) Enforcement may only start when the order previously has been served or is concurrently served.

(3) The court bailiff is authorised to make a request for information and assistance in accordance with section 757a of the Code of Civil Procedure. Section 758 (1) and (2) and sections 759 to 763 of the Code of Civil Procedure apply accordingly.

(4) An order issued in the enforcement action is contestable by a complaint subject to a time limit upon application with the necessary modifications of sections 567 to 572 of the Code of Civil Procedure.

(5) Sections 80 to 82 and section 84 apply accordingly to the decision on costs.

Subdivision 2

Enforcement of decisions concerning the surrender of persons and rules governing contact

Section 88

Principles

(1) Enforcement is to be undertaken by the court in the district of which the person has his or her habitual residence at the time of the commencement of the enforcement.

(2) The Youth Welfare Office provides support to the court in suitable cases.

(3) The proceedings have priority and are to be conducted in an expedited manner.

Section 89

Administrative means of coercion

(1) In cases of non-compliance with an enforcement instrument requiring the surrender of a person and rules governing contact, the court may impose an administrative fine on the person obliged and, in the event this cannot be recovered, administrative detention. If an order for an administrative fine is likely to be unsuccessful, the court may order administrative detention. Orders are to be delivered by way of an order.

(2) The order issued to order the surrender of persons or the rules governing contact must refer to the consequences of non-compliance with the enforcement instrument.

(3) The amount of a single administrative fine may not exceed 25,000 euros. As to the enforcement of administrative detention, section 802g (1) sentence 2 and (2) and sections 802h and 802j (1) of the Code of Civil Procedure apply accordingly.

(4) Coercive measures may not be established when the person obliged sets forth grounds demonstrating that that he or she bears no responsibility for the non-compliance. If grounds

are subsequently presented justifying the failure to comply, the establishment of administrative means of coercion is to be revoked.

Section 90 **Use of direct coercion**

(1) The court may order enforcement through direct coercion by way of a specific order, when:

1. the establishment of administrative means of coercion has been unsuccessful;
2. the establishment of administrative means of coercion is likely to be unsuccessful;
3. immediate enforcement of the decision is essential.

(2) The use of direct coercion against a child is not permitted when the child is to be surrendered for the purpose of exercising right of contact. In all other cases, direct coercion against a child is only permitted when justified in consideration of the best interests of the child and implementation of the obligation is not possible through less serious measures.

Section 91 **Judicial search warrant**

(1) The residence of the person obliged may be searched without his or her agreement only on the basis of a judicial search warrant. The foregoing does not apply when the issuance of the order would jeopardise the success of the search.

(2) Subsection (1) does not apply to the enforcement of an arrest warrant under section 94 in conjunction with section 802g of the Code of Civil Procedure.

(3) If the person obliged agrees to the search or if an order has been issued against him or her under subsection (1) sentence 1 or is unnecessary under subsection (1) sentence 2, persons sharing in the custody of the obliged person's residence must tolerate the search. Undue hardship for persons sharing in the custody of the residence must be avoided.

(4) The warrant under subsection (1) must be presented at the time of the enforcement.

Section 92 **Enforcement proceedings**

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

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

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

Section 93 **Discontinuation of enforcement**

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

1. an application has been made for return to the status quo ante;
2. an application has been made for reopening the proceedings;
3. a complaint has been filed against a decision;
4. an application has been made for modification of a decision;

5. an application has been made for the implementation of conciliation proceedings (section 165).

At the complaint instance, a decision concerning temporary discontinuance of enforcement is to be made in advance. The court order is incontestable.

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

Section 94

Statutory declaration in lieu of an oath

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

Subdivision 3

Enforcement under the Code of Civil Procedure

Section 95

Application of the Code of Civil Procedure

(1) To the extent there is no provision to the contrary in the previous subdivision, the provisions of the Code of Civil Procedure in respect of compulsory enforcement apply with the necessary modifications to enforcement of:

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

(2) Rather than a judgment, there is to be an order under the provisions of this Act.

(3) If the person obliged to pay a monetary claim credibly demonstrates that the enforcement will cause him or her an irreparable disadvantage, upon his or her application the court must preclude the enforcement in the decision prior to it becoming final and binding. In cases under section 707 (1) and section 719 (1) of the Code of Civil Procedure, enforcement may only be discontinued upon fulfilment of the same prerequisite.

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

Section 96

Enforcement in proceedings under the Act on Protection against Violence and in matters concerning the marital home

(1) If the obliged person acts in contravention of an order under section 1 of the Act on Protection against Violence to refrain from performing an action, the entitled person may make use of a court bailiff to eliminate a continuing violation. The court bailiff proceeds in accordance with section 758 (3) and section 759 of the Code of Civil Procedure; he or she may make a request for information and assistance in accordance with section 757a of the Code of Civil Procedure. In addition, sections 890 and 891 of the Code of Civil Procedure remain applicable.

(2) In cases of an interlocutory order in matters concerning protection against violence, insofar as the object of the proceedings relates to arrangements concerning matters

concerning the marital home, and in matters concerning the marital home, repeated instructions may be issued concerning putting into possession within the meaning of section 885 (1) of the Code of Civil Procedure during the period of validity. Renewed service on the obliged person is not required.

Section 96a

Enforcement in matters relating to parentage

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

(2) Should a person refuse to have testing performed in repeated instances, without such refusal being justified, measures of direct coercion of the person concerned may also be taken, in particular by ordering the forcible production of the person concerned for testing.

Division 9

Proceedings with transnational elements

Subdivision 1

Relationship to agreements under international law and legal acts of the European Union

Section 97

Priority and integrity

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

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

Subdivision 2

International jurisdiction

Section 98

Marital matters; interconnection of divorce and ancillary proceedings

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

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

(2) For proceedings to determine the invalidity of a marriage under Article 13 (3) no. 1 of the Introductory Act to the Civil Code (*Einführungsgesetz zum Bürgerlichen Gesetzbuch*), German courts also have jurisdiction if a person who was not yet 16 years of age upon the conclusion of the marriage submits the application and one of the two persons involved has his or her habitual residence in Germany. For proceedings for the annulment of the marriage under Article 13 (3) no. 2 of the Introductory Act to the Civil Code, German courts also have jurisdiction if the spouse, who at the time of the marriage had reached the age of 16 but not 18, has his or her place of residence in Germany.

(3) In cases of the interconnection of divorce and ancillary proceedings, the jurisdiction of German courts under subsection (1) extends to such ancillary proceedings.

Section 99
Parent and child matters

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

1. is German or
2. has his or her habitual residence in Germany.

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

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

(3) If both German courts and the courts of a foreign state have jurisdiction with respect to the order of guardianship and if a guardianship exists within Germany, the court before which the guardianship proceeding is pending may relinquish the matter to the state whose courts would have jurisdiction over a guardianship order when this is in the interests of the ward, the guardian states his or her agreement, and the other state states its willingness to assume the guardianship. If the guardian, or, in cases where two or more persons have joint guardianship, one of the guardians, agrees, then instead of the court where the guardianship is pending, a decision is to be made by the court of a higher instance in the proceedings.

The order is incontestable.

(4) Subsections (2) and (3) apply accordingly to proceedings under section 151 nos. 5 and 6.

Section 100
Matters relating to parentage

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

1. is German or
2. has his or her habitual residence in Germany.

Section 101
Matters relating to adoption

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

1. is German or
2. has his or her habitual residence in Germany.

Section 102
Matters relating to the equalisation of pension rights

German courts have jurisdiction when:

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

Section 103
Matters concerning life partnerships

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

1. a life partner is or was German at the time of the establishment of the life partnership,
 2. the habitual residence of one of the life partners is in Germany, or
 3. the life partnership was established before a competent German public body.
- (2) In cases of the interconnection of the dissolution of life partnerships and ancillary proceedings, the jurisdiction of German courts under subsection (1) extends to such proceedings.
- (3) Sections 99, 101, 102 and 105 apply accordingly.

Section 104

Matters concerning custodianship and placement; curatorship for adults

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

1. is German or
2. his or her habitual residence is in Germany.

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

(2) Section 99 (2) and (3) applies accordingly.

(3) In cases of proceedings under section 312 no. 4, subsections (1) and (2) are not applicable.

Section 105

Other proceedings

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

Section 106

Non-exclusionary effect of jurisdiction

Jurisdiction as set forth in this subdivision is not exclusive.

Subdivision 3

Recognition and enforceability of foreign decisions

Section 107

Recognition of foreign judgments in marital matters

(1) Decisions annulling, terminating, or dissolving a marriage, or declaring a legal separation, or establishing the existence or non-existence of a marriage between the participants in a foreign state are only recognised when the *Land* department of justice has established that the prerequisites for recognition are fulfilled. If a court or a public authority of the state of which both spouses were nationals at the time reached a decision, recognition is not dependent upon such an establishment by the *Land* department of justice.

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

(3) The *Land* governments may transfer the authority of the *Land* department of justice in accordance with these provisions to one or more of the presidents of the higher regional courts by way of statutory instrument. The *Land* governments may transfer the power in accordance with sentence 1 by way of statutory instrument to the *Land* departments of justice.

(4) A decision is to be made upon application. The application may be filed by a person who credibly demonstrates a legal interest in the recognition.

- (5) If the *Land* department of justice rejects the application, the applicant may apply for a decision from the higher regional court.
- (6) If the *Land* department of justice establishes that the prerequisites for recognition are fulfilled, a spouse who did not submit the application may apply for a decision from the higher regional court. The decision of the *Land* department of justice becomes effective upon notification to the applicant. However, the *Land* department of justice may determine in its decision that such decision only becomes effective after a certain period of time has passed.
- (7) Jurisdiction lies with a civil division of the higher regional court in the district of which the *Land* department of justice has its seat. An application for a judicial decision does not have suspensive effect. Divisions 4 and 5 and sections 14 (1) and (2) and 48 (2) apply accordingly.
- (8) The above provisions apply accordingly to an application that seeks to establish that the prerequisites for recognition of a decision are not fulfilled.
- (9) The establishment that the prerequisites for recognition are or are not fulfilled is binding upon courts and administrative authorities.
- (10) If on 1 November 1941, a German family register (marriage register) contained a notation based upon a foreign decision concerning an annulment, termination, dissolution, separation, or the existence or non-existence of a marriage, the notation is equivalent to recognition under these provisions.

Section 108

Recognition of other foreign decisions

- (1) With the exclusion of decisions in marital matters and decisions under section 1 (2) of the Act on the Effect of Adoptions according to Foreign Law (*Adoptionswirkungsgesetz*), foreign decisions are recognised without the requirement of a particular proceeding.
- (2) Participants who have a legal interest may apply for a decision on the recognition or non-recognition of a foreign decision that does not involve property law. Section 107 (9) applies accordingly. As to the recognition or non-recognition of the adoption of a child, however, the provisions of the Act on the Effect of Adoptions according to Foreign Law are applicable when the adopted person at the time of the adoption had not yet reached the age of 18.
- (3) Local jurisdiction for a decision on an application in accordance with subsection (2) sentence 1 lies with the court in the district of which at the time of the filing of the application:
1. the person opposing the application or the person that the decision on the application relates to has his or her usual residence or
 2. if there is no local jurisdiction under no. 1, interest in the establishment became known or the need for care arose.

This jurisdiction is exclusive.

Section 109

Impediments to recognition

- (1) Recognition of a foreign decision is excluded:
1. when the courts of the other state do not have jurisdiction under German law;
 2. when a participant who did not comment on the main action and claims that the document initiating the proceeding was not properly notified to him or her or that notification was not made in due time so that he or she could not properly exercise his or her rights;
 3. when the decision is incompatible with a decision issued in Germany or an earlier foreign decision to be recognised in Germany, or when the proceedings at the basis of such decision are incompatible with proceedings that were previously pending here;

4. when recognition of the decision would lead to a result that is obviously incompatible with significant principles of German law, in particular when recognition is incompatible with fundamental rights.

(2) Section 98 (1) no. 4 does not prevent recognition of a foreign decision in a marital matter when a spouse has his or her habitual residence in the state in which its courts decided. If a foreign decision in a marital matter is recognised by the states of which the spouses are nationals, section 98 does not prevent recognition of the decision.

(3) Section 103 does not prevent recognition of a foreign decision in a life partnership matter when the state that maintains the register recognises the decision.

(4) Recognition of a foreign decision relating to:

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

are also excluded when reciprocity is not guaranteed.

(5) An examination of the legitimacy of the foreign decision does not take place.

Section 110

Enforceability of foreign decisions

(1) A foreign decision is not enforceable when it cannot be recognised.

(2) Insofar as the substance of a foreign judgment relates to a duty specified in section 95

(1), enforceability is to be ruled upon in an order. The order must state the reasons on which it is based.

(3) The local court in the district that would have general local jurisdiction over the obligor has jurisdiction for the order under subsection (2) and otherwise the local court in which a lawsuit could be filed against the obligor under section 23 of the Code of Civil Procedure has jurisdiction. The order may only be issued after the decision of the foreign court becomes final and binding under the laws applicable to that court.

Book 2

Proceedings in family matters

Division 1

General provisions

Section 111

Family matters

Family matters are:

1. marital matters;
2. parent and child matters;
3. parentage matters;
4. adoption matters;
5. matters concerning the marital home and household objects;
6. matters concerning protection from violence;

7. matters concerning the equalisation of pension rights;
8. matters concerning maintenance;
9. matters concerning marital property law;
10. other family matters;
11. matters concerning life partnerships.

Section 112

Matters concerning family disputes

Matters concerning family disputes are the following family matters:

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

Section 113

Application of provisions of the Code of Civil Procedure

(1) In marital matters and family dispute matters, sections 2 to 22, 23 to 37, 40 to 45, 46 sentences 1 and 2, sections 47, 48 and 76 to 96 are not applicable. The general provisions of the Code of Civil Procedure and the provisions of the Code of Civil Procedure concerning proceedings before the regional courts apply accordingly.

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

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

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

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

are not applicable.

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

1. "procedure" or "legal dispute" the term "proceeding,"
2. "complaint/action" the term "application,"
3. "plaintiff" the term "applicant,"

4. “defendant” the term “respondent,”
 5. “party” the term “participant”
- are to be used.

Section 114

Representation by a lawyer; power of attorney

- (1) In marital matters and in ancillary proceedings, spouses before the family court and the higher regional court and participants in independent family dispute matters are to be represented by a lawyer.
- (2) Before the Federal Court of Justice, the participants are to be represented by a lawyer admitted to practice before the Federal Court of Justice.
- (3) Public authorities and legal entities under public law including cooperations formed by them for fulfilling their public duties may be represented by their own employees or by employees of other public authorities or legal entities under public law including cooperations formed by them for fulfilling their public duties. Before the Federal Court of Justice, they must be represented by authorised persons who are qualified to hold judicial office.
- (4) Representation by a lawyer is not required:
 1. in proceedings on interlocutory orders;
 2. in matters concerning maintenance as to participants who are represented by the Youth Welfare Office as adviser, guardian, or supplementary curator;
 3. for consent to a divorce, to withdrawal of an application for divorce and to withdrawal of a consent to divorce,
 4. for an application for severance of an ancillary proceeding from divorce proceedings;
 5. in proceedings on legal aid;
 6. in matters under section 78 (3) of the Code of Civil Procedure; and
 7. for an application for implementation of equalisation of pension rights under section 3 (3) of the Act on the Equalisation of Pension Rights (*Versorgungsausgleichgesetz*) and the declarations concerning option rights to be made under section 15 (1) and (3) as well as section 19 (2) no. 5 of the Act on the Equalisation of Pension Rights.
- (5) An authorised representative in marital matters must have a special power of attorney specific to the proceedings. The power of attorney for divorce matters is also applicable to the ancillary proceedings.

Section 115

Dismissal of means of challenge or defence

In matters concerning marriage and in family dispute matters, means of challenge or defence that were not submitted in due time are to be dismissed when, in the freely-formed conviction of the court their admission would delay the conclusion of the proceedings and the delay relates to gross negligence. In all other respects, means of challenge or defence in derogation from the general provisions are to be admitted.

Section 116

Decision by order; effectiveness

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

Section 117

Appellate remedies in marital and family dispute matters

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

Section 118

Reopening of proceedings

Sections 578 to 591 of the Code of Civil Procedure apply accordingly to the reopening of proceedings in marital matters and family dispute matters.

Section 119

Interlocutory order and seizure

- (1) In family dispute matters, the provisions of this statute concerning interlocutory orders are applicable. In family dispute matters under section 112 nos. 2 and 3, section 945 of the Code of Civil Procedure applies accordingly.
- (2) In family dispute matters, the court may order seizure. Sections 916 to 934 and sections 943 to 945 of the Code of Civil Procedure apply accordingly.

Section 120

Enforcement

- (1) Enforcement in marital matters and family dispute matters takes place in accordance with the provisions of the Code of Civil Procedure concerning compulsory enforcement.
- (2) Final decisions are enforceable upon taking effect. If the obliged person credibly demonstrates that enforcement will cause him or her an irreparable disadvantage, upon his or her application, the court is to dismiss or limit the enforcement in the final decision prior to it becoming final and binding. In cases under section 707 (1) and section 719 (1) of the Code of Civil Procedure, the enforcement is only to be discontinued or limited upon the fulfilment of the same prerequisites.
- (3) An obligation to enter into marriage and to establish marital life is not subject to enforcement.

Division 2

Proceedings in marital matters; proceedings in divorce matters and ancillary proceedings

Chapter 1

Proceedings in marital matters

Section 121

Marital matters

Marital matters are proceedings:

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

Section 122

Local jurisdiction

Exclusive jurisdiction lies with the courts in the following order of priority:

1. the court in the district of which one of the spouses has his or her habitual residence with all of the common minor children;
2. the court in the district of which one of the spouses has his or her habitual residence with some of the common minor children, to the extent that none of the common minor children have their habitual residence with the other spouse;
3. the court in the district of which the spouses together most recently had their habitual residence when one of the spouses had his or her habitual residence in the district of this court at the time of the commencement of the legal proceedings;
4. the court in the district of which the respondent has his or her habitual residence;
5. the court in the district of which the applicant has his or her habitual residence;
6. in cases under section 98 (2), the court in the district of which the spouse, who at the time of the marriage had reached the age of 16 but not 18, has his or her residence;
7. the Schöneberg Local Court in Berlin.

Section 123

Transfer of proceedings in cases of pendency of several marital matters

If marital matters that relate to the same marriage are pending at different courts in the first instance, when only one of the proceedings is a divorce matter, the remaining marital matters are to be relinquished ex officio to the court before which the divorce matter is pending. In all other cases, relinquishment is to be made to the court before which a marital matter was first pending. Section 281 (2) and (3) sentence 1 of the Code of Civil Procedure applies accordingly.

Section 124

Application

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

Section 125

Capacity to participate in proceedings

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

Section 126

Several marital matters; marital matters and other proceedings

- (1) Marital matters that relate to the same marriage may be joined together.

(2) Joinder of marital matters with other proceedings is inadmissible. Section 137 remains unaffected.

(3) If both annulment and divorce have been applied for in the same proceeding and if each application is well-founded, only annulment of the marriage is to be pronounced.

Section 127 **Limited judicial inquiry**

(1) The court is to conduct the necessary inquiries ex officio to establish the facts necessary for a decision.

(2) In proceedings on divorce or annulment of the marriage, facts not presented by the participants may only be considered when they are suitable for serving to uphold the marriage or when the applicant does not object to their consideration.

(3) In proceedings on divorce, the court may consider extraordinary circumstances under section 1568 of the Civil Code only when presented by the spouse who objects to the divorce.

Section 128 **Personal appearance of the spouses**

(1) As a rule, the court must order the personal appearance of the spouses and hear them. The hearing of a spouse takes place in the absence of the other spouse when this is necessary to protect the spouse being heard or for other reasons. The court may examine ex officio one or both of the spouses as participants even if the prerequisites of section 448 of the Code of Civil Procedure are not fulfilled.

(2) If there are common minor children of the marriage, the court is also to hear the spouses on the issues of parental custody and right of contact and is to inform them of options for counselling.

(3) If a spouse is unable to appear or if he or she lives such a distance from the seat of the court that it is unreasonable to require him or her to appear, the hearing or examination may take place before a requested judge.

(4) The measures to be taken against a spouse who fails to appear are the same as those taken against a witness who does not appear at the examination hearing; administrative detention is excluded.

Section 129 **Cooperation of administrative authorities or third persons**

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

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

Section 129a **Principles of priority and expediting proceedings**

The principles of priority and expediting proceedings (section 155 (1)) apply accordingly to proceedings on the annulment of a marriage based upon a spouse not being of marriageable age (*Eheunmündigkeit*). The hearing (section 128) is to take place at the latest one month after the commencement of the proceedings; section 155 (2) sentences 4 and 5 applies accordingly. The court is to hear the Youth Welfare Office at the hearing unless the spouses have reached the age of majority by then.

Section 130
Default of a participant

- (1) A default decision against the applicant is to be issued so that the application is considered to have been withdrawn.
(2) A default decision against the respondent, as well as a decision based on the record as it stands, are inadmissible.

Section 131
Death of a spouse

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

Section 132
Costs upon annulment of the marriage

- (1) If annulment of the marriage is pronounced, the costs of the proceedings are to be offset against one another. If this appears inequitable in light of the fact that upon entering into the marriage, one spouse alone had knowledge that the marriage could be annulled, or if one spouse through wilful deception or illegal threat against the other spouse or with knowledge thereof intended to enter into the marriage, the court at its discretion may otherwise apportion the costs.
(2) Subsection (1) is not applicable when the marriage is annulled based upon an application submitted by the competent administrative authority or by a third person in the case of a violation set forth in section 1306 of the Civil Code.
(3) Costs cannot be imposed upon a minor participant.

Subdivision 2
Proceedings in divorce matters and ancillary proceedings

Section 133
Contents of the written application

- (1) The written application must contain:
1. the name and date of birth of the common minor children and information on their habitual residence,
 2. a statement whether the spouses have reached agreement in respect of parental custody, contact and the obligation to provide maintenance for common minor children, as well as the statutory spousal maintenance obligation arising from the marriage, the legal status concerning the marital home and household property, and
 3. information concerning whether there are any other family matters pending in which both spouses are participants.
- (2) As a general rule, the marriage certificate and the birth certificates of the common minor children must accompany the written application.

Section 134
Approval of divorce and of withdrawal; revocation

- (1) Approval of the divorce or of withdrawal of the application for divorce may be filed for the record with the court registry or may be stated orally during the oral hearing for recording by the court.
(2) Approval of the divorce may be revoked up until the conclusion of the oral hearing at which a decision on the divorce is made. The revocation may be filed for the record with the registry or may be stated orally during the oral hearing for recording by the court.

Section 135
Out-of-court conflict resolution as to ancillary proceedings

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

Section 136

Suspension of proceeding

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

Section 137

Joinder of divorce proceedings and ancillary proceedings

- (1) Divorce and ancillary proceedings are to be argued and decided together (joinder).
 - (2) Ancillary proceedings are:
 1. proceedings on the equalisation of pension rights,
 2. maintenance and support proceedings, to the extent there is a maintenance obligation in respect of common children or statutory maintenance arising from the establishment of the marriage, with the exception of simplified proceedings concerning maintenance for minors,
 3. proceedings concerning the marital home and household objects, and
 4. proceedings concerning marital property law matters
- when a decision in the case of divorce is to be made and the family matter was filed at the latest two weeks prior to the oral hearing in the first instance in the divorce proceeding by one of the spouses. As to the equalisation of pension rights no application is required in cases under sections 6 to 19 and 28 of the Act on the Equalisation of Pension Rights.
- (3) A proceeding on parent and child matters is also an ancillary proceeding when the issues involve the transfer or revocation of parental custody, the right of contact, surrender of a common child of the spouses, or right of contact of one spouse with a child of the other spouse, when one spouse submits an application for joinder of the issues prior to the conclusion of the oral hearing in the first instance in the divorce matter, except when the court does not find joinder to be appropriate based upon the best interests of the child.
 - (4) In the case of a referral or relinquishment, proceedings that fulfil the prerequisites of subsections (2) or (3) are to be joined as ancillary proceedings before the court where the divorce proceeding is pending.
 - (5) Severed ancillary proceedings under subsection (2) remain ancillary proceedings; if more than one ancillary proceeding is severed, those matters are to remain joined. Ancillary proceedings under subsection (3) are to be continued as independent matters after severance.

Section 138

Assignment of counsel

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

(2) The assigned lawyer has the status of legal counsel.

Section 139

Joinder of additional participants and third parties

(1) If there are other participants in addition to the spouses, preparatory documents, duplicates, or transcripts may only be disclosed to them or served on them to the extent the contents of the writing concern them. The same applies to the service of decisions on third persons who are entitled to file appeals.

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

Section 140

Severance

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

(2) The court may sever an ancillary proceeding from joined matters. This is only admissible when:

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

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

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

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

(6) The decision is to be made in the form of a separate order; it is not independently contestable.

Section 141

Withdrawal of application for divorce

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

Section 142

Uniform final decision; rejection of application for divorce

- (1) In the case of divorce, a decision is to be made for each of the joined family matters in a uniform order. This also applies insofar as a default decision is to be made.
- (2) If the application for divorce is rejected, the ancillary proceedings become void. This does not apply to ancillary proceedings under section 137 (3) or to ancillary proceedings with respect to which prior to the decision a participant expressly stated the desire to continue the proceeding. These are to be continued as independent family matters.
- (3) If an order under subsection (1) contains a decision concerning an equalisation of pension rights, reference may be made in this regard to the operative provisions at the pronouncement of the order.

Section 143

Protest

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

Section 144

Waiver of cross-appeal

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

Section 145

Time limit for extension of appeal and cross-appeal

- (1) If a uniform decision made in accordance with section 142 is contested in part by filing a complaint or a complaint on points of law, the portions of the uniform decision that relate to a different family matter are only contestable prior to the expiry of one month following the notification of the grounds for appeal, through an extension of the appeal or through a cross-appeal; in the case of more than one notification of the grounds for appeal, the last in time is determinative. If there is no statutory requirement for providing the grounds for appeal, instead of the notification of the grounds for appeal, the time of notification of the document through which the appeal was filed is determinative.
- (2) If an extension of the appeal or a cross-appeal takes place within this time limit, the time limit increases by one additional month. In the case of renewed extension of the appeal or cross-appeal within the extended time limit, sentence 1 applies accordingly.

Section 146

Referral back to a court of lower instance

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

(2) Upon application, the court to which the matter is referred back may order that the ancillary proceeding be heard when a complaint on points of law has been filed against the reversal decision.

Section 147 **Expanded reversal**

If a decision is reversed in part on a complaint on points of law, upon application by a participant the court hearing the complaint on a point of law may also reverse the decision and refer the matter back to the court of lower instance for further argument and decision to the extent it appears necessary to do so on account of the connection with the reversed decision. An application for reversal of the grant of divorce may only be submitted within one month following service of the grounds for the appeal or the order on admissibility of the complaint on points of law and in the case of more than one service, prior to the expiry of one month following the last service.

