

Act V of 2013
on the Civil Code¹

BOOK ONE

INTRODUCTORY PROVISIONS

Section 1:1

[Scope]

This Act governs the property and personal relations of persons under the principle of interdependence and the principle of equality.

Section 1:2

[Interpretative principle]

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

(2) The legislation relating to civil law shall be interpreted in accordance with the provisions of this Act.

Section 1:3

[Principle of good faith and fair dealing]

(1) In exercising rights and in fulfilling obligations the requirements of good faith and fair dealing shall be observed.

(2) The requirements of good faith and fair dealing shall be considered breached where a party's exercise of rights is contradictory to his previous actions which the other party had reason to rely on.

Section 1:4

[Principle of reasonable conduct. Attributability]

(1) Unless otherwise provided for by this Act, in civil law any reference to what can be expected of or by a person, or in a particular situation, is a reference to what can reasonably be expected.

(2) A person may not rely, in support of his claim, on an unlawful act he has committed.

(3) A person who himself engaged in an unlawful act may also rely on the wrongful act committed by others.

Section 1:5

¹ Promulgated on 26 February 2013.

[Prohibition of abuse of rights]

(1) Abuse of rights is prohibited by law.

(2) Where the abuse of a right is manifested in the repudiation of a statement required by law and this conduct does injury to an overriding public interest or a private interest in cases of exceptional circumstances, the court is entitled to substitute its judgment for the party's legal statement, provided there is no other way of averting the injury.

Section 1:6

[Judicial process]

Unless otherwise provided for by law, the rights afforded in this Act may be enforced by way of judicial process.

BOOK TWO

MAN AS A SUBJECT AT LAW

PART ONE

LEGAL CAPACITY

TITLE I

COMMENCEMENT AND CESSATION OF LEGAL CAPACITY

Section 2:1

[Legal capacity]

(1) All persons shall have legal capacity; all persons shall be entitled to have rights and obligations.

(2) Unilateral statements limiting legal capacity shall be null and void.

Section 2:2

[Commencement of legal capacity]

(1) Each person, if born alive, shall have legal capacity from the day of conception.

(2) The three hundredth day preceding the date of birth shall be considered the day of conception, which, however, may be evidenced to have occurred earlier or later. The day of birth shall be included in the aforementioned period.

Section 2:3

[Legal guardian of the fetus]

(1) The guardian authority shall appoint a guardian for the fetus upon request or ex officio, where this is deemed required to protect the interest of the fetus.

(2) The appointment of a guardian may be requested by the parent or grandparent of the fetus, or by the competent public prosecutor or notary.

Section 2:4

[Cessation of legal capacity]

Legal capacity ceases upon death.

TITLE II

LEGAL PRESUMPTION OF DEATH

Section 2:5

[Legal presumption of death]

(1) A missing person may be legally declared dead by the court upon request five years after the date of his/her disappearance if there has been no information of any kind during this period to indicate that he/she is alive.

(2) A person legally declared dead shall be considered dead in the absence of proof to the contrary.

(3) Legal presumption of death may be requested by the missing person's close relatives, the public prosecutor, the guardian authority, or by any person who has an interest in the legal presumption of death of the missing person.

Section 2:6

[Determining the time of death]

(1) The court shall declare the time of death upon due consideration of the circumstances.

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

Section 2:7

[Changes in the circumstances underlying the legal presumption of death]

(1) If it is conclusively resolved that the person declared legally dead had disappeared before or after the date indicated in the relevant ruling, however, the conditions for the legal presumption of death otherwise apply, the court shall amend its ruling on the legal presumption of death accordingly. The legal consequences shall change in accordance with the revised ruling.

(2) If it has been conclusively resolved that a person legally presumed dead had disappeared after the date indicated in the relevant ruling and, in consequence, the conditions for the legal presumption of death are not valid, the court shall abolish its ruling on the legal presumption of death, and all ensuing legal consequences shall be considered null and void.

(3) The amendment and repeal of the ruling on the legal presumption of death may be requested by the same persons that have the right to request the legal presumption of death.

(4) If a person who has been legally presumed dead is found, the ruling on the legal presumption of death shall be abolished, and the ensuing legal consequences shall be considered null and void.

PART TWO

LEGAL COMPETENCY

TITLE III

GENERAL RULES ON LEGAL COMPETENCY

Section 2:8

[Legal competency]

- (1) Any person whose competency is not limited or precluded under this Act or by a court ruling on guardianship is considered legally competent.
- (2) Whosoever is competent is entitled to conclude contracts and make other legal statements.
- (3) Unilateral statements limiting legal competency shall be null and void.

Section 2:9

[Incompetency]

- (1) A legal statement made by any person who is not of sound mind and who is therefore unable to make decision for himself or herself at that time shall be considered null and void.
- (2) Legal statements, exclusive of testamentary dispositions, made by incompetent persons shall not be considered null and void on the grounds of incompetence, if the contents and circumstances thereof imply that the legal statement would also have been justified had the party been legally competent.

TITLE IV

LIMITED CAPACITY AND LEGAL INCOMPETENCY OF MINORS

Section 2:10

[Minority]

- (1) Persons who have not yet reached the age of eighteen years shall be deemed minors. Married minors are considered to be of legal age.
- (2) If the marriage is annulled by court order owing to the lack of capacity or in the absence of the guardian authority's consent where it is required due to minority, adulthood acquired by marriage shall no longer apply.
- (3) The dissolution of this marriage shall not affect adulthood acquired by marriage.

Section 2:11

[Minors of limited legal capacity]

A minor shall be of limited capacity if he or she has reached the age of fourteen years and is not incompetent.

Section 2:12

[Legal statements of minors of limited legal capacity]

(1) Unless otherwise provided for by this Act, the legal statements of a minor with limited capacity shall not be deemed valid without the consent of that minor's legal representative. If and when a minor of limited capacity becomes competent, he shall be entitled to make his own decisions concerning the validity of his pending legal statement.

(2) Minors of limited capacity shall, without the involvement of their legal representatives, be entitled:

- a) to make legal statements of a personal nature for which they are authorized by legislation;
- b) to conclude contracts of minor importance aimed at satisfying their everyday needs;
- c) to dispose of the earnings they acquire by gainful employment and undertake commitments up to the extent of their earnings;
- d) to conclude contracts that only offer advantages; and
- e) to give away gifts within reasonable limits.

(3) With the permission of the guardian authority, the legal representative shall be entitled to refuse gifts that are promised or given to a minor of limited capacity. If the guardian authority declines to approve the legal representative's statement of refusal, the guardian authority's such decision shall replace the legal representative's statement of acceptance.

(4) The legal representative shall be entitled to make statements in the name and on behalf of the minor of limited capacity, except when the law requires the statement to be made by the minor with limited capacity himself/herself or when the statement concerns the income the minor of limited capacity has acquired by gainful employment. As regards any statement of a legal representative that effects the person or property of a minor, it shall be made with a view to the opinion of the minor of limited capacity.

Section 2:13

[Incompetent minors]

Minors under the age of fourteen years are legally incompetent.

Section 2:14

[Legal statements of incompetent minors]

(1) Legal statements made by incompetent minors shall be null and void; their legal representatives shall proceed on their behalf.

(2) Contracts of minor importance that are generally concluded in large numbers and do not require special consideration and that have been concluded and performed directly by incompetent minors shall not be considered null and void on the grounds of incompetence.

(3) As regards any statement made by the legal representative that effects the person or property of the minor, the views of the incompetent minor of sound mind shall be taken into account in accordance with the age and maturity of the child.

Section 2:15

[The guardian authority's approval for the legal acts made by the legal representatives of minors]

(1) The approval of the guardian authority is required for the legal acts of the legal representatives of minors, if they concern:

- a) the waiver of maintenance of a minor;

b) rights or obligations that, by virtue of inheritance, are conferred upon a minor; and refusals to inherit any property that can be individually refused;

c) the acquisition of any real estate property by a minor, if such property is not free and clear, or the transfer or encumbrance of a minor's real estate property;

d) disposition relating to the assets of a minor controlled by the guardian authority; or

e) any other property of a minor, the value of which exceeds the amount limit prescribed in other legislation.

(2) The consent of the guardian authority is not required for the encumbrance of the real estate property of a minor if it takes place upon acquiring the property without consideration, and if the provider is granted beneficiary right at the same time.

(3) The consent of the guardian authority is not required if the legal statement has already been adjudicated in court or under notarial proceedings.

Section 2:16

[Uncompensated commitment of minors]

Any legal act made by the legal representative of a minor - with effect of the minor's assets - for giving gifts, undertaking obligations without adequate consideration, or for relinquishing rights without consideration shall be null and void. This provision shall apply mutatis mutandis to the legal representative's consent to a legal statement made by a minor of limited legal capacity.

Section 2:17

[Relative nullity of the legal acts of minors]

Nullity on the basis of incompetence or limited capacity of minors may be invoked in the interest of a person who is incompetent or of limited capacity.

Section 2:18

[Limiting the competency of minors by order of conservatorship or guardianship]

(1) A minor may be placed by court order under conservatorship or guardianship after reaching the age of seventeen years according to the provisions applicable to adults.

(2) Placement under guardianship or conservatorship may be requested by the minor's legal representative as well.

(3) Where a minor is placed by court order under guardianship invoking fully limited legal competency, guardianship shall come into effect when reaching legal age, however, the minor loses his/her legal competency on the date on which the relevant decision becomes legally binding.

TITLE V

LIMITING THE LEGAL CAPACITY OF PERSONS OF LEGAL AGE

Section 2:19

[Conservatorship]

(1) Persons of legal age shall be of partially limited capacity if a court has placed them in the custody of a conservator to that effect.

(2) Persons of legal age whose necessary discretionary ability for conducting their affairs is - owing to their mental disorder - permanently or persistently diminished shall be placed by court order under conservatorship which partially limits their competency in respect of certain specific matters, where this is deemed justified due to his individual circumstances and family and social ties.

(3) In its ruling invoking partially limited legal competency the court shall specify the matters of a personal or financial nature, in which legal capacity is limited.

(4) Legal capacity may not be limited to any extent, where protection of the rights of the person affected can be ensured by other means without prejudice to legal capacity.

(5) Persons of partially limited legal capacity shall be able to make legal statements in all matters concerning which the court did not limit their competency in its ruling invoking partially limited legal competency.

Section 2:20

[Legal acts of persons of partially limited legal capacity]

(1) Legal statements made by persons of partially limited legal capacity with respect to certain types of matters specified in the court ruling shall be considered valid upon the conservator's consent. If and when a persons of partially limited legal capacity becomes competent, he shall be entitled to make his own decisions concerning the validity of his pending legal statement.

(2) Any dispute between a person of partially limited legal capacity and his conservator shall be decided by the guardian authority.

(3) Persons of partially limited legal capacity shall, without the consent of their conservators relating to certain types of matters specified in the court ruling, be entitled:

- a) to make legal statements of a personal nature for which they are authorized by legislation;
- b) to conclude contracts of minor importance aimed at satisfying their everyday needs;
- c) to dispose of a certain percentage of their earnings as specified by the court, and to undertake commitments up to the extent thereof;
- d) to conclude contracts that offer only advantages; and
- e) to give away gifts within reasonable limits.

(4) Where prompt measures are deemed necessary for protecting the interests of a person of partially limited legal capacity, or for safeguarding him from suffering losses, the conservator shall be able to proceed of his own motion in cases for which his consent is required, and shall be able to make statements in the name o the person affected. The persons of partially limited legal capacity and the guardian authority shall be notified thereof without delay.

Section 2:21

[Guardianship]

(1) Persons of legal age whom the court has placed under guardianship fully limiting their legal competency are deemed legally incompetent.

(2) Persons of legal age whose necessary discretionary ability for conducting their affairs is - owing to their mental disorder - completely lacking shall be placed by court order under guardianship that fully limits their competency in all matters of life, where this is deemed justified due to their individual circumstances and family and social ties.

(3) Guardianship with fully limited legal competency may be ordered by the court if the protection of the rights of the person affected cannot be ensured by other means without prejudice to legal capacity, nor by partially limited competency.

Section 2:22

[Legal acts of incompetent adults]

(1) Legal statements made by incompetent adults shall be null and void; their guardian shall proceed on their behalf.

(2) Contracts of minor importance that are generally concluded in large numbers and do not require special consideration and that have been concluded and performed directly by incompetent adults shall not be considered null and void on the grounds of incompetence.

(3) Prior to making a decision the guardian shall hear the views and requests of the incompetent adult, if he/she is of sound mind, and shall abide by such requests if possible.