Section 148 **Effectiveness of decision in ancillary proceedings**

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

Section 149 **Extension of the approval of legal aid**

The approval of legal aid for the divorce matter extends to ancillary proceedings concerning the equalisation of pension rights insofar as such extension is not expressly excluded.

Section 150 **Costs in divorce proceedings and ancillary proceedings**

- (1) If the divorce is granted, the costs of the divorce proceedings and ancillary proceedings are to be offset against one another.
- (2) If the application for divorce is rejected or withdrawn, the applicant is to bear the costs of the divorce proceedings and ancillary proceedings. If applications for divorce of both spouses are withdrawn or rejected or if the proceeding is concluded in the main action, the costs for the divorce proceedings and ancillary proceedings are to be offset against one another.
- (3) If in an ancillary matter that is not severed under section 140 (1) there are other participants in addition to the spouses, these persons are to bear their own out-of-court costs.
- (4) If in cases under subsections (1) to (3) it appears that the apportionment of costs is inequitable particularly with respect to the reconciliation of the spouses or the result of a maintenance or marital property law matter pursued as an ancillary proceeding, the court may otherwise apportion the costs at its own discretion. In so doing it may also consider whether a participant did not comply with a judicial order to participate in an informational interview in accordance with section 135 to the extent the participant did not have an adequate excuse therefor. If the participants reached an agreement in respect of costs, the court is to use it as the basis for its decision in whole or in part.
- (5) The provisions in subsections (1) to (4) also apply to ancillary proceedings concerning which a decision is to be taken separately on account of severance. If ancillary proceedings are pursued as independent family matters the provisions on costs applicable thereto are to be applied.

Division 3 **Proceedings in parent and child matters**

Section 151 **Parent and child matters**

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

1. parental custody,
2. the right of contact and the right to information concerning the personal circumstances of the child,
3. surrender of the child
4. guardianship,
5. curatorship or the court appointment of another representative for a minor or for a child already conceived,
6. the approval of placement involving a deprivation of liberty and measures involving deprivation of liberty under section 1631b of the Civil Code, also in conjunction with sections 1795 (1) sentence 3 and 1813 (1) of the Civil Code,
7. the approval or order of placement involving a deprivation of liberty, measures involving deprivation of liberty, or coercive medical treatment of a minor under *Land* statutes concerning the placement of persons with psychological disorders, or
8. duties under the Youth Courts Act (*Jugendgerichtsgesetz*).

Section 152 **Local jurisdiction**

- (1) During the pendency of a marital matter, the court before which the marriage matter is or was pending in the first instance has exclusive jurisdiction for parent and child matters among German courts insofar as the matter concerns common children of the spouses.
- (2) Otherwise, the court in the district of which the child has his or her habitual residence has jurisdiction.
- (3) If the jurisdiction of a German court is not determined by subsections (1) or (2), the court in the district of which the need for care becomes known has jurisdiction.
- (4) As to measures designated in sections 1693 and 1802 (2) sentence 3 in conjunction with section 1867 of the Civil Code, the court in the district of which the need for care becomes known also has jurisdiction. As a rule, it must communicate the ordered measures to the court before which a guardianship or curatorship matter is pending.

Section 153 **Relinquishment to court where the marital matter is pending**

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

Section 154 **Assignment upon unilateral change of the child's residence**

The court that has jurisdiction under sections 152 (2) may refer the proceedings to the court in the district of which the child previously had his or her habitual residence if one parent has changed the child's residence without the prior agreement of the other parent. This does not apply when the other parent does not have a right of agreement concerning the child's residence or if the change in the place of residence was necessary for the protection of the child or the care-giving parent.

Section 155 **Principles of priority and expediting proceedings**

- (1) Parent and child matters concerning the child's residence, the right of contact, or the surrender of the child, as well as proceedings based upon endangerment of the best

interests of the child have priority and the proceedings are to be conducted in an expedited manner.

(2) In proceedings in accordance with subsection (1), the court is to discuss the matter with the participants at a court hearing. As a rule, the court hearing must take place at the latest one month after the start of the proceedings. The Youth Welfare Office is to be heard at this court hearing. Postponement of the court hearing is only admissible based upon compelling reasons. The grounds for postponement must be credibly demonstrated together with the request for postponement.

(3) As a rule, the court must order the personal appearance of the participants with capacity to participate in proceedings at the court hearing.

(4) If the court suspended a proceeding designated in subsection (1) for the implementation of a mediation or another proceeding for reaching an out-of-court settlement, as a general rule it must reopen the proceedings after three months if the participants have not agreed upon a settlement.

Section 155a

Proceedings for the transfer of joint parental custody

(1) The following provisions in this section apply to proceedings under section 1626a (2) of the Civil Code. In the application for the transfer of joint parental custody, the child's date and place of birth must be provided.

(2) Section 155 (1) applies accordingly. The court serves the application for the transfer of joint parental custody on the other parent in accordance with sections 166 to 195 of the Code of Civil Procedure and sets a time limit for him or her to comment, which for the mother may not be earlier than six weeks after the birth of the child.

(3) In cases subject to section 1626a (2) sentence 2 of the Civil Code, the court, as a rule, must decide in proceedings conducted in writing without hearing the Youth Welfare Office and without an in-person hearing with the parents. Section 162 is not applicable. The court communicates to the competent Youth Welfare Office under section 87c (6) sentence 2 of Book 8 of the Social Code (*Sozialgesetzbuch VIII*) its decision and in so doing provides the child's date and place of birth together with the name given the child on the birth certificate for the purposes set forth in section 58 of Book 8 of the Social Code, without any requirement as to form.

(4) If the court becomes aware from the participants or in some other manner of grounds that could be inconsistent with joint parental custody, section 155 (2) applies accordingly, with the proviso that the court hearing under sentence 2, as a rule, must take place at the latest one month after the reasons have become known, however, not prior to the expiration of the time limit for the mother to provide comments in accordance with subsection (2) sentence 2.

Section 155 (3) and section 156 (1) apply accordingly.

(5) Declarations of parental custody and agreement by the statutory representative of a parent with limited capacity to contract may also be made orally at the court hearing for discussion for recording by the court. Section 1626d (2) of the Civil Code applies accordingly.

Section 155b

Plea seeking the expedition of proceedings

(1) A participant in a parent and child matter set forth in section 155 (1) may assert that the duration of the proceedings until then have not complied with the principles of priority and expediting proceedings under the above provision (plea seeking the expedition of proceedings). In raising this plea, the participant is to submit circumstances showing that the proceedings have not been given priority and have not been conducted in an expedited manner.

(2) The court is to take a decision on the plea seeking the expedition of proceedings no later than one month after it has received said plea, doing so by an order. Where the court considers the plea seeking the expedition of proceedings to be justified, it is to take suitable measures, without undue delay, that serve the prioritised and expedited handling of the

proceedings; in particular, the question of whether or not an interlocutory order is to be issued is to be reviewed.

(3) The plea seeking the expedition of proceedings is concurrently deemed to be a censure of delay within the meaning of section 198 (3) sentence 1 of the Courts Constitution Act (*Gerichtsverfassungsgesetz*).

Section 155c

Complaint regarding the expedition of proceedings

(1) The participant may contest the order under section 155b (2) sentence 1 within a period of two weeks following the written notification by filing a complaint. Section 64 (1) applies accordingly. The court is not authorised to provide redress; it must immediately submit the files to the court handling the complaint under subsection (2).

(2) The higher regional court takes the decision concerning the complaint regarding the expedition of proceedings in cases where the local court has handed down the order under section 155b (2) sentence 1. Where the higher regional court or the Federal Court of Justice has handed down the order, a different body of the same court takes the decision.

(3) The court handling the complaint takes the decision without undue delay, based on the record as it stands; its decision is to be handed down no later than within one month. Section 68 (2) applies accordingly. The court handling the complaint is to establish whether the duration of the proceedings thus far is in keeping with the principles of priority and expediting proceedings set out in section 155 (1). Should the court handling the complaint establish that this is not the case, then the court whose order has been contested is to pursue the proceedings without undue delay, taking account of the legal assessment of the court handling the complaint, giving them priority and conducting them in an expedited manner.

(4) Where the court has failed to take a decision regarding the plea seeking the expedition of proceedings within the one-month period stipulated by section 155b (2) sentence 1, the participant may file the complaint regarding the expedition of proceedings with the court handling the complaint under subsection (2), doing so within a period of two months. The period commences running upon the plea seeking the expedition of proceedings being received by the court. Subsections (2) and (3) apply accordingly.

Section 156

Facilitation of agreement

(1) In parent and child matters concerning parental custody upon separation or divorce, the residence of the child, right of contact or surrender of the child, the court facilitates agreement of the participants at every phase of the proceedings, when this is not contrary to the best interests of the child. It provides information on the possibilities for counselling by the counselling offices and services of the child and youth welfare services, especially for the development of an agreed concept for the exercise of parental custody and parent responsibility. The court may order that the parents individually or jointly participate in a free informational interview concerning mediation or other options for out-of-court resolution of the dispute with a person or agency named by the court and submits confirmation thereof. It may also order that the parents participate in counselling in accordance with sentence 2. Orders under sentences 3 and 4 are not independently contestable and are not to be enforced by administrative means of coercion.

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

(3) If agreement cannot be reached at a court hearing under section 155 (2) in parent and child matters concerning the residence of the child, right of contact or the surrender of the child, the court is to discuss issuance of an interlocutory order with the participants and the Youth Welfare Office. If in parent and child matters concerning right of contact, participation in counselling, a free informational interview concerning mediation or another option for out-of-court conflict resolution or a written expert opinion is ordered, the court, as a rule, must

provide rules for or exclude contact by way of an interlocutory order. As a rule, the court must conduct an in-person hearing with the child prior to issuance of an interlocutory order.

Section 157

Discussion of endangerment of the best interests of the child; interlocutory order

- (1) In proceedings under sections 1666 and 1666a of the Civil Code the court, as a general rule, must discuss with the parents, and in suitable cases with the child as well, how endangerment of the best interests of the child can be handled, particularly through public agencies, and the possible consequences of not accepting necessary assistance.
- (2) The court is to order the personal appearance of the parents at the court hearing under subsection (1). The court conducts the discussion in the absence of one parent when necessary to protect a participant or for other reasons.
- (3) In proceedings under sections 1666 and 1666a of the Civil Code, the court is to assess the issuance of an interlocutory order without undue delay.

Section 158

Appointment of a guardian ad litem for minors (*Verfahrensbeistand*)

- (1) The court appoints a professionally and personally suitable guardian ad litem for minors for minor children in parent and child matters concerning the child to the extent necessary for representing the child's interests. The guardian ad litem for minors must be appointed as early as possible.
- (2) Appointment is always required if one of the following decisions is under consideration:
 1. part or complete removal of care of the person of the child in accordance with sections 1666 and 1666a of the Civil Code,
 2. exclusion of the right of contact in accordance with section 1684 of the Civil Code or
 3. order for the child to remain where he or she currently is in accordance with section 1632 (4) or section 1682 of the Civil Code.
- (3) As a rule, appointment is required when
 1. the interests of the child are significantly at odds with those of his or her legal representatives;
 2. separation of the child from the person currently caring for him or her is to occur;
 3. the object of proceedings is the surrender of the child; or
 4. a significant limitation of the right of contact is under consideration.

If the court, in the cases specified, foregoes the appointment of a guardian ad litem for minors, the reasons for this decision are to be stated in the final decision.

- (4) The appointment ends upon revocation of the appointment, upon the decision concluding the proceedings becoming final and binding or upon any other conclusion of the proceedings. The court revokes the appointment when

1. the guardian ad litem for minors applies for this and no substantial grounds prevent revocation or
2. continuation in this position would endanger the child's best interests.

- (5) The appointment of a guardian ad litem for minors, revocation of such appointment, and rejection of such a measure are not independently contestable.

Section 158a

Suitability of the guardian ad litem for minors

(1) A professionally suitable person within the meaning of section 158 (1) is a person who has basic knowledge in the fields of family law, particularly the law on parent and child matters, procedural law in parent and child matters, and the law on child and youth welfare services, as well as knowledge of child development psychology and child-friendly dialogue techniques. Evidence must be provided of the knowledge and skills required in accordance with sentence 1 should the court so demand. Such evidence may be, in particular, a vocational qualification in social education, education, law or psychology and a specific additional qualification for the work of a guardian ad litem for minors. Guardians ad litem must undergo regular advanced training at least every two years and provide evidence thereof to the court should it so demand.

(2) A personally suitable person within the meaning of section 158 (1) is a person who guarantees to represent the child's best interests conscientiously, unbiasedly and independently. A person on whom a final and binding conviction has been passed for a criminal offence under sections 171, 174 to 174c, 176 to 178, 180, 180a, 181a, 182 to 184c, 184e to 184g, 184i to 184l, 201a (3), sections 225, 232 to 233a, 234, 235 or 236 of the Criminal Code is particularly personally unsuitable. In order to examine the conditions under sentence 2, the court is to have an extended certificate of good conduct submitted by the person concerned (section 30a of the Act on the Central Criminal Register and the Educative Measures Register; *Bundeszentralregistergesetz*) or, with the agreement of the person concerned, inspect another extended certificate of good conduct that already exists. Such a certificate may not be more than three years old. Records must be kept only of the inspection of the extended certificate of good conduct of the appointed guardian ad litem, the date of issue and the ascertainment that the extended certificate of good conduct does not contain an entry concerning a final and binding conviction for a criminal offence specified in sentence 2.

Section 158b

Duties and legal position of the guardian ad litem for minors

(1) The guardian ad litem for minors is to determine the best interests of the child and to assert these in the court proceedings. For this purpose, he or she is to also make a written statement of position. The guardian ad litem is to inform the child of the object, course, and potential result of the proceedings in a suitable manner. In addition, he or she should in particular

1. conduct interviews with the parents and other persons to whom the child relates closely, if necessary and
2. in suitable cases, participate in facilitating an agreed settlement concerning the issues in the case.

If the proceedings end in a final decision, the guardian ad litem for minors is to discuss the court decision with the child.

(2) If required to facilitate communication with the child, his or her parents or other persons to whom the child relates closely, the court allows the guardian ad litem for minors to call in an interpreter or translator or other suitable language mediator, in particular a sign language interpreter. Permission should be given as soon as possible. It is given by a decision which is not separately contestable.

(3) The guardian ad litem for minors is included as a participant in the proceedings through his or her appointment. He or she may lodge appeals in the best interests of the child. The guardian ad litem is not the legal representative of the child.

Section 158c

Remuneration; costs

(1) The guardian ad litem for minors receives one-off remuneration of 690 euros for the performance of his or her duties in each instance of the proceedings. If the court appoints the same guardian ad litem for minors for several children living in the same household, he or she receives a flat-rate fee of 555 euros for the second child and for each additional child.

(2) The guardian ad litem for minors is to be reimbursed for the costs of appointing an interpreter or translator or another suitable language mediator if the court has permitted that person to be called in under section 158b (2). The amount of the costs to be reimbursed is limited to the amounts to be paid in accordance with the Judicial Remuneration and Compensation Act (*Justizvergütungs- und -entschädigungsgesetz*). In all other cases, the remuneration covers all further claims to reimbursement of the costs arising in connection with acting as a guardian ad litem for minors.

(3) Remuneration and reimbursement of expenditures are always paid from the public treasury. Claims for remuneration and reimbursement of expenditures lapse if they are not asserted to the court within 15 months after they arise. Section 292 (1) and (5) applies accordingly.

(4) No costs are to be imposed on the guardian ad litem for minors.

Section 159

In-person hearing of the child

(1) The court is to conduct an in-person hearing of the child and obtain a personal impression of the child.

(2) The court may forego an in-person hearing of the child and the obtaining of a personal impression in accordance with subsection (1) only when

1. there are substantial grounds therefor
2. the child is obviously not in a position to make his or her preferences and desires known,
3. the preferences, relationships or desires of the child are insignificant to the decision and an in-person hearing is also not indicated for other reasons or
4. the proceedings only concern the property of the child, and an in-person hearing is not indicated based upon the type of matter.

Sentence 1 no. 3 is not applicable in proceedings in accordance with sections 1666 and 1666a of the Civil Code that concern the person of the child. In such proceedings, the court must obtain a personal impression of the child even if the child is obviously not in a position to make his or her preferences and desires known.

(3) If the court forgoes an in-person hearing of the child or the obtaining of a personal impression of the child, the reasons for this must be stated in the final decision. If a hearing or the obtaining of a personal impression is foregone solely because of imminent danger, it is to be held as soon as possible thereafter.

(4) As a general rule, the child must be informed of the object, course, and potential result of the proceedings in a suitable manner for his or her age to the extent there is no fear of a negative impact on his or her development, education, or health. He or she is to be given the opportunity to make a statement. If the court appointed a guardian ad litem for minors for the child under section 158, the in-person hearing and the obtaining of a personal impression are to take place in the presence of the guardian ad litem. In all other cases, the form of the in-person hearing may be determined within the discretion of the court.

Section 160

Hearing of the parents

(1) In proceedings that concern the child, the court, as a general rule, must conduct an in-person hearing with the parents. In proceedings under sections 1666 and 1666a of the Civil Code an in-person hearing with the parents is to be conducted.

(2) In other parent and child matters, the court is to hear the parents. This does not apply to a parent who does not have parental custody to the extent clarification is not to be expected from the hearing.

(3) A hearing may only be omitted based upon substantial grounds.

(4) If the hearing does not take place solely because of imminent danger, it is to must be held later without undue delay.

Section 161 **Cooperation of curator**

(1) In proceedings that concern the person of the child, the court may bring in the curator as a participant in the interest of the child when the child has lived for a long time in foster care. Sentence 1 applies accordingly when the child, based upon a decision in accordance with section 1682 of the Civil Code, lives with the spouse, life partner, or person with a right of contact designated therein.

(2) The persons set forth in subsection (1) are to be heard when the child has lived for a long time in foster care.

Section 162 **Cooperation of the Youth Welfare Office**

(1) In proceedings that concern the person of the child, the court is to hear the Youth Welfare Office. If the hearing does not take place solely because of imminent danger, it is to be held later without undue delay.

(2) In proceedings under sections 1666 and 1666a of the Civil Code, the Youth Welfare Office is to be included as a participant. In all other cases, the Youth Welfare Office is to be allowed to participate in the proceedings upon its submission of an application.

(3) In proceedings that concern the person of the child, the Youth Welfare Office is to be informed of court hearings and all decisions by the court are to be announced to it. The Youth Welfare Office is entitled to file a complaint against an order.

Section 163 **Written expert opinion**

(1) In proceedings under section 151 nos. 1 to 3, the opinion is to be prepared by a suitable expert who, as a rule, must have at least a vocational qualification in psychology, psychotherapy, child and youth psychiatry, psychiatry, medicine, education or social education. If the expert has a vocational qualification in education or social education, the acquisition of adequate diagnostic and analytical knowledge is to be demonstrated by means of a recognised additional qualification.

(2) In proceedings that concern the person of the child, the court may order that the expert should also attempt to facilitate an agreement between the participants during the preparation of the report.

(3) (repealed)

Section 163a **Exclusion of examination of the child**

The child is not to be examined as a witness.

Section 164 **Notification of the decision to the child**

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

Section 165 **Conciliation proceedings**

(1) If one parent asserts that the other parent has frustrated or obstructed the implementation of a court decision or a court-approved settlement concerning contact with the common child, upon the application of a parent the court mediates between the parents.

The court may reject the conciliation when a conciliation proceeding or subsequent out-of-court counselling was previously unsuccessful.

(2) The court is to summon the parents to a conciliation hearing without delay. The court orders the personal appearance of the parents at this conciliation hearing. In the summons, the court provides information on the potential legal consequences of an unsuccessful conciliation under subsection (5). In suitable cases, the court also summons the Youth Welfare Office to the conciliation hearing.

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

(4) As a rule, the must facilitate agreement between the parents as to the exercise of contact. If a court-approved agreement is achieved, this takes the place of the previous arrangement. If agreement is not reached, the disputed points are to be set forth in a memorandum.

(5) If there is no agreement on contact arrangements or if there is no agreement on participation in out-of-court counselling or if at least one parent does not appear at the conciliation hearing, the court establishes in an incontestable order that the conciliation proceeding was unsuccessful. In this case, the court examines whether administrative measures should be taken, contact arrangements amended or measures concerning custody taken. If a corresponding proceeding is initiated ex officio or is initiated within one month of an application by a parent, the costs of the conciliation proceedings are treated as a portion of the costs of the subsequent proceedings.

Section 166

Modification and review of decisions and court-approved settlements

(1) The court modifies a decision or a court-approved settlement under the standards set forth in section 1696 of the Civil Code.

(2) A measure under the law on child protection of a long duration that may be amended ex officio is to be reviewed by the court at reasonable intervals.

(3) If the court forgoes a measure under sections 1666 to 1667 of the Civil Code, it reviews its decision after a reasonable interval, as a rule after three months.

Section 167

Applicable provisions upon the placement of minors and upon measures involving a deprivation of liberty for minors

(1) In proceedings under section 151 no. 6, the provisions governing placement matters under section 312 nos. 1 and 2, and in proceedings under section 151 no. 7, the provisions governing placement matters under section 312 no. 4, are applicable. The guardian ad litem for minors (*Verfahrensbeistand*) takes the place of the guardian ad litem (*Verfahrenspfleger*). A guardian ad litem for minors must always be appointed.

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

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

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

(5) The Youth Welfare Offices support the parents, the guardian or the curator in conducting the placement when they so desire.

(6) In proceedings under section 151 nos. 6 and 7 the expert must be a physician for child and youth psychiatry and psychotherapy. In proceedings under section 151 no. 6, the expert opinion may also be prepared by a psychotherapist, psychologist, educator, or social worker with proven experience in questions of residential care. In proceedings on the approval of measures involving deprivation of liberty a medical certificate is sufficient; sentence 1 applies accordingly.

(7) The placement involving deprivation of liberty and measures involving deprivation of liberty terminate at the latest after six months; where the need for a longer period of protection is obvious, they terminate at the latest after one year, unless they have been previously extended.

Section 167a

Special provisions for proceedings under section 1686a of the Civil Code

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

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

(3) Section 177 (2) sentence 2 and section 178 (2) apply accordingly.

Section 167b

Approval procedures under Section 1631e of the Civil Code; authorisation to issue statutory instruments

(1) In proceedings under section 1631e (3) of the Civil Code, the court gives approval in proceedings conducted in writing if the parents submit an opinion in favour of the procedure and there are no evident reasons to oppose approval. If the court gives a decision in the proceedings conducted in writing, it must, as a rule, forego hearing the Youth Welfare Office, an in-person hearing with the parents and the appointment of a guardian ad litem for minors. Section 162 is not applicable.

(2) If the parents do not submit to the court an opinion in favour of the procedure or if there are evident reasons to oppose approval under subsection (1), the court discusses the matter with the participants in a court hearing. The court provides information on the possibilities for counselling by the counselling offices and services of the child and youth welfare services. It may order that the parents participate in counselling about dealing with gender development variants and submit confirmation to the court thereof. This order is not independently contestable and may not be enforced by administrative means of coercion.

(3) The *Land* governments are authorised to allocate jurisdiction for proceedings under subsections (1) and (2) to the family court in the district of which the higher regional court has its seat or to another family court by statutory instrument. The *Land* governments may delegate this authorisation to the *Land* department of justice. Two or more *Länder* may together agree upon the jurisdiction of one court beyond their border for proceedings in accordance with this provision.

Section 168

Selection of the guardian

(1) If the court is required to appoint a guardian, it must, as a rule, also hear close family members and persons enjoying the confidence of the child concerned if this is possible without a significant delay.

(2) Before the appointment of a person as an honorary guardian or as a professional guardian, the court must obtain information under section 41 of the Act on the Central Criminal Register and the Educative Measures Register. The court reviews whether the guardian continues to be suitable by obtaining information at appropriate intervals, no later than every two years after the appointment.

(3) Section 291 applies accordingly to a ward who has reached the age of 14 and is not legally incapacitated.

Section 168a

Content of the operative provisions of the order and entry into force of orders

(1) In the case of the appointment of a guardian, the operative part of the order is to include

1. the designation of professional guardian upon the appointment of a professional guardian;
2. the designation of association guardian upon the appointment of an association guardian and the designation of the association;
3. the designation of the competent Youth Welfare Office upon appointment of the Youth Welfare Office;
4. the designation of the curator upon the appointment of a curator under section 1776 or 1777 of the Civil Code and the matters assigned to him or her;
5. the designation of temporary guardian upon the appointment under section 1781 of the Civil Code.

(2) Decision on the contents or existence of the appointment of a guardian become effective upon notification of the guardian. Section 287 (2) applies accordingly.

Section 168b

Certificate of appointment

(1) Decision The guardian receives a certificate concerning his or her appointment. As a general rule, the certificate must include:

1. the designation of the ward and the guardian;
2. in cases under sections 1776 or 1777 of the Civil Code, the designation of the matters assigned to the curator;
3. information on the limitations of power of attorney in accordance with section 1789 (2) sentence 3 of the Civil Code.
4. information on exemptions in accordance with section 1801 of the Civil Code.

(2) If the Youth Welfare Office has become a guardian under section 1751 (1) sentence 2, section 1786 or section 1787 of the Civil Code, the court is to issue it with a certificate of the start of guardianship without delay.

(3) Upon termination of the appointment, the guardian must return the appointment document or certificate.

Section 168c

Hearing in important matters

The court must, as a rule, also hear close family members of the ward before decisions on important matters if this is possible without a significant delay.

Section 168d

Proceedings for establishing payments

Section 292 (1) and (3) to (6) apply accordingly to proceedings to establish payments to the guardian.

Section 168e

Termination of the guardianship

If there are doubts or disagreement as to whether and when the guardianship has ended, the court establishes the termination of the guardianship and the time of the termination by order.

Section 168f

Curatorship for minors

The provisions for guardianship apply accordingly to curatorship for minors. The operative provisions of the order and the certificate of appointment include the curator's designation and the matters assigned to him or her.

Section 168g

Communication duties of the registry office

(1) If the registry office is notified of the death of a person who left behind a minor child or the birth of a child subsequent to the death of the father or the discovery of a minor whose family status cannot be determined, or the birth of a child as a confidential birth in accordance with section 25 (1) of the Act on Pregnancies in Conflict Situations

(*Schwangerschaftskonfliktgesetz*), or if in cases under section 3 (1) sentence 2 of the Act on Self-Determination With Regard to Gender Markers (*Gesetz über die Selbstbestimmung in Bezug auf den Geschlechtseintrag*) there is a lack of approval by the legal representative, the registry office is to communicate this to the family court.

(2) If parents who have joint custody of a child do not have a married name and if within one month of the birth of a child the birth name of the child has not been established, and if at least one of the parents refuses the birth name of the child arising in accordance with section 1617 (4) sentence 1 of the Civil Code by means of a declaration to the registry office, the registry office communicates this to the family court.

Division 4

Proceedings in matters concerning parentage

Section 169

Matters concerning parentage

Matters concerning parentage are proceedings:

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

Section 170

Local jurisdiction

(1) The court in the district of which the child has his or her habitual residence has exclusive jurisdiction.

(2) If no German court has jurisdiction under subsection (1), the habitual residence of the mother, otherwise the father, is determinative of jurisdiction.

(3) If there is no jurisdiction under subsections (1) or (2), the Schöneberg Local Court in Berlin has exclusive jurisdiction.

Section 171

Application

(1) The proceedings are initiated by the filing of an application.

(2) As a general rule, the application must specify the objective of the proceedings and the persons concerned. As a general rule, in a proceeding for contesting paternity under section 1600 (1) nos. 1 to 4 of the Civil Code, those circumstances must be provided that argue against paternity as well as the point in time at which the circumstances became known.

Section 172

Participants

(1) The participants are:

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

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

Section 173

Representation of a child by an adviser

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

Section 174

Guardian ad litem for minors

The court is to appoint a guardian ad litem for minors for a minor participant in matters concerning parentage to the extent necessary for representing his or her interests. Sections 158 to 158c apply accordingly.

Section 175

Court hearing for discussion; in-person hearing

(1) Prior to the taking of evidence concerning paternity, the court discusses the matter in a court hearing. It orders the personal appearance of the participants who have capacity to participate in proceedings.

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

Section 176

Hearing of the Youth Welfare Office

(1) In the case of a contest to paternity under section 1600 (1) no. 2 of the Civil Code as well in a case of a contest to paternity under section 1600 (1) no. 4 of the Civil Code, the court, as a rule, must hear the Youth Welfare Office when the contestation is made by the legal representative. In all other cases, the court may hear the Youth Welfare Office when a participant is a minor.

(2) The court is to inform the Youth Welfare Office of the decision in cases of contestation under subsection (1) sentence 1 and of a hearing under subsection (1) sentence 2. The Youth Welfare Office has the right to file a complaint against the order.

Section 177

Limited ex officio investigation; formal taking of evidence

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

(2) A formal taking of evidence is to occur in respect of parentage in proceedings under section 169 nos. 1 and 4. An assessment by an expert may be replaced by the use of an expert opinion concerning parentage obtained by a participant upon the agreement of the

other participants when the court does not doubt the correctness and completeness of the facts established in the opinion and the participants agree thereto.

Section 178

Testing for the establishment of parentage

- (1) Insofar as necessary for the establishment of parentage, each person must acquiesce to testing, particularly the drawing of blood samples, unless the person cannot reasonably be expected to undergo the testing.
- (2) Sections 386 to 390 of the Code of Civil Procedure apply accordingly. Should a person refuse to have testing performed in repeated instances, without such refusal being justified, measures of direct coercion may be taken, in particular by ordering the forcible production of the person concerned for testing.

Section 179

Majority of proceedings

- (1) Matters concerning parentage concerning the same child may be joined together. A matter concerning maintenance under section 237 may be joined with proceedings for the establishment of paternity.
- (2) In all other cases, joining several matters concerning parentage or with other proceedings is inadmissible.

Section 180

Declarations for recording by the court

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

Section 181

Death of a participant

If a participant dies prior to the final decision becoming final and binding, the court is to inform the remaining participants that the proceeding will only be continued when a participant requests this by a declaration to the court within a one-month time limit. If no participant requests continuation of the proceeding within the time limit set by the court, it is deemed to have been concluded in the main proceedings.

Section 182

Contents of the order

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

Section 183

Costs of contesting paternity

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

Section 184

Effectiveness of order; exclusion of modification; supplementary provisions concerning complaint

- (1) The final decision in matters concerning parentage becomes effective when final and binding. Modification is excluded.

(2) To the extent a decision has been reached concerning parentage, the order is effective in favour of and against all.

(3) Those persons who were or should have been participants in the proceeding are also entitled to submit a complaint against final decisions in matters concerning parentage.

Section 185

Reopening of proceedings

(1) An application for retrial of the case against an order that is final and binding in which a decision was made concerning parentage are also available as a remedy when a participant submits a new expert opinion concerning parentage which alone or together with the evidence taken in the earlier proceeding would have led to a different decision.

(2) The application for reopening the proceedings may also be submitted by the participant who prevailed in the earlier proceedings.

(3) The court with exclusive jurisdiction regarding the application is the court that ruled in the first instance; if the contested order was issued by the court hearing the complaint or by the court hearing the complaint on points of law, then the court hearing such complaint has jurisdiction. If the application is joined with an application for annulment or an application for retrial of the matter under section 580 of the Code of Civil Procedure, section 584 of the Code of Civil Procedure is applicable.

(4) Section 586 of the Code of Civil Procedure is not applicable.

Division 5

Proceedings in adoption matters

Section 186

Adoption matters

Adoption matters are proceedings concerning

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

Section 187

Local jurisdiction

(1) For proceedings under section 186 nos. 1 to 3 the court in the district of which the adopting parents or one of the adopting parents have their habitual residence has exclusive jurisdiction.

(2) If no German court has jurisdiction under subsection (1), the habitual residence of the child is determinative.

(3) For proceedings under section 186 no. 4 the court in the district of which one of the betrothed persons has his or her habitual residence has exclusive jurisdiction.

(4) In adoption matters concerning a minor, section 6 (1) sentence 1 and (2) of the Act on the Effects of Adoption under Foreign Law (*Gesetz über Wirkungen der Annahme als Kind nach ausländischem Recht*) applies accordingly when

1. the habitual residence of the adopting parents and the adoptive child is abroad or
2. the habitual residence of the adoptive child in the last two years before submission of the application was abroad.

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

Section 188 Participants

(1) Participants to be involved are

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

(2) The Youth Welfare Office and the *Land* Youth Welfare Office are to be involved as participants upon their application.

Section 189 Professional opinion

- (1) If a minor is to be adopted, the court is to obtain a professional opinion concerning whether the child and the adoptive family are suitable for the adoption.
- (2) The professional opinion is to be obtained from the adoption agency that was the contact for the child or that issued the counselling certificate (*Beratungsschein*) in accordance with section 9a (2) of the Adoption Placement Act (*Adoptionsvermittlungsgesetz*). If no adoption agency was involved, the professional opinion of the Youth Welfare Office is to be obtained.
- (3) The professional opinion is to be provided at no cost.
- (4) The court must inform the adoption agency that was the contact for the child of the decision.

Section 190 (repealed)

Section 191 Guardian ad litem for minors

The court is to appoint a guardian ad litem for minors for a minor who is a participant in an adoption matter to the extent necessary for representing his or her interests. Sections 158 to 158c apply accordingly.

Section 192 Hearing the participants

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

Section 193

Hearing additional persons

The court may hear the children of the adoptive parent and of the person to be adopted in cases concerning the adoption. Section 192 (3) applies accordingly.

Section 194

Hearing the Youth Welfare Office

(1) In matters concerning adoption the court is to hear the Youth Welfare Office to the extent the adoptive parent or the person to be adopted is a minor. This does not apply when the Youth Welfare Office must submit a professional opinion under section 189.

(2) The court is to inform the Youth Welfare Office of the decision in cases in which it was heard or submitted a professional opinion. The Youth Welfare Office has the right to file a complaint against the decision.

Section 195

Hearing the *Land* Youth Welfare Office

(1) In cases under section 11 (1) nos. 2 and 3 of the Adoption Placement Act, the court must also hear the central adoption office of the *Land* Youth Welfare Office in the district of which the adopting parents have their habitual residence before the pronouncement of the adoption. If no central adoption office is a participant, in its place is the *Land* Youth Welfare Office in the district of which the Youth Welfare Office is located that received an opportunity to express an opinion under section 194 or that submitted a professional opinion under section 189.

(2) The court is to inform the *Land* Youth Welfare Office of all decisions regarding which it was examined under subsection (1). The *Land* Youth Welfare Office has the right to file a complaint against the decision.

Section 196

Inadmissibility of joinder

Joinder of an adoption matter with other proceedings is inadmissible.

Section 196a

Dismissal of application

The court is to dismiss an application for adoption as a child if the counselling certificates required in accordance with section 9a of the Adoption Placement Act have not been submitted.

Section 197

Order concerning the adoption of a child

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

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

(3) The order is not contestable. Modification or reopening of proceedings is excluded.

Section 198

Order in ancillary proceedings

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

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

(3) An order releasing the participants from the prohibition on marriage under section 1308 (1) of the Civil Code is not contestable; modification or reopening of proceedings is excluded when the marriage has been entered into.

Section 199

Application of the Act on the Effects of Adoption Under Foreign Law

The provisions of the Act on the Effects of Adoption under Foreign Law remain unaffected.

Division 6

Proceedings in matters concerning the marital home and household objects

Section 200

Marital home; household objects

(1) Matters concerning the marital home are proceedings

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

(2) Matters concerning household objects are proceedings

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

Section 201

Local jurisdiction

Exclusive jurisdiction lies with the courts in the following order of priority:

1. during the pendency of a marital matter, the court before which the marital matter is or was pending in the first instance;
2. the court in the district of which the joint home of the spouses is located;
3. the court in the district of which the respondent has his or her habitual residence;
4. the court in the district of which the applicant has his or her habitual residence.

Section 202

Transfer to the court before which the marital matter is pending

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

Section 203

Application

- (1) The proceedings are initiated by the filing of an application by one of the spouses.
- (2) An application concerning household objects must set forth the objects that he or she seeks to have allocated to him or her. An application under section 200 (2) no. 2, in addition must contain a list of all the household objects and a specific description thereof in an attachment.
- (3) The application in marital home matters must set forth whether children reside in the spouses' household.

Section 204

Participants

(1) In matters concerning the marital home under section 200 (1) no. 2 the lessor, the property owner, third parties (section 1568a (4) of the Civil Code), and persons with a joint holding in the residence with the spouses or with one of them are to be involved as participants.

(2) The Youth Welfare Office must be included as a participant upon its filing of an application therefor when children reside in the spouses' household.

Section 205

Hearing of the Youth Welfare Office in matters concerning the marital home

(1) In matters concerning the marital home the court must hear the Youth Welfare Office when children reside in the spouses' household. If the hearing does not occur solely because of imminent danger, it must subsequently be held without delay.

(2) In cases under subsection (1) sentence 1, the court must inform the Youth Welfare Office of the decision. The Youth Welfare Office has the right to file a complaint against the order.

Section 206

Special provisions for matters concerning household objects

(1) The court in matters concerning household objects may require each spouse:

1. to set forth the household objects that he or she seeks to have allocated to him or her,
2. to submit a list of all household objects including a detailed description thereof or to complete a list previously submitted,
3. to make statements concerning particular circumstances, to expand upon his or her own information or to provide comments on the submission of another participant, or
4. to submit certain documentation or receipts

and may set a reasonable time limit for doing so.

(2) Circumstances that are presented only after the time limit under subsection (1) may only be considered when, at the court's freely-formed conviction, conclusion of the proceedings will not be delayed or when the spouse sufficiently excuses the delay.

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

Section 207

Court hearing for discussion

The court discusses the matter with the spouses at a court hearing. It orders the personal appearance of the spouses.

Section 208

Death of a spouse

If one of the spouses dies prior to the conclusion of the proceedings, they are deemed to have been as concluded in the main proceeding.

Section 209

Implementation of decision, effectiveness

(1) As a rule, together with the final decision, the court must issue orders necessary for its implementation.

(2) The final decision in matters concerning the marital home and household goods becomes effective when final and binding. As a rule, the court must order immediate effectiveness in matters concerning the marital home under section 200 (1) no. 1.

(3) Together with the order of immediate effectiveness, the court may also order the admissibility of execution prior to service on the respondent. In such a case, effectiveness

takes place at the point in time at which the decision is transmitted to the court registry for announcement. This point in time is to be noted on the final decision.

Division 7

Proceedings in matters concerning protection against violence

Section 210

Matters concerning protection against violence

Matters concerning protection against violence are proceedings under sections 1 and 2 of the Act on Protection against Violence.

Section 211

Local jurisdiction

Based on the choice of the applicant, exclusive jurisdiction is with:

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

Section 212

Participants

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

Section 213

Hearing of the Youth Welfare Office

(1) In proceedings under section 2 of the Act on Protection against Violence, the court must, as a rule, hear the Youth Welfare Office when children reside in the household. If the hearing does not occur solely because of imminent danger, it is to be held subsequently without delay.

(2) In cases under subsection (1) sentence 1, the court must inform the Youth Welfare Office of the decision. The Youth Welfare Office has the right to file a complaint against the order.

Section 214

Interlocutory order

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

(2) The order under subsection (1) is to be served ex officio. The court registry commissions the court bailiff with service. In the case of issuance of the interlocutory order without an oral hearing, the application for issuance is at the same time deemed to be a commission for enforcement; at the request of the applicant, service may not take place before enforcement.

Section 214a

Confirmation of settlement

If the participants conclude a settlement, the court is to confirm this insofar as it could have ordered such a measure under section 1 (1) of the Act on Protection against Violence, also in conjunction with section 1 (2) sentence 1 of the Act on Protection against Violence. The confirmation by the court is incontestable.

Section 215

Implementation of the final decision

In proceedings under section 2 of the Act on Protection against Violence, the court must, as a rule, in its final decision issue orders necessary for the implementation of that decision.

Section 216

Effectiveness; enforcement prior to service

- (1) In matters concerning protection against violence, the final decision becomes effective when final and binding. As a rule, the court must order that it is immediately effective.
- (2) Upon ordering immediate effectiveness, the court may also order the admissibility of enforcement prior to service on the respondent. In such a case, effectiveness takes place at the time at which the decision is transmitted to the court registry for announcement; this time is to be noted on the final decision.

Section 216a

Communication of decisions

The court communicates to the competent police authority and other public agencies that are affected by the implementation of the orders issued based upon sections 1 and 2 of the Act on Protection against Violence, as well as any modification or revocation thereof without delay, provided the interests of a participant that are worthy of protection in excluding such communication do not outweigh the need for protection of the participants or the public interest in communication. As a rule, the participants must be informed of the communication. The above provisions apply accordingly to a confirmed settlement under section 214a.

Division 8

Proceedings in matters concerning the equalisation of pension benefits

Section 217

Matters concerning the equalisation of pension benefits

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

Section 218

Local jurisdiction

Exclusive jurisdiction lies with the courts in the following order of priority:

1. during the pendency of a marital matter, the court before which the marital matter was or is pending in the first instance;
2. the court in the district of which the spouses have or last had their joint habitual residence when one spouse continues to have his or her habitual residence there;
3. the court in the district of which a respondent has his or her habitual residence or seat;
4. the court in the district of which an applicant has his or her habitual residence or seat;
5. the Schöneberg Local Court in Berlin.

Section 219

Participants

Parties to be involved are:

1. the spouses,
2. the pension provider with which the pension claim that is to be equalised exists,

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

Section 220

Procedural duty to provide information

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

Section 221

Hearing, suspension

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

Section 222

Implementation of external apportionment

- (1) The options under section 14 (2), section 15 (1) and section 19 (2) no. 5 of the Act on the Equalisation of Pension Rights are to be exercised within time limits to be set by the court.
- (2) If the person entitled to an equalisation of pension benefits exercises his or her option in accordance with section 15 (1) of the Act on the Equalisation of Pension Rights, within the time limit set in accordance with subsection (1) he or she must also provide evidence that the chosen pension provider is in agreement with the intended apportionment.
- (3) In the final decision, the court sets forth the principal amount to be paid under section 14 (4) of the Act on the Equalisation of Pension Rights.
- (4) In the case of external apportionment under section 16 of the Act on the Equalisation of Pension Rights, subsections (1) to (3) are not applicable.

Section 223

Requirement of application as to claims for pension equalisation subsequent to the divorce

After the divorce, the court only decides on claims for pension equalisation under sections 20 to 26 of the Act on the Equalisation of Pension Rights on the basis of an application.

Section 224

Decision on pension equalisation

- (1) Final decisions concerning pension equalisation become effective when final and binding.
- (2) The reasons on which the final decision is based must be stated.

- (3) Insofar as an equalisation of value did not take place at the time of the divorce under section 3 (3), sections 6, 18 (1) or (2) or 27 of the Act on the Equalisation of Pension Rights, the court is to state this in the operative provision of the order.
- (4) If subsequent to the equalisation of values undertaken as part of the divorce, equalisation of pension rights still exist, the court sets forth these rights in the reasons upon which the final decision is based.

Section 225

Admissibility of modification of the equalised value at the time of divorce

- (1) Modification of the equalised value at the time of divorce is only admissible as to claims within the meaning of section 32 of the Act on the Equalisation of Pension Rights.
- (2) Upon legal or factual changes after the dissolution of the marriage that retroactively affect the equalised value of a claim and lead to a significant change in value, the court modifies the final decision with respect to this claim upon application.
- (3) A change in value is significant in accordance with subsection (2) when it amounts to at least 5 percent of the former equalised value of the claim and when it exceeds, in the case of a pension amount, 1 percent as a reference rate, in all other cases as principal value, 120 percent of the determinative monthly reference rate at the end of the marriage under section 18 (1) of Book 4 of the Social Code (*Sozialgesetzbuch IV*).
- (4) Modification is also admissible when a determinative waiting period that is a prerequisite for the pension of the person entitled to equalisation would be thereby fulfilled.
- (5) The modification must have a beneficial effect for one of the spouses or his or her surviving dependents.

Section 226

Implementation of a modification of the equalised value at the time of divorce

- (1) Persons entitled to file an application for modification are the spouses, their surviving dependents and the pension providers affected by a modification.
- (2) The application is admissible at the earliest twelve months prior to the point in time at which a spouse intends to obtain regular benefit payments from the claim to be modified or that is expected based upon the modification.
- (3) Section 27 of the Act on the Equalisation of Pension Rights applies accordingly.
- (4) The modification is effective from the first day of the month following the month in which the application was filed.
- (5) If the spouse who filed the application for modification dies prior to the final decision becoming final and binding, the court is to inform the remaining participants entitled to file an application that the proceeding will only be continued when a participant entitled to file an application requests this by a declaration to the court within a time limit of one month. If no entitled participant requests continuation of the proceedings within the time limit, they are deemed to have been disposed of as regards the merits of the case. If the other spouse dies, the proceedings are continued against his or her heirs.

Section 227

Other modifications

- (1) As to modification of a decision concerning equalisation claims subsequent to the divorce under sections 20 to 26 of the Act on the Equalisation of Pension Rights, section 48 (1) applies.
- (2) Sections 225 and 226 apply accordingly to an agreement between the spouses concerning the equalisation of pension benefits when modification has not been excluded.

Section 228

Admissibility of complaint

In matters concerning the equalisation of pension benefits, section 61 is only applicable to a contestation concerning a decision on costs.

Section 229

Electronic legal communications between the family court and pension providers

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

(2) The transmission procedure is to:

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

(3) The court is to transmit requests for information under section 220 to the pension provider, the pension provider is to transmit information under section 220 and declarations under section 222 (1) to the court through the transmission procedures.

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

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

Section 230

(repealed)

Division 9

Proceedings in matters concerning maintenance

Subdivision 1

Special procedural rules

Section 231

Matters concerning maintenance

(1) Matters concerning maintenance are proceedings concerning:

1. statutory maintenance obligations based upon kinship,
2. statutory maintenance obligations based upon marriage or
3. claims under
 - a) section 1305 (1) of the Civil Code or
 - b) sections 1615l or 1615m of the Civil Code.

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

Section 232

Local jurisdiction

(1) Exclusive jurisdiction lies:

1. in matters concerning maintenance as to a support obligation for a common child of the spouses, with the exception of a simplified proceeding concerning support of minor children or in respect of a maintenance obligation based upon marriage, during the

pendency of a marital matter, with the court before which the marital matter was or is pending in the first instance;

2. in matters concerning maintenance as to a support obligation for a minor child or a child that qualifies as such in accordance with section 1603 (2) sentence 2 of the Civil Code, with the court in the district in which the child or the parent with the authority to act on behalf of the child has his or her habitual residence; this does not apply when the child or the parent has his or her habitual residence outside of Germany.

(2) Jurisdiction under subsection (1) has priority over the exclusive jurisdiction of another court.

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

1. as to an application by a parent against the other parent based upon a claim concerning a statutory maintenance obligation based on the marriage or based upon a claim under section 1615I of the Civil Code, with the court before which the proceedings concerning child maintenance is pending in the first instance;

2. as to an application by a child through which the claim for fulfilment of the support obligation of both parents is asserted, with the court that has jurisdiction over the application against one parent;

3. with the court in the district of which the applicant has his or her habitual residence when there is no domestic jurisdiction over the respondent.

Section 233

Relinquishment to the court handling the marital matter

If a marital matter is pending at the same time that a matter concerning maintenance under section 231 (1) no. 3 (a) or section 232 (1) no. 1 is pending in the first instance before another court, this matter is to be relinquished to the court before which the marital matter is pending ex officio. Section 281 (2) and (3) sentence 1 of the Code of Civil Procedure applies accordingly.

Section 234

Representation of the child by an adviser

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

Section 235

Procedural law information obligation of participants

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

(2) The court proceeds in accordance with subsection (1) when a participant files an application for this and the other participant has not complied with an information obligation under the provisions of civil law despite an order to do so within a reasonable time limit prior to the start of the proceedings.

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

(4) Orders of the court under this provision are not independently contestable and are not enforceable through compulsory measures.

Section 236

Procedural law information obligation of third parties

(1) If a participant does not or does not completely perform an obligation under section 235

(1) within the time limit set therefor, to the extent it is relevant to the assessment of maintenance, the court may request information on the amount of income and certain documentation from:

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

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

(3) The participants must be informed of an order under subsection (1).

(4) The persons and agencies set forth in subsection (1) are obliged to comply with court orders. Section 390 of the Code of Civil Procedure applies accordingly, except as concerns a public agency.

(5) The orders of the court under this provision are not independently contestable by the participants.

Section 237

Child maintenance upon the establishment of paternity

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

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

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

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

Section 238

Modification of court decisions

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

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

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

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

Section 239

Modification of settlements and legal instruments

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

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

Section 240

Modification of decisions under sections 237 and 253

(1) If a final and binding decision under section 237 or section 253 contains an obligation to make future recurrent payments, each participant may file an application for modification as long as an application for implementation of legal proceedings determining whether or not a claim is justified under section 255 has not been made.

(2) If an application for a reduction of maintenance payments is not submitted within one month of it becoming final and binding, modification is only admissible from the time that the application was pending. If, within the one-month time limit, an application for an increase in maintenance payments by the other participant has become pending, the time limit may not expire prior to the conclusion of this proceeding. An application for reduction filed subsequent to the expiration of the time limit is also admissible for the time from the first day of the month following a corresponding request for information or renunciation by the applicant. Section 238 (3) sentence 4 applies accordingly.

Section 241

Increased liability

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

Section 242

Provisional suspension of enforcement

If an application for modification seeking reduction is pending or if an application for approval of legal aid for this has been submitted, section 769 of the Code of Civil Procedure applies accordingly. The order is not contestable.

Section 243

Decision on payment of costs

In derogation from the provisions of the Code of Civil Procedure concerning the apportionment of costs, in maintenance matters the court decides at its discretion on apportionment of the payment of the costs of the proceedings among the participants. In so doing it is to consider in particular:

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

Section 244

Inadmissibility of objection based on majority

If the person obliged is to make maintenance payments for a child after he or she has reached the age of 18, no objection may be lodged against the enforcement of a claim for maintenance established in the order or in another instrument under section 794 of the Code of Civil Procedure in accordance with the standards of section 1612a of the Civil Code based upon the fact that the child is no longer a minor.

Section 245

Specification of index-linked maintenance titles for compulsory enforcement in foreign states

- (1) If a maintenance title that established the maintenance amount as a percentage of the minimum maintenance amount under section 1612a of the Civil Code is to be enforced in a foreign state, the maintenance owed is to be specified as a sum upon application.
- (2) It is incumbent upon those courts, public authorities or notaries who are under a duty to issue an enforceable duplicate of the order to specify the amount.
- (3) The provisions concerning contestation decisions in respect of the issuance of a certificate of enforceability apply accordingly to the contestation of a decision specifying the amount of maintenance.

Subdivision 2

Interlocutory orders

Section 246

Special provisions for interlocutory orders

- (1) Upon application, the court may establish rules for the obligation to make maintenance payments or to pay an advance on costs through an interlocutory order in derogation from section 49.
- (2) The decision is to be made on the basis of oral hearing when this appears necessary to clarify the facts or for an agreed settlement of the proceedings.

Section 247

Interlocutory order prior to the birth of a child

- (1) Rules concerning the obligation to make maintenance payments due for the first three months for the child and the mother under section 1615l (1) of the Civil Code may be issued by way of interlocutory order even prior to the birth of the child.
- (2) With respect to maintenance for the child, the application may also be submitted by the mother. Section 1600d (2) and (3) of the Civil Code applies accordingly. In cases under subsection (1) it may also be ordered that the amount is to be deposited at a certain time prior to the birth of the child.

Section 248

Interlocutory order upon establishment of paternity

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

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

(3) Section 1600d (2) and (3) of the Civil Code applies accordingly.

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

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

Subdivision 3

Simplified proceedings concerning maintenance for minors

Section 249

Availability of simplified proceedings

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

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

Section 250

Application

(1) The application must contain:

1. the designation of the participants, their legal representatives and the authorised representatives in the proceedings;
2. the designation of the court to which the application was submitted;
3. the child's date of birth;
4. the point in time as of which maintenance is requested;
5. in the event that maintenance is requested for the past, information on when the prerequisites in section 1613 (1) or (2) no. 2 of the Civil Code were fulfilled;
6. the amount of maintenance requested;
7. child benefits and other payments to be taken into account (section 1612b or section 1612c of the Civil Code);
8. a statement that there is a parent-child relationship between the child and the respondent under sections 1591 to 1593 of the Civil Code;
9. a statement that the child does not live together with the respondent in one household;
10. the amount of the child's income;

11. a statement as to whether the claim is made based upon the applicant's own right, a right acquired by operation of law, or an assigned right;

12. a statement that maintenance is not requested for time periods during which the child received assistance under Book 12 of the Social Code (*Sozialgesetzbuch XII*), citizen's benefit under section 19 (1) sentence 2 of Book 2 of the Social Code (*Sozialgesetzbuch II*), upbringing assistance or integration assistance under Book 7 of the Social Code (*Sozialgesetzbuch VII*), payments under the Maintenance Advance Act (*Unterhaltsvorschussgesetz*), maintenance under section 1607 (2) or (3) of the Civil Code, or, to the extent maintenance is requested based upon the operation of law or under section 94 (4) sentence 2 of Book 12 of the Social Code, section 33 (2) sentence 4 of Book 2 of the Social Code, or section 7 (4) sentence 1 of the Maintenance Advance Act, a statement that the maintenance applied for does not exceed the payments to or for the child;

13. a statement that establishment through a simplified proceeding is not excluded under section 249 (2).

(2) If the application does not comport with the prerequisites set forth in subsection (1) and those in section 249, it must be dismissed. Prior to the dismissal, the applicant must be heard. The dismissal is not contestable.

(3) If simplified proceedings concerning other children of the respondent are pending before the court, the court is to join the proceedings for the purpose of a concurrent decision.