Section 2:23

[Requirement of the guardian authority's consent]

(1) The consent of the guardian authority is required for the validity of legal statements made by a person of partially limited legal capacity and his conservator, or by the guardian of an incompetent adult, if the legal statement concerns:

- a)* the maintenance of the person of partially limited legal capacity or the incompetent adult;
- b)* rights or obligations which, by virtue of inheritance, fall upon the person of partially limited legal capacity or the incompetent adult;
- c)* the acquisition of any real estate property by the person of partially limited legal capacity or the incompetent adult, if such property is not free and clear, or the transfer or encumbrance of real estate property;
- d)* disposition relating to the assets of the person of partially limited legal capacity or the incompetent adult controlled by the guardian authority; or
- e)* any other property of the person of partially limited legal capacity or the incompetent adult, the value of which exceeds the amount limit prescribed in the resolution on the appointment of the guardian or conservator.

(2) On an exceptional and duly justified basis, the guardian authority may approve, upon request made jointly by the person with limited legal capacity in financial affairs and his guardian, the following outlays can be made from the assets of the person affected:

a) for a descendant of the person affected to establish and uphold his/her own household or to achieve some other vital objective as financed from the assets of the person affected; this support, however, shall not exceed half of the legal share - of a status and value prevailing at the time when the support is provided - in the succession of the heir; or

b) for making gifts or to surrender any of his/her rights without consideration or donate such for public purposes, if such transaction does not endanger the livelihood of the person affected.

(3) On an exceptional and duly justified basis, the guardian authority may approve, upon request made by the guardian of an incompetent adult, outlays for a descendant to establish and uphold his/her own household or to achieve any other vital objective from the assets of the person affected; this support, however, shall not exceed half of the legal share - of a status and value prevailing at the time when the support is provided - in the succession of the heir.

(4) The consent of the guardian authority is not required for the encumbrance of the real estate holdings of a person of partially limited legal capacity or an incompetent adult if it takes place upon acquiring the property without consideration, and if the provider is granted beneficiary right at the same time.

(5) The consent of the guardian authority is not required if the legal statement has already been adjudicated in court or under notarial proceedings.

Section 2:24

[Relative nullity of the legal acts of persons of partially limited legal capacity and incompetent adults]

Nullity on the basis of partially limited legal capacity or incompetence may be invoked in the interest of a person whose legal capacity is partially limited or who is incompetent.

TITLE VI

MEASURES PRIOR TO PLACEMENT UNDER GUARDIANSHIP OR CONSERVATORSHIP

Section 2:25

[Sequestration and appointment of a conservator]

If legal action for the placement of a person under conservatorship or guardianship appears justified, and the protection of the assets of this person demands urgent action, the guardian authority shall order sequestration of all or part of such assets, and shall appoint a sequestrator at the same time. The aforesaid ruling may not be appealed.

Section 2:26

[Appointment of a temporary conservator]

(1) In cases demanding immediate action, the guardian authority may appoint a temporary conservator to persons of legal age whose placement under guardianship affecting legal capacity appears justified, and if their person or assets cannot be protected by other means, by sequestration in principle. An order of appointment of a temporary conservator cannot be appealed.

(2) The guardian authority shall specify in its order of appointment of a temporary conservator the particular matters or groups of matters concerning which the temporary conservator has powers to make legal acts.

(3) Moreover, the activities of temporary conservators shall be governed by the provisions pertaining to conservators.

Section 2:27

[Common provisions relating to sequestration and to the appointment of a temporary conservator]

(1) The guardian authority shall file for legal action for placement under conservatorship within eight days from the order of sequestration or the appointment of a temporary conservator. The

court shall ex officio review the sequestration or the appointment of a temporary conservator within thirty days following the time of bringing action.

(2) Terminating the effect of sequestration or the removal of the receiver or the temporary conservator shall be provided for at the latest in the order of appointment of the conservator.

TITLE VII

PLACEMENT UNDER GUARDIANSHIP OR CONSERVATORSHIP

Section 2:28

[Requesting placement under guardianship or conservatorship]

(1) Placement under guardianship or conservatorship may be requested by:

a) the spouse, domestic partner, relative in direct line, or sibling living with the person of legal age;

b) the minor's legal representative;

c) the guardian authority; and

d) the public prosecutor.

(2) The guardian authority shall initiate the conservatorship procedure upon receiving notice that it is necessary to place a person in the custody of a conservator, if it is not initiated by either of the persons referred to in Paragraphs a) and b) of Subsection (1) within sixty days of receipt of notification from the guardian authority concerning the requirement for legal action.

Section 2:29

[Mandatory review of placement under guardianship or conservatorship]

(1) The court ruling on restricting, upholding or modifying the legal competency of a person shall specify the date by which to initiate the statutory review of conservatorship, where this date:

a) must be fixed within five years from the date when the ruling becomes legally operative in the case of conservatorship;

b) must be fixed within ten years from the date when the ruling becomes legally operative in the case of guardianship.

(2) The review procedure shall be initiated by the guardian authority of its own motion. The petition for review may request the termination of conservatorship or guardianship, the extension of conservatorship or guardianship, the transfer from conservatorship invoking partially limited legal competency into guardianship invoking fully limited legal competency, the transfer from guardianship invoking fully limited legal competency into conservatorship invoking partially limited legal competency, or the revision of the sphere of rights that cannot be exercised by a person under conservatorship of limited competency.

Section 2:30

[Termination and revision of conservatorship or guardianship]

(1) The court shall terminate conservatorship concerning competency if the grounds on which it was ordered no longer prevail.

(2) Termination of guardianship or conservatorship may be requested by:

a) the person in custody;

b) the spouse, domestic partner, relative in direct line, or sibling living with the person in custody;

c) the conservator;

d) the guardian authority; or

e) the public prosecutor.

(3) The persons listed under Subsection (2) may also request the modification of guardianship or conservatorship. To that end, they may request the transfer from conservatorship invoking partially limited legal competency into guardianship invoking fully limited legal competency, the transfer from guardianship invoking fully limited legal competency into conservatorship invoking partially limited legal competency, or the revision of the sphere of rights that cannot be exercised by a person under conservatorship of partially limited competency.

(4) Legal action for the termination or modification of conservatorship or guardianship may also be initiated before the statutory review of guardianship and conservatorship.

TITLE VIII

APPOINTMENT OF A CONSERVATOR; RIGHTS AND OBLIGATIONS OF CONSERVATORS

Section 2:31

[Appointment of conservator]

(1) The guardian authority shall appoint a conservator for the person placed under conservatorship by court order. Any person with legal competency, who accepts the office may be appointed a conservator.

(2) A person shall not be appointed conservator if:

a) he/she is excluded by the person under conservatorship from among the possible candidates by means of a prior legal statement, or if an objection to such person is expressly made by the person under conservatorship; or

b) it conflicts with the interests of the person under conservatorship.

(3) The person designated by the person placed under conservatorship in a prior legal statement, or named in the appointment procedure by the relevant person, shall be appointed for the office of conservator, unless it expressly conflicts with his/her interest. If this is not possible, his or her spouse or domestic partner living in the same household, shall be appointed for the office of conservator. In the absence of such family member, or if the appointment of his/her spouse or domestic partner appointed would jeopardize the interest of the person under conservatorship, the guardian authority shall appoint a person for the office of conservator who appears competent in view of all applicable circumstances.

(4) Of the persons deemed competent for the office of conservator, preference shall be given to the parents or the person named by the parents in an authentic instrument or in their will in the event of their death, or, in the absence of such persons, to any other relatives, provided they are able and willing to provide care should it be necessary.

(5) If a conservator cannot be appointed in accordance with Subsections (3)-(4), a professional conservator shall be appointed for the person under conservatorship. The person aspiring to be a professional conservator shall have no criminal record and shall have the qualifications prescribed for professional conservators. A legal person working with persons suffering in a mental disorder may also be appointed for the office of conservator; such legal person shall

designate a natural person who will carry out the functions of the conservator. The person so designated shall have the qualifications prescribed for professional conservators.

Section 2:32

[Multiple and substitute conservators]

(1) Under exceptional circumstances, more than one conservator may be appointed to a person placed under conservatorship. Multiple conservators may be appointed if:

a) both parents or two close relatives of the person under conservatorship accept the office of conservator; or

b) management of all or a part of the assets or handling certain other matters of the person under conservatorship requires special expertise.

(2) In the case provided for in Paragraph *a)* of Subsection (1), upon request made jointly by the conservators, the guardian authority shall specify their functions individually. In the absence thereof, the functions of the conservators are identical; they can act collectively or individually.

(3) In the case provided for in Paragraph *b)* of Subsection (1), the guardian authority shall specify the functions of each conservator individually.

(4) In addition to a conservator who is absent or is unable to carry out his duties for other reasons, the guardian authority may also appoint a substitute conservator for the person under conservatorship. The substitute conservator shall have powers to proceed in matters which require immediate attention.

Section 2:33

[Cessation of the office of conservator]

(1) The guardian authority shall dismiss a conservator from office:

a) if the court has terminated conservatorship;

b) upon the death of the person under conservatorship;

c) if so requested by the conservator citing substantial reasons; or

d) if any reason serving as grounds for exclusion of the conservator's appointment arises subsequently.

(2) The guardian authority shall remove a conservator from office if the conservator:

a) fails to carry out his obligations;

b) fails to follow the instructions set out in the prior legal statement; or

c) is engaged in any conduct by which to cause serious injury to, or endanger the interest of, the person under conservatorship.

(3) In matters where immediate attention is required, the guardian authority shall suspend the conservator from office before ordering his dismissal.

Section 2:34

[Activities of conservators]

(1) In the case of guardianship or conservatorship invoking partially limited legal competency by order of the court, the conservator shall function as the legal representative of the person under guardianship or conservatorship.

(2) The conservator shall be entitled to manage the assets of the person placed in his custody if the court has fully limited the legal competency of the person affected, or has limited his/her competency in disposing over his/her income or financial assets.

(3) If so required by the circumstances the conservator - if agreed in principle - shall also provide care for the person in his custody.

(4) If the person whose competency has been limited by court order has made a prior legal statement in which he/she specifies the way the conservator should proceed in his/her specific personal and financial affairs, the conservator shall carry out his functions in due observation of such instructions.

(5) If the conservator exceeds his powers, his legal statement shall be considered effective in dealings with third parties, however, the conservator shall compensate the person in his custody on the grounds of non-contractual liability.

Section 2:35

[Management of assets by conservators]

(1) The conservator shall manage the assets of the person in his custody so as to best serve the interests of that person.

(2) In the case of guardianship or conservatorship invoking partially limited legal competency in connection with financial matters, the conservator shall - at the guardian authority's request - surrender the assets of the person in his custody to the guardian authority, if they are not required for covering running expenses. For any transaction concerning the assets deposited with the guardian authority the guardian authority's prior consent is required.

Section 2:36

[Supervision of the activities of conservators]

(1) The guardian authority shall exercise supervision of the activities of conservators.

(2) Conservators shall be required to report to the guardian authority on their activities and concerning the condition of the persons in their custody at the time upon the guardian authority's request, or on an annual basis together with the annual statement of accounts.

(3) The persons placed in the custody of conservators shall be entitled to have access to records on the conservators' activities and also on their assets, and to make copies of such records.

Section 2:37

[Giving account of conservators' management activities]

(1) Conservators shall give account on the management of assets annually to the guardian authority. If the conservator is a close relative of the person under conservatorship the guardian authority may forgo the requirement of reporting, and may authorize simplified accounting.

(2) With the exception of professional conservators, no annual account - simplified or normal - is required if the person in the conservator's custody has no assets, and if his/her income is below the statutory limit.

(3) The guardian authority shall be entitled to order any conservator to give account on a case-by-case basis. Such order may also be issued if requested by the person under conservatorship to whom it pertains.

(4) When his office is terminated, the conservator shall prepare a final statement of account on the assets managed, and present it to the guardian authority within fifteen days. If the conservator's office terminates because the court lifted guardianship or conservatorship invoking partially limited legal competency in financial affairs, the conservator shall present the final statement of account to the person having entitlement to dispose over those same assets in the future.

(5) The claims arising out of or in connection with the conservator's obligation to give account shall expire within one year from the date of delivery of the resolution releasing the conservator from the responsibility of asset management. If the party affected becomes aware of the reason underlying a claim at a later point in time, the deadline shall be reckoned from that time if the claim has not yet expired.

TITLE IX

ADVOCATED DECISION-MAKING WITHOUT PREJUDICE TO LEGAL CAPACITY

Section 2:38

[Appointment of an advocate]

(1) Where a person of legal age is in need of assistance due to the partial loss of his/her discretionary ability in certain matters, the guardian authority shall appoint an advocate upon his/her request with a view to avoiding conservatorship invoking limited legal competency.

(2) If in an action for the placement of a person under conservatorship or guardianship the court considers that there is no justification to limit that person's legal competency even partially, yet he/she is in need of assistance due to the partial loss of his/her discretionary ability in certain matters, the court shall dismiss the action for placement under conservatorship or guardianship, and shall deliver its decision to the guardian authority. The advocate is appointed by the guardian authority based on the court ruling, in agreement with the person affected.

(3) The appointment of an advocate shall not affect the legal competency of a person of legal age.

TITLE X

PRE-ARRANGED LIMITATION OF LEGAL COMPETENCY FOR FUTURE CONSIDERATIONS

Section 2:39

[Prior legal statement]

(1) A person of legal age with legal capacity shall be entitled to make a prior legal statement executed in an authentic instrument or in a private document countersigned by an attorney, or before the guardian authority in person, with a view to partially or fully limiting his/her legal competency for future considerations.

(2) In that prior legal statement the person making the statement:

- a)* may designate one or more persons of his/her liking as a conservator;
- b)* may exclude one or more persons from the list of potential conservators; and

c) may instruct the conservator as regards the way to proceed in his/her specific personal and financial affairs.

(3) The above-specified prior legal statement shall be recorded in the register of prior legal statements. Failure to enter a prior legal statement into the register shall not affect the validity of that prior legal statement.

(4) The provisions on making prior legal statements shall also apply to the amendment and withdrawal of such statements. If withdrawn, the prior legal statement shall be removed from the register.

Section 2:40

[Entry into effect of prior legal statements]

(1) In its decision ordering conservatorship concerning competency, the court shall order the application of a prior legal statement, except if:

a) compliance with the instructions set out in the prior legal statement expressly conflicts with the interests of the person under conservatorship; or

b) the person designated by the person of legal age for the office of conservator refuses to carry out the instructions set out in the prior legal statement, or is subject to any statutory grounds for disqualification.

(2) Should any of the several dispositions of a prior legal statement be considered inoperative, it shall not affect the validity or effect of the other dispositions.

(3) In the appointment of a conservator and in determining his functions, the guardian authority shall take due account of the instructions set out in the prior legal statement.

Section 2:41

[Review of prior legal statements]

In the event of any changes in the circumstances of a person who has made a prior legal statement upon which compliance with the instructions set out in the prior legal statement are likely to conflict with the interests of the person under conservatorship, the person in custody, the conservator, the guardian authority and the public prosecutor may request the court to abolish such instructions.

PART THREE

RIGHTS RELATING TO PERSONALITY

TITLE XI

GENERAL PROVISIONS AND CERTAIN RIGHTS RELATING TO PERSONALITY

Section 2:42

[Protection of rights relating to personality]

(1) Everyone is entitled to freely practice his personality rights within the framework of the law and within the rights of others, and to not be impeded in exercising such right by others.

(2) Human dignity and the related personality rights must be respected by all. Personality rights are protected under this Act.

(3) Personality rights shall not be considered violated by any conduct if the person affected has given prior consent thereto.

Section 2:43

[Specific personality rights]

The following, in particular, shall be construed as violation of personality rights:

- a) any violation of life, bodily integrity or health;
- b) any violation of personal liberty or privacy, including trespassing;
- c) discrimination;
- d) any breach of integrity, defamation;
- e) any violation of the right to protection of privacy and personal data;
- f) any violation of the right to a name;
- g) any breach of the right to facial likeness and recorded voice.

Section 2:44

[Protection of the personality rights of politically exposed persons]

Exercising the fundamental rights relating to the free debate of public affairs may diminish the protection of the personality rights of politically exposed persons for overriding public interest, to the extent necessary and proportionate, without prejudice to human dignity.

Section 2:45

[Right to integrity and reputation]

(1) The integrity of a person is considered violated when a false and malicious oral statement is uttered publicly to damage that person's reputation, and to make people have a bad opinion of such person.

(2) Defamation means when something bad about someone that is not true, or a true fact with an untrue implication is published or disseminated in an abusive attack on that person's good name.

Section 2:46

[Right to privacy]

(1) The right to the protection of privacy shall, in particular, cover the confidentiality of correspondence protection, professional secrecy and commercial secrecy.

(2) Invasion of privacy shall, in particular, cover the unauthorized access to and use of private secrets, including publication and disclosure to unauthorized persons.

Section 2:47

[Right to commercial secrecy. Know-how]

(1) Trade secrets shall include any fact, information and other data, or a compilation thereof, connected to economic activities, which are not publicly known or which are not easily accessible to other operators pursuing the same economic activities, and which, if obtained and/or used by

unauthorized persons, or if published or disclosed to others are likely to imperil or jeopardize the rightful financial, economic or commercial interest of the owner of such secrets, provided the lawful owner is not subject to actionability in terms of keeping such information confidential.

(2) Commercial secrecy shall also apply to technical, economic and other practical knowledge of value held in a form enabling identification, including accumulated skills and experience and any combination thereof (hereinafter referred to as „know-how”), if acquired, used, disclosed or published in violation of the principle of good faith and fair dealing. This protection shall not apply where a person obtains the know-how, or any knowledge which essentially has the same attributes:

- a) by means of development independent of the proprietor; or
- b) by way of testing or analyzing a lawfully acquired product or lawfully received service.

(3) Breach of commercial secrecy shall not be relied on as against a person who has obtained trade secrets or know-how from third parties in good faith, in the course of trade for consideration.

Section 2:48

[Right to facial likeness and recorded voice]

(1) The consent of the person affected shall be required for producing or using his/her likeness or recorded voice.

(2) The consent of the relevant person is not required for recording his/her likeness or voice, and for the use of such recording if made of a crowd or in a public event.

Section 2:49

[Right to a name]

(1) Literary, artistic or scientific activities or activities accompanying public performances may be pursued under an assumed name, provided that it does not result in any harm to the relevant lawful interests of other persons.

(2) If the name of a person engaged in literary, artistic or scientific activities or in activities accompanying public performances can be confused with the name of another person who has already been engaged in similar activities, at the request of the relevant person such name may be used with a distinctive addendum or omission while engaged in such activities.

Section 2:50

[Right in memoriam]

(1) In the case of any violation of the memory of a deceased person, the relative and/or the person having been named heir apparent in the will of the deceased shall be entitled to bring court action.

(2) Any heir shall have the right to lay claim to any financial advantage obtained by having violated the memory of a deceased person. Where there are several heirs, the deprived financial advantage shall be distributed among the heirs according to their respective shares of the estate.

TITLE XII

SANCTIONS FOR VIOLATIONS OF RIGHTS RELATING TO PERSONALITY

Section 2:51

[Sanctions independent of attributability]

(1) A person whose personality rights have been violated shall have the right to demand within the term of limitation - based on the infringement - as appropriate by reference to the circumstances of the case:

- a) a court ruling establishing that there has been an infringement of rights;
- b) to have the infringement discontinued and the perpetrator restrained from further infringement;
- c) that the perpetrator make appropriate restitution and that the perpetrator make an appropriate public disclosure for restitution at his own expense;
- d) the termination of the injurious situation and the restoration of the previous state, and to have the effects of the infringement nullified or deprived of their unlawful nature;
- e) that the perpetrator or his successor surrender the financial advantage acquired by the infringement according to the principle of unjust enrichment.

(2) Where any violation of personality rights is committed by a person in an official capacity within administrative authority, the sanctions referred to in Subsection (1) shall be imposed upon the legal entity exercising State authority. If the person exercising State authority is not a legal entity, the sanctions shall be imposed upon the administrative body having legal personality, on whose behalf the relevant administrative body operates.

(3)² Where any violation of personality rights is committed by a person in an official capacity within the jurisdiction of a court or public prosecutor, the sanctions referred to in Subsection (1) shall be imposed upon the court or the Prosecutor General, as appropriate. If the acting court is not a legal entity, the claim shall be enforced against the court whose president exercises overall employer's rights over the judges of the court having no legal personality.

Section 2:52

[Restitution]

(1) Any person whose rights relating to personality had been violated shall be entitled to restitution for any non-material violation suffered.

(2) As regards the conditions for the obligation of payment of restitution - such as the definition of the person liable for the restitution payable and the cases of exemptions - the rules on liability for damages shall apply, with the proviso that apart from the fact of the infringement no other harm has to be verified for entitlement to restitution.

(3) The court shall determine the amount of restitution in one sum, taking into account the gravity of the infringement, whether it was committed on one or more occasions, the degree of responsibility, the impact of the infringement upon the aggrieved party and his environment.

Section 2:53

² Enters into force as under Section 184 of Act CCLII of 2013.

[Liability for damages]

Any person who suffers any damage from the violation of his personality rights shall have the right to demand compensation from the infringer in accordance with the provisions on liability for damages resulting from unlawful actions.

Section 2:54

[Enforcement of rights relating to personality]

(1) Personality rights must be enforced in person.

(2) Minors of limited legal capacity and persons of partially limited legal capacity shall be able to take action on their own for the protection of their personality rights. The personality rights of incompetent persons shall be protected by their legal representative.

(3) The personality rights of absent persons of unknown whereabouts shall be protected by their family members or conservators.

(4) If the violation of personality rights infringes upon the public interest, the public prosecutor shall be entitled to bring action upon the victim's consent, and to invoke the sanctions independent of attributability. Pursuant to the public prosecutor's action the financial advantage achieved shall be relinquished for public purposes. This Subsection shall apply to the infringement referred to in Subsection (5) with the exception that the public prosecutor shall be entitled to bring action without the victim's consent within the applicable limitation period.

(5) Any member of a community shall be entitled to enforce his personality rights in the event of any false and malicious statement made in public at large for being part of the Hungarian nation or of a national, ethnic, racial or religious group, which is recognized as an essential part of his personality, manifested in a conduct constituting a serious violation in an attempt to damage that community's reputation, by bringing action within a thirty-day preclusive period. All members of the community shall be entitled to invoke all sanctions for violations of personality rights, with the exception of laying claim to the financial advantage achieved.

PART FOUR

COPYRIGHT AND INDUSTRIAL PROPERTY RIGHTS

Section 2:55

[Supplementary rule]

This Act shall apply to matters falling within its scope, which are not governed by the legislation on copyright and industrial property rights.

BOOK THREE

LEGAL PERSONS

PART ONE

GENERAL RULES RELATING TO LEGAL PERSONS

TITLE I

GENERAL PROVISIONS

Section 3:1

[Legal capacity of legal persons]

(1) All legal persons shall have legal capacity; they shall be entitled to have rights and obligations.

(2) The legal capacity of legal persons shall cover all rights and obligations that do not inherently pertain solely to individual human beings.

(3) The provisions on the protection of personality rights shall also apply to the inherent rights of legal persons, unless such protection, by virtue of its very nature, can only be given to private persons.

(4) Legal persons may be established in a form defined by law, for the pursuit of activities and objection which are not prohibited by law; any instrument of constitution made in violation of this provision shall be null and void.

(5) A legal person shall have its own name and seat, shall have assets separate from its members and founders, and shall have a management and representative body.

Section 3:2

[Liability for the legal person's debts]

(1) Legal persons shall be liable for their debts with their own assets; members and founders of a legal person shall not be held liable for the legal person's debts.

(2) In the event of abuse of limited liability on the part of any member or founder of a legal person, on account of which any outstanding creditors' claims remain unsatisfied at the time of the legal person's dissolution without succession, the member or founder in question shall be subject to unlimited liability for such debts.

Section 3:3

[Application of the general rules relating to legal persons]

(1) The general rules relating to legal persons shall apply where this Act does not provide otherwise in connection with certain types of legal persons.

(2) The general rules relating to legal persons shall also apply to legal persons of the types not governed under this Act.

(3) Where legal personality is conferred by civil law upon any organization lacking the legal status of legal persons, the general rules relating to legal persons shall also apply to those entities.

TITLE II

FOUNDATION OF LEGAL PERSONS

Chapter I

Freedom of Establishment

Section 3:4

[Freedom of establishment of legal persons]

(1) Persons shall have freedom of establishment of a legal person by means of a contract, charter document or articles of association (hereinafter referred to collectively as „instrument of constitution”), and shall themselves decide on the legal person’s organizational structure and operational arrangements.

(2) As regards relations between members and founders, and between them and the legal person, and as regards the organizational structure and operational arrangements of the legal person, in the instrument of constitution the members and founders may derogate from the provisions of this Act relating to legal persons, save where Subsection (3) applies.

(3) Members and founders of a legal person may not derogate from the provisions of this Act:

a) if it is precluded by law; or

b) where any derogation clearly violates the interests of the legal person’s creditors, employees and minority members, or it is likely to prevent the exercise of effective supervision over legal persons.

(4) Legal persons shall enter into existence upon registration by the court based on the instrument of constitution made out for the type of legal person in question. The court of registry may refuse to register a legal person on grounds specified by the relevant legislation.

(5) Legal persons are established for a definite or indefinite period. If the instrument of constitution does not provide for the term of the legal person, the legal person enters into existence for an indefinite duration.