Section 251

Measures taken by the court

(1) If simplified proceedings seem admissible under the submissions by the applicant, the court has the application or a communication of its contents served on the respondent. At the same time, the court informs him or her:

1. of the point in time and the amount at which maintenance may be established; in so doing, the following are to be designated:

a) the time periods based upon the age of the child as to which the establishment of maintenance under the minimum maintenance for the first, second, and third age levels are possible;

b) in the case of section 1612a of the Civil Code, also the percentage of each minimum maintenance at issue;

c) the payments to be taken into account in accordance with section 1612b or section 1612c of the Civil Code;

2. that the court has not assessed whether the maintenance requested in the application takes into account the child's income set forth in the application;

3. that an order establishing maintenance may be issued based upon which the applicant may pursue compulsory enforcement if he or she does not file objections within one month;

4. the objections that may be filed under section 252, especially that the objection of limited or no ability to pay may only be asserted when the information under section 252 (4) is submitted and documentary evidence of income is attached;

If the application is to be served outside of Germany, the court must set forth the time limit under sentence 2 no. 3.

(2) Section 167 of the Code of Civil Procedure applies accordingly.

Section 252

Objections by the respondent

(1) The respondent may assert objections against the admissibility of the simplified proceedings. When objections are well-founded, the court dismisses the application. The court dismisses unfounded objections with the order establishing maintenance under section 253.

(2) Objections other than those specified in subsection (1) sentence 1, in particular objections under subsections (3) and (4), are only admissible if the respondent concurrently states the extent to which he or she is prepared to pay maintenance and that he or she obliges himself or herself to fulfil the claim for maintenance to this extent.

(3) The objection of fulfilment is only admissible when the respondent concurrently states the extent to which he or she has paid maintenance and presents the relevant documentation or receipts.

(4) The objection of limited or lack of ability to pay is only admissible when the respondent concurrently provides documentation of his or her income and assets and presents documentation of his or her income for the last twelve months. A respondent who receives benefits for ensuring his or her livelihood in accordance with Book 2 or Book 12 of the Social Code must present the current approval decision on this. In the case of income from self-employment, business, agriculture and forestry, the last income tax assessment notice and, for the last business year, the income statement or the net income accounts are to be presented as documentation.

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

Section 253

Order establishing maintenance

(1) If the application is admissible and no objections or no objections admissible under section 252 (4) are raised, maintenance is established by way of an order after expiration of the time limit set forth under section 251 (1) sentence 2 no. 3. Establishment by order also takes place to the extent that the respondent has undertaken to pay maintenance under section 252 (2). The order is to state that the respondent is to pay the established maintenance to the person entitled to maintenance. The order is also to establish the reimbursable costs of the proceedings incurred up until then to the extent they can be calculated without the need to meet any further requirements; it is sufficient if the applicant communicates to the court the information necessary for the calculation.

(2) The order is to provide information on the objections that may be raised in the complaint and the prerequisites required for requesting modification.

Section 254

Communication of objections

If the respondent has raised admissible objections (section 252 to (4)), the court communicates this to the applicant and points out that legal proceedings determining whether or not the claim is justified will be conducted upon application by a participant.

Section 255

Legal proceedings determining whether or not a claim is justified

(1) In cases under section 254, legal proceedings determining whether or not a claim is justified are implemented upon the application of a participant.

(2) If a participant applies for implementation of legal proceedings determining whether or not a claim is justified, the matter is to proceed in the same way as following receipt of an application in a matter concerning maintenance. Objections under section 252 are deemed to be a response.

(3) The proceedings are deemed to be pending upon the service of the application for the establishment of maintenance (section 251 (1) sentence 1).

(4) If an order establishing maintenance was previously issued under section 253 (1) sentence 2, as to future recurrent maintenance payments a total amount is to be determined and the order establishing maintenance rescinded to this extent.

(5) The costs of simplified proceedings are to be treated as a part of the costs of the legal proceedings determining whether or not a claim is justified.

(6) If the application for implementation of legal proceedings determining whether or not a claim is justified is not submitted prior to the expiration of six months after receipt of the communication under section 254, the application for the establishment of maintenance that goes beyond the order establishing maintenance under section 253 (1) sentence 2 or the order establishing maintenance that goes beyond the acknowledgement of an obligation by the respondent under section 252 (2) is deemed to have been withdrawn.

Section 256

Complaint

In the complaint, only objections against admissibility, or the inadmissibility of simplified proceedings, the admissibility of objections under section 252 (2) to (4) and the incorrectness of the decision on costs or the establishment of costs may be asserted, to the extent they are contestable under general principles. The complaint is inadmissible if it is based upon objections under section 252 (2) to (4) that were not made prior to the issuance of the order establishing maintenance.

Section 257

Special procedural rules

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

Section 258

Special rules for automatic processing

(1) In simplified proceedings, automatic processing is admissible. Section 702 (2) sentences 1, 3, and 4 of the Code of Civil Procedure applies accordingly.

(2) Upon automatic processing, orders, decrees, and duplicates have the court seal affixed to them; a signature is not required.

Section 259

Printed forms

(1) The Federal Ministry of Justice is authorised to introduce printed forms to simplify and harmonise proceedings by way of statutory instrument for simplified proceedings subject to the approval of the Bundesrat. Different printed forms may be introduced for courts that use automatic processing for proceedings and for courts that do not use automatic processing for proceedings.

(2) To the extent printed forms for applications and declarations by the participants are introduced in accordance with subsection (1) the participants are required to use them.

Section 260

Determination of local court

(1) The *Land* governments are authorised to allocate simplified proceedings concerning maintenance for minors to one local court for the districts of several local courts by statutory instrument when this would serve to conclude them more quickly and cost-effectively. The *Land* governments may delegate the authorisation by statutory instrument to the *Land* department of justice.

(2) The child may submit or present applications and declarations to the local court that would have had jurisdiction if the *Land* government or the *Land* department of justice had not allocated proceedings in accordance with subsection (1) to one local court with the same effect as at the other local court.

Division 10

Procedures in marital property law matters

Section 261

Marital property law matters

- (1) Marital property law matters are proceedings concerning claims arising based upon marital property law, even when third parties are participants in the proceedings.
- (2) Marital property law matters are also proceedings in accordance with section 1365 (2), section 1369 (2), sections 1382, 1383, 1426, 1430 and 1452 of the Civil Code, and section 1519 of the Civil Code in conjunction with Article 5 (2), Article 12 (2) sentence 2, and Article 17 of the Treaty of 4 February 2010 between the Federal Republic of Germany and the French Republic on the optional matrimonial property regime of the community of accrued gains (*Abkommen zwischen der Bundesrepublik Deutschland und der Französischen Republik über den Güterstand der Wahl-Zugewinnngemeinschaft*).

Section 262

Local jurisdiction

- (1) During the pendency of a marital matter, that court has exclusive jurisdiction before which the marital matter was or is pending in the first instance. This jurisdiction takes priority over the exclusive jurisdiction of another court.
- (2) In all other cases, jurisdiction is determined under the Code of Civil Procedure with the proviso that in the provisions on general jurisdiction “residence” (*Wohnsitz*) is replaced by “habitual residence” (*gewöhnliche Aufenthalt*).

Section 263

Relinquishment to the court before which the marital matter is pending

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

Section 264

Proceedings for deferment and for the transfer of assets

- (1) In proceedings under sections 1382 and 1383 of the Civil Code, as well as under section 1519 of the Civil Code in conjunction with Article 12 (2) sentence 2 and Article 17 of the Treaty of 4 February 2010 between the Federal Republic of Germany and the French Republic on the optional matrimonial property regime of the community of accrued gains, the decision of the court first becomes effective when it is final and binding. Modification or reopening proceedings are excluded.
- (2) In the order in which the decision on the application for deferment of the claim for equalisation is set forth, upon application by the creditor, the court may also state that the debtor is under an obligation to pay the equalisation claim.

Section 265

Uniform decision

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

Division 11

Proceedings in other family matters

Section 266

Other family matters

- (1) Other family matters are proceedings concerning:
1. claims between persons who are or were engaged to be married to one another in connection with the termination of the engagement as well as in cases under sections 1298 and 1299 of the Civil Code between such a person and a third person,

2. claims stemming from the marriage,
3. claims between persons who are or were married to one another or between such a person and a parent in connection with separation or dissolution or annulment of the marriage,
4. claims stemming from the parent-child relationship, or
5. claims stemming from the right of contact

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

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

Section 267

Local jurisdiction

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

(2) In all other cases, jurisdiction is determined under the Code of Civil Procedure with the proviso that in the provisions on general jurisdiction, “residence” (*Wohnsitz*) is replaced by “habitual residence” (*gewöhnliche Aufenthalt*).

Section 268

Relinquishment to the court before which the marital matter is pending

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

Division 12

Proceedings in matters concerning life partnerships

Section 269

Matters concerning life partnerships

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

1. the termination of the life partnership on the basis of the Act on Life Partnerships,
2. the establishment of the existence or non-existence of a life partnership,
3. parental custody, right of contact, or surrender with respect to a common child,
4. the adoption of a child and the substitution of agreement as to the adoption of a child,
5. matters concerning the allocation of the home under section 14 or section 17 of the Act on Life Partnerships,
6. household matters under section 13 or section 17 of the Act on Life Partnerships,
7. the equalisation of pension benefits of the life partners,
8. statutory maintenance for a common minor child of the life partners,
9. a duty to pay maintenance based upon the establishment of the life partnership,

10. claims based on life partnership property law, including when third persons participate in the proceedings,
11. decisions under section 6 of the Act on Life Partnerships in conjunction with section 1365 (2), section 1369 (2), and sections 1382 and 1383 of the Civil Code,
12. decisions under section 7 of the Act on Life Partnerships in conjunction with sections 1426, 1430, and 1452 of the Civil Code or with section 1519 of the Civil Code and Article 5 (2), Article 12 (2) sentence 2, or Article 17 of the Treaty of 4 February 2010 between the Federal Republic of Germany and the French Republic on the optional matrimonial property regime of the community of accrued gains.

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

1. claims under section 1 (4) sentence 2 of the Act on Life Partnerships in the version valid up until 21 December 2018 in conjunction with sections 1298 to 1301 of the Civil Code,
2. claims arising from the life partnership,
3. claims between persons who are or were in a life partnership with one another, or between such person and a parent in connection with the separation or termination of the life partnership,

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

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

Section 270

Applicable provisions

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

(2) In other life partnership matters under section 269 (2) and (3), the provisions applicable to other family matters under section 111 no. 10 apply accordingly.

Book 3

Proceedings in custodianship and placement matters

Division 1

Proceedings in custodianship matters

Section 271

Custodianship matters

Custodianship matters are:

1. proceedings for the appointment of a custodian or the revocation of custodianship,
2. proceedings for ordering a reservation of consent, and

3. other proceedings concerning the legal custodianship of a person of full age (sections 1814 to 1881 of the Civil Code) insofar as the matter does not involve a placement matter.

Section 272 **Local jurisdiction**

(1) Exclusive jurisdiction lies with the courts in the following order of priority:

1. the court before which the custodianship is pending when a custodian has already been appointed;
2. the court in the district of which the person concerned has his or her habitual residence;
3. the court in the district of which the need for care arises;
4. the Schöneberg Local Court in Berlin when the person concerned is a German national.

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

Section 273 **Relinquishment upon change in habitual residence**

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

Section 274 **Participants**

(1) The persons to be involved as participants are:

1. the person concerned,
2. the custodian, to the extent his or her area of duties is affected,
3. an authorised person within the meaning of section 1814 (3) sentence 2 no. 1 of the Civil Code, to the extent his or her area of duties is affected.

(2) The guardian ad litem becomes a participant in the proceedings through his or her appointment.

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

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

(4) Other participants may be:

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

Section 275

Position of the person concerned in proceedings

- (1) In matters concerning custodianship, the person concerned has the capacity to participate in the proceedings without consideration of his or her capacity to contract.
- (2) The court informs the person concerned at the institution of proceeding in a way that is as appropriate for the addressee as possible, about the tasks of a custodian, the possible course of proceedings and the costs that may generally follow from the appointment of a custodian.

Sections 276

Guardian ad litem

- (1) The court appoints a suitable guardian ad litem for the person concerned when this is necessary for representing the interests of the person concerned. In general appointment is necessary when:
1. an in-person hearing with the person concerned under section 278 (4) in conjunction with section 34 (2) is to be foregone, or
 2. a custodian is to be appointed or a reservation of consent is to be ordered against the declared will of the person concerned.
- (2) Such appointment may be disregarded in cases under subsection (1) sentence 2 when there is no apparent interest of the person concerned in the appointment of the guardian ad litem. Reasons must be stated in the case appointment is not made.
- (3) The guardian ad litem must establish the wishes, subsidiarily the presumed will, of the person concerned and assert it in the court proceedings. He or she is to inform the person concerned about the subject, course and possible outcome of the proceedings in a suitable way and to support him or her as necessary in exercising his or her rights in the proceedings. He or she is not the legal representative of the person concerned.
- (4) A natural person is to be appointed as guardian ad litem. A person who works as a professional guardian ad litem may only be appointed as guardian ad litem when no other suitable person is available who is prepared to undertake the role of guardian ad litem on a voluntary basis.
- (5) As a rule, the appointment of a guardian ad litem may not take place or must be rescinded when the interests of the person concerned are represented by a lawyer or another authorised representative.
- (6) The appointment terminates, to the extent it has not previously been rescinded, upon the final decision becoming final and binding or upon another conclusion of the proceedings.
- (7) The appointment of a guardian ad litem or the rescindment thereof, as well as the rejection of such a measure, are not independently contestable.
- (8) Costs may not be imposed on the guardian ad litem.

Section 277

Remuneration and reimbursement of expenditures of the guardian ad litem

- (1) Guardianship ad litem is performed without payment. The guardian ad litem is reimbursed for his or her expenditures in accordance with section 1877 (1) to (2) and (4) sentence 1 of the Civil Code. Advance payment may not be requested.
- (2) If the guardianship ad litem, as an exception, is conducted on a professional basis, this is to be determined in the appointment. The claims of a guardian ad litem acting in a professional capacity to remuneration and reimbursement of his or her expenditures are based on section 2 (2) sentence 1 and sections 3 to 5 and section 16 of the Guardians and Custodians Payment Act (*Vormünder- und Betreuervergütungsgesetz*).
- (3) In place of reimbursement of expenditures and remuneration under subsection (2), the court may approve a fixed monetary amount for the guardian ad litem when the time required for the management of the activities as guardian ad litem is foreseeable and the guardian ad litem ensures that this amount of time is exhausted. In calculating the monetary amount, the

foreseeably necessary hours are to be compensated at the hourly rates set forth in section 3 (1) of the Guardians and Custodians Payment Act plus a fixed amount for costs of four euros for each estimated hour or any part thereof. In such a case, the guardian ad litem is not required to prove the time spent and the expenses paid; he or she is not entitled to additional remuneration for time or reimbursement of expenditures.

(4) Reimbursement of expenditures and remuneration for the guardian ad litem are always to be paid from the public treasury. Section 292 (1) and (5) applies accordingly.

Section 278

In-person hearing of the person concerned

(1) The court is to conduct an in-person hearing with the person concerned prior to the appointment of a custodian or an order of a reservation of consent and to ask what his or her wishes are. It is to obtain a personal impression of the person concerned. As a rule, this personal impression must be obtained by the court in his or her usual environment when the person concerned requests this or when it serves the clarification of facts and the person concerned does not object.

(2) At the hearing, the court discusses with the person concerned the proceedings, the findings of the expert opinion obtained, the person or agency that is being considered as a custodian, the extent of duties and the time by which the court is to decide on a rescindment or an extension of custodianship or an order of a reservation of consent. In suitable cases, it is to inform the person concerned of the possibility of a lasting power of attorney, its substance, and the possibility of its registration with the Central Register of Lasting Powers of Attorney under section 78a (2) of the Federal Regulation on Notaries (*Bundesnotarordnung*). If the court has appointed a guardian ad litem for the person concerned under section 276, the in-person hearing must, as a rule, take place in his or her presence.

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

(4) If an in-person hearing in accordance with section 34 (2) is not to take place because there is a fear it will result in significant detriment to the health of the person concerned, this decision may only be made based upon a medical opinion. If, for this reason, an in-person hearing does not take place, it is also not necessary to obtain a personal impression.

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

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

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

Section 279

Hearing other participants, the custodianship authorities, and the legal representative

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

(2) The court is to hear the competent public authority prior to the appointment of a custodian or the order of a reservation of consent. As a rule, the hearing must take place before an expert opinion is obtained under section 280 and, in particular, must address the following criteria:

1. the personal, health, and social circumstances of the person concerned,

2. the necessity of the custodianship including suitable other assistance (section 1814 (3) of the Civil Code),
 3. selection of the custodian upon consideration of the preference for a volunteer (section 1816 of the Civil Code), and
 4. the opinion of the person concerned regarding these criteria.
- (3) Upon request of the person concerned, the court must hear a person close to him or her if this is possible without a significant delay.
- (4) In the case of the appointment of a custodian or an order of a reservation of consent for a minor (section 1814 (5) and section 1825 (4) of the Civil Code), the court is to hear the legal representative of the person concerned.

Section 280

Obtaining an expert opinion

- (1) Prior to the appointment of a custodian or an order of a reservation of consent, the formal taking of evidence in the form of obtaining an expert opinion on the necessity of the measure is to take place. As a rule, the expert must be a psychiatrist or a physician with experience in the field of psychiatry.
- (2) The expert is to personally examine or question the person concerned prior to drafting the expert opinion. The expert must take into consideration the results of a hearing under section 279 (2) sentence 2 if he or she has it when preparing the opinion.
- (3) The expert opinion is to address the following areas:

1. the illness or handicap including its development,
2. the examinations undertaken and the knowledge of the research at the basis of this,
3. the physical and psychological condition of the person concerned,
4. the need for support from a medical perspective on account of the illness or disability and
5. the presumed duration of the measure.

Section 281

Medical certificate; dispensability of expert opinion

- (1) Instead of obtaining an expert opinion in accordance with section 280, a medical certificate is sufficient when the person concerned has applied for the appointment of a custodian and waived an expert opinion, and obtaining an expert opinion would be disproportionate particularly with respect to the scope of the duties to be undertaken by the custodian.
- (2) Section 280 (2) applies accordingly.

Section 282

Existing expert opinions to determine need for long-term care

- (1) In proceedings for the appointment of a custodian, the court may choose not to obtain an expert opinion (section 280 (1)) insofar as it can determine by using an existing medical opinion to establish the need for long-term care under section 18b of Book 11 of the Social Code (*Sozialgesetzbuch XI*) to what extent the person concerned fulfils the conditions for the appointment of a custodian on account of an illness or a disability.
- (2) The court may request this expert opinion from the long-term nursing care fund, including existing findings to avoid supplementary expert opinions. In its request, the court is to state the purpose for which the expert opinion and the findings are to be used. The court must delete the data transmitted without delay when it establishes that it is not suitable for the purpose stated.

(3) If the court is convinced that the expert opinion and the findings obtained in the proceeding for the appointment of a custodian are suitable for replacing a supplementary expert opinion in whole or in part, prior to such use, the agreement of the person concerned or the guardian ad litem for the proceedings is to be obtained. If approval is not given, the court must delete the data transmitted to it without delay.

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

Section 283

Presentation for examination

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

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

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

Section 284

Placement for expert assessment

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

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

(3) Section 283 (2) and (3) applies accordingly. A complaint subject to a time limit is admissible in accordance with sections 567 to 572 of the Code of Civil Procedure against orders issued under subsections (1) and (2).

Section 285

Investigation and surrender of a custodianship authorisation or a lasting power of attorney

(1) Before the appointment of a custodian, the court is to obtain information as to whether a lasting power of attorney or a custodianship of the person concerned is registered in the Central Register of Lasting Powers of Attorney. If the court has refrained from obtaining information only on account of imminent danger, the information must be obtained subsequently without delay.

(2) In cases under section 1820 (1) sentence 2, (4) sentences 1 and 2 and (5) sentence 3 of the Civil Code, the order to produce a copy of the documents specified there or the order to surrender the certificate of power of attorney takes place by means of an order. The same applies to an order for the transmission of a guardianship directive as required under the provisions of section 1816 (2) sentence 4 of the Civil Code.

Section 286

Contents of the operative provisions of the order

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

1. the description of the scope of duties of the custodian, naming the specific task areas;
 2. upon appointment of a custodian organisation, the designation as custodian organisation must be set forth as well as the designation of the organisation;
 3. upon appointment of a public agency custodian, the designation as public agency custodian must be set forth as well as the designation of the public agency;
 4. upon appointment of a professional custodian, the designation as professional custodian.
- (2) In the case of an order of a reservation of consent, the operative provisions of the order must contain the designation of the scope of the declarations of intent requiring consent.
- (3) The point in time at which the court must decide concerning the cancellation or extension of a measure under subsections (1) or (2) must be set forth in the operative provisions of the order.

Section 287 **Effectiveness of orders**

- (1) Orders concerning the scope, contents, or status of an appointment of a custodian, an order of a reservation of consent, or the issuance of an interlocutory order under section 300 become effective upon notification to the custodian.
- (2) If notification to the custodian is not possible or in the case of imminent danger, the court may order the immediate effectiveness of the order. In such a case, it becomes effective when the order and the order of its immediate effectiveness:
1. are notified to the person concerned or the guardian ad litem or
 2. are provided to the court registry for the purpose of notification under no. 1.
- The time of immediate effectiveness is to be noted on the order.
- (3) An order that has as its object an approval in accordance with section 1829 (2) of the Civil Code first becomes effective two weeks after notification to the custodian or the authorised representative as well as to the guardian ad litem.

Section 288 **Notification**

- (1) Notification of the grounds upon which an order is based to the person concerned may be refrained from when this is necessary according to the medical certificate in order to avoid significant detriment to his or her health.
- (2) The court must always notify the competent public agency of orders concerning the appointment of a custodian or an order of a reservation of consent or order concerning the scope, substance, or status of such a measure. The competent public agency must be notified of other orders when it was heard prior to their issuance.

Section 289 **(repealed)**

Section 290 **Certificate of appointment**

- (1) The custodian receives a certificate concerning his or her appointment. As a general rule, this certificate must contain:
1. the designation of the person concerned and the custodian;
 2. upon the appointment of a custodians' organisation or public agency custodian, this designation, together with the designation of the organisation or public agency;
 3. the scope of duties of the custodian, naming the specific task areas;

4. in the case of an order of a reservation of consent, the designation of the scope of the declarations of intent requiring consent;
5. upon the appointment of a temporary custodian through an interlocutory order, the end of the temporary measure;
6. information on any exemption in accordance with sections 1859 and 1860 of the Civil Code.

(2) Insofar as this is necessary to observe legitimate interests of the person concerned and the protection of legal transactions does not oppose it, the court, upon application by the custodian, issues another certificate in which the information on the custodian's task areas or on the order of a reservation of consent is only shown to a limited extent.

(3) Upon termination of the appointment, the custodian must return the certificate of appointment and other certificates under subsection (2) to the court.

Section 291

Review of selection of custodian

The person concerned may request that the selection of the person that an organisation or the public agency assigned to perform the custodianship be reviewed by a court decision. The court may instruct the organisation or public agency to select another person when a recommendation by the person concerned, against which there is no good cause, was not accepted or the person selected does not appear suitable to perform this custodianship. Section 35 is not applicable.

Section 292

Payments to the custodian; power to make statutory instruments

(1) By means of an order upon the application of the custodian, custodianship association or the person concerned, or at its own discretion, the court determines:

1. an advance payment to be made to the custodian, the reimbursement of expenditures and remuneration to be made to him or her, insofar as the custodian may demand payments from the state treasury (section 1879 of the Civil Code) or he or she has not been assigned the care of assets.
2. remuneration or part-payment to be approved for an honorary custodian (section 1876 of the Civil Code) or
3. remuneration to be approved for a person performing custodianship in a professional capacity or for a custodian association under the Guardians and Custodians Payment Act.

(2) The court may determine the remuneration to be approved under subsection (1) no. 3 for future periods of time. The determination is to be reviewed at regular intervals to be determined in advance, which may not exceed two years. The payment of the remuneration is made for the relevant periods of time as set out in section 14 (1) sentence 1 of the Guardians and Custodians Payment Act. The custodian is to notify the court without delay of any change in the criteria relevant to determining the remuneration.

(3) The personal and financial circumstances of the person concerned are to be presented in the application. Section 118 (2) sentences 1 and 2 of the Code of Civil Procedure applies accordingly. If, at the court's freely-formed conviction, the effort of investigating the personal and economic circumstances of the person concerned is disproportionate to the amount of the claim to be paid from the state treasury or to the amount of the expected payments the person concerned is required to pay, the court may determine the amount to be paid without further assessment or may refrain from determining the payments to be made by the person concerned.

(4) The person concerned is to be heard before determining a payment to be made by him or her.

(5) In such case as an application for determination has not been made, the procedural rules for compensating witnesses with regard to their cash expenditures applies analogously to payments that may be requested from the state treasury.

(6) The *Land* governments are authorised to introduce by statutory instrument forms for applications in accordance with subsections (1) and (2). To the extent that forms have been introduced, persons who perform custodianship in a professional capacity or custodian associations must use them and submit them as electronic documents if they are intended for submission in this way. Otherwise, a proper claim has not been made within the meaning of section 1875 (2) of the Civil Code in conjunction with the Guardians and Custodians Payment Act. The *Land* governments may delegate the authorisation under sentence 1 to the *Land* department of justice by way of statutory instrument.

Section 292a

Payments to the state treasury

(1) At the same time as making the determination in accordance with section 292 (1), the court also determines the amount and time of the payments that the person concerned must pay to the state treasury under section 1880 (2) and 1881 sentence 1 of the Civil Code. The court may determine the amount and time of the payments to be made separately if this is appropriate. Section 120 (2) and (3) and section 120a (1) sentences 1 to 3 of the Code of Civil Procedure apply accordingly.

(2) In the event of the death of the person concerned, the court determines the amount and time of the payments to be made by the heir to the state treasury under section 1881 sentence 2 of the Civil Code. The heir has an obligation to provide the court with the information required to this end, in particular to submit to the court at its request a list of the objects belonging to the inheritance and to make a declaration in lieu of an oath that he or she, to the best of his or her knowledge and belief, has indicated the inventory as completely as he or she was able to.

(3) Before a decision, the person concerned or the heir is to be heard.

Section 293

Extension of the custodianship or the reservation of consent

(1) As to the extension of the scope of duties of the custodian and the extension of the scope of the declarations of intent requiring consent, the provisions concerning such measures apply accordingly. The court need only hear the competent public authority if the person concerned so requests or if necessary for clarification of the matter.

(2) An in-person hearing under section 278 (1) as well as obtaining an expert opinion or a medical certificate (sections 280 and 281) is not required:

1. when these procedural actions took place less than six months in the past or
2. the intended extension under subsection (1) is not significant.

A significant extension of the scope of duties of the custodian particularly exists when in whole or in part the care of the person or one of the duties set forth in section 1815 (2) or sections 1829 to 1832 of the Civil Code is to be included for the first time.