Chapter II

Instrument of Constitution

Section 3:5

[Mandatory layout of the instrument of constitution]

The instrument of constitution of a legal person shall expressly indicate the founders’ intent to set up the legal person and shall contain:

a) the legal person’s name;

b) the legal person’s registered office;

c) the legal person’s purpose or main activity;

d) the names of the founders of the legal person, including their home address or registered office;

e) the capital contributions prescribed, the value of such contributions, as well as how and when such assets are to be made available; and

f) the legal person’s chief executive officer.

Section 3:6

[Name of legal persons]

(1) The name of a legal person must differ from the names of other previously registered legal persons to an extent that they should not be confused. Where the registration of several legal persons is requested under names which are identical or may be confused, the name in question may be used by the applicant having submitted the first application.

(2) The name of a legal person may not convey an unrealistic impression. The name of the legal person shall contain a designation relating to the type or form of the legal person.

(3) The type of legal person, and if the name contains an indication of the legal person's activity as well, the legal person's activity shall be fixed in Hungarian, in conformance with the rules of Hungarian grammar.

Section 3:7

[Statutory seat of legal persons]

The registered office of a legal person shall also function as its statutory seat, where the legal person shall have facilities for receiving legal correspondence addressed to the legal person, and where the legal person is to provide access to documents specified by the relevant legislation.

Section 3:8

[Activities of legal persons]

Legal persons may engage in the pursuit of any activity that is not expressly prohibited or restricted by law.

Section 3:9

[Obligation of capital contribution]

(1) Founders and members of legal persons are required to provide capital contribution to the legal person at the time of foundation and also in cases where membership rights are otherwise acquired. Capital contributions made available to legal persons are not recoverable, and equivalent compensation may not be demanded.

(2) If the founders and members of legal persons are not required to provide capital contribution, liability for the legal person's debts shall fall upon its members, or in the case of non-membership legal persons, upon the person exercising founders' rights. If the guarantee obligation falls upon several persons, their liability shall be joint and several.

Section 3:10

[Form and value of capital contributions]

(1) The capital contribution required from members and founders may be provided to the legal person in the form of cash or in the form of consideration other than in cash.

(2) The founder or member may provide asset contribution by transferring ownership rights of tangible or intangible assets to the legal person.

(3) If, at the time of transfer, the value of asset contribution does not reach the value indicated in the instrument of constitution, the legal person may demand payment of the difference from the person having provided the asset contribution within five years from the date of transfer.

Section 3:11

[Prohibition of issue of securities representing membership rights]

With the exception of limited companies, securities representing membership rights may not be issued.

Chapter III

Registration of Legal Persons

Section 3:12

[Submission of applications for registration]

(1) An application for the registration of a newly established legal person shall be submitted by the person appointed to represent the legal person.

(2) The representative shall be held liable towards the founders for damages resulting from his failure to submit the application in due time, also if the notification submitted is incomplete or deficient, in accordance with the provisions on liability for damages for loss caused by non-performance of an obligation.

Section 3:13

[Basic principles for the registration of legal persons]

(1) All entries made to the register of rights, facts or data must be evidenced by a document, court or administrative decision specified by law.

(2) The register shall be construed as an official public register; the rights, facts and data (hereinafter referred to as „data of record”) it contains shall be presumed to exist and to be authentic. Under no circumstances shall the lack of knowledge of any data of record constitute an excuse. In respect of parties acting in good faith, a legal person may not be excused on the grounds that certain data it has reported, and thus registered, was untrue. Unless proven to the contrary, it shall be presumed that a party acquiring certain rights for consideration relying upon the register was acting in good faith.

(3) The general public shall have unlimited access to the register, and notes may be made and certified true copies or extracts may be requested thereof.

Section 3:14

[Publication of legal statements]

Where any obligation of publication is prescribed for legal persons in this Act, it shall be satisfied by way of publication in the Cégközlöny (*Company Gazette*), unless this Act provides otherwise.

Chapter IV

Nullity of the Establishment of Legal Persons

Section 3:15

[Nullity of the establishment of legal persons]

(1) The provisions on the nullity of contracts shall apply to the nullity of the instruments of constitution of legal persons insofar as the resolution on the registration of the legal person becomes final and enforceable.

(2) After the registration of a legal person by binding decision, nullity of the instruments of constitution of the legal person may not be cited as grounds for removal from the registry. Where any provision of the instrument of constitution is found unlawful, the means for ensuring lawful operations may be accessed.

(3) The provisions set out in Subsections (1) and (2) shall also apply to any amendment to the instrument of constitution.

TITLE III

ORGANIZATIONAL STRUCTURE AND REPRESENTATION OF LEGAL PERSONS

Chapter V

Decision-making by Members or Founders of Legal Persons

Section 3:16

[Decision-making bodies]

(1) Members and founders shall exercise their decision-making powers under this Act or the instrument of constitution in a body comprised of members selected from among all members or of delegates selected by the members from among themselves (hereinafter referred to as „college of delegates”), or in a body consisting of persons exercising founder’s rights.

(2) Decision-making bodies shall take decisions in session or out of session.

Section 3:17

[Convening the meetings of decision-making bodies]

(1) Meetings of the decision-making bodies shall be convened by the executive officer by sending or publishing an invitation thereto.

(2) The invitation shall contain:

- a) the legal person’s name and registered address;
- a) the date and place of the meeting;
- c) the agenda.

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

(4) The decision-making body shall convene at the legal person’s head office.

(5) If the decision-making body has not been convened in due form, the meeting may be held only if all entitled persons are present, and if they unanimously agree to open the meeting.

(6) The meeting of the decision-making body shall be able to pass resolutions on duly notified points that are included in the agenda, except if entitled persons are present and they unanimously agree to discuss a matter that is not included in the agenda.

Section 3:18

[Quorum]

(1) In the meeting of the decision-making body a quorum shall exist when more than one half of the members with voting right are present. Quorum shall be considered for each decision.

(2) Any member or founder who is not eligible to vote in a given subject shall not be included for the purposes of quorum relating to the decision in question.

Section 3:19

[Passing resolutions]

(1) At the meetings of decision-making bodies the members or founders shall decide the matters at issue by voting.

(2) In the process of adopting a resolution the following persons may not vote:

a) any person for whom the resolution contains an exemption from any obligation or responsibility, or for whom any advantage is to be provided by the legal person;

b) any person with whom an agreement is to be concluded according to the resolution;

c) any person against whom legal proceedings are to be initiated according to the resolution;

d) any person whose family member has a vested interest in the decision, who is not a member or founder of the legal person;

e) any person who maintains any relation on the basis of majority control with an organization that has a vested interest in the decision; or

f) any person who himself has a vested interest in the decision.

(3) Members or founders shall adopt resolutions by a majority of the votes considered for the purposes of quorum. Where a simple - or higher - majority of the votes is prescribed under this Act for passing a resolution, any clause of the instrument of constitution providing for a lower voting ratio shall be null and void. Where unanimity is prescribed under this Act for passing a resolution, any clause of the instrument of constitution to the contrary shall be null and void.

Section 3:20

[Adopting resolutions out of session]

(1) Where the instrument of constitution allows for adopting resolutions out of session, management shall initiate such process by sending the draft of the resolution to the members or founders. Members or founders shall be given at least eight days from the time of receipt of the draft to send their vote to management.

(2) In adopting a resolution out of session, the provisions of this Act on quorum and voting shall apply with the exception that the decision-making process shall be considered effective if the number of votes sent to management corresponds to at least the number of members or founders with voting right required to attend for a quorum if the meeting was in fact held in session.

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

(4) Management shall determine the outcome of the voting within three days following the last day of the time limit prescribed for voting, or, if the votes of all members or founders are received previously, within three days from the day when the last vote is received, and shall convey the results in writing to the members or founders within an additional three days. The date of the resolution shall be the last day of the voting deadline, or if the votes of all members or founders are received previously, the day when the last vote is received.

Chapter VI

Management of Legal Persons

Section 3:21

[Definition of management, appointment of executive officers]

(1) Decisions that are related to the governance of a legal person, and are beyond the competence of the members or founders, shall be adopted by one or more executive officers or by a body consisting of executive officers.

(2) Executive officers shall perform their management functions representing the legal person's interests.

(3) The first executive officers of a legal person shall be delegated in the legal person's instrument of constitution. After the legal person is established, executive officers are selected, appointed and dismissed by the members of the legal person, or by the founders in the case of non-membership legal persons. The appointment of an executive officer shall take effect when accepted by the person delegated, elected or appointed.

Section 3:22

[Requirements for executive officers, grounds for exclusion]

(1) The executive officer must be of legal age and must have full legal capacity in the scope required for discharging his functions.

(2) If the executive officer is a legal person, that legal person shall designate a natural person to discharge the functions of the executive officer in its name and on its behalf. The rules pertaining to executive officers shall apply to the designated person as well.

(3) The executive officer shall perform management functions in person.

(4) Any person who has been sentenced to imprisonment by final verdict for the commission of a crime may not be an executive officer until exonerated from the detrimental consequences of having a criminal record.

(5) A person may not be an executive officer if he has been prohibited from practicing that profession. Any person who has been prohibited by final court order from practicing a profession may not serve as an executive officer of a legal person that is engaged in the activity indicated in the verdict.

(6) Any person who has been prohibited from holding an executive office may not serve as an executive officer within the time limit specified in the prohibition order.

Section 3:23

[Confidentiality and obligation of information]

(1) The executive officer is required to keep the members of the legal person, or the founders in the case of non-membership legal persons, informed concerning the legal person, and to provide access for them to the legal person's documents, records and registers. The executive officer shall be entitled to request a written declaration of confidentiality before the provision of information or access.

(2) The executive officer may refuse to give information and to provide access to documents if this would infringe upon the legal person's trade secrets, if the requesting party exercises his right

in a manner which is abusive, or if he refuses to make a declaration of confidentiality despite having been asked to do so. If the requesting party considers the refusal of information unjustified, he may request the court of registry to order the legal person to provide access to the information.

Section 3:24

[Liability of executive officers]

The executive officer shall be held liable for damages caused to the legal person resulting from his management activities in accordance with the provisions on liability for damages for loss caused by non-performance of an obligation.

Section 3:25

[Termination of executive officers]

- (1) The mandate of an executive officer shall terminate:
 - a) upon expiry of the designated term of office;
 - b) if the mandate is rendered subject to some condition for termination, when the condition is met;
 - c) by dismissal;
 - d) upon resignation;
 - e) upon death or dissolution of the executive officer without succession;
 - f) if executive officer's legal capacity is limited in the scope required for discharging his functions;
 - g) upon the occurrence of any grounds for exclusion or any reason giving cause to conflict of interest.
- (2) Members of the legal person, or the founders in the case of non-membership legal persons, shall be entitled to dismiss the executive officer at any time, without giving any reason.
- (3) The executive officer may resign at any time by means of notice addressed to the legal person and delivered to the legal person's other executive officer or decision-making body.
- (4) If so required by any vital interest of the legal person, the resignation shall only take effect upon the delegation or election of a new executive officer, or failing this on the sixtieth day after the announcement thereof.

Chapter VII

[Supervision of legal persons on behalf of the owners]

Section 3:26

[Establishment and membership of the supervisory board]

- (1) Members or founders may provide in the instrument of constitution for the establishment of a supervisory board comprised of three persons, tasked to supervise management in order to protect the interests of the legal person.
- (2) Members of the supervisory board must be of legal age and must have full legal capacity in the scope required for discharging their functions. A person who is subject to any grounds for

exclusion applicable to executive officers may not hold a seat on the supervisory board, nor any person who himself or whose family member holds an executive office in the legal person.

(3) Supervisory board members shall partake in the work of the supervisory board in person. Supervisory board members shall be independent of the management of the legal person, and shall not be bound by any instructions in performing their duties.

(4) The members of the first supervisory board shall be designated in the instrument of constitution, after which such members are appointed by the decision-making body. Membership in the supervisory board shall take effect when accepted by the person appointed.

(5) The provisions on the termination of the mandate of executive officers shall also apply to the termination of membership of supervisory board members, with the proviso that supervisory board members shall send their resignation to the legal person's executive officer.

Section 3:27

[Supervisory board operating procedures]

(1) The supervisory board shall assess all motions brought before the decision-making body of members or founders, and to present its opinion thereof at the meeting of the decision-making body.

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

(3) The supervisory board shall adopt its decisions by a simple majority of the votes of the members present. Any clause of the instrument of constitution providing for a lower voting ratio shall be null and void.

Section 3:28

[Liability of supervisory board members]

Members of the supervisory board shall be held liable for damages caused to the legal person resulting from their omission of supervisory responsibilities in accordance with the provisions on liability for damages for loss caused by non-performance of an obligation.

Chapter VIII

Representation of Legal Persons

Section 3:29

[Legal representation of legal persons]

(1) The responsibility for providing legal representation of legal persons lies with the executive officer.

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

(3) The executive officer shall notify the legal person's particulars prescribed by law to the court of registry.

Section 3:30

[Mode of representation]

(1) If the legal person's instrument of constitution or its internal policy relating to the organization and functioning of the legal person provides for an office vested with power of representation, the person holding that office shall also be vested with individual power of representation.

(2) The head of any department lacking the legal status of a legal person shall also be vested with individual power of representation in matters considered necessary for the regular functioning of the department.

(3) In specific cases management may delegate powers of representation upon the employees of the legal person in writing; employees shall be able to exercise such power of representation together with another person vested with power of representation by management in a written statement.

Section 3:31

[Limited power of representation]

Any restriction of the power of representation vested upon the legal person's authorized representative shown in the registry of legal persons, or rendering such representative's actions conditional or subject to approval shall not be effective as against third parties, except if the third party knew, or should have known about the restriction or about the condition or approval requirement, and the lack thereof.

Chapter IX

Legal Status of Any Department of a Legal Person

Section 3:32

[Legal status of any department of a legal person]

(1) Where so permitted by this Act, the instrument of constitution may contain provisions for conferring legal personality upon certain departments of the legal person, provided that the department has its own organization and assets separate from the founders and from the legal person.

(2)³ The general rules relating to legal persons shall also apply to the departments of legal persons, with the exception that liability for any claims of creditors that cannot be satisfied from the own assets of the department with legal personality shall fall upon the legal person both during the period of the department's legal personality and subsequently.

Section 3:33

[Provisions relating to the termination of the department's legal personality]

(1) If the department's legal personality is terminated, the department's rights and obligations shall pass to the legal person.

(2) If the legal person decided to terminate the department's legal personality, such decision shall be made public. If a creditor's claim arises before the announcement of the decision, the

³ Enters into force as under Paragraph a) of Subsection (30) of Section 185 of Act CCLII of 2013.

creditor may demand adequate safeguards from the legal person within a thirty-day preclusive period if termination of the department's legal personality jeopardizes the satisfaction of its claim. The department may be stricken if the legal person provides adequate guarantees in compliance with the creditor's request.

(3) If the legal person's dissolution is ordered, the legal personality of the legal person's department shall cease to exist.

TITLE IV

SAFEGUARDS FOR THE LAWFUL OPERATION OF LEGAL PERSONS

Chapter X

Judicial Oversight of Legal Persons

Section 3:34

[Judicial oversight of legal persons]

(1) Judicial oversight of legal persons shall in general be carried out by the competent court of registry. Judicial oversight shall not apply to cases that are normally subject to other court or administrative proceedings. The scope of judicial oversight shall not cover the business decisions of legal persons in terms of economic feasibility and efficiency.

(2) If the measures taken to restore the legality of operations prove ineffective, the competent court of registry shall declare the legal person terminated.

Chapter XI

Judicial Review of the Resolutions of Legal Persons

Section 3:35

[Reasons for review, persons entitled to initiate reviews]

Members of the legal person, or the founders in the case of non-membership legal persons, the executive officers of legal persons and members of the supervisory board shall be entitled to bring court action seeking annulment of resolutions adopted by the members or founders, or by the bodies of the legal person, if the resolution is alleged to be unlawful or to violate the instrument of constitution.

Section 3:36

[Action for the annulment of resolutions]

(1) An action may be brought against the legal person for the annulment of a resolution within thirty days from the time when the applicant has become, or could be expected to have become, aware of the resolution. No action may be brought after a preclusive period of one year from the date of the resolution.

(2) Persons who contributed to the adoption of the resolution with their votes, except for cases of mistake, misrepresentation or duress, shall not be entitled to bring action.

(3) If a resolution is challenged by the executive officer of the legal person, and the legal person remains without an executive officer who can represent the legal person, a member of the supervisory board appointed by the supervisory board shall represent the legal person in the proceedings. If the legal person does not have a supervisory board, or all members of the supervisory board are involved in the proceedings as plaintiffs, the court shall order a curator ad litem to represent the legal person.

(4) Bringing action for the annulment of a resolution shall have no suspensory effect on the enforcement of the resolution. The court shall be entitled to suspend execution on reasonable grounds, upon the applicant's request. The decision ordering suspension may not be appealed. Court injunctions may not be issued in such actions.

Section 3:37

[Annulment of resolutions]

(1) If a resolution is found unlawful or to violate the instrument of constitution, the court shall annul the resolution and shall order the passing of a new resolution if necessary.

(2) The court decision on the annulment of a resolution shall also apply to any other persons who are not involved in the proceedings and are entitled to bring action for the review of the resolution.

(3) If the violation of the law or the instrument of constitution is not considered significant, and does not jeopardize the legal person's lawful operation, the court shall establish the fact of infringement.

Chapter XII

Statutory Auditor

Section 3:38

[Statutory auditor]

(1) If the legal person enlists the services of a statutory auditor to audit the legal person's books, the statutory auditor shall have access to the documents, accounting records and books of the legal person, and shall be entitled to request information from executive officers, from the members of the supervisory board and from the legal person's employees, and to inspect the legal person's payment account, cash accounts, securities portfolio, inventories and contracts.

(2) Should the statutory auditor detect any changes in the legal person's assets that are likely to jeopardize its ability to satisfy any claims filed against the legal person, or learn of any circumstance which entails the liability of the executive officers or supervisory board members with respect to their activities performed in that capacity, he shall forthwith request management to take immediate action to the extent required for enabling the members - or the persons exercising founder's rights in the case of non-membership legal persons - to take the necessary decisions. In the event of non-compliance with his request, the auditor shall inform the court of registry exercising judicial oversight over the legal person concerning the situation at hand.

TITLE V

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

Chapter XIII

Transformation, Merger, Division

Section 3:39

[Transformation]

(1) In the case of transformation of a legal person to another type of legal person, the legal person undergoing transformation will be dissolved, and its rights and responsibilities shall be transferred to the legal person established by way of the transformation, as the general legal successor.

(2) In the case of transformation, the provisions on the establishment of legal persons shall apply.

Section 3:40

[Restrictions]

A legal person may not be transformed if:

- a) undergoing dissolution without succession or bankruptcy proceedings;
- b) indicted in criminal proceedings carrying possible criminal sanctions, or if subject to any criminal sanctions in connection with the criminal liability of legal persons; or
- c) the members or founders fail to provide the capital contribution prescribed in the instrument of constitution.

Section 3:41

[Decision on going into transformation]

(1) The decision on going into transformation, including the mode of transformation and the successor legal person, lies with the members or founders of the legal person.

(2) Following the decision referred to in Subsection (1) the legal person's management shall draw up the draft terms of transformation, including a draft statement of assets and liabilities, and shall make these available to the members or founders.

Section 3:42

[Members refusing to take part in the transformation]

(1) The members of a legal person shall have thirty days from the time of disclosure of the draft terms of transformation to declare that they do not intend to retain their membership in the legal person to be established by the transformation.

(2) The membership of those members referred to in Subsection (1) shall terminate at the time of transformation, and they shall be entitled to an equal share from the assets of the legal person undergoing transformation that they would have the right to claim in the event of the legal person's dissolution without succession.

(3) The draft terms of transformation shall be amended according the members' statements made under Subsection (1).

Section 3:43

[Conclusion of transformation]

(1) Members or founders shall take a decision on transformation by adopting the draft terms of transformation; the decision-making body shall pass this resolution by at least a three-quarters majority.

(2) The adopted draft terms of transformation shall be made public together with the decision on transformation. If a creditor's claim originates from before the decision was published, the creditor may demand adequate safeguards from the legal person to be converted within a thirty-day preclusive period if transformation jeopardizes the satisfaction of its claim.

(3) At the time of registration of the legal person established by transformation, the legal person terminated by transformation shall be removed from the registry. Until the time of registration of the successor legal person, the predecessor legal person shall continue to operate in the form registered.

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

Section 3:44

[Merger]

(1) A legal person may combine with other legal persons as one legal entity by way of merger or acquisition. In the case of merger, the merging legal persons are terminated and a new legal person is established by way of universal succession. In the case of merger by acquisition, the acquired legal person is terminated and all its assets and liabilities are transferred to the acquiring legal person by way of universal succession.

(2) Where all of the merging legal persons decide to initiate the merger, their management shall prepare the draft terms of merger in accordance with the draft terms of transformation, containing the draft statements of assets and liabilities of all participating legal persons as well as the opening draft statements of assets and liabilities of the legal person established by the merger.

(3) The merging legal persons shall individually decide on adopting the draft terms of merger. The draft terms of merger shall be considered adopted, if it has been approved by all legal persons participating in the merger.

Section 3:45

[Demerger]

(1) Demerger means when a legal person is split into two or more legal persons by way of division or separation. Division means the operation whereby, after being terminated, a legal person transfers all its assets to more than one legal person. In the case of separation the legal person shall continue to operate in its previous form and part of its assets are transferred to the successor legal person established by the separation.

(2) Furthermore, demerger may take place by way of separation or division where:

a) a member joins another legal person with a part of the predecessor legal person's assets (separation by acquisition);

b) members join various existing legal persons and transfer their share of the predecessor legal person's assets to such successor legal persons (division by acquisition).

(3) In the case of separation by acquisition and division by acquisition, the decision taken by the decision-making body on the demerger is subject to the consent of the acquiring legal persons which the acquired members wish to join.

Section 3:46

[Rights and obligations of the legal person being divided]

(1) The successors of the legal person being divided - including the one that remains after separation - shall be held liable in accordance with the draft terms of division for the obligations of the legal person being divided originating from before demerger. If the successor named in the draft terms of division fails to fulfill a given obligation, all successors shall be jointly and severally liable for such obligation.

(2) If the draft terms of division does not provide for a given obligation, the successors shall be jointly and severally liable for such obligation.

(3) The rights of the legal person being divided obtained prior to the distribution of assets may be enforced after the division by the successor upon which the draft terms of division has conferred the right in question. If the draft terms of division does not provide for a specific right, the successors shall be entitled to such right in the proportion in which the assets were distributed.

Section 3:47

[Application of the rules of transformation]

In connection with the merger and demerger of legal persons the provisions on transformation shall apply mutatis mutandis.

Chapter XIV

Dissolution of Legal Persons Without Succession

Section 3:48

[Dissolution of legal persons without succession]

(1) A legal person shall terminate without succession if:

- a) it was established for a fixed duration, and such period of time expires;
- b) it was subject to termination upon a certain condition, when this condition is met;
- c) declared terminated by its members or founders; or
- d) terminated by a body so authorized;

provided in all cases that the legal person is cancelled from the registry following completion of the appropriate procedure for the settlement of the legal person's financial affairs.

(2) Following dissolution of the legal person without succession, its assets remaining after settlement of all debts shall be allocated to the legal person's members, or to the person exercising founders' rights in the case of non-membership legal persons in the same percentage as the capital contribution they or their predecessors provided to the legal person.

(3) The members and founders of a legal person dissolved without succession shall be held liable up to their respective shares for the debts of the dissolved legal person outstanding.

TITLE VI

GROUPS OF CORPORATIONS

Section 3:49

[Definition of recognized groups of corporations]

(1) Recognized group of corporations means a form of cooperation featuring a common business strategy between at least one dominant member that is required to draw up consolidated annual accounts and at least three members controlled by the dominant member under a control contract.

(2) A group of corporations may consist of limited companies, private limited-liability companies, groupings and cooperative societies.

(3) If a group of corporations is led jointly by several legal persons, they shall enter into an agreement to determine the one enabled to exercise the rights of the dominant member in accordance with the control contract.

Section 3:50

[Control contracts]

(1) The control contract lays down the common business strategy for a corporate group.

(2) The control contract shall inter alia contain the following:

a) the corporate names and registered offices of the dominant member and the controlled members;

b) the mode of cooperation within the group, including the key aspects of such cooperation;

c) an indication as to whether the corporate group is established for a limited period of time or for an indefinite duration.

(3) The autonomy of the controlled companies of the group may be restricted in the manner and to the extent specified in the control contract with a view to achieving the common business objective. The control contract shall provide for the protection of the rights of the controlled members, and for the protection of creditors' interests.

(4) The general provisions pertaining to contracts shall also apply to control contracts.

Section 3:51

[Preparing the formation of a group of corporations]

(1) The draft terms of the control contract shall be prepared by the managements of the dominant member and the controlled members by delegation of the supreme bodies of the participants. Workers' representative bodies of the participating members shall be duly informed about the preparations for the formation of a corporate group.

(2) The supreme bodies of the members participating in the group shall decide on adopting the control contract by at least a three-quarters majority.

(3) The dominant member shall make a public announcement on the formation of the group of corporations within eight days after gaining knowledge of the last decision on the approval of the control contract on two occasions, at least thirty days apart.

(4) The above-specified public announcement shall contain:

a) the control contract; and

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

(5) The management of the dominant member shall submit an application to the court of registry for registration of the group of corporations within sixty days after gaining knowledge of the last approval.