(3) Notwithstanding subsection (2), the court may dispense with obtaining an expert opinion or a medical certificate if the custodian's task area is to be extended, not on account of a change in the illness or disability of the person concerned, but on account of a change in his or her living circumstances or on account of the insufficient effect of other assistance.

(4) If an extension of the scope of duties is connected with the appointment of an additional custodian under section 1817 of the Civil Code, subsections (1) to (3) apply accordingly.

Section 294

Termination and limitation of the custodianship or the reservation of consent

(1) Sections 279 (1), (3), and (4) and 288 (2) sentence 1 apply accordingly to the termination of the custodianship or an order of a reservation of consent, as well as to a limitation on the scope of duties of the custodian or the scope of the declarations of intent requiring consent.

The court need only hear the competent public authority if the person concerned so requests or if necessary for clarification of the matter.

(2) If the court did not obtain an expert opinion in accordance with section 281 (1), this must take place subsequently in cases where an application by the person concerned for termination of the custodianship or a limitation of the scope of duties is to be rejected for the first time.

(3) The court is to decide on the termination of the custodianship or the reservation of consent at the latest seven years after such measures have been ordered. If the measure has been ordered contrary to the declared will of the person concerned, a first-time decision on its revocation is to be taken at the latest two years after the order.

Section 295

Extension of duration of custodianship or the reservation of consent

(1) As to an extension of the duration of a custodianship or an order of a reservation of consent, the provisions concerning the initial order of such measures apply accordingly. A new expert opinion does not need to be obtained when the in-person hearing of the person concerned and a medical certificate show that the scope of the need for custodianship has not diminished and an extension is not contrary to the will of the person concerned. The court need only hear the competent public authority if the person concerned so requests or if necessary for clarification of the matter.

(2) The court is to decide on the extension of the duration of the custodianship or the reservation of consent at the latest seven years after such measures have been ordered. If the measure has been ordered contrary to the declared will of the person concerned, a decision on a first-time extension is to be taken at the latest after two years.

Section 296

Removal of custodian and appointment of new custodian

(1) The court is to conduct an in-person hearing with the person concerned and the custodian when the person concerned objects to the removal of the custodian (section 1868 of the Civil Code).

(2) Prior to the appointment of a new custodian (section 1869 of the Civil Code), the court is to conduct an in-person hearing with the person concerned. This does not apply when the person concerned stated his or her agreement with the change in custodian. Section 279 (1), (3) and (4) applies accordingly. The court need only hear the competent public authority if the person concerned so requests or if necessary for clarification of the matter.

Section 297

Sterilisation

(1) The court is to conduct an in-person hearing with the person concerned prior to the approval of consent by the custodian to a sterilisation (section 1830 (2) of the Civil Code) and must obtain a personal impression of him or her. It is to inform the person concerned of the possible course of the proceedings.

(2) The court is to hear the competent public authority when the person concerned so requests or when it would serve clarification of the facts.

(3) The court is to hear other participants. Upon request of the person concerned, the court is to hear a person close to him or her if this is possible without significant delay.

(4) Procedural actions under subsections (1) to (3) may not be undertaken by the requested judge.

(5) The appointment of a guardian ad litem is always necessary to the extent the person concerned does not allow himself or herself to be represented by a lawyer or another suitable authorised representative.

(6) The approval may first be granted only after expert opinions are obtained through the formal taking of evidence that address the medical, psychological, social, special educational, and sexual educational issues. The experts must personally examine or

question the person concerned prior to preparation of the expert opinion. An expert and the acting physician may not be the same person.

(7) The approval becomes effective upon the notification of the decision with respect to consent to the sterilisation to the custodian appointed and:

1. to the guardian ad litem or
2. to the authorised representative when a guardian ad litem was not appointed.

(8) A decision approving the sterilisation must always be announced directly to the person concerned. Notification of the grounds for the decision to the person concerned cannot be excluded. The competent public authority must always be notified of the decision.

Section 298

Proceedings in cases under section 1829 of the Civil Code

(1) The court may only approve the consent, rejection, or revocation of consent of a custodian or authorised representative (section 1829 (1), (2), and (5) of the Civil Code) when it has previously conducted an in-person hearing with the person concerned. As a rule, the court must hear the other participants. Upon request of the person concerned, the court must hear a person close to him or her if this is possible without significant delay.

(2) The appointment of a guardian ad litem is always necessary when the object of the proceedings is an approval under section 1829 (2) of the Civil Code.

(3) Prior to the approval, an expert opinion must be obtained. The expert may not also be the acting physician.

Section 299

In-person hearing in other approval proceedings

The court is to conduct an in-person hearing with the person concerned prior to a decision in accordance with section 1833 (3), section 1820 (5) sentence 2 of the Civil Code or section 3 (3) of the Act on Self-Determination With Regard to Gender Markers. As a general rule, the court must conduct an in-person hearing with the person concerned prior to a decision in accordance with sections 1850 to 1854 of the Civil Code

Section 300

Interlocutory order

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

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

In derogation from section 278 (3), a hearing of the person concerned through mutual legal assistance proceedings is admissible.

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

Section 301

Interlocutory orders upon increased urgency

(1) In cases of imminent danger, the court may issue an interlocutory order under section 300 prior to the in-person hearing of the person concerned, as well as prior to the hearing

and appointment of a guardian ad litem. These procedural acts are subsequently to be undertaken without delay.

(2) In cases of imminent danger, the court is not bound by section 1816 (2) and (3) of the Civil Code in the selection of the custodian.

Section 302

Duration of the interlocutory order

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

Section 303

Supplementary provisions concerning a complaint

(1) The competent public agency has the right to file a complaint against decisions concerning:

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

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

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

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

(3) The guardian ad litem has the right to file a complaint.

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

Section 304

Complaint by the public treasury

(1) The representative of the public treasury has the right to file a complaint to the extent the interests of the public treasury are affected by the order. If the representative of the public treasury asserts that the custodian submitted a false invoice or that instead of a custodian appointed under section 1816 (5) of the Civil Code, the person under custodianship could be cared for by one or more suitable persons who are not professional custodians, he or she has the right to file a complaint against a rejection of the removal of the custodian.

(2) The time limit for filing a complaint by the representative of the public treasury is three months beginning from the point in time of the communication without a prescribed form (section 15 (3)) to him or her.

Section 305

Complaint by the person involuntarily committed

If the person concerned has been involuntarily committed, he or she may also file a complaint with the local court in the district of which he or she is involuntarily committed.

Section 306

Revocation of the reservation of consent

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

Section 307

Costs in custodianship matters

In custodianship matters, the court may impose the expenses of the person concerned insofar as they were necessary for the appropriate legal actions in whole or in part on the public treasury if a custodianship measure under sections 1814 to 1881 of the Civil Code was rejected, revoked as unjustified, limited, or if the proceedings were concluded without a decision concerning such measure.

Section 308

Communication of decisions

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

(2) If during the course of court proceedings, knowledge requiring communication under subsection (1) arises prior to the conclusion of the proceedings, communication of the knowledge that arose must be made without delay.

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

1. the purpose of the proceedings or the purpose of the communication would be endangered upon provision of the information,
2. according to a medical certificate, there is a concern that significant disadvantage would result to the health of the person concerned, or
3. it is the impression of the court that the person concerned is obviously not in a condition to understand the substance of the information.

As soon as the reasons set forth in sentence 2 are no longer applicable, the information must be subsequently provided.

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

Section 309

Communications to the registration office

If a reservation of consent has been ordered that encompasses determining the residence of the person concerned, the court must inform the registration authority of this and provide the name of the custodian. Communication must also take place when the reservation of consent under sentence 1 is terminated or there is a change in the person undertaking the custodial duties.

Section 309a

Communications to the custodianship authority

(1) In the event that the custodianship ends as a result of the death of the person concerned, the court is to inform the custodianship authority thereof.

(2) The court may inform the custodianship authority of the circumstances concerning the suitability or reliability of the custodian. At the same time, the court informs the custodian of the communication and its content. The custodian is not so informed if so doing would endanger the purpose of the communication. Such information is to be provided subsequently as soon as the reasons under sentence 3 cease to be applicable.

Section 310

Communications during a placement involving deprivation of liberty or a measure involving deprivation of liberty

For the duration of a placement involving deprivation of liberty or a measure involving deprivation of liberty, the court must inform the head of the facility in which the placement measure is carried out of the appointment of a custodian whose duties encompass determining the residence or deciding on one of the specified placement measures of the person concerned, revocation of such custodianship, and any change in the person undertaking the custodial duties.

Section 311

Communications for criminal prosecution

Except for cases set forth in this statute, in section 16 of the Introductory Act to the Court Constitutions Act (*Einführungsgesetz zum Gerichtsverfassungsgesetz*) and in section 70 (1) sentences 2 and 3 of the Youth Courts Act, the court may ex officio communicate to other courts or public authorities decisions or knowledge gained from the proceedings from which the person concerned is recognisable only for the prosecution of crimes or administrative offences to the extent there are no prevailing interests of the person concerned worthy of protection that would preclude the transmission. Section 308 (3) and (4) applies accordingly.

Division 2

Proceedings in placement matters

Section 312

Placement matters

Placement matters are proceedings that concern the approval or order concerning:

1. a placement involving a deprivation of liberty under section 1831 (1) and (2) also in conjunction with (5), of the Civil Code),
2. a measure involving a deprivation of liberty under section 1831 (4) also in conjunction with (5), of the Civil Code,
3. coercive medical treatment, including transportation to an in-patient stay under section 1832 (1), (2), and (4) also in conjunction with (5), of the Civil Code, or
4. a placement involving deprivation of liberty, a measure involving deprivation of liberty, or coercive medical treatment for a person who has reached the age of majority in accordance with *Land* statutes concerning placement of persons with a mental illness (placement measure).

Section 313

Local jurisdiction

(1) Exclusive jurisdiction for placement matters under section 312 nos. 1 to 3 lies with the courts in the following order of priority:

1. the court before which a proceeding for the appointment of a custodian was initiated or the custodianship proceeding is pending;
2. the court in the district of which the person concerned has his or her habitual residence;
3. the court in the district of which the need for the placement measure arose;
4. the Schöneberg Local Court in Berlin when the person concerned is a German national.

(2) As to interlocutory orders or interlocutory measures, that court also has jurisdiction in the district of which the need for the placement measure became known. In the case of an

interlocutory order or an interlocutory measure, it must, as a rule, communicate this to the court that would have jurisdiction under subsection (1) no. 1 or no. 2.

(3) The court in the district of which the need for the placement arose has exclusive jurisdiction for placement measures under section 312 no. 4. If the person concerned has already been placed in a facility involving the deprivation of liberty, the court in the district of which the facility is located has exclusive jurisdiction.

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

Section 314

Relinquishment of the placement matter

The court may relinquish the placement matter when the person concerned has his or her abode in the district of the other court and the placement measure is to be executed there insofar as that court has stated agreement with accepting the proceedings.

Section 315

Participants

(1) The participants are:

1. the person concerned,
2. the custodian,
3. the authorised person within the meaning of section 1814 (3) sentence 2 no. 1 of the Civil Code.

(2) The guardian ad litem must be included as a participant in the proceedings by appointment.

(3) The competent public authority must be included as a participant upon its application.

(4) In the interests of the person concerned, the following may also be participants:

1. his or her spouse or life partner when the spouses or life partners are not permanently separated, his or her parents and children when the person concerned lives with them or had lived with them when the proceeding was initiated, his or her foster parents,
2. a person named by him or her who enjoys his or her trust,
3. the head of the facility in which the person concerned resides.

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

Section 316

Capacity to participate in proceedings

In placement matters the person concerned has the capacity to participate in the proceedings without regard to his or her capacity to contract.

Section 317

Guardian ad litem

(1) The court appoints a suitable guardian ad litem for the person concerned when this is necessary for representing his or her interests. The appointment is particularly necessary when there will be no hearing of the person concerned. In the case of the approval of consent to coercive medical treatment or an order therefor, the appointment of a guardian ad litem is always required.

(2) If the court does not appoint a guardian ad litem for the person concerned, the reasons for this must be stated in the decision in which the placement measure is approved or ordered.

(3) The guardian ad litem must establish the wishes, subsidiarily the presumed will, of the person concerned and must assert it in the court proceedings. He or she is to inform the person concerned about the subject, course and possible outcome of the proceedings in a suitable way and to support him or her as necessary in exercising his or her rights in the proceedings. He or she is not the legal representative of the person concerned.

(4) A natural person is to be appointed as guardian ad litem. A person who is a professional guardian ad litem may only be appointed as guardian ad litem when there is no other suitable person available who is prepared to voluntarily perform the duties of guardian ad litem.

(5) The appointment of a guardian ad litem may not be made or must be rescinded when the interests of the person concerned are represented by a lawyer or another suitable authorised representative.

(6) The appointment ends, insofar as it has not previously been rescinded, upon the final decision becoming final and binding or upon another conclusion of the proceedings.

(7) The appointment or rescindment of a guardian ad litem as well as the rejection of such a measure are not independently contestable.

(8) No costs may be imposed on the guardian ad litem.

Section 318

Remuneration and expenditure reimbursement for the guardian ad litem

Section 277 applies accordingly to remuneration and expenditure reimbursement for the guardian ad litem.

Section 319

In-person hearing of the person concerned

(1) The court is to must conduct an in-person hearing with the person concerned prior to a placement measure and must obtain a personal impression of him or her. The court is to obtain the personal impression, to the extent necessary, in the usual environment of the person concerned.

(2) At the hearing, the court discusses with the person concerned the proceedings, the findings of the expert opinion obtained and the possible duration of placement. If the court has appointed a guardian ad litem for the person concerned under section 317, the in-person hearing must, as a rule, take place in his or her presence.

(3) If an in-person hearing does not take place in accordance with section 34 (2) because there is a concern of significant detriment to the health of the person concerned, this decision may only be made based upon a medical opinion. If, for this reason, an in-person hearing does not take place, it is also not necessary to obtain a personal impression.

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

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

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

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

Section 320

Hearing other participants and the competent public authority

The court may hear the other participants. As a rule, it must hear the competent public authority.

Section 321

Obtaining an expert opinion

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

(2) As to a measure involving a deprivation of liberty under section 312 no. 2 or 4, a medical certificate is sufficient.

Section 322

Presentation for testing; placement for expert assessment

Sections 283 and 284 apply accordingly to the presentation for testing and placement for expert assessment.

Section 323

Contents of the operative provisions of the order

(1) In the case of an approval or an order of a placement measure, the operative provisions of the order must also contain:

1. a detailed description of the placement measure and
2. the time at which the placement measure will terminate.

(2) Upon the approval of consent to coercive medical treatment or upon an order therefor, the operative provisions of the order must also contain statements that the implementation and documentation of this measure are the responsibility of a physician.

Section 324

Effectiveness of orders

(1) An order concerning the approval or the order of a placement measure becomes effective when it becomes final and binding.

(2) The court may order the immediate effectiveness of an order. In such a case, it becomes effective when the order and the order of its immediate effectiveness:

1. are notified to the person concerned, the guardian ad litem, the custodian, or the person authorised under section 1814 (3) sentence 2 no. 1 of the Civil Code,
2. are communicated to a third party for the purpose of execution of the order, or
3. are provided to the court registry for the purpose of notification.

The time of immediate effectiveness must be noted on the order.

Section 325

Notification

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

(2) The director of the institution in which the person concerned is to be involuntarily committed is also to be notified of the order through which a placement measure has been approved or ordered. The court is to notify the competent public agency of a decision through which a placement measure was approved, ordered, or terminated.

Section 326

Presentation for placement; transportation to in-patient stay

- (1) The competent public authority is to support the custodian or the person authorised under section 1814 (3) sentence 2 no. 1 of the Civil Code at their request in presenting the person concerned for placement in accordance with section 312 no. 1 or with transportation under section 312 no. 3.
- (2) The public authority may only employ coercive force when the court has expressly so ordered. The competent public authority is authorised to request the assistance of police enforcement bodies when necessary.
- (3) The residence of the person concerned may only be opened, entered, and searched by force against his or her will when the court has expressly so ordered for his or her presentation for placement or for his or her transportation under section 312 no. 3. Prior to the order, the person concerned must be heard in person. In a case of imminent danger, the order may be made by the competent public authority without a prior hearing of the person concerned. This provision is a limitation on the fundamental right to the inviolability of the home arising from Article 13 (1) of the Basic Law.

Section 327

Enforcement issues

- (1) The person concerned may apply for a decision by the court against measures regulating individual issues as part of execution of the placement measure under section 312 no. 4. A requirement to perform rejected or omitted measures may also be requested with the application.
- (2) The application is only admissible when the person concerned credibly demonstrates that his or her rights have been violated by the measure, its rejection, or its omission.
- (3) The application does not have suspensive effect. The court may order suspension.
- (4) The order is not contestable.

Section 328

Suspension of execution

- (1) The court may suspend the execution of the placement under section 312 no. 4. Conditions may be placed upon the suspension. The suspension may not exceed six months; it may be extended for up to one year.
- (2) The court may revoke the suspension when the person concerned does not comply with a condition or when his or her condition so requires.

Section 329

Duration and extension of placement measure

- (1) The placement measure must cease at the latest at the end of one year; in the case of an obvious need for a longer period of placement at the latest at the end of two years if it is not previously extended. The approval of consent to coercive medical treatment or an order therefor may not exceed a duration of six weeks when it was not previously extended.
- (2) The provisions concerning the initial order or approval apply accordingly to the extension of the approval or order of a placement measure. In the case of placements that exceed a total duration of four years, the court may not, as a rule, appoint an expert who previously treated the person concerned or prepared an expert opinion regarding the person concerned or who works in the institution to which the person has been involuntarily committed.
- (3) As to the approval of consent to coercive medical treatment or an order therefor with a total duration of more than twelve weeks, the court may not, as a rule, appoint an expert who has previously treated the person concerned or prepared an expert opinion regarding the person concerned or who works in the institution to which the person concerned has been involuntarily committed.

Section 330

Revocation of the placement measure

The approval or order of the placement measure must be revoked when the prerequisites therefor are no longer met. Prior to the revocation of a placement measure under section 312 no. 4, the court must, as a rule, conduct a hearing with the competent public authority unless this would lead to a delay in the proceedings that is not slight.

Section 331

Interlocutory order

The court may order or approve a provisional placement measure through an interlocutory order when:

1. there are urgent grounds for the assumption that the prerequisites for the approval or order of a placement measure are met and there is urgent need for immediate action,
2. there is a medical certificate concerning the condition of the person concerned and the necessity of the measure; the physician who issued the medical certificate must, as a rule, be a psychiatrist; he or she must have experience in the field of psychiatry; this does not apply to measures involving deprivation of liberty under section 312 nos. 2 and 4,
3. in cases under section 317, a guardian ad litem has been appointed and heard, and
4. an in-person hearing has been conducted with the person concerned.

In derogation from section 319 (4), a hearing of the person concerned is admissible through mutual legal assistance proceedings.

Section 332

Interlocutory order upon increased urgency

In cases of imminent danger, the court may issue an interlocutory order in accordance with section 331 prior to the in-person hearing with the person concerned as well as prior to a hearing with and appointment of the guardian ad litem. These procedural steps are to be subsequently undertaken without delay.

Section 333

Duration of the interlocutory order

(1) The interlocutory order may not exceed a duration of six weeks. If this period is insufficient, after hearing an expert it may be extended by a further interlocutory order. Repeated extension is admissible under the conditions set forth in sentences 1 and 2. It may not exceed a total duration of three months. Placement for the purpose of preparation of the expert opinion (section 322) is to be included in this total duration.

(2) The interlocutory order may not exceed a duration of two weeks as to the approval of consent to coercive medical treatment or an order therefor. Upon repeated extensions, the maximum duration of six weeks may not be exceeded.

Section 334

Interlocutory measures

When a placement measure is to be ordered under section 1867 of the Civil Code, sections 331, 332, and 333 apply accordingly.

Section 335

Supplementary provisions concerning a complaint

(1) The following have the right to file a complaint in the interests of the person concerned:

1. his or her spouse or life partner when the spouses or life partners are not permanently separated, as well as his or her parents and children when the person

concerned lives with them or lived with them at the time the proceedings were initiated, foster parents,

2. a person named by the person concerned who enjoys his or her trust, as well as

3. the director of the institution in which the person concerned resides

when they were participants in the proceedings in the first instance.

(2) The guardian ad litem has the right to file a complaint.

(3) The custodian or the person named in the lasting power of attorney may also file a complaint against a decision that relates to the scope of his or her duties, also in the name of the person concerned.

(4) The competent public authority also has the right to file a complaint.

Section 336

Filing a complaint by the person concerned

The person concerned may also file the complaint with the local court in the district of which he or she has been involuntarily committed.

Section 337

Costs in placement matters

(1) In placement matters, the court may impose the expenses of the person concerned, insofar as they were necessary for the legal proceedings, on the state treasury in whole or in part, when a placement measure under section 312 nos. 1 to 3 was rejected, revoked on the basis of lack of justification, limited, or when the proceeding was terminated without a decision concerning the measure.

(2) If an application for a placement measure under *Land* statutes concerning the placement of psychologically ill persons in accordance with section 312 no. 4 is rejected or withdrawn and if the result of the proceeding is that there was no reasonable basis for the competent administrative authority to submit an application, the court is to impose the expenses of the person concerned on the entity to which the administrative authority belongs.

Section 338

Communication of decisions

Sections 308 and 311 apply accordingly to communications. The revocation of a placement measure under section 330 sentence 1 and the suspension of the placement under section 328 (1) sentence 1 are to be communicated to the director of the institution in which the person concerned resides.

Section 339

Informing relatives

The court is to promptly inform a relative of the person concerned or a person who enjoys his or her trust of the order or approval of the placement measure and its extension without delay.

Division 3

Proceedings in matters concerning custodianship court allocations

Section 340

Matters concerning custodianship court allocations

Matters concerning custodianship court allocations are:

1. proceedings concerning curatorship with the exception of curatorship for minors or for a child already conceived,

2. proceedings concerning the court appointment of another representative for a person who has reached the age of majority, as well as

3. other proceedings allocated to the custodianship court

to the extent the matter does not involve custodianship matters or placement matters.

Section 341
Local jurisdiction

Court jurisdiction is determined for matters concerning custodianship court allocations in accordance with section 272.

Book 4
Proceedings in estate and property division matters

Division 1
Definitions of terms; local jurisdiction

Section 342
Definitions of terms

(1) Estate matters are proceedings that concern:

1. the special official custody of dispositions mortis causa,
2. securing the estate including curatorship of estates,
3. the opening of the disposition mortis causa,
4. determination of the heirs,
5. the acceptance of declarations that are to be submitted to the probate court under statutory provisions,
6. certificates of inheritance, certificates of executorship, and other certificates to be issued by the probate court,
7. execution of a will,
8. estate administration, and
9. other duties allocated to the probate court by statute.

(2) Property division matters are:

1. the duties that courts must perform under this Book concerning the distribution of property of estates and communities of property upon the termination of a marriage, a life partnership, or a continued community of property, and
2. proceedings relating to certificates concerning the distribution of the community of property of a marriage, life partnership, or continued community of property under sections 36 and 37 of the Real Property Registration Regulation (*Grundbuchordnung*) and sections 42 and 74 of the Ship Registration Regulation (*Schiffsregisterordnung*).

Section 343
Local jurisdiction

- (1) That court has jurisdiction in the district of which the testator had his or her habitual residence at the time of death.
- (2) If the testator did not have a habitual residence in Germany at the time of death, that court has jurisdiction in the district of which the testator had his or her last habitual residence in Germany.
- (3) If there is no jurisdiction under subsections (1) and (2), the Schöneberg Local Court in Berlin has jurisdiction if the testator is a German national or if estate assets are located in Germany. The Schöneberg Local Court in Berlin may refer the matter to another probate court for good cause.

Section 344

Special local jurisdiction

(1) Jurisdiction for special official custody of wills:

1. when the will was made before a notary lies with the court in the district of which the notary has his or her official seat;
2. when the will was made before the mayor of a municipality lies with the court in the district of which the municipality is located;
3. when the will was made in accordance with section 2247 of the Civil Code lies with any court.

The testator may at any time request custody at a court that does not have local jurisdiction under sentence 1.

(2) The renewed special official custody of joint wills in accordance with section 349 (2) sentence 2 takes place at the court with jurisdiction for the estate of the first deceased, unless the surviving spouse or life partner requests custody at a different local court.

(3) Subsections (1) and (2) apply accordingly to the special official custody of contracts of inheritance.

(4) As to securing the estate, each court in the district of which a need for the securing of the estate exists has jurisdiction.

(4a) As to distribution of an estate, every notary has jurisdiction who has his or her official seat in the district of the local court in which the testator had his or her last habitual residence. If the testator did not have a habitual residence within Germany, every notary has jurisdiction who has his or her official seat in the district of the local court in which estate assets are located. In cases where more than one notary has local jurisdiction, the notary who first received an application for distribution is competent to act. Agreements among those sharing in the distribution remain unaffected.

(5) As to distribution of the joint property of a community of property, if a portion of the joint property is part of an estate, that notary has jurisdiction who is competent for the distribution of the estate. In all other cases, every notary has jurisdiction who has his or her official seat in the district of the competent court under section 122 nos. 1 to 5. If there is no jurisdiction under that provision, every notary has jurisdiction who has his or her official seat in the district of a local court in which assets are located that belong to the joint property.

Subsection (4a) sentences 3 and 4 applies accordingly.

(6) If a court other than the court with jurisdiction under section 343 has official custody of a disposition mortis causa, this court has jurisdiction for opening the disposition.

(7) As to the acceptance of a declaration disclaiming an inheritance or by which the failure to comply with the period for disclaimer, the acceptance or disclaimer of an inheritance or a declaration of avoidance itself is avoided that probate court also has jurisdiction in the district of which the person making the declaration has his or her habitual residence. The original record or the original publicly certified declaration must be transmitted from that court to the competent probate court.

Division 2

Proceedings in estate matters

Subdivision 1

General provisions

Section 345

Participants

(1) In proceedings concerning the issuance of a certificate of inheritance, the applicant is a participant. Further, additional parties who may be involved are:

1. statutory heirs,

2. persons who may be heirs based upon an existing disposition mortis causa,
3. the applicant's opponent when a legal dispute is pending with respect to the right of succession,
4. persons who in the event of the ineffectiveness of the disposition mortis causa would be heirs, and
5. all others whose right to the estate would be directly affected by the proceedings.

They are to be included upon their application.

(2) Subsection (1) applies accordingly for the issuance of a certificate under section 1507 of the Civil Code or under sections 36 and 37 of the Real Property Registration Regulation and sections 42 and 74 of the Ship Registration Regulation.

(3) In proceedings for the appointment of an executor and for the issuance of an executor's certificate, the executor is a participant. The court may include as participants:

1. the heirs,
2. the co-executor.

They must be included upon their application therefor.

(4) In other estate proceedings that are commenced by application, participants in proceedings concerning:

1. curatorship of the estate or administration of the estate include the curator of the estate or the administrator of the estate;
2. the dismissal of the executor of the estate include the executor;
3. the determination of succession law time limits include the person who must comply with the time limit;
4. the determination or extension of an inventory period include the heir who must comply with the time limit and, in cases under section 2008 of the Civil Code, his or her spouse or life partner;
5. the making of a declaration in lieu of an oath include the person who is to make the declaration in lieu of oath, as well as in cases under section 2008 of the Civil Code, his or her spouse or life partner.