Section 3:52

[Rights and entitlements of members and creditors of controlled companies]

(1) The members of a controlled company that participates in a group of corporations may request within a thirty-day preclusive period following the second publication of the notice on the formation of the group that their shares be purchased by the dominant member at the market value prevailing at the time of publication of the announcement.

(2) If a creditor has any claim from a controlled member participating in the group of corporations at the time of first publication of the announcement, the creditor may demand adequate safeguards from said controlled member within a thirty-day preclusive period following the second publication of the announcement. Any creditor whose claim is already guaranteed - pursuant to statutory provision or contract - shall not be entitled to demand such safeguards, including if it is not justified in light of the controlled member's financial standing or of the contents of the control contract.

(3) A group of corporations may be registered if all rightful claims of the members and creditors of the controlled legal persons have been satisfied, or if the court has dismissed the request of members and creditors in a legal action brought to that effect.

Section 3:53

[Effects of registration of a group of corporations]

Following registration the provisions relating to members with a qualifying holding shall not apply to the group of corporations and its members.

Section 3:54

[Single-member company in a group of corporations]

If only the dominant member holds any share in the controlled member of a group of corporations, no control contract is required. Instead, the mandatory layout of the control contract shall be provided for in the instrument of constitution of the dominant member and the controlled member.

Section 3:55

[Relations between the management of the dominant member and the controlled member]

(1) The management of the dominant member shall have the right to give instructions to the management of the controlled member as specified in the control contract, and to issue binding resolutions relating to the controlled member's operations. If the dominant member's actions are

in compliance with the control contract, the provisions of this Act pertaining to the supreme body's exclusive jurisdiction and to management autonomy shall not apply to the controlled member.

(2) If the control contract provide facilities to delegate competence upon the dominant member for the election and recall of the controlled member's executive officers and supervisory board members, and for determining their remuneration, an employee of the dominant member may be appointed as director of the controlled company.

(3) The executive officers and supervisory board members of the dominant member may also serve at the controlled member as executive officers and supervisory board members.

(4) The executive officer of a controlled member shall manage the controlled member in accordance with the control contract, under the governance of the dominant member, based on the primacy of the business policy of the group of corporations as a whole. The executive officer shall be exempt from liability to members if his conduct is found to be in compliance with the provisions set out in the relevant legislation and in the control contract.

Section 3:56

[Reporting obligation]

(1) The managements of both the dominant member and the controlled member shall report to their supreme body at the intervals fixed in the control contract, but at least once a year on the fulfillment of the objectives set out in the control contract. Any provision of the control contract providing for a less frequent reporting obligation shall be null and void.

(2) Any creditor of the controlled member whose claim reaches ten per cent of the controlled member's subscribed capital may request the management of the dominant member to provide information on the implementation of the control contract, and on the controlled member's financial standing. If the management of the dominant member fails to comply with the request, or if the information supplied is insufficient, the creditor may request the court of registry to adjudicate that the dominant member is in breach of the control contract.

Section 3:57

[Safeguards for the protection of minority stakeholders]

A group of members controlling at least five per cent of the voting rights in the controlled company and the executive officers of the controlled company may request that the supreme body of the dominant member be convened if they notice any substantive or repeated breach of the control contract. If the management of the dominant member fails to comply with such request within fifteen days of the date of receipt, and fails to convene the meeting of the supreme body within thirty days, the court of registry shall convene the meeting of the supreme body at the request of the members making the proposal, or shall empower the requesting members to convene the meeting within the prescribed deadline. The costs of the meeting shall be advanced by the dominant member, however, if the request is found unsubstantiated, the costs shall be borne by the requesting parties.

Section 3:58

[Employee participation]

(1) If employee participation in the supervisory board is mandatory in at least three controlled members of a registered group of corporations, the supreme body of the dominant member may permit, if so requested by the works councils concerned, that the representatives of employees participate in the supervisory board of the dominant member instead of the supervisory bodies of the controlled members. In that case the instrument of constitution of the dominant member shall provide for the setting up of a supervisory board, if the given member did not have one. The mode of delegation of the representatives of employees in that case shall be regulated by way of an agreement between the management of the dominant member and the works councils of the controlled members affected.

(2) The general provisions for contracts shall also apply to the agreements concluded under Subsection (1).

Section 3:59

[Liability of the dominant member]

If any controlled member of the group is undergoing liquidation, the dominant member shall be held liable for any debt the member may have outstanding. The dominant member shall be relieved of liability if able to verify that the controlled member's insolvency did not arise as a consequence of the group's common business strategy.

Section 3:60

[Measures of the court of registry]

In the event of any major or repeated breach of the control contract, the court of registry shall, upon request by either of the parties with legal interest:

- a)* call on the dominant member to abide by the control contract;
- b)* introduce supervisory measures; or
- c)* dissolve the group of corporations.

Section 3:61

[Termination of the group of corporations]

(1) A group of corporations shall terminate if:

a) the duration fixed in the control contract has expired, or the condition of termination has occurred;

b) the supreme body of the dominant member so decides by a three-quarters majority of all members;

c) if the dominant member is no longer required to prepare a consolidated annual account; or

d) the court of registry decides to dissolve the group of corporations.

(2) In the cases provided for in Paragraphs *a)-c)* of Subsection (1), the court of registry shall delete from the registry all entries pertaining to the group of corporations upon receipt of notice from the dominant member. The notice shall be made within thirty days from the date of publication of the relevant circumstance.

(3) The dominant member shall remain liable to honor the commitments undertaken during the life of the recognized group of corporations also after the group ceases to exist.

Section 3:62

[De facto groups of corporations]

(1) If the conditions for the control contract prevail for at least three consecutive years, at the request of either of the parties with legal interest the court may order the de facto dominant member and the controlled companies to conclude the control contract and to apply to the court of registry for the registration of the group of corporations.

(2) If a group of corporations de facto operates for at least three consecutive years, the court - at the request of either of the parties with legal interest - shall have authority to apply the regulations governing the relations between the managements of the dominant member and the controlled member even in the absence of a control contract and without being registered as a group of corporations.

PART TWO

ASSOCIATIONS

TITLE VII

DEFINITION, FOUNDATION AND MEMBERSHIP OF ASSOCIATIONS

Section 3:63

[Definition of associations]

(1) Associations are legal persons with registered members, created for the purposes defined in their statutes in order to achieve their common objectives on a continuous basis.

(2) Associations may not be formed with the objective of performing economic activities.

(3) Associations are authorized to perform economic activities only if they are directly related to the achievement of the association's goals.

(4) Associations shall use their assets in accordance with their objective, they shall not be allowed to distribute their assets among their members, and may not pay dividends to their members.

(5)⁴ Legal personality may be conferred by the statutes upon a department of the association.

Section 3:64

[Establishment]

An association shall be considered established upon the adoption of its statutes, for which the unanimous declaration of intent of at least ten person is required.

Section 3:65

[Legal status of association members]

(1) The members of an association shall be entitled to partake in the association's activities.

(2) Association members shall have equal rights and obligations, except where the statutes provide for membership of special legal status.

⁴ Enters into force as under Subsection (1) of Section 185 of Act CCLII of 2013.

(3) Members shall exercise their membership rights in person. Members may exercise their membership rights by way of proxy if so permitted by the statutes. Membership rights are non-tradable, and can not be inherited.

(4)⁵ The members, apart from the payment of membership dues, shall not be responsible for the liabilities of the association with their own assets.

Section 3:66

[Obligations of members]

(1) Members of the association shall fulfill the obligations prescribed for members in the statutes.

(2) Members of the association shall not jeopardize the objectives of the association and the activities of the association.

Section 3:67

[Commencement of membership]

(1) Membership in the association shall commence at the time of foundation upon the registration of the association, after the application for admission are accepted by the general meeting.

(2) The personal data of members are not considered public information.

Section 3:68

[Termination of membership]

(1) Membership shall terminate:

- a) upon the member's withdrawal;
- b) if membership is cancelled by the association;
- c) upon the member's exclusion;
- d) upon death or dissolution of the member without succession.

(2) Members shall be able to terminate their membership at any time, by means of written notice addressed to the association's representative, without giving any reason.

Section 3:69

[Cancellation of membership]

(1) If membership is rendered subject to certain conditions set out in the statutes, and the member fails to meet such conditions, the association shall have the right to cancel the membership in writing subject to a thirty-day notice period.

(2) Cancellation of membership shall be decided by the association's general meeting.

Section 3:70

[Exclusion of members]

⁵ Enters into force as under Subsection (2) of Section 185 of Act CCLII of 2013.

(1) If a member has seriously or repeatedly infringed the law, the statutes of the association or any resolution of the general meeting, the general meeting shall - when so requested by any member or body of the association - have authority to open procedures for the member's exclusion, inasmuch as the statutes provides guarantees for the conduct of a fair hearing.

(2) The resolution for the exclusion of the member shall be fixed in writing, and the statement of reasons shall indicate the facts and evidence underlying the exclusion decision, as well as information on access to review procedures. The resolution of exclusion shall be delivered to the member concerned.

(3) The statutes may provide for access to appeal against the resolution of exclusion, in which case the statutes shall also provide for the appeal procedure and shall specify the association body to hear the appeal.

TITLE VIII

STATUTES AND BODIES OF THE ASSOCIATION

Section 3:71

[Layout of the statutes, interpretation]

(1) In addition to the standard contents of the mandatory layout of the instrument of constitution of a legal person, the statutes of an association shall specify:

- a)* the rights and obligations of its members;
- b)* the bodies of the association and their competence, and the grounds for exclusion of members, executive officers and supervisory board members, and any reason giving cause to conflict of interest;
- c)* the sanctions to be invoked in the event of any infringement of the law, the statutes or any resolution of the association, and any conduct in gross violation of the association's objectives, including the rules of procedure and the cases where such sanctions and rules do not apply;
- d)* the rules for convening and conducting the general meeting, for setting the venue of the general meeting, the rules governing the contents of the invitation and the agenda, the rules for the appointment of the officers and the chairperson presiding over the general meeting, the rules for the election of vote counters, the rules on quorum and voting, keeping the minutes, and the delivery of resolutions; and
- e)* the conditions for exercising voting rights.

(2) The statutes shall be interpreted taking into account the association's goals.

Section 3:72

[General meeting, college of delegates]

(1) The association's decision-making body is the general meeting.

(2) Members shall be entitled to attend the general meeting and exercise their voting rights. Moreover, they shall be entitled to speak and ask questions according to the rules of the general meeting, to make recommendations and to submit its comments.

(3) If the statutes provide for a college of delegates, it shall also specify the procedure for the election of delegates. The provisions on general meetings shall apply to the college of delegates *mutatis mutandis*.

Section 3:73

[Sessions of the general meeting]

(1) The general meeting shall convene at least once a year. Any clause of the instrument of constitution providing for less frequent meetings shall be null and void.

(2) The general meeting shall not be open to the public; it may be attended - apart from the members and management - by persons duly invited by the person entitled to convene the general meeting, and by the persons attending in an advisory capacity under the statutes or upon the decision of the general meeting.

Section 3:74

[Competence of the general meeting]

The following shall fall within the competence of the general meeting:

- a) amendment of the statutes;
- b) decision on the termination, merger or division of the association;
- c) appointment and dismissal of the executive officer and establishing his remuneration;
- d) adopting the annual budget;
- e) adopting the annual account, covering also the report of the management body on the association's financial position;
- f) exercising employer's rights over the executive officer, if the executive officer has a contract of employment with the association;
- g) approval to conclude contracts between the association and one of its members, its executive officer, supervisory board member or their close relatives;
- h) decision on the enforcement of claims for compensation from present or previous members, executive officers and supervisory board members, or from the members of any other bodies of the association;
- i) election and dismissal of supervisory board members and establishing their remuneration;
- j) election and dismissal of the auditor and establishing his remuneration;
- k) appointment of a receiver.

Section 3:75[Additions to the agenda]

(1) Within the time limit provided for in the statutes, calculated from the delivery or public disclosure of the invitation to the general meeting, members and the bodies of the association may request additions to the agenda from the body or person convening the general meeting, with the reasons indicated.

(2) The decision for additions to the agenda lies with the body or person convening the general meeting. If the body or person convening the general meeting has decided to make additions to the agenda, or refused the request therefor, the general meeting shall decide before adopting a resolution on the agenda whether or not to make any additions to the agenda.

Section 3:76

[Passing resolutions]

(1) A resolution passed by a three-quarters majority of the votes of the members present shall be required for the amendment of the statutes of the association.

(2) A resolution passed by a three-quarters majority of the members with voting rights shall be required for the amendment of the objectives of the association and for a decision on the dissolution of the association.

Section 3:77

[Management]

Associations are managed by the managing director or by the presidency. The association's executive officers are the managing director or members of the presidency.

Section 3:78

[Presidency]

(1) The presidency is comprised of three members. The presidency shall elect its chairman from among its members.

(2) Members of the presidency are required to attend the general meeting, answer questions in the general meeting related to the association, and give account of the activities and financial position of the association.

(3) The presidency shall adopt its resolutions by a simple majority of the votes of the members present. Any clause of the statutes providing for a lower voting ratio shall be null and void.

Section 3:79

[Mandate of executive officers]

(1) If the members do not provide for the term of an executive officer in the statutes upon his election, the executive officers shall be considered elected for two years.

(2) If the mandate of an executive officer is set for more than five years, the part exceeding the five-year period shall be null and void.

(3) Executive officers shall be elected from among the members of the association, by authorization of the statutes not more than one-third of the executive officers may be elected from among non-members.

Section 3:80

[Management functions]

The responsibilities of management shall include:

a) performing daily administrative tasks, taking decisions within the competence of management;

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

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

d) managing the association's assets, and taking decisions relating to the allocation and investment of assets, for which the general meeting has no responsibility, and the implementation of such decisions;

e) making preparations for setting up bodies provided for by law and by the association's statutes, and for the election of officers for these bodies;

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

g) setting the agenda for the general meeting convened by the managing body;

- h) attending the general meeting and providing answers to questions concerning the association;
- i) keeping records on members;
- j) keeping record of the association's resolutions, organizational documents and other books;
- k) safeguarding documents pertaining to the association's operations;
- l) monitoring the existence of any other cause for winding up the association, and taking measures as provided for in this Act if such cause has occurred; and
- m) taking decision under the statutes concerning the admission of new members.

Section 3:81

[Convocation of the general meeting]

(1) The managing body shall call the general meeting in order to provide for the necessary measures if:

- a) the association's assets are insufficient to cover its outstanding debts;
- b) it is presumed that the association will not be able to meet its liabilities when due; or
- c) achieving the association's goals no longer appears feasible.

(2) If the general meeting is convened as under Subsection (1) the members are required to take measures for eliminating the cause on account of which the meeting was called, or shall decide on the dissolution of the association.

Section 3:82

[Cases where a supervisory board must be established]

(1) A supervisory board must be established if more than half of all members are not natural persons, or if there are more than one hundred members.

(2) The supervisory board is responsible for supervising the association's bodies, upholding the law and monitoring the implementation of the statutes and the resolutions of the association.

TITLE IX

DISSOLUTION OF ASSOCIATIONS

Section 3:83⁶

[Termination with succession]

An association may not be transformed to another type of legal person, it may merge only with another association or may be divided into associations only.

Section 3:84

[Reasons for dissolution without succession]

Apart from the general cases of dissolution of a legal person without succession, an association shall be dissolved without succession if:

⁶ Enters into force as under Subsection (3) of Section 185 of Act CCLII of 2013.

- a) the association has fulfilled its purpose, or if achieving the association's objective is no longer possible, and a new objective has not been determined; or
- b) the number of members of the association remains below ten for six consecutive months.

Section 3:85

[Distribution of the remaining assets]

(1)⁷ In the event of the association's dissolution without succession, assets remaining after settlement of all debts shall be transferred to a public-benefit organization established for a purpose that is identical or similar to the association's objective laid down in the statutes. The court of registry shall assign the assets to an organization designated by law, if the statutes does not provide for the assets of the dissolved association, or if the public-benefit organization designated in the statutes refuses to accept it, or cannot acquire it.

(2) The court of registry shall provide for the distribution of the association's remaining assets in its decision on dissolution, and - if necessary - shall appoint a guardian ad litem for overseeing the transfer of assets. The right of disposition over the assets shall pass to the new beneficiary upon the de-registration of the association.

Section 3:86

[Liability of executive officers in the event of dissolution without succession]

(1) Following dissolution of the association without succession, claims for damages may be brought against the executive officers within a period of one year following the time of de-registration of the association by the court of registry, for losses resulting from their activities performed in that capacity by the members with membership at the time of de-registration, or any person to whom the association's assets remaining at the time of dissolution had to be transferred, or should have been transferred had there been any assets remaining.

(2)⁸ In the event of an association's dissolution without succession, creditors may bring action for damages up to their claims outstanding against the association's executive officers on the grounds of non-contractual liability, should the executive officer affected fail to take the creditors' interests into account in the event of an imminent threat to the association's solvency. This provision is not applicable in the case where the association is wound up without going into liquidation.

Section 3:87

[Arbitration]

In accordance with the statutes of the association or under an agreement between the parties concerned, any dispute arising out of or in connection with membership or from the relations of the bodies and members of the association shall be settled by way of permanent or ad hoc arbitration.

PART THREE

⁷ Enters into force as under Subsection (4) of Section 185 of Act CCLII of 2013.

⁸ Enters into force as under Subsection (5) of Section 185 of Act CCLII of 2013.

BUSINESS ASSOCIATIONS

TITLE X

COMMON PROVISIONS RELATING TO BUSINESS ASSOCIATIONS

Chapter XV

General Provisions

Section 3:88

[Definition of business association]

(1) Business associations are legal persons established for the pursuit of business operations with financial contribution provided by its members, where each member has a right to a share of the profit and an obligation to participate in covering the losses.

(2) The business association's profits and losses shall be distributed among the members in proportion to their capital contributions. The business association shall be allowed to pay dividends or a share from the net profit for the year or from the retained earnings available. Any clause of the instrument of constitution for the exclusion of any member from the profits or from the bearing of losses shall be null and void.

(3) Each member shall be required to cooperate with other members and the company's organs, and may not engage in any conduct which seriously endangers the achievement of the company's objectives.

Section 3:89

[Company form]

(1) A business association may operate in the form of a general partnership, limited partnership, private limited-liability company or limited company.

(2) The corporate name of a business association shall contain the designation of the corporate form or the abbreviation thereof as specified in this Act.

Section 3:90

[Members of the company]

(1) A natural person may be a member with unlimited liability in only one business association at any given point in time. A minor may not be a member with unlimited liability in a business association.

(2) A general partnership, limited partnership or sole proprietorship may not be a member with unlimited liability in a business association.

(3) Any person who has been prohibited from practicing a profession may not be a member in a business association, other than a public limited company.

(4) In respect of limited companies, the members are the shareholders.

Section 3:91

[Means and time of legal statements]

(1) Legal statements pertaining to the company must be made in writing. This provision shall also apply to the company's decisions, and to the delivery of legal statements and decisions to the recipient.

(2) A legal statement relating to the company may be made or delivered by means of electronic communications if so permitted by the company's instrument of constitution, which shall provide for the relevant conditions and the means thereof.

(3) Where a legal statement relating to the business association is mandatory, or where certain action is required, it shall be made or carried out without delay.

(4) Where a legal statement made in writing has been sent by way of post, it shall be considered received - if sent to a resident recipient - at the point in time indicated on the notice of receipt, and in the case of registered mail on the fifth working day following dispatch, in the absence of proof to the contrary.

Section 3:92

[Arbitration procedure]

(1) In accordance with the instrument of constitution or under an agreement between the parties concerned, any dispute in the area of company law shall be settled by way of binding arbitration.

(2) Corporate dispute shall mean:

a) any dispute arising out of or in connection with the corporate relationship between the business association and its members, including former members, covering also the judicial review of decisions of company bodies;

b) any dispute between members in connection with their corporate relationship; and

c) any dispute between the business association and its executive officers or supervisory board members, arising out of or in connection with their office.

Section 3:93

[Application of the common provisions relating to business associations]

The common provisions relating to business associations shall apply where this Act does not provide otherwise in connection with certain types of business associations.

Chapter XVI

Foundation of Business Associations

Section 3:94

[Instrument of constitution of business associations]

The memorandum of association of a company shall also function as its instrument of constitution, with the exception of limited companies and single-member private limited-liability companies. The articles of association of a limited company and the charter document of a single-member private limited-liability companies shall serve as its instrument of constitution.

Section 3:95

[Formal requirements of instruments of constitution]

(1) The instrument of constitution shall be signed by all founder members. The memorandum of association may be signed on behalf of a member by his representative holding an authorization fixed in an authentic instrument or in a private document representing conclusive evidence.

(2) The instrument of constitution shall be drawn up in a notarial document, or in a private document countersigned by a lawyer or the legal counsel of a founder.

Section 3:96

[Place of operation]

(1) If a company's registered office and head office of central administration are not the same, the office of central administration shall be indicated in the instrument of constitution as well.

(2) The company's place of business and branch shall be indicated in the instrument of constitution, if the company requests the registration thereof.

Section 3:97

[Provisions relating to the scope of activities of the company]

(1) Where authorization by the competent authority is prescribed mandatory by law to engage in a certain economic activity, the company may take up the pursuit of such activity in possession of such authorization.

(2) A business association may engage in the pursuit of an activity that is rendered conditional upon specific qualifications by law, if the company's member bound by personal involvement, or at least one person employed by the company under contract of employment or any other form of civil employment relationship is able to satisfy such qualification requirements.

Section 3:98

[Non-compliance with the obligation of capital contribution]

(1) If a member fails to provide his contribution as undertaken in the instrument of constitution by the prescribed time limit, management shall call upon such member, with the applicable consequences indicated, to provide the contribution within thirty days.

(2) In the event of non-compliance within the thirty-day time limit, the membership of the member who failed to provide the capital contribution shall be terminated on the day following the expiration of such time limit. Management shall notify the former member of the termination of his membership. The former member shall be held liable for damages caused to the business association by virtue of his failure to provide the contribution in accordance with the provisions on liability for damages for loss caused by non-performance of an obligation.

(3) Any provision of the instrument of constitution which provides more lenient sanctions than what is prescribed in this Act upon members for failure to provide the capital contribution shall be null and void.

Section 3:99

[Asset contribution]

(1) Non-cash contribution may also be provided in the form of receivables, provided that it is acknowledged by the debtor or if it is based on a final court ruling. Commitments of members for

performing work or for any other personal involvement or service shall not be accepted as a form of capital contribution.

(2) Members who were knowledgeable about, and consented to, a non-monetary contribution that a member has provided at a value higher than what it was worth at the time when provided shall, together with the person providing it, be subject to joint and several liability toward the company in accordance with the provisions on liability for damages for loss caused by non-performance of an obligation.

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

Section 3:100

[Notification to the court of the formation of a company]

(1) The formation of a business association shall be notified to the court of registry within thirty days from the date when the instrument of constitution is executed in a notarized document or countersigned by a lawyer or legal counsel.

(2) If the establishment of a business association is subject to approval by the authorities, notification to the court of registry shall be made within fifteen days upon receipt of the final authorization.

Section 3:101

[Pre-company]

(1) As of the date when the instrument of constitution is executed in a notarized document or countersigned by a lawyer or legal counsel, the business association may operate as the pre-company of the business association. A pre-company may take up the pursuit of business operations only after having submitted the application for the registration of the business association. The disposition of the pre-company shall be indicated on the company's documents and legal statements; in the absence thereof, any legal statement taken by the pre-company shall be treated as a legal statement taken by the founders collectively if the court of registry refuses to register the company.

(2) The regulations applicable for the business association to be established shall also apply to the pre-company with the following exceptions:

- a)* changes in the persons of the members of the pre-company are allowed only if expressly permitted by law;
- b)* the instrument of constitution may not be altered, other than for the purpose of compliance with any request made by the court of registry or the competent body of authorization;
- c)* the pre-company may not establish a business association, nor may it join one as a member;
- d)* legal proceedings for the exclusion of a member may not be initiated; and
- e)* no decision for dissolution without succession, transformation, merger or division may be adopted.

(3) Upon registration by final decision of the court of registry the business association shall cease to function as a pre-company, and all transactions concluded in that capacity will be treated as if they were concluded by the business association.

(4) If registration of the business association is refused by final decision, the pre-company must terminate all operations effective immediately upon gaining knowledge thereof. The executive officers of the pre-company shall be held liable for damages caused by non-compliance in

accordance with the provisions on liability for damages resulting from any breach of that obligation.

(5) If the pre-company ceases to exist as under Subsection (4), the obligations undertaken until that time shall be satisfied from the assets made available to the business association to be established. The founders shall be subject to joint and several liability vis-à-vis third persons for the liabilities that cannot be covered from such assets. If the liability of the members of the business association to be established for the obligations of the business association is limited, and any outstanding claims remain despite the members honoring their respective liability, the executive officers of the business association to be established shall bear unlimited, joint and several liability vis-à-vis third parties.

(6) The provisions contained in Subsections (4)-(5) shall also apply if the company withdraws its application for registration.

Chapter XVII

Amendment of the Instrument of Constitution

Section 3:102

[Amending the instrument of constitution]

(1) Any amendment to the instrument of constitution, if done by means other by contract, shall be decided by the supreme body of the company by at least a three-quarters majority.

(2) The supreme body may change the business association's corporate name, registered office, places of business and branches, and the activities of the business association other than its principle activity, by simple majority.