The court may involve as other participants all others whose rights are directly affected by the proceedings. They are to be included upon their application.

Subdivision 2

Custody of dispositions mortis causa

Section 346

Proceedings upon special official custody

(1) The acceptance of a disposition mortis causa into special official custody as well as its surrender must be ordered by the judge and effectuated by him or her together with the records clerk of the court registry.

(2) The deposit of a will is to be made under the joint seal of the judge and the records clerk of the court registry.

(3) The testator is to be issued a certificate of deposit concerning the official custody of the disposition mortis causa; in the case of a joint will, each testator receives a certificate of deposit and in the case of a contract of inheritance, each contracting party.

Section 347

Communication of custody

(1) If the court takes a holographic will or an emergency will into special official custody, it electronically transmits without delay the details of the custody within the meaning of section 78d (2) sentence 2 of the Federal Regulations for Notaries to the public authority that maintains the Central Register of Wills. Sentence 2 applies accordingly to joint holographic wills and contracts of inheritance that have not been taken into special official custody when they were opened after the death of the first testator and do not exclusively contain rules relating to the succession occurring upon the death of the first testator.

(2) If a joint will or a contract of inheritance under section 349 (2) sentence 2 and (4) is again deposited into special official custody, the court with jurisdiction under section 344 (2) or (3) transmits the details of the custody to the public authority that maintains the Central Register of Wills, with reference to the previous registration to the extent available.

(3) If a disposition mortis causa deposited into special official custody is withdrawn from such special official custody, the custodial court communicates this to the public registration authority.

Subdivision 3 **Opening of dispositions mortis causa**

Section 348 **Opening of dispositions mortis causa by the probate court**

(1) As soon as the court has received knowledge of the death of the testator, it opens the disposition mortis causa in its custody. A record must be kept of the opening. If the disposition mortis causa was sealed, it is to be noted in the record whether the seal was undamaged.

(2) The court may set a hearing date for the opening of the disposition mortis causa and summon the statutory heirs as well as other participants to the hearing. The content of the disposition mortis causa is to be notified orally to those appearing. It may also be presented to those appearing; upon request it must be presented.

(3) The court must notify the participants of the substance of the disposition mortis causa that relates to them in writing. This does not apply to participants who were present at a hearing under subsection (2).

Section 349 **Particular circumstances as to the opening of joint wills and contracts of inheritance**

(1) Upon the opening of a joint will, the dispositions of the surviving spouse or life partner are not to be notified to the extent they are separable.

(2) If the joint will was in special official custody, a certified copy of the dispositions of the deceased spouse or life partner is to be prepared. The will is to be closed again and placed in special official custody with the competent court under section 344 (2).

(3) Subsection (2) is not applicable when the will only contains rules relating to succession of the first deceased spouse or life partner, especially if the will is limited to the statement that the spouses or life partners establish a mutual and reciprocal disposition.

(4) Subsections (1) to (3) apply accordingly to contracts of inheritance.

Section 350 **Opening of disposition mortis causa by another court**

If a court with jurisdiction under section 344 (6) opens the disposition mortis causa, it must transmit this and a certified copy of the record of the opening to the probate court; a certified copy of the disposition mortis causa must be retained.

Section 351 **Time limit for opening dispositions mortis causa**

If a will, a joint will or a contract of inheritance was in official custody for more than thirty years, the custodial office is to investigate ex officio whether the testator is still alive. If the custodial office cannot determine whether the testator is still alive, the disposition mortis causa is to be opened. Sections 348 to 350 apply accordingly.

Subdivision 4
Proceedings on a certificate of inheritance; execution of the will

Section 352
Information in application for issuance of certificate of inheritance; evidence of accuracy

(1) A person who, as a statutory heir, applies for the issuance of a certificate of inheritance must specify:

1. the time of death of the testator,
2. the last habitual residence and the nationality of the testator,
3. the relationship upon which the inheritance right is based,
4. whether there are or were any other persons who would either exclude him or her as heir or reduce his or her share of the inheritance and if so, their identity,
5. whether and what dispositions of mortis causa exist,
6. whether any lawsuit concerning his or her inheritance right is pending,
7. that he or she has accepted the inheritance,
8. the amount of his or her hereditary share.

If a person has ceased to be an heir who would have excluded the applicant as heir or would have diminished his or her share of the inheritance, the applicant must state the reason such person has ceased to be an heir.

(2) A person who applies for the issuance of a certificate of inheritance based upon a disposition mortis causa, must

1. specify the disposition upon which his or her inheritance right is based,
2. provide information as to whether and what other dispositions mortis causa made by the deceased exist, and
3. provide the information required in subsection (1) sentence 1 nos. 1, 2, and 6 to 8, as well as sentence 2.

(3) The applicant must provide evidence of the accuracy of the information under subsection (1) sentence 1 nos. 1 and 3, as well as sentence 2, through public documents and in the case of subsection (2) must present the documents upon which his or her inheritance right is based. If the documents cannot be obtained or can be obtained only with disproportionate difficulty, the presentation of other evidence is sufficient. As evidence that the testator at the time of death was living in a matrimonial property regime of the community of accrued gains, and in respect of the other information required by subsections (1) and (2), the applicant must declare in lieu of an oath before a court or notary that he or she is not aware of anything contrary to the accuracy of his or her information. The probate court may dispense with the declaration if it regards it as unnecessary.

Section 352a
Joint certificate of inheritance

(1) If there is more than one heir, a joint certificate of inheritance must be issued upon application. The application may be submitted by any one of the heirs.

(2) In the application, the heirs and their shares of the inheritance must be stated. The statement in respect of inheritance shares is not required when in the application all applicants waive the inclusion of the inheritance shares in the certificate of inheritance.

(3) If the application is not submitted by all of the heirs, it must contain a statement that the other heirs have accepted the inheritance. Section 352 (3) is also applicable to the information provided by the applicant concerning the other heirs.

(4) The declaration in lieu of an oath in accordance with section 352 (3) sentence 3 is to be made by all heirs, except when the probate court regards a declaration by one or more heirs to be sufficient.

Section 352b

Contents of certificate of inheritance for prior heirs; naming the executor

(1) The certificate of inheritance issued to a prior heir must contain the information that a subsequent heir has been appointed, the requirements to be fulfilled prior to the succession, and the identity of the subsequent heir. If the testator has appointed the subsequent heir to inherit the portion of the inheritance remaining at the time of the subsequent succession, or if he or she has directed that the prior heir has free disposition over the inheritance, this must also be stated.

(2) If the testator has appointed an executor, the appointment must be provided in the certificate of inheritance.

Section 352c

Certificate of inheritance limited to certain objects

(1) If an inheritance includes objects located outside of Germany, the application for issuance of a certificate of inheritance may be limited to those objects that are located within Germany.

(2) An object as to which a German public authority maintains a ledger or register for registration of the entitled person is deemed to be located within Germany. A claim is deemed to be located within Germany if a German court has jurisdiction over the action.

Section 352d

Public invitation

The probate court may issue a public invitation for the registration of the inheritance rights of other persons; the form of the announcement and the duration of the registration period are determined in accordance with the provisions applicable to public notice proceedings (*Aufgebotsverfahren*).

Section 352e

Decision on application for certificate of inheritance

(1) The certificate of inheritance may only be issued when the probate court considers the facts upon which the application is based to be established. The decision is made by way of an order. The order becomes effective upon its issuance. There is no requirement for notification of the order.

(2) If the order is contrary to the stated wishes of a participant, the order must be notified to the participants. In this case, the court must suspend the immediate effectiveness of the order and postpone the issuance of the certificate of inheritance until the order becomes final and binding.

(3) If the certificate of inheritance has already been issued, a complaint against the order is only admissible to the extent there is an application for the revocation of the certificate of inheritance.

Section 353

Revocation or declaration of invalidity of certificates of inheritance

(1) If, in a proceeding on revocation, the certificate of inheritance cannot be immediately obtained, the probate court must declare it invalid by way of an order. The order must be publicly announced in accordance with section 435. The declaration of invalidity becomes effective one month after publication in the *Bundesanzeiger* (Federal Gazette). The order is not subject to appeal after its publication.

- (2) In proceedings concerning the withdrawal or declaration of invalidity of certificates of inheritance, the court must reach a decision on the costs of the proceedings. As a rule, the decision on costs must be issued at the same time as the final decision.
- (3) If the certificate of inheritance has already been revoked, a complaint against the order of revocation is only admissible when there is an application for the issuance of a new identical certificate of inheritance. The complaint applies in the case of doubt as an application for a new identical certificate of inheritance.

Section 354 **Other certificates**

- (1) Sections 352 to 353 apply accordingly to the issuance of certificates under sections 1507 and 2368 of the Civil Code, sections 36 and 37 of the Real Property Registration Regulation and sections 42 and 74 of the Ship Registration Regulation.
- (2) If the executor is restricted in administration of the estate or if the testator directed that the executor should not be restricted in incurring obligations on behalf of the estate, this is to be stated in the certificate under section 2368 of the Civil Code.

Section 355 **Execution of the will**

- (1) An order through which the probate court specifies a time limit for a declaration by a third party under section 2198 (2) of the Civil Code or a time limit for the acceptance of the office of executor by a person named as executor is contestable by a complaint subject to a time limit upon application with the necessary modifications of sections 567 to 572 of the Code of Civil Procedure.
- (2) Section 40 (3) applies accordingly to an order through which the court decides in the case of a difference of opinion among more than one executor with respect to undertaking a legal transaction; the complaint must be filed within a time limit of two weeks.
- (3) If two or more persons hold the office of executor jointly, each executor independently has the right to file a complaint against an order through which the court suspended instructions of the testator for the administration of the estate, as well as against an order in which the court decided in a matter of a difference of opinion among the executors.

Subdivision 5 **Other procedural law rules**

Section 356 **Duties of communication**

- (1) If the court becomes aware that a child has acquired property through a disposition mortis causa that is to be inventoried under section 1640 (1) sentences 1 and 2 of the Civil Code, it is to communicate the acquisition of property to the family court.
- (2) If a court under section 344 (4) orders measures for securing the estate, it must, as a rule, inform the court with jurisdiction under section 343 accordingly.

Section 357 **Inspection of an opened disposition mortis causa; duplicate of a certificate of inheritance or another certificate**

- (1) Whosoever credibly demonstrates a legal interest is entitled to inspect an opened disposition mortis causa.
- (2) Whosoever credibly demonstrates a legal interest therein may request to receive a duplicate of the certificate of inheritance. The same applies to court certificates issued under section 354 as well as to orders that relate to the appointment or termination of an executor.

Section 358 **Coercion for the delivery of a will**

In cases under section 2259 (1) of the Civil Code, an order for the delivery of the will must be made by way of an order.

Section 359

Administration of estates

- (1) The order through which the application of the heirs for an order for administration of the estate was granted is not contestable.
- (2) The filing of a complaint against an order that approved an application by a creditor of the estate for an order for administration of the estate is only available to the heirs and in the case of joint heirs, each heir as well as the executor of the estate who is authorised to administer the estate.

Section 360

Determination of an inventory time limit

- (1) The time limit for submitting a complaint against the order that determined a time limit for the submission of the inventory by the heir begins for each creditor of the estate at that point in time at which the order was announced to the creditor of the estate who had submitted an application for the determination of such inventory deadline.
- (2) Subsection (1) applies accordingly to a complaint against an order setting forth a decision with respect to the determination of a new time limit for the submission of the inventory or with respect to an application by an heir to extend the time limit for the submission of the inventory.

Section 361

Declaration in lieu of an oath

If a creditor of the estate requests the submission of a declaration in lieu of an oath from the heirs in accordance with section 2006 of the Civil Code, an application for the determination of a date for the court hearing for the submission of the declaration in lieu of an oath may be submitted by the creditor of the estate as well as by the heir. Both parties must be summoned to the court hearing. The appearance of the creditor is not mandatory. Sections 478 to 480 and 483 of the Code of Civil Procedure apply accordingly.

Section 362

Deferment as to claim for compulsory share

Section 264 applies accordingly to a proceeding on deferment as to a claim for the compulsory share (section 2331a in conjunction with section 1382 of the Civil Code).

Division 3

Proceedings in property distribution matters

Section 363

Application

- (1) In cases where there is more than one heir, the notary must facilitate the distribution of the estate among the participants upon the filing of an application; this is not applicable when there is an executor who is entitled to distribute the assets of the estate.
- (2) Each joint heir, the purchaser of a portion of the inheritance, as well as any person who has a lien or usufruct in a portion of the estate is entitled to submit an application.
- (3) As a general rule, the application must set forth the participants and the property to be distributed.

Section 364

(repealed)

Section 365

Summons

- (1) The notary is to summon the applicant and the other participants to an oral hearing. A summons by way of public service is inadmissible.
- (2) As a rule, the summons must contain the information that even in the absence of a participant the oral hearing on the distribution of the estate will proceed and that the summons for a new court hearing need not be made in the event the court hearing is

postponed or a new court hearing date for the continuation of the oral hearing is to be scheduled. If there is written documentation concerning the distribution of the estate, reference is to be made in the summons that the documents may be inspected in the office of the notary.

Section 366 **Out-of-court agreement**

- (1) If the participants who appear reach an agreement prior to the distribution of the estate, in particular as concerns the form of the division of property, the notary records the agreement. The same applies to the recommendations of a participant when he or she is the only person to appear.
- (2) If all participants appear, the notary confirms the agreement they reached. The same applies when those participants who did not appear submit their agreement by way of a court record by the court or a publicly certified document.
- (3) If a participant does not appear, the notary, when the participant did not agree in accordance with subsection (2) sentence 2, is to notify him or her of the substance of the document that relates to him or her and concurrently inform him or her that the document may be inspected in the offices of the notary and a copy of the document may be requested. The notification must contain the information that his or her acceptance of the substance of the document is presumed when he or she does not submit an application for the scheduling of a new hearing within the time limit established by the notary or when he or she does not appear at the new hearing.
- (4) If the participant applies in due time for the scheduling of a new court hearing and if he or she appears at the new court hearing, the oral hearing is to be continued; in all other cases the notary confirms the agreement.

Section 367 **Restoration of the status quo ante**

If in a case under section 366 the participant was hindered through no fault of his or her own in submitting an application for the scheduling of a new hearing in due time or in appearing at the new hearing, the provisions governing restoration of the status quo ante (sections 17, 18, and 19 (1)) apply accordingly.

Section 368 **Property distribution plan; confirmation**

- (1) As soon as the circumstances of the situation allow the distribution of property to take place, the notary is to prepare a property distribution plan. If the participants who appear are in agreement with the substance of the plan, the notary records it. If all participants appear, the notary confirms the distribution of the property; the same applies when those participants who did not appear submit their agreement by way of a recording by the court or a publicly certified document.
- (2) If a participant did not appear, the notary is to proceed in accordance with section 366 (3) and (4). Section 367 applies accordingly.
- (3) (repealed)

Section 369 **Distribution by drawing lots**

If there is an agreement for distribution of the property by drawing lots when there has been no other agreement, the lot for any participant who does not appear is to be drawn by a representative appointed by the notary.

Section 370 **Suspension in the event of a dispute**

If disputed issues arise during the oral hearing, a record thereof is to be made and the proceeding suspended until the disputed issues are concluded. Insofar as undisputed issues

may be recorded and certified, the notary is to proceed in accordance with sections 366 and 368 (1) and (2).

Section 371

Effect of confirmed agreement and distribution of property; execution

(1) Agreements in accordance with section 366 (1) as well as distributions of property in accordance with section 368 become effective when the confirmation order is final and binding and are as binding upon all participants as a contractual agreement or property distribution.

(2) Execution takes place upon the effectiveness of the agreement under section 366 (1) as well as upon distribution of property. Sections 795 and 797 of the Code of Civil Procedure apply accordingly.

Section 372

Legal remedy

(1) An order setting forth a time limit in accordance with section 366 (3) and an order concerning restoration of the status quo ante are contestable by a complaint subject to a time limit upon application with the necessary modifications of sections 567 to 572 of the Code of Civil Procedure.

(2) A complaint against an order of confirmation may only be based upon the grounds that the provisions regarding the proceedings were not complied with.

Section 373

Distribution of a community of property

(1) Upon the termination of a marriage, a life partnership, or a continued community of property, the provisions of this Division apply accordingly to the distribution of the community of property.

(2) Section 345 (1) and sections 352, 352a, 352c to 353, and 357 apply accordingly to proceedings for the issuance, withdrawal, or declaration of ineffectiveness of certificates concerning the distribution of the community of property of a marriage, life partnership, or continued community of property under sections 36 and 37 of the Real Property Registration Regulation and sections 42 and 74 of the Ship Registration Regulation.

Book 5

Proceedings in registry matters, commercial law proceedings

Division 1

Definitions of terms

Section 374

Registry matters

Registry matters are:

matters concerning the commercial register (*Handelsregister*),

matters concerning the company register (*Gesellschaftsregister*)

3. matters concerning the register of cooperatives (*Genossenschaftsregister*),

4. matters concerning the partnership register (*Partnerschaftsregister*),

5. matters concerning the register of associations (*Vereinsregister*).

Section 375

Commercial law proceedings

Commercial law proceedings are those matters to be dealt with by the court in accordance with:

1. section 145 (1) and (3), section 152 (1) and section 318 (3) to (5) of the Commercial Code (*Handelsgesetzbuch*),
2. section 11 of the German Inland Waterways Act (*Binnenschifffahrtsgesetz*) in accordance with the provisions of this act that concern average adjustments, as well as in accordance with section 595 (2) of the Commercial Code, in conjunction with section 78 of the German Inland Waterways Act as well,
3. section 33 (3), sections 35 und 73 (1), sections 85 und 103 (3), sections 104 and 122 (3), section 147 (2), section 183a (3), section 264 (2), section 265 (3) and (4), section 270 (3), section 273 (2) to (4), as well as section 290 (3) of the Stock Corporation Act,
4. Article 55 (3) of Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European Company (SE) (OJ L 294/1), as well as section 29 (3), section 30 (1), (2), and (4), and section 45 of the Act Implementing the SE Regulation (*SE-Ausführungsgesetz*),
5. section 26 (1) and (4) as well as section 206 sentences 2 and 3 of the Transformation Act (*Umwandlungsgesetz*),
6. section 66 (2), (3), and (5), section 71 (3), as well as section 74 (2) and (3) of the Limited Liability Companies Act (*Gesetz betreffend die Gesellschaften mit beschränkter Haftung*),
7. section 45 (3), sections 64b, 83 (3), (4), and (5), as well as section 93 of the Act on Cooperatives (*Genossenschaftsgesetz*),
8. Article 54 (2) of Council Regulation (EC) No 1435/2003 of 22 July 2003 on the Statute for a European Cooperative Society (SCE) (OJ L 207/1),
9. section 2 (3) and section 12 (3) of the Disclosure Act (*Publizitätsgesetz*),
10. section 11 (3) of the Act on Co-Determination in the Coal, Iron, and Steel Industry (*Gesetz über die Mitbestimmung der Arbeitnehmer in den Aufsichtsräten und Vorständen der Unternehmen des Bergbaus und der Eisen und Stahl erzeugenden Industrie*),
11. section 2c (2) sentences 2 to 7, sections 22o, 36 (3) sentence 2, section 28 (2), section 38 (2) sentence 2 and section 45a (2) sentences 1, 3, 4 and 6 of the Banking Act (*Kreditwesengesetz*),
- 11a. section 2a (4) sentences 2 and 3 of the Investment Act (*Investmentgesetz*),
- 11b. section 27 (2) sentences 1 to 6 and section 77 (2) of the Investment Firm Act (*Wertpapierinstitutsgesetz*),
12. section 23 (2) of the Payment Services Supervision Act (*Zahlungsdiensteaufsichtsgesetz*)
13. section 19 (2) sentences 1 to 6, section 36 (1a) and section 204 (2) of the Insurance Supervision Act (*Versicherungsaufsichtsgesetz*) and section 28 (2) sentences 1 to 5 of the Financial Conglomerate Supervision Act (*Finanzkonglomerate-Aufsichtsgesetz*),
14. section 6 (4) sentences 4 to 7 of the Stock Exchange Act (*Börsengesetz*),
15. section 10 of the Limited Liability Partnership Act (*Partnerschaftsgesellschaftsgesetz*) in conjunction with section 145 (1) and section 152 (1) of the Commercial Code,

16. section 9 (2) and (3) sentence 2 and section 18 (2) sentences 2 and 3 of the Act on Debt Securities (*Schuldverschreibungsgesetz*),

17. section 736a (1) and (3) of the Civil Code

Division 2 Jurisdiction

Section 376

Special jurisdiction rules; authorisation to issue statutory instruments

(1) As to proceedings in accordance with section 374 nos. 1 to 3 as well as section 375 nos. 1, 3 to 14, 16 and 17, that court in the district of which the seat of a regional court is located has jurisdiction for the district of such regional court.

(2) The *Land* governments are authorised to delegate by way of statutory instrument the duties set forth in section 374 nos. 1 to 4 as well as section 375 nos. 1, 3 to 14, 16 and 17 to other or additional local courts and to otherwise establish the districts of the courts in derogation from subsection (1). They may delegate the authorisations under sentence 1 by way of statutory instrument to the *Land* departments of justice. Two or more *Länder* may together agree upon the jurisdiction of one court beyond their border for proceedings in accordance with section 374 nos. 1 to 4.

Section 377 Local jurisdiction

(1) The court in the district of which the place of business of a sole proprietorship, the seat of a company, the insurance association, the cooperative, the partnership or the association is located has exclusive jurisdiction insofar as there is no conflicting provision in the applicable statute.

(2) As to matters allocated to the courts in relation to average adjustments to be made in accordance with the Commercial Code or in accordance with the German Inland Waterways Act, that court located in the place where the average adjustment will be prepared has jurisdiction.

(3) Section 2 (1) is not applicable.

Division 3 Register matters

Subdivision 1 Proceedings

Section 378

Representation; notarial competence; authorisation to issue statutory instruments

(1) As to declarations required to be made in conjunction with an application for an entry into a register and that are submitted in an official or publicly certified form, the participants may also be represented by persons who are not entitled to represent others under section 10

(2). This also applies to the acceptance of notifications of registration entries and decrees of the register.

(2) If a declaration necessary for an application for an entry into the register is certified or notarised by a notary, he or she is deemed to be authorised to apply for the entry into the register in the name of the person entitled to do so.

(3) Prior to their submission, applications in registry matters, with the exception of matters concerning the register of cooperatives and the partnership register, are to be examined by a notary for registrability. In matters concerning the commercial register and the company register, they are also to be submitted to a notary for forwarding the application to the office responsible.

(4) The *Land* governments are authorised to determine by statutory instrument that notaries, in addition to electronic applications, are to transmit certain information contained therein in a structured, machine-readable format, insofar as the Federal Ministry of Justice has not

enacted provisions under section 387 (2). The *Land* governments may transfer the authorisation by way of statutory instrument to the *Land* departments of justice.

Section 379

Duties of communication of public authorities

(1) The courts, the public prosecution authorities, the police and municipality authorities, as well as notaries, are to communicate to the register court official knowledge obtained as a result of cases of incorrect, incomplete, or omitted registrations to the commercial register, register of cooperatives, company register, partnership register or register of associations.

(2) The finance authorities are to provide information to the register courts pertaining to the tax circumstances of merchants or companies, especially in the area of commercial and value-added taxes, to the extent this information would be necessary for the avoidance of incorrect entries into the commercial, company or partnership registers, as well as for the correction, completion, or deletion of entries in the register. The information is not subject to the right to inspect files (section 13).

Section 380

Involvement of professional organisations; right of complaint

(1) The register courts are supported in the prevention of incorrect registrations, the correction and completion of the commercial, company and partnership registers, the deletion of registrations in these registers, and upon intervention against impermissible use of a trade name infringement or the impermissible use of the name of a partnership or of a registered civil-law partnership by:

1. the bodies of commercial merchants,
2. the bodies of craft and trade professions, insofar as the registration involves craft and trade professionals,
3. the bodies of agricultural and forestry professions, insofar as the registration involves agricultural and forestry professionals,
4. the professional bodies of the liberal professions, insofar as the registration involves members of these professions

(professional bodies).

(2) In cases of doubt, the court may hear the professional bodies to the extent this is necessary for the performance of the statutorily prescribed registrations as well as for the avoidance of incorrect registrations in the register. Upon their filing of an application, the professional bodies are to be included as participants.

(3) In matters pertaining to the register of cooperatives, the hearing under subsection (2) is limited to the question of the permissibility of the use of the trade name.

(4) To the extent professional bodies are heard, they are to be notified of the court's decision.

(5) Professional bodies have the right to file a complaint against the order.

Section 381

Suspension of proceedings

The register court may also suspend the proceedings when the other prerequisites in accordance with section 21 (1) are fulfilled if no legal dispute is pending. In such a case, the court is to establish a time limit for the filing of a lawsuit by one of the participants.

Section 382

Decision on application for an entry in the register

(1) The register court accepts the application for an entry in the register by the entry into the register. Upon implementation of the entry into the register, it becomes legally effective.

- (2) As a general rule, the register entry must state the date on which it was implemented; the signature or electronic signature of the competent judge or official is to be noted thereupon.
- (3) A decision rejecting an application for an entry into the register is made by way of an order.
- (4) If the application for entry into one of the registers set forth in section 374 is incomplete or if any other hindrance to entry in the register exists that could be remedied by the applicant, the register court sets a reasonable time limit within which the applicant must eliminate the hindrance. The decision is contestable way of a complaint.

Section 383

Notification; appealability

- (1) The entry into the register is to be notified to the participants informally; notification may be omitted.
- (2) The provisions pertaining to the publication of the entries in the register remain unaffected.
- (3) The entry is not contestable.

Section 384

Entries to be implemented ex officio

- (1) Section 382 (1) sentence 2 and (2) as well as section 383 apply accordingly to entries implemented ex officio.
- (2) If a fact to be entered into the register ex officio causes other facts entered in this register to become incorrect, this is to be so identified ex officio in a suitable form.

Section 385

Inspection of the register

Inspection of the registers set forth in section 374 as well as of the documents submitted to the respective register is determined by the particular register law provisions as well as by the statutory instruments enacted under section 387.

Section 386

Written confirmations

Upon request, the register court is to issue a written confirmation that, in regard to the object of an entry in the register, there are no other entries in the register or that a certain entry in the register has not been implemented.

Section 387

Authorisations

- (1) The *Land* governments are authorised to determine by way of statutory instrument that the data in a commercial, cooperative, company, partnership or association register maintained by a court are also accessible to other local courts for inspection and for the issuance of copies. The *Land* governments may delegate this authority by way of statutory instrument to the *Land* departments of justice. Two or more *Länder* may also agree that the register data maintained by the courts of one *Land* are also accessible to the local courts of the other *Land* for inspection and for the issuance of copies.
- (2) The Federal Ministry of Justice is authorised to enact more specific provisions by way of statutory instrument in agreement with the Bundesrat pertaining to the establishment and maintenance of the commercial, cooperative, company and partnership register, the transmission of data to the company register, the management of files in complaint proceedings, inspection of the register, the details of electronic transmission under section 9 of the Commercial Code, and proceedings upon applications, entries and announcements. In so doing, it may also be specified that the date of birth of persons to be entered into the register is to be notified and the address of the business and branch offices to be entered into the register is to be submitted to the court; to the extent such details are provided for in the statutory instrument, section 14 of the Commercial Code applies accordingly.

(3) Further provisions concerning the cooperation of the bodies set forth in section 380 in proceedings before the register courts may also be established by statutory instrument in accordance with subsection (2). In this regard, it may in particular be established that the bodies will be notified continuously or at regular intervals of the data from the commercial, company or partnership register necessary for the fulfilment of their statutory duties and the documents submitted to this register. The data to be notified are to be set forth in the statutory instrument. The recipients may only use the transmitted personal data for fulfilment of the purpose for which they were transmitted to them.

(4) In addition, further requirements may be established by statutory instrument enacted in accordance with subsection (2) regarding the establishment and maintenance of the register of associations, particularly including proceedings for applications, entries into the register, announcements, inspection of the register, and the maintenance of files in complaint cases.

(5) Electronic data processing for the maintenance of the commercial, cooperative, company, partnership or association register may be performed by the equipment of another official agency or the equipment of a third party on behalf of the competent court if the proper performance of the register matters is ensured.

(6) In addition, the necessary provisions may be established by statutory instrument under subsection (2) concerning

1. the structure, allocation and use of the unique European identifier under section 9b (2) sentence 2 of the Commercial Code,
2. the scope of the obligation to notify in the exchange of information between the registers, and the list of data to be transmitted in this regard,
3. the details regulating the electronic transfer of data under section 9b (1) and (2) of the Commercial Code, including specifications regarding data formats and payment modalities,

Subdivision 2

Proceedings concerning fines

Section 388

Warning

(1) As soon as the register court obtains credible information regarding circumstances that justify its involvement under sections 14, 37a (4) and 125 (2) of the Commercial Code, also in conjunction with section 707b no. 2 of the Civil Code, section 5 (2) of the Limited Liability Partnership Act or section 160 (1) of the Act on Cooperatives, sections 407 and 408 of the Stock Corporation Act, section 79 (1) of the Limited Liability Companies Act, section 350 of the Transformation Act, or section 12 of the Act Implementing the European Economic Interest Grouping (EEIG) (*EWIV-Ausführungsgesetz*), it is to set a specific time limit accompanied by a warning of the imposition of a fine within which the person concerned must comply with his or her statutory obligations or justify the omission by way of filing a protest.

(2) In the same manner, the register court may proceed against the members of the board of an association or its liquidators in order to compel them to comply with the provisions set forth in section 78 of the Civil Code.

Section 389

Establishing the amount of the fine

(1) If within the time limit set, neither sufficient compliance with the statutory obligation nor the filing of a protest has occurred, the fine warned of is to be established by way of an order and concurrently the demand made in accordance with section 388 repeated with another warning of the imposition of a fine.

(2) At the time of the establishment of the fine, the costs of the proceeding are also to be imposed upon the participant.

(3) This process is to be repeated in the same manner until the statutory obligation has been complied with or a protest has been filed.

Section 390

Proceedings upon the filing of a protest

(1) If a protest is filed in due time, the court, as a general rule, must summon the participants to a hearing on the matter when the protest does not appear well-founded in the absence of further information.

(2) The court may, even when the participant does not appear at the hearing, reach a decision in the matter.

(3) If the protest is held to be well-founded, the decision reached is to be overruled.

(4) In all other cases, the court is to overrule the protest by way of an order and is to establish the fine warned of. The court may, when circumstances so justify, refrain from the establishment of the fine or establish a fine in a smaller amount than that warned of.

(5) In the case of the overruling of the protest, the court is to concurrently issue a renewed demand in accordance with section 388. The time limit set forth in this decision begins when the overruling of the protest becomes final and binding.

(6) If in cases under section 389 a protest is filed against the renewed warning of the imposition of a fine and if this is held to be well-founded, the court may, when the circumstances so justify, suspend an earlier establishment of a fine or establish a fine in a smaller amount.

Section 391

Complaint

(1) The order through which a fine is established or a protest is rejected is contestable by way of a complaint.

(2) If the fine is established in accordance with section 389, the complaint cannot be based on the fact that the warning of the imposition of a fine was not justified.

Section 392

Proceedings upon unauthorised use of a company name

(1) If there is a need for intervention against a person in accordance with section 37 (1) of the Commercial Code for the unauthorised use of a company name, sections 388 to 391 are applicable, whereby:

1. the participants, together with a warning of the imposition of an administrative fine, are required to refrain from using the company name or, within a specified time limit, to justify the use of the company name through the filing of a protest;

2. the administrative fine is established in the event no protest is filed or a protest that was filed is rejected, the rejection has become final and binding, and the participant has contravened the order after its announcement.

(2) Subsection (1) applies accordingly in cases of the unauthorised use of the name of a partnership or of a registered civil-law partnership.

Subdivision 3

Dissolution and liquidation proceedings

Section 393

Dissolution of a company

(1) Under section 31 (2) of the Commercial Code, the dissolution of a company is to be entered into the commercial register ex officio or upon the application of a professional body. The court is to inform the registered owner of the company or his or her legal successor of the intended dissolution and concurrently to set a reasonable time limit for the lodging of an objection.

(2) If the persons named or their residence is unknown, the notification and the setting of the time limit are announced in the electronic information and communications system designated for the register publications in accordance with section 10 of the Commercial Code.

(3) The court decides by way of an order when it does not grant an application for the commencement of dissolution proceedings or when an objection to the dissolution was lodged. The order is contestable by way of a complaint.

(4) Together with the dismissal of the objection, the costs of the proceedings on the objection are to be imposed on the participants insofar as this is not inequitable.

(5) Dissolution may only occur when no objection has been lodged or when the order dismissing the objection has become final and binding.

(6) Subsections (1) to (5) apply accordingly when the dissolution of the name of a partnership or of a registered civil-law partnership is to be entered into the register.

Section 394

Dissolution of companies and cooperatives without assets

(1) A stock corporation, partnership limited by shares, a limited liability company, or cooperative that has no assets may be dissolved ex officio or upon an application by the finance authorities or the professional bodies. It is to be dissolved ex officio when insolvency proceedings concerning the assets of the company have been implemented and there is no indication that the company still possesses any assets.

(2) The court is to announce to the legal representatives of the company or cooperative the intent to dissolve it insofar as such representatives exist and they and their domestic residence are known; at the same time, they are to be given a reasonable time limit for the lodging of an objection. Even when there is no duty for announcement or the setting of the time limit in accordance with sentence 1, the court may order that the announcement and setting of the time limit takes place by way of publication in the electronic information and communications system designated for register publications in accordance with section 10 of the Commercial Code; in this case, any person who has a legitimate interest in preventing the dissolution from occurring is entitled to lodge an objection. Prior to the dissolution, the organisations set forth in section 380 and in the case of a cooperative, the auditing body, are to be heard.

(3) As to further proceedings, section 393 (3) to (5) applies accordingly.

(4) Subsections (1) to (3) apply accordingly to registered civil-law partnerships, general partnerships and partnerships limited by shares in which none of the personally liable partners is a natural person. Such a company, however, may only be dissolved when the prerequisites related to a lack of assets are fulfilled both by the company and by the personally liable partners. Sentences 1 and 2 are not applicable when a personally liable partner is another registered civil-law partnership, general partnership or partnership limited by shares in which a natural person is a personally liable partner.

Section 395

Removal of inadmissible register entries

(1) If an entry in the register is inadmissible due to the non-fulfilment of a significant prerequisite, the register court may ex officio or upon the application of a professional body remove it. Removal takes place by way of the entry of a notice.

(2) The court is to notify the persons concerned of the intended removal and at the same time set a reasonable time limit for the lodging of an objection. Section 394 (2) sentences 1 and 2 applies accordingly.

(3) As to further proceedings, section 393 (3) to (5) applies accordingly.

Section 396

(repealed)

Section 397

Dissolution of companies and cooperatives that are invalid

A stock corporation or partnership limited by shares that is entered into the commercial register may be dissolved as invalid under section 395 when the prerequisites set forth in sections 275 and 276 of the Stock Corporation Act are met so that a lawsuit for a declaration of invalidity may be filed. The same applies to a limited liability company entered into the commercial register when the prerequisites set forth in sections 75 and 76 of the Act on Limited Liability Companies are met so that a lawsuit for a declaration of invalidity may be filed as well as to a cooperative entered into the register of cooperatives when the prerequisites set forth in sections 94 and 95 of the Act on Cooperatives are met so that a lawsuit for a declaration of invalidity may be filed.

Section 398

Removal of invalid resolutions

A resolution of the general meeting or the meeting of shareholders entered into the commercial register by one of the companies set forth in section 397 as well as a resolution of the general meeting of a cooperative entered into the register of cooperatives may be removed as invalid in accordance with section 395 when by its contents it violates compulsory statutory provisions and its removal appears to be necessary in the public interest.

Section 399

Liquidation based upon deficiencies in the articles of association

(1) If the articles of association of a stock corporation or a partnership limited by shares does not contain one of the significant provisions set forth in section 23 (3) nos. 1, 4, 5 or 6 of the Stock Corporation Act or if one of these provisions or the provision set forth in section 23 (3) no. 3 of the Stock Corporation Act is invalid, the register court ex officio or upon the application of the professional bodies is to order the company to submit for entry into the commercial register an amendment of the articles of association within a certain time limit that corrects the deficiency or to justify the omission by way of the lodging of an objection against the order. The court is to concurrently provide notice that in all other cases a deficiency that is not corrected is to be established within the meaning of subsection (2) and that the company thereupon will be liquidated in accordance with section 262 (1) no. 5 or section 289 (2) no. 2 of the Stock Corporation Act.

(2) If within the time limit determined under subsection (1) the order is not complied with or an objection is not lodged or is dismissed, the court is to establish a deficiency in the articles of association. The establishment may be connected with a dismissal of the objection. Upon the dismissal of the objection, the costs of the proceedings on the objection are to be imposed upon the company insofar as to do so is not inequitable.

(3) The order by way of which an establishment under subsection (2) is made or an application or objection is dismissed is contestable by a complaint.

(4) Subsections (1) to (3) apply accordingly when the partnership agreement of a limited liability company entered into the commercial register does not contain one of the significant provisions under section 3 (1) no. 1 or no. 4 of the Act on Limited Liability Companies or if one of these provisions or the provision set forth in section 3 (1) no. 3 of the Act on Limited Liability Companies is invalid.

Subdivision 4

Supplementary provisions regarding the register of associations

Section 400

Communication duties

The court is to communicate to the competent administrative authority an entry into the register or an amendment to the articles of association when there are indications that a

foreign association or an organisational unit of a foreign association under sections 14 and 15 of the Act on Associations is at issue.

Section 401

Withdrawal of legal capacity

An order through which legal capacity is withdrawn from an association in accordance with section 73 of the Civil Code become effective only when it is final and binding.

Division 4

Commercial law proceedings

Section 402

Contestability

- (1) An order of the court deciding on applications under section 375 is contestable through a complaint.
- (2) A contestation of the order through which an application under section 11 of the German Inland Waterways Act or section 595 (2) of the Commercial Code, also in conjunction with section 78 of the German Inland Waterways Act, is approved is excluded.
- (3) The provisions of the Commercial Code, the Stock Corporation Act and the Disclosure Act concerning complaints remain unaffected.

Section 403

Refusal by the average adjuster

- (1) If the average adjuster rejects an assignment by an interested party to draw up the statement of general average based upon the grounds that there has been no case of a general average the court decides on the obligation of the average adjuster upon application of the interested party.
- (2) The decision is contestable through a complaint.

Section 404

Delivery of documents; right to inspect documents

- (1) Upon application of the average adjuster, the court may impose an obligation on an interested party to deliver documents in his or her possession as to which he or she has a statutory obligation regarding communication, to the average adjuster.
- (2) The average adjuster is obliged to grant each participant an inspection of the documents and upon request to provide copies of them upon reimbursement of the costs thereof.

Section 405

Hearing; summons

- (1) Each participant is authorised to apply for an oral hearing with the court regarding the statement of general average by the average adjuster. The application is to specify the participants who are to be included in the proceeding.
- (2) If an application for oral hearing is submitted, the court is to obtain the statement of general average and the supporting documentation from the average adjuster and, when it is not apparent that the prerequisites of a general average are not fulfilled, the court is to summon the applicant as well as those participants designated by him or her to a court hearing.
- (3) The summons must contain the information that if the person summoned neither appears at the court hearing nor lodges an objection to the statement of general average with the court prior to the court hearing, his or her agreement with the statement of general average will be presumed. It is to be noted in the summons that the statement of general average and the documentation relating to it may be inspected at the offices of the court registry.
- (4) The period between the time of the summons and the court hearing must be at least two weeks.

(5) If the court determines that it is necessary to complete the documentation relating to the statement of general average, it is to order the production of the required documentation. Section 404 (1) applies accordingly.

Section 406

Proceedings at the court hearing

(1) If during the court hearing no objection to the statement of general average is lodged and if none was previously raised, the court is to confirm the statement of general average vis-à-vis the participants in the proceedings.

(2) If an objection has been lodged, the participants whose rights are affected thereby are to make a statement. If the objection is acknowledged as well-founded or if agreement is reached in another way, the statement of general average is to be amended accordingly. If the objection is not resolved, the statement of general average is to be confirmed to the extent that it is not affected by the objection.

(3) If the rights of a participant who did not appear at the court hearing are affected by the objection, it is presumed that he or she does not acknowledge the objection as well-founded.

Section 407

Pursuit of the objection

(1) Insofar as an objection has not been resolved in accordance with section 406 (2), the person raising the objection is to pursue it by filing a lawsuit against those participants in the proceedings whose rights are affected by the objection. Sections 878 and 879 of the Code of Civil Procedure apply accordingly with the proviso that, upon the application of a participant, when significant grounds are credibly demonstrated, the court may extend the time limit for him or her to file the lawsuit and that confirmation of the statement of general average takes the place of execution of the allocation plan.

(2) If the objection is resolved through a final and binding judgment or in any other way, the statement of general average is confirmed after it has been amended if necessary by the local court in accordance with the provisions for resolution of the objections.

Section 408

Complaint

(1) The order through which an application for a court hearing under section 405 has been dismissed, a decision on the confirmation of the statement of general average has been made, or a participant under section 404 has been obliged to surrender documents is contestable by way of a complaint.

(2) Objections to the statement of general average that are to be asserted by the lodging of an objection cannot be asserted in the complaint.

Section 409

Effectiveness; enforcement

(1) The confirmation of the statement of general average is only effective in regard to the participants in the proceedings vis-à-vis one another.

(2) The order on confirmation becomes effective only when it is final and binding.

Enforcement takes place of the statement of general average that has been finally and bindingly confirmed.

(3) As to lawsuits concerning the issuance of the court certificate of enforceability as well as for lawsuits through which objections to the claims established in the statement of general average are asserted or through which the legal succession is disputed that was assumed to have happened at the time of the issuance of the court certificate of enforceability, the court that confirmed the statement of general average has jurisdiction. If the claim cannot be properly made before the local courts, the lawsuits are to be filed with the competent regional court.

Book 6

Proceedings in other matters of non-contentious jurisdiction

Section 410

Other matters of non-contentious jurisdiction

Other matters of non-contentious jurisdiction are:

1. the submission of a declaration in lieu of an oath that is not to be declared before the enforcement court in accordance with sections 259, 260, 2028 and 2057 of the Civil Code,
2. the designation, administration of oath, and examination of the expert witness in cases in which a person may cause the condition or value of an object to be established by an expert in accordance with the provisions of civil law,
3. the appointment of a depositary in cases under sections 432, 1217, 1281 and 2039 of the Civil Code and the establishment of the remuneration claimed by him or her and his or her expenditures,
4. a derogation in the form of a sale of the pledged item in the case of section 1246 (2) of the Civil Code.

Section 411

Local jurisdiction

- (1) In proceedings in accordance with section 410 no. 1, that court has jurisdiction in the district of which the obligation to provide information, to perform an accounting, or to present the index are to be fulfilled. If the residence or domicile of the person obliged is in Germany, he or she may make an oath before the local court of that residence or place of domicile.
- (2) In proceedings under section 410 no. 2, the court in the district of which the object is located has jurisdiction. An express agreement by the persons whose issues are the subject matter of the case may provide the basis for the jurisdiction of another court.
- (3) In proceedings in accordance with section 410 no. 3, the court in the district of which the object is located has jurisdiction.
- (4) In proceedings in accordance with section 410 no. 4, the court in the district of which the pledged item is deposited has jurisdiction.

Section 412

Participants

Those persons to be included as participants are:

1. in proceedings in accordance with section 410 no. 1, the person obliged to submit a statutory declaration in lieu of an oath and the beneficiary;
2. in proceedings in accordance with section 410 no. 2, the person who is to be designated as the expert and the opponent to the extent there is one;
3. in proceedings in accordance with section 410 no. 3, the person who is to be appointed as the depositary and additionally, in cases under sections 432, 1281 and 2039 of the Civil Code, the co-beneficiary, in cases under section 1217 of the Civil Code the pledgee, and in a case concerning the establishment of the remuneration and the expenses of the depositary, the depositary and the creditors;
4. in proceedings in accordance with section 410 no. 4, the owner, the pledgee and every other person whose right would be extinguished by a sale of the pledged item.

Section 413

Statutory declaration in lieu of an oath

In proceedings in accordance with section 410 no. 1, both the person obliged and the person entitled may apply for the submission of a statutory declaration in lieu of an oath. The court is to order the personal appearance of the person obliged. Sections 478 to 480 and 483 of the Code of Civil Procedure apply accordingly.

Section 414
Incontestability

The decision through which an application is approved in a proceeding in accordance with section 410 no. 2 is incontestable.

Book 7
Proceedings in matters involving a deprivation of liberty

Section 415
Matters involving a deprivation of liberty

(1) Matters involving a deprivation of liberty are matters that concern a deprivation of liberty based upon federal law insofar as the proceeding is not otherwise governed under federal law.

(2) A deprivation of liberty exists when a person against their will or in the condition of a lack of will has their liberty withdrawn, particularly in a locked facility such as a detention cell or the locked section of a hospital.

Section 416
Local jurisdiction

That court in the district of which the person who is to be subject to the deprivation of liberty has his or her habitual residence has jurisdiction, otherwise the court in the district of which the need for the deprivation of liberty arose. If the person is already in custody in a locked facility, the court in the district of which the facility is located has jurisdiction.

Section 417
Application

(1) The court may only order the deprivation of liberty upon an application by the competent public authority.

(2) The reasons for the application must be stated. The statement of reasons must contain:

1. the identity of the person concerned,
2. the habitual residence of the person concerned,
3. the necessity for the deprivation of liberty,
4. the required duration of the deprivation of liberty, and
5. in proceedings concerning custody pending deportation, detention pending removal and detention pending exit from the federal territory, the obligation of the person concerned to leave the federal territory, as well as the prerequisites and the feasibility of deportation, removal, and exit from the federal territory.

In proceedings concerning custody pending deportation, the public authority must, as a general rule, submit the file of the person concerned together with the application.

(3) Facts under subsection (2) sentence 2 may be supplemented until the end of the trial court proceedings.

Section 418
Participants

(1) Participants to be included are the persons who are to be deprived of their liberty (persons concerned) and the administrative authority that submitted the application for the deprivation of liberty.

(2) The guardian ad litem is included as a participant in the proceedings through his or her appointment.

(3) In the interests of the person concerned, the following may also participate:

1. his or her spouse or life partner when the spouses or life partners are not permanently separated, and his or her parents and children when the person concerned

lives with them or lived with them at the time of the commencement of the proceedings, foster parents, and

2. a person designated by him or her who enjoys his or her trust.

Section 419 **Guardian ad litem**

(1) The court is to appoint a suitable guardian ad litem for the person concerned when this is necessary for the assertion of his or her interests. The appointment is particularly necessary when there is no intent to conduct a hearing with the person concerned.

(2) The guardian ad litem is to establish the wishes, subsidiarily the presumed will, of the person concerned and to assert it in the court proceedings. He or she is to inform the person concerned about the subject, course and possible outcome of the proceedings in a suitable way and to support him or her as necessary in exercising his or her rights in the proceedings. He or she is not the legal representative of the person concerned.

(3) The appointment of a guardian ad litem is not to be made or is to be cancelled when the interests of the person concerned are represented by a lawyer or another suitable authorised representative.

(4) The appointment ceases when it has not previously been cancelled when the order on the deprivation of liberty becomes final and binding or upon another conclusion of the proceedings.

(5) The appointment of a guardian ad litem, the cancellation of such appointment, as well as the rejection of such a measure are not independently contestable.

(6) Section 277 applies accordingly to the remuneration and reimbursement of expenditures of the guardian ad litem. No costs are to be imposed on the guardian ad litem.

Section 420 **Hearing; presentation**

(1) The court is to conduct an in-person hearing with the person concerned prior to issuance of an order of a deprivation of liberty. If the person concerned does not appear at the hearing, his or her immediate presentation may be ordered in derogation from section 33 (3). The court decides on this by way of an incontestable order.

(2) An in-person hearing with the person concerned may be refrained from when under a medical opinion there is a concern of significant detriment to his or her health as a result or when he or she suffers from a communicable disease within the meaning of the Federal Law on Communicable Diseases (*Infektionsschutzgesetz*).

(3) The court is to hear the other participants. A hearing may be refrained from when it is not possible to conduct without significant delay or disproportionate cost.

(4) A deprivation of liberty in a locked section of a hospital may only be ordered after a hearing with a medical expert. The administrative authority that submitted the application for the deprivation of liberty must, as a rule, submit a medical opinion together with the application.

Section 421 **Contents of the operative provisions of the order**

The operative provisions of the order of a deprivation of liberty also contains:

1. a detailed description of the deprivation of liberty as well as
2. the time at which the deprivation of liberty ends.

Section 422 **Effectiveness of orders**

(1) The order through which a deprivation of liberty is mandated becomes effective when it is final and binding.

(2) The court may order the immediate effectiveness of the order. In such a case the order becomes effective when it and the order of immediate effectiveness:

1. have been notified to the person concerned, the competent administrative authority, or the guardian ad litem, or
2. have been transmitted to the offices of the court registry for the purpose of notification.

The time of immediate effectiveness is to be noted on the order.

(3) The order by way of which the deprivation of liberty is mandated is executed by the competent administrative authority.

(4) If detention pending exit from the federal territory (section 15 of the Residence Act) or custody pending deportation (section 62 of the Residence Act) is executed in a prison facility as part of mutual legal assistance, sections 171, 173 to 175 and 178 (3) of the Prison Act (*Strafvollzugsgesetz*) apply accordingly to the extent section 62a of the Residence Act does not provide otherwise concerning custody pending deportation.

Section 423

Refraining from notification

Notification of the grounds upon which the order is based to the person concerned may be refrained from when this is necessary in accordance with a medical certificate to avoid significant damage to his or her health.

Section 424

Suspension of execution

(1) The court may suspend the execution of the deprivation of liberty. Prior thereto it is to hear the administrative authority and the head of the facility. For suspensions of up to one week, there is no requirement for a court decision. The suspension may have conditions attached.

(2) The court may revoke the suspension when the person concerned does not fulfil a condition or his or her condition so requires.

Section 425

Duration and extension of the deprivation of liberty

(1) In the order for the deprivation of liberty, a time limit of a maximum of up to one year for the deprivation of liberty is to be set insofar as there is no other statutory provision that sets a shorter maximum duration for the deprivation of liberty.

(2) If there has been no extension of the duration of the deprivation of liberty within the time limit by way of a judicial order, the person concerned is to be released. The court is to be notified of the release.

(3) The provisions regarding the initial order apply accordingly to the extension of the deprivation of liberty.

Section 426

Revocation

(1) The order for the deprivation of liberty is to be revoked prior to the expiration of the time limit established in accordance with section 425 (1) ex officio when the grounds upon which the deprivation of liberty was based no longer exist. Prior to the revocation, the court is to hear the competent administrative authority.

(2) The participants may apply for the revocation of the deprivation of liberty. The court decides on the application by way of an order.

Section 427

Interlocutory order

(1) The court may order a temporary deprivation of liberty by way of an interlocutory order when there are urgent grounds for the assumption that the prerequisites for an order of a deprivation of liberty are fulfilled and there is an urgent need for immediate action. The temporary deprivation of liberty may not exceed a duration of six weeks.

(2) In cases of imminent danger, the court may issue an interlocutory order prior to conducting an in-person hearing with the person concerned as well as prior to the appointment and hearing of a guardian ad litem; these procedural acts are subsequently to be undertaken without delay.

(3) In derogation from subsections (1) and (2), the court may issue an interlocutory order prior to hearing the person concerned if there are urgent grounds for the assumption that the prerequisites for the order of a deprivation of liberty are fulfilled and the prior hearing would jeopardise the purpose of such an order. The hearing is to be held subsequently without delay.

Section 428

Administrative measures; judicial evaluation

(1) As to each administrative measure associated with a deprivation of liberty that is not based upon a judicial order, the competent administrative authority is to seek a judicial decision regarding the measure without delay. If a deprivation of liberty has not been ordered through a judicial decision by the end of the following day, the person concerned is to be released.

(2) If a measure by the administrative authority in accordance with subsection (1) sentence 1 is contested, a decision is also to be made through court proceedings in accordance with the provisions of this Book.

Section 429

Supplementary provisions regarding a complaint

(1) The competent public authority have the right to file a complaint.

(2) The following have a right to file a complaint in the interest of the person concerned:

1. his or her spouse or life partner when the spouses or life partners are not permanently separated, his or her parents and children, when the person concerned lives with them or lived with them at the time of the commencement of the proceedings, foster parents and

2. a person designated by him or her who enjoys his or her trust

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

(3) The guardian ad litem has the right to file a complaint.

(4) If the person concerned is already in a locked facility, the complaint may also be submitted to the court in the district of which the facility is located.

Section 430

Reimbursement of expenses

If an application by the administrative authority for a deprivation of liberty is rejected or withdrawn and if the result of the proceeding is that there was no reasonable basis for the competent administrative authority to submit the application, the court is to impose the expenses incurred by the person concerned, to the extent they were necessary for the appropriate pursuit of the legal proceedings, upon the entity to which the administrative authority belongs.

Section 431

Communication of decisions

Sections 308 and 311 apply accordingly to notifications of decisions, whereby the administrative authority takes the place of the custodian. The revocation of a deprivation of liberty measure in accordance with section 426 sentence 1 and the suspension of its execution in accordance with section 424 (1) sentence 1 are to be notified to the head of the locked facility in which the person concerned is located.

Section 432

Information to relatives

The court is to inform a relative of the person concerned or a person who enjoys his or her trust without delay of an order of a deprivation of liberty and its extension.