(3) Any amendment that would harm the rights of some members or make their status more onerous shall be decided by all members unanimously. In voting for such issue members without the right to vote may also participate.

(4) Moreover, the provisions on the formation of business associations shall also apply to the amendment of the instrument of constitution, however, the document on the amendment need not be signed by the members, and it may be countersigned by the legal counsel of the business association as well.

Chapter XVIII

Protection of Minority Stakeholders

Section 3:103

[Requesting convocation of the supreme body]

(1) Those members of the business association together controlling at least five per cent of the voting rights may, at any time, request that the business association's supreme body be convened, indicating the reason and the purpose thereof, or the passing of a decision without a meeting. If management fails to comply with such request within eight days of the date of receipt, and fails to convene the meeting of the supreme body at the earliest possible date, and fails to provide for the passing of a decision out of session, the court of registry shall convene the meeting of the supreme body at the request of the members making the proposal, or shall empower the

requesting members to convene the meeting, or to carry out the procedure for the passing of a decision out of session.

(2) The expected costs shall be covered by the requesting members. The business association's supreme body shall decide in a meeting convened at the request of minority stakeholders or by way of a decision adopted without a meeting whether the costs incurred be borne by the business association or the persons convening such meeting.

Section 3:104

[Requesting special audits]

(1) If the business association's supreme body has refused - or did not present for decision - a proposal that the last financial report, or any economic event which has occurred in connection with the activities of management during the last two years, or any commitment be examined by an auditor to be engaged specifically for this purpose, such examination shall be ordered, and the auditor shall be appointed, at the company's expense by the court of registry upon a request by any one member or members controlling at least five per cent of the votes submitted within a thirty-day preclusive period calculated from the meeting of the supreme body.

(2) The court of registry shall refuse the request in the event of abuse of minority rights by the members presenting the request.

(3) The company's auditor may not be appointed to carry out such special audits.

(4) The costs of the audit shall be advanced and borne by the company. The company shall be able to charge the costs upon the member affected if requesting the audit was manifestly unfounded.

Section 3:105

[Initiating the enforcement of claims]

If the supreme body of a business association has refused - or did not present for decision - a request to enforce a claim against the members, executive officers, supervisory board members or against the auditor of the business association, any one member or members controlling at least five per cent of the votes may move within a thirty-day preclusive period calculated from the meeting of the supreme body to enforce such claim themselves on behalf and for the benefit of the company.

Section 3:106

[Prohibition of derogations]

Any provision of the instrument of constitution which derogates from the provisions of this Chapter to the detriment of minorities shall be null and void.

Chapter XIX

Exclusion of Members

Section 3:107

[Grounds for exclusion, legal effects of exclusion]

(1) A member of a business association may be excluded from the business association by court ruling based on a claim launched by the business association against such member, if the continued membership of the person in question would seriously jeopardize the business association's objective.

(2) Action for exclusion may not be brought in two-member companies. A shareholder of a public limited company and any member holding three-quarters or more of the votes in the meetings of the supreme body may not be excluded.

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

Section 3:108

[Exclusion procedure]

(1) A procedure for the exclusion of a member may be opened upon a resolution adopted by the supreme body of the company by at least a three-quarters majority of all members, indicating the reasons for exclusion as well. The member affected may not vote on that issue.

(2) The action based on the resolution referred to in Subsection (2) shall be brought within a fifteen-day preclusive period from the date of the supreme body's resolution.

(3) The court may suspend the membership rights of the member affected upon request, before the final court ruling, if continued exercise of such membership rights would seriously harm the company's interests. Such suspension shall not affect the member's right to a share of the profit.

(4) As regards relations between members, a commitment undertaken during the period of suspension shall not apply to the member whose right has been suspended, even if such member is liable for the company's debts owed to third parties.

(5) During the period of suspension of membership rights, the instrument of constitution may not be amended, an action for the exclusion of another member may not be opened, and a decision may not be taken to resolve the transformation, merger or division of the business association, or its dissolution without succession.

Chapter XX

Organizational Structure of Business Associations

1. Supreme body of business associations

Section 3:109

[Powers and responsibilities of the supreme body]

(1) The supreme body functions as the decision-making organ of the members of the business association.

(2) The principal duty of the supreme body of a business association is to adopt decisions on fundamental business and personnel issues. The responsibilities of the supreme body shall include the approval of the annual account, as prescribed in the Accounting Act (hereinafter referred to as „financial report”), and decisions on the distribution of profits.

(3) The decision for the enforcement of claims for damages against the company's members, executive officers, supervisory board members and against the auditor lies with the business association's supreme body.

(4) In single-member companies the founder or the sole member shall function as the supreme body. In matters falling within the supreme body's competence the founder or the sole member shall take decisions in writing, and such decisions shall take effect when communicated to management.

Section 3:110

[Participating in the supreme body's decision-making process]

(1) All members of the business association shall have the right to partake in the activities of the supreme body in person or by way of a representative. Unless this Act contains provisions to the contrary, a member may delegate one representative, however, a representative shall be allowed to represent more than one members. The power of attorney for representation shall be fixed in an authentic instrument or in a private document with full probative force.

(2) The voting right of a member in the supreme body of the company is consistent with the members' capital contribution.

Section 3:111

[Meetings of the supreme body]

(1) Sessions of the supreme body shall not be public. The company's executive officers and supervisory board members may attend sessions of the supreme body in an advisory capacity.

(2) Members may exercise their rights in meetings of the supreme body by means of electronic communications instead of attending in person, if the instrument of constitution defines such electronic communications equipment and the condition for their use to contain facilities for the identification of members and for mutual and unrestricted communication between the members.

(3) Any resolution adopted at a meeting which was unduly convened and held, and is therefore considered invalid, shall become valid with retroactive effect from the date when the resolution was adopted, if declared valid by the unanimous decision of all members within thirty days of the day on which the meeting was held.

2. Management and representation

Section 3:112

[Autonomy of executive officers]

(1) The executive officer shall manage the operations of the business association under a personal service contract or under a contract of employment, as agreed with the company.

(2) The executive officer shall manage the operations of the business association independently, based on the primacy of the business association's interests. In this capacity, the executive officer shall discharge his duties in due compliance with the relevant legislation, the instrument of constitution and the resolutions of the company's supreme body. The executive officer may not be instructed by the members of the business association and his competence may not be negated by the supreme body.

(3) As regards single-member business associations, the sole member may instruct the management, which the executive officer is required to carry out.

Section 3:113

[Managers]

(1) The company's supreme body may decide to appoint one or more managers to assist the executive officers in their work. Managers shall carry out their functions under contract of employment. Managers are employees who direct the continuous operation of the company on the basis of the executive officer's instructions.

(2) The grounds for exclusion of executive officers, and the reasons giving cause to conflict of interest shall also apply to company managers.

(3) In addition to managers with general competence, the supreme body of the business association or, upon the authorization of the supreme body, the management may appoint managers with restricted competence to the place of business and branches of the company.

Section 3:114

[Term of mandate of executive officers]

Executive officers are elected for a term of five years, or - if the business association is established for a shorter period - for that period.

Section 3:115

[Conflict of interest]

(1) Executive officers may not acquire any share in the capital of a business association - except for the shares of public limited companies - which is engaged in the pursuit of the same economic activity, as its main activity, as the business association in which they hold an executive office. In the event of accepting a new executive office, within fifteen days of accepting such office the executive officer shall notify any other company in which he already serves as an executive officer or a supervisory board member.

(2) With the exception of everyday dealings, an executive officer and his close relatives may not conclude any transactions falling within the scope of the main activities of the business association in his own name and on his own behalf.

Section 3:116

[Representation of the company. Power of representation]

(1) Business associations are represented by their executive officers and other duly authorized employees in writing.

(2) Management may confer general power of representation upon managers.

(3) Managers and other employees entitled to representation may not validly assign their right of representation to others.

Section 3:117

[Liability of executive officers to the business association for damages]

(1) If the company's supreme body provides a hold-harmless warrant to an executive officer at the time of approval of the financial report, thus acknowledging the executive officer's management activities during the previous financial year, the company may bring action against the executive officer on the grounds of breaching management obligations in a claim for damages if the facts and information underlying the hold-harmless warrant proved to be false or incomplete.

(2) If an executive officer is removed from office in between two meetings debating the financial report, the executive officer may request the supreme body's decision for the issue of a hold-harmless warrant in the next session.

(3) Following termination of the business association without succession, claims for damages may be brought against the executive officers by the members with membership at the time of the company's removal from the registry, within a preclusive period of one year following the time of removal. Members may enforce any claim for compensation up to their rightful share from the assets distributed upon termination of the business association.

Section 3:118

[Liability of executive officers in respect of third parties]

In the event of a business association's dissolution without succession, creditors may bring action for damages up to their claims outstanding against the company's executive officers on the grounds of non-contractual liability, should the executive officer affected fail to take the creditors' interests into account in the event of an imminent threat to the business association's solvency. This provision is not applicable in the case where the company is wound up without going into liquidation.

3. Supervisory Board

Section 3:119

[Cases where a supervisory board must be established]

A supervisory board must be established if the annual average number of full-time employees employed by the business association exceeds two hundred, and the works council did not relinquish employee participation in the supervisory board.

Section 3:120

[Powers of the supervisory board]

(1) If the supervisory board wishes to engage the services of experts in the course of its supervisory activities, management shall fulfill the supervisory board's such request.

(2) If the company has a supervisory board, the supreme body of the company may adopt a decision concerning the financial report in possession of the written report of the supervisory board.

(3) If, in the judgment of the supervisory board, the activity of the management is contrary to the law, to the instrument of constitution or to the resolutions of the business association's supreme body, or otherwise infringes upon the interests of the business association, the supervisory board shall have the right to convene the meeting of the business association's supreme body to discuss that issue and to take the necessary decisions.

(4) Any provision of the instrument of constitution which derogates from the provisions of Subsections (1)-(3) shall be null and void.

Section 3:121

[Membership of the supervisory board]

(1) The supervisory board shall consist of three members. If the business association is required to have a supervisory board, or it has a peremptory supervisory board, any provision of the instrument of constitution according to which the supervisory board may consist of less than three members shall be null and void. The supervisory board shall function as a body, and may entrust any of its members to fulfill certain supervisory tasks, or may divide supervisory duties among its members.

(2) Supervisory board members are elected for a term of five years, or - if the business association is established for a shorter period - for that period.

(3) The regulations governing personal service contracts shall also apply to supervisory board members.

(4) Employees of the business association may not hold a seat on the supervisory board, except where membership is based on employee participation.

Section 3:122

[Supervisory board operating procedures]

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

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

(3) The supervisory board shall establish its own rules of procedure, subject to approval by the business association's supreme body.

(4) If the number of supervisory board members falls below the number set forth in the instrument of constitution, the management of the business association shall convene the business association's supreme body, or shall take measures for adopting a resolution out of session, in the interest of restoring proper operation of the supervisory board.

Section 3:123

[Peremptory supervisory body]

(1) If under the instrument of constitution the supervisory board is given responsibility under the instrument of constitution for the taking or approval of decisions which otherwise fall within the competence of the supreme body or management, the members of the supervisory board shall be held liable for damages caused to the business association while acting in that capacity in accordance with the provisions on liability for damages for loss caused by non-performance of an obligation.

(2) If the instrument of constitution renders certain decisions of management subject to prior approval by the supervisory board, and the supervisory board refuses to approve the proposal of management for a decision, however, management stands by its proposal nonetheless, management shall be entitled to turn to the company's supreme body for a decision. If the supervisory board approves the proposal of management for a decision, the executive officers and supervisory board members having voted for the proposal shall be jointly and severally liable for damages caused to the business association in accordance with the provisions on liability for damages for loss caused by non-performance of an obligation.

(3) In connection with their decision-making functions, members of the supervisory board shall be subject to the provisions pertaining to those vested with decision-making authority under this Act with respect to the issue at hand.

Section 3:124

[Conditions for employee participation]

(1) If the annual average number of full-time employees employed by the business association exceeds two hundred, one-third of the supervisory board shall be made up of employee representatives.

(2) Where employee representatives are entitled to sit on the supervisory board, the instrument of constitution may preclude employee participation in the supervisory board for a maximum period of five years, subject to the prior consent of the works council. Any clause of the instrument of constitution to the contrary shall be null and void.

(3) Employee representatives shall be elected for the first time when the company's supreme body debates the annual account for the financial year when the annual average number of employees reached two hundred.

(4) In a company established by way of succession, employee participation in the supervisory board shall be provided for from the time of registration, if the number of employees employed by the business association exceeds two hundred, and if the conditions for employee participation existed at the predecessor company, or at one of the predecessor companies, if there was more than one.

Section 3:125

[Election and removal of employee representatives]

(1) Employee representatives are delegated by the works council from among the employees following consultation with the trade unions operating at the business association. In the event of the termination of employment of an employee representative, this shall also bring about the termination