Book 8

Proceedings in matters concerning judicial public notice

Division 1

General procedural provisions

Section 433

Matters concerning judicial public notice

Matters concerning judicial public notice are proceedings in which the court publishes a call for the registration of claims or rights, the consequence of non-compliance with which bears a legal penalty; it is undertaken only in cases provided for by statute.

Section 434

Application; contents of the judicial public notice

(1) Judicial public notice proceedings are only initiated upon the filing of an application.
(2) If the application is admissible, the court is to issue the public notice. The public notice is to contain in particular:

1. the designation of the applicant;
2. the call for the registration of claims and rights by a certain deadline with the court (registration deadline);
3. the description of the legal penalties that will take effect if registration does not occur.

Section 435

Public announcement

(1) The public announcement of the public notice is made by way of posting it on the court public notice board and through publication one time in the *Bundesanzeiger* (Federal Gazette), when the statute applicable to the matter at issue does not prescribe otherwise. In place of posting on the court public notice board, the public announcement may be made on an electronic information and communications system that is publicly accessible at the court.
(2) The court may order that in addition, the public notice is to be published in other forms as well.

Section 436

Validity of the public announcement

Should the written notice be removed from the court public notice board or the document be deleted from the information and communications system prior to the deadline or if in the case of a repeated publication the prescribed interim deadline between announcements was not adhered to, it has no effect on the validity of the public announcement.

Section 437

Public notice time limit

Between the day on which the public notice was published for the first time in an information and communications system or in the *Bundesanzeiger* and the day of the registration deadline, there is to be a minimum time limit (public notice time limit) of six weeks when no statute prescribes otherwise.

Section 438

Registration subsequent to the public notice period

A registration made after the public notice period has expired but prior to the issuance of the exclusion order, is to be regarded as having been made in due time.

Section 439

Issuance of the exclusion order; complaint restoration of the status quo ante and reopening of proceeding

- (1) Prior to the issuance of the exclusion order, a more detailed investigation, particularly a declaration in lieu of an oath concerning the veracity of an assertion by the applicant, may be ordered.
- (2) The final decision in a matter concerning a judicial public notice only becomes effective when it is final and binding.
- (3) Section 61 (1) is not applicable.
- (4) The provisions regarding restoration of the status quo ante apply with the proviso that the time limit subsequent to which restoration of the status quo ante may no longer be applied for or approved is five years, in derogation from section 18 (3). The provisions concerning the restoration of the status quo ante are applicable with the proviso that filing a lawsuit after the expiration of ten years, determined from the day the exclusion order becomes final and binding, is unavailable.

Section 440

Effect of a registration

Upon a registration through which the right asserted by the applicant as the basis for the application is disputed, either the proceedings on judicial public notice are to be suspended until the final decision on the registered right or the registered right is to be reserved in the exclusion order.

Section 441

Service by publication of the exclusion order

The exclusion order is to be served by publication. Sections 186, 187 and 188 of the Code of Civil Procedure apply accordingly to the implementation of service by publication.

Division 2

Public notice of the owner of plots of land, ships and ships under construction

Section 442

Public notice to the owner of a plot of land; local jurisdiction

- (1) For the public notice procedure for the exclusion of an owner of a plot of land in accordance with section 927 of the Civil Code, the following special provisions apply.
- (2) The court in the district of which the plot of land is located has local jurisdiction.

Section 443

Person entitled to file an application

That person who has had the plot of land in his or her proprietary possession for the amount of time set forth in section 927 of the Civil Code is entitled to file an application.

Section 444

Credible demonstration of the claim

The applicant is to credibly demonstrate the necessary facts and circumstances at the basis of the application prior to the commencement of the proceedings.

Section 445

Contents of the public notice

In the public notice, the previous owner is to be called upon to register his or her rights at the latest by the registration deadline, failing which his or her exclusion will occur.

Section 446

Public notice to the owner of a ship

- (1) For the public notice procedure for the exclusion of the owner of a registered ship or a ship under construction under section 6 of the Act concerning Rights in Registered Ships and Ships under Construction (*Gesetz über Rechte an eingetragenen Schiffen und*

Schiffsbauwerken) (Federal Law Gazette III, pp. 403-404), sections 443 to 445 apply accordingly.

(2) The court where the register for the ship or the ship under construction is maintained has local jurisdiction.

Division 3

Public notice to creditors regarding mortgages and ship liens and persons entitled to other property rights

Section 447

Public notice to creditors regarding mortgages; local jurisdiction

(1) For the public notice procedure for the exclusion of a creditor regarding a mortgage, realty charge, or annuity realty charge on the basis of sections 1170 and 1171 of the Civil Code, the following special provisions apply.

(2) The court in the district of which the encumbered plot of land is located has local jurisdiction.

Section 448

Person entitled to file an application

(1) The owner of the encumbered plot of land is entitled to file an application.

(2) In a case under section 1170 of the Civil Code, a creditor who has a right equal to or inferior in priority and for the benefit of whom a priority notice under section 1179 of the Civil Code has been registered or who has a claim under section 1179a of the Civil Code, is entitled to file an application. In addition, in cases of a consolidated mortgage, a joint and several realty charge or a joint and several annuity realty charge, that person who has a right equal to or inferior in priority to demand satisfaction from any of the encumbered pieces of property is also entitled to file an application. The entitlement to file an application only exists when the creditor or other entitled person has obtained an enforceable instrument of indebtedness.

Section 449

Credible demonstration of the claim

Prior to the commencement of the proceedings the applicant is to demonstrate the credibility of his or her claim that the creditor is unknown.

Section 450

Special credible demonstration of the claim

(1) In cases under section 1170 of the Civil Code, prior to the commencement of the proceedings, the applicant must also credibly demonstrate that recognition of the right of the creditor that would exclude the public notice has not occurred.

(2) If the mortgage for a claim based on a bearer bond has been created or if the land charge certificate or annuity land charge certificate has been made out to the bearer, the applicant must credibly demonstrate that the bearer bond or the certificate has not been presented prior to the expiry of the time limit set forth in section 801 of the Civil Code and that the claim has not been asserted in court. If presentation has taken place or the claim has been asserted in court, the demonstration of credibility laid down in subsection (1) is required.

(3) In cases under subsections (1) and (2), a declaration by the applicant in lieu of an oath is sufficient to demonstrate the credibility of the claims. The right of the court to order additional inquiries ex officio is not affected hereby.

(4) In the public notice, warning is to be given that the legal penalty to the creditor is exclusion from his or her rights.

(5) If the public notice is issued based upon an application by a person entitled to file an application in accordance with section 448 (2), the owner of the plot of land is to be notified thereof ex officio.

Section 451

Proceedings upon exclusion by way of deposit

- (1) In cases under section 1171 of the Civil Code, the applicant must offer to deposit the sum payable to the creditor prior to the commencement of the proceedings.
- (2) In the public notice, warning is to be given that the creditor, subsequent to the deposit of the sum due to him or her, is only entitled to request satisfaction from the amount deposited rather than from the plot of land and that his or her right thereto is to be extinguished if he or she does not register his or her claim with the depository institution prior to the expiration of 30 years after the issuance of the exclusion order.
- (3) If the time limit for the registration of a claim is dependent upon a termination, the public notice time limit is to be extended by the time limit for the termination.
- (4) The exclusion order may only be issued when the deposit has taken place.

Section 452

Public notice to creditors regarding ship mortgages; local jurisdiction

- (1) Sections 448 to 451 apply accordingly to the public notice proceedings for the exclusion of a creditor regarding a ship mortgage on the basis of sections 66 and 67 of the Act concerning the Rights of Registered Ships and Ships under Construction (Federal Law Gazette III, pp. 403-404). In place of sections 1170, 1171 and 1179 of the Civil Code, sections 66, 67 and 58 of the aforementioned statute apply.
- (2) The court where the register for the ship or the ship under construction is maintained has local jurisdiction.

Section 453

Public notice of persons entitled to priority notices, rights of pre-emption, and realty charges

- (1) The provisions in sections 447 (2), 448 (1), 449, 450 (1) to (4), 451, and 452 apply accordingly to public notice proceedings concerning the exclusion of entitled persons as determined by sections 887, 1104, and 1112 of the Civil Code and section 13 of the Act concerning Rights in Registered Ships and Ships under Construction (Federal Law Gazette III, pp. 403-404) as to priority notices, rights of pre-emption, and realty charges.
- (2) A person is also entitled to file an application when, based upon a right that is equal to or lower in priority, he or she may demand satisfaction from the plot of land or the ship or the ship under construction, when he or she has obtained an enforceable instrument of indebtedness for his or her claim. The public notice is to be notified to the owner of the plot of land or the ship or the ship under construction ex officio.

Division 4

Public notice of creditors of estates

Section 454

Public notice of creditors of estates; local jurisdiction

- (1) As to public notice proceedings for the exclusion of creditors of estates based upon section 1970 of the Civil Code, the following special provisions apply.
- (2) Local jurisdiction lies with the local court responsible for matters relating to the probate court. If these matters have been delegated to a public authority other than a local court, the local court in the district of which the probate authority has its seat has local jurisdiction.

Section 455

Persons entitled to file an application

- (1) Each heir who does not have unlimited liability as regards the obligations of the estate is entitled to file an application.
- (2) Also entitled to file an application are the curator of the estate, the administrator of the estate and the executor if they are entitled to administer the estate.
- (3) The heirs and the executor may only file an application after the acceptance of the inheritance has occurred.

Section 456

List of creditors of the estate

A list of the known creditors of the estate indicating their place of residence must accompany the application.

Section 457

Estate insolvency proceedings

- (1) As a general rule, the public notice may not be issued when there has been an application for the opening of estate insolvency proceedings.
- (2) The public notice proceedings are terminated by the opening of estate insolvency proceedings.

Section 458

Contents of the public notice; public notice time limit

- (1) The public notice is to contain a warning of legal detriment to creditors of the estate who do not register their claim that they may only seek satisfaction from the heirs to the extent that there are assets remaining after the non-excluded creditors have been satisfied; the right to be considered prior to obligations arising from compulsory share rights, bequests, and conditions remains unaffected.
- (2) The public notice time limit has a maximum duration of six months.

Section 459

Registration of claim

- (1) The registration of a claim is to contain the object and the basis of the claim. Documentary support in the form of originals or copies is to be attached.
- (2) The court is to allow each person who credibly demonstrates a legitimate interest to inspect the registered claims.

Section 460

Majority of heirs

- (1) If there is more than one heir, an application filed by one heir and the exclusion order obtained thereby also benefit all other heirs; the provisions of the Civil Code in respect of unlimited liability remain unaffected. Creditors of the estate who do not register a claim are also to be warned of the legal detriment that, subsequent to the distribution of the estate, each heir is liable only for obligations corresponding to his or her portion of the estate.
- (2) The public notice with the warning of the legal detriment specified in subsection (1) sentence 2 may also be applied for by any heir who is subject to unlimited liability for the obligations of the estate.

Section 461

Subsequent succession

In cases of subsequent succession, section 460 (1) sentence 1 applies accordingly to prior heirs and subsequent heirs.

Section 462

Community of property

- (1) If an estate is part of the marital property of a community of property, both the spouse who is the heir as well as the spouse who is not the heir but who administers the marital property alone or together with his or her spouse may submit an application for a public notice without any requirement of agreement by the other spouse. The spouses retain this authority when the community of property ceases.
- (2) The application filed by one spouse and the exclusion order effectuated thereby also benefit the other spouse.
- (3) Subsections (1) and (2) apply accordingly to life partners.

Section 463

Purchaser of inheritance

- (1) If the heir sold the inheritance, both the purchaser and the heir may apply for a public notice. The application filed by one party and the exclusion order obtained thereby also benefit the other party, irrespective of the provisions of the Civil Code on unlimited liability.
- (2) These provisions apply accordingly when a person sells an inheritance acquired by contract or when he or she has obliged himself or herself to sell an inheritance accrued or otherwise acquired by him or her.

Section 464

Public notice of common matrimonial property creditors

In cases of the continuation of the community of property, section 454 (2) and sections 455 to 459, 462 and 463 apply accordingly to the public notice proceedings for the exclusion of common matrimonial property creditors in accordance with section 1489 (2) and section 1970 of the Civil Code.

Division 5

Public notice of ships' creditors

Section 465

Public notice of ships' creditors

- (1) The following provisions apply to public notice proceedings for the exclusion of ships' creditors based upon section 110 of the German Inland Waterways Act.
- (2) Local jurisdiction lies with the court in the district of which the ship's port of registry or the ship's place of origin is located.
- (3) If the ship is subject to registration in the ship register, the application may only be filed subsequent to the registration of the sale of the ship.
- (4) The applicant is to provide the claims of ships' creditors known to him or her.
- (5) The public notice time limit must have a duration of at least three months.
- (6) The public notice to ships' creditors who do not register is to contain the warning of the legal detriment that their liens will be cancelled if their claim is not known to the applicant.

Division 6

Public notice of declarations of invalidity of legal instruments

Section 466

Local jurisdiction

- (1) For public notice proceedings, the court in the district of which the place of fulfilment designated in the legal instrument is located has local jurisdiction. If the legal instrument does not contain such a designation, the court in the district of which the issuer has his or her place of general jurisdiction has local jurisdiction, and in the event of a lack of such a court, the court where the issuer had his or her place of general jurisdiction at the time of its issuance.
- (2) If the legal instrument concerns a right registered in the land register, the court where the property is situated has exclusive local jurisdiction.
- (3) If the public notice is issued by a court other than the one set forth in this provision as having local jurisdiction, the public notice is also to be publicly announced by posting on the court notice board or by input into the information system of the latter court.

Section 467

Persons entitled to file an application

- (1) As to negotiable instruments made out to the bearer or those that may be transferred by endorsement and contain a blank endorsement, the bearer up until then of the lost or destroyed negotiable instrument is entitled to file an application for the commencement of public notice proceedings.
- (2) As to other records or documents, that person is entitled to file an application who may assert a right arising from the record or document.

Section 468

Demonstration of grounds for the application

To demonstrate the grounds for the application, the applicant is to:

1. present a copy of the record or document or provide the material contents thereof and provide all information necessary for its complete identification,
2. credibly demonstrate the loss of the record or document as well as those circumstances supporting his or her entitlement to apply for the public notice proceedings, and
3. offer to provide a declaration in lieu of an oath as to the veracity of the information he or she has provided.

Section 469

Contents of the public notice

In the public notice, the bearer of the record or document is to be instructed to register his or her rights with the court by the registration deadline and to present the record or document. A warning is to be given of the legal detriment that the record or document will be declared invalid.

Section 470

Supplementary announcement in special cases

If the public notice concerns an instrument made out to the bearer and if there is a requirement according to a notation on the instrument or in the provisions by which the necessary state approval was granted that the public announcement is to be effected through other publications, then the announcement is also to be effected by publication as prescribed. The same applies to debt obligations issued by a German *Land* or by a former state (*Bundesstaat*) if public announcement in a particular publication is prescribed by *Land* statute. In addition, the public announcement may take place through input into an electronic information and communications system designated for announcements by the court.

Section 471

Securities with interest coupons

- (1) As to securities for which interest, annuity, or dividend payment coupons are periodically provided, the registration deadline is to be determined in such a way that between the date the first interest, annuity, or dividend payment coupon to become due since the time the loss was credibly demonstrated and its maturity date a minimum of six months have passed.
- (2) Prior to the issuance of the exclusion order, the applicant is to present a certificate prepared after the expiration of this six-month period, issued by the relevant public agency, public treasury, or institution, that states that since the time the loss was credibly demonstrated they have not been presented with the instrument for the issuance of new coupons and that no new coupons have been issued to any other person than the applicant.

Section 472

Interest coupons older than four years

- (1) As to securities regarding which interest, annuity or dividend payment coupons have been issued for a period longer than four years, it is sufficient if the time of registration is determined so that by that time, since the time of the credibly demonstrated loss of the most recently issued coupons, coupons for four years have matured and six months have elapsed since the last such coupons matured. Coupons for time periods during which no interest, annuity, or dividends were paid are not considered.
- (2) Prior to the issuance of the exclusion order, the applicant is to present a certificate prepared after the expiration of the six-month time period that is issued by the relevant public agency, public treasury or institution and that states that the coupons from the designated four-year time period that subsequently matured have not been presented to them by any other person than the applicant. If subsequent to the issuance of the public notice a new

issuance of coupons took place, the certificate must also contain the information required by section 471 (2).

Section 473

Presentation of interest coupons

Sections 471 and 472 are not applicable to the extent the interest, annuity, or dividend payment coupons, the maturity date of which must already have occurred under these provisions, are presented by the applicant. When the certificate issued by the relevant public agency, public treasury or institution states that the matured coupons were presented to it by the applicant, this has the same effect as the presentation of the coupons.

Section 474

Expired issuance of interest coupons

As to securities regarding which interest, annuity or dividend payment coupons have been issued but as to which such coupons will no longer be issued, the registration deadline is to be determined so that there is a six-month period between such deadline and the maturity date of the last coupon issued; this does not apply when the prerequisites of sections 471 and 472 are fulfilled.

Section 475

Registration deadline in cases of specific maturity dates

If an instrument of indebtedness contains a specific maturity date that has not yet been reached at the time of the first publication of the public notice in the Federal Gazette, and if the prerequisites set forth in sections 471 to 474 have not been met, the registration deadline is to be set to occur at least six months after the maturity date.

Section 476

Public notice time limit

The public notice time limit is a maximum of one year.

Section 477

Registration of rights

If the owner of a legal instrument registers his or her rights upon presentation of the legal instrument prior to the issuance of the exclusion order, the court is to inform the applicant thereof and grant him or her the possibility to inspect the legal instrument within a certain time limit and to present comments.

Section 478

Exclusion order

- (1) The exclusion order is to declare the legal instrument null and void.
- (2) The significant portions of the exclusion order are to be announced through publication in the Federal Gazette. Section 470 applies accordingly.
- (3) In the same way, a decision made based upon a complaint is to be announced to the extent the invalidity of the legal instrument is rescinded by the decision.

Section 479

Effect of the exclusion order

- (1) The person who obtained the exclusion order is entitled to assert the rights arising from the legal instrument against the person obliged by the legal instrument.
- (2) If the exclusion order is rescinded through the proceedings on a complaint, the payments made by the person obliged based upon the exclusion order remain valid in regard to third parties, in particular the appellant, unless the person obliged was aware of the rescindment of the exclusion order at the time of the payment.

Section 480

Payment stoppage

(1) If the public notice proceedings result in the invalidity of a bearer instrument, upon application the court is to issue a prohibition to the issuer as well as the paying agent set forth in the instrument and as designated by the applicant against making any payments to the bearer of the instrument, especially against providing any new interest, annuity or dividend payment coupons or a renewal coupon (stoppage of payments). Notification of the commencement of the public notice proceedings is to be linked with the prohibition. The prohibition is to be publicly announced in the same way as the public notice.

(2) An order by way of which the application for issuance of a payment stoppage is dismissed is contestable by a complaint subject to a time limit upon application of sections 567 to 572 of the Code of Civil Procedure with the necessary modifications.

(3) The prohibition issued to the issuer is also effective against paying agents that are not designated in the instrument.

(4) The redemption of interest, annuity or dividend payment coupons issued prior to the prohibition is not affected by the prohibition.

Section 481

Dispensability of certificate under section 471 (2)

If a payment stoppage is ordered before interest, annuity or dividend payment coupons were issued since the time the loss was credibly demonstrated, presentation of the certificate specified in section 471 (2) is not required.

Section 482

Revocation of the payment stoppage

(1) If the instrument that was lost is presented to the court or if the public notice proceedings are concluded without the issuance of an exclusion order, the payment stoppage is to be revoked ex officio. The same applies when the payment stoppage was ordered prior to the commencement of the public notice proceedings and there was no application filed for the commencement within six months of the removal of the hindrance thereto. If the public notice proceeding or the payment stoppage has been publicly announced, the conclusion of the proceedings or the revocation of the payment stoppage is to be publicly announced in the Federal Gazette ex officio.

(2) If the instrument is presented, the payment stoppage is to be revoked only after the applicant has been granted inspection in accordance with the provisions set forth in section 477.

(3) The order through which the payment stoppage is revoked is contestable by a complaint subject to a time limit upon application of sections 467 to 572 of the Code of Civil Procedure with the necessary modifications.

Section 483

Restricted bearer instrument

If the public notice proceeding is intended to bring about the declaration of invalidity of an instrument of the type set forth in section 808 of the Civil Code, sections 466 (3), 470 and 478 (2) sentence 2 and sections 480 to 482 apply accordingly. *Land* statutes may make other provisions concerning publication of the public notice, the announcements prescribed in section 478 (2) and (3) and sections 480 and 482 and the public notice time limit.

Section 484

Reservation as to *Land* legislation

(1) As to public notices based upon sections 887, 927, 1104, 1112, 1162, 1170, and 1171 of the Civil Code, section 110 of the German Inland Waterway Act, section 6, 13, 66 and 67 of the Act concerning Rights to Registered Ships and Ships under Constructions (Federal Law Gazette III, pp. 403-404) and sections 13, 66 and 67 of the Act concerning Rights to Aircraft (*Gesetz über Rechte an Luftfahrzeugen*), *Land* statutes may make other provisions regarding the form of publication of the public notice, the exclusion order and the public notice time limit than those set forth in sections 435, 437 and 441.

(2) As to public notices issued based upon section 1162 of the Civil Code, *Land* statutes may provide make other provisions as to the form of the publication of the public notice, the exclusion order, the orders set forth in section 478 (2) and (3), and the public notice time limit than those set forth in sections 470, 475, 476, and 478.

Book 9
Final provisions

Section 485
Relationship to other statutes

Article 1 (2) and Articles 2 and 50 of the Introductory Act to the Civil Code apply accordingly.

Section 486
***Land* statute reservations; supplementary and implementing provisions**

- (1) Insofar as the Introductory Act to the Civil Code reserves legal areas for *Land* legislation, such reservation also applies to the corresponding procedural provisions to the extent they are an object of this Act.
- (2) Provisions for supplementing and implementing this Act, including the necessary transitional measures, may be issued by *Land* statute. This also applies when there are no reservations for *Land* legislation.
- (3) Section 378 (3) is not applicable insofar as the application has been publicly certified by a person or office competent therefor under *Land* statute under section 68 of the Notarial Recording Act (*Beurkundungsgesetz*).

Section 487
Distribution of an estate; distribution of a community of property

- (1) *Land* law provisions remain unaffected:
1. in accordance with which the probate court is to handle the distribution of the estate ex officio when this has not been done within a certain time period;
 2. in accordance with which other entities than judicial authorities are competent for handling the matters incumbent upon the local courts under section 373 (2);
 3. in accordance with which in Baden-Württemberg in cases under section 363 in place of or in addition to notaries other agencies may handle the distribution;
 4. that concern proceedings in cases under no. 3.
- (2) Sections 365 to 372 apply to distributions in accordance with subsection (1) no. 1.

Section 488
Proceedings before public agencies allowed by *Land* statute

- (1) If under *Land* statute other public agencies are competent in regard to matters specified in sections 1 and 363, the provisions of Book 1 with the exception of section 6, 15 (2), 25, 41 (1), and 46 also apply to these public agencies.
- (2) That court that is the related court of the next higher level of jurisdiction for the local court in the district of which the public agency has its seat is deemed to be the related court of the next higher level of jurisdiction under section 5. It may be determined by *Land* statute that, when public agencies have their seat in the same district as the local court, this is competent as the related court of the next higher level of jurisdiction.
- (3) The provisions of the Courts Constitution Act regarding the language of the court, communication with the court and mutual legal assistance apply accordingly. The duty of the courts to provide mutual legal assistance remains unaffected.

Section 489
Appellate remedies

- (1) If under *Land* statute, public agencies rather than courts are competent in regard to the matters set forth in section 1, it may be determined by *Land* statute that as to modifications of a decision by such public agency, the local court in the district of which the public agency has its seat has jurisdiction. Sections 59 to 69 apply accordingly to the proceedings.
- (2) A decision by the local court is subject to the filing of a complaint.

Section 490

Public notice proceedings under *Land* law

As to public notices the admissibility of which is based on *Land* statutes, *Land* statutes may exclude the applicability of provisions regarding public notice proceedings or replace such provisions with other provisions.

Section 491

***Land* law reservations in proceedings on the invalidity of certificates**

Land law provisions that declare that a specific local court has exclusive jurisdiction in cases regarding public notice proceedings for the purpose of a declaration of invalidity of bearer debt securities issued by a German *Land* or former state (*Bundesstaat*) or a body, foundation or corporation under public law, or for the payment of which a German *Land* or former federal state assumed the liability, remain unaffected. If the public notice is intended to result in the declaration of invalidity of a type of certificate set forth in section 808 of the Civil Code, sentence 1 applies accordingly.

Section 492

Applicable provisions as to the competence of notaries

- (1) If in proceedings in accordance with section 342 (2) no. 1 a notary acts rather than the local court, the provisions applicable to the local court apply accordingly to the notary. The notary performs the duties of judge, senior judicial officer and records clerk of the court registry. The court registry is the offices of the notary. In place of judicial staff, the court bailiff acts. The performance of public service approved by the notary takes place upon his or her request by the local court in the district of which the official seat of the notary is located.
- (2) If there is no appellate remedy provided for against a decision by the notary under general procedural law provisions, reminder as a legal remedy takes place, which is to be submitted to the notary within the time limit applicable to a complaint. The notary may redress the reminder. He or she submits reminders that he or she does not redress to the local court in the district of which his or her official seat is located. In all other cases, the provisions applicable to complaints apply by analogy to the reminder as a legal remedy.
- (3) Decrees, orders, and certificates of the notary that have become effective in accordance with the provisions of this Act and may no longer be amended are not contestable by way of reminder as a legal remedy.

Section 493

Transitional provisions

- (1) Until the effectiveness of the Act on the Transfer of Duties in the Area of Non-Contentious Jurisdiction to Notaries dated 26 June 2013 (Federal Law Gazette I, p. 1800) on 1 September 2013, the Act on Proceedings in Family Matters and in Matters of Non-Contentious Jurisdiction is applicable in the version in force until that time to distributions applied for under sections 363 to 373.
- (2) Sections 249 to 260 in the version in force until 31 December 2016 remain applicable to simplified proceedings concerning maintenance for minors under sections 249 to 260 for which applications were submitted up until 31 December 2016.
- (3) For applications that were recorded or certified up to and including 8 June 2017, section 378 (3) is not applicable.
- (4) Section 158a does not apply in proceedings in which a guardian ad litem for minors was appointed before 1 January 2022. Section 158c (1) is not applicable to guardians ad litem for

minors who were ordered up to and including 10 April 2025; in this respect, section 158c (1) continues to be applicable in the previously applicable version.

(5) If custodianship or reservation of consent was ordered before 1 January 2023, first-time decisions on the revocation or extension of the measure, in derogation from the time limits specified in section 294 (3) sentence 2 and section 295 (2) sentence 2, must be taken at the following times:

1. by midnight on 30 June 2024 concerning measures that were ordered by midnight on 30 June 2022;
2. no later than two years after the order concerning measures that were ordered between 1 July 2022 and 31 December 2022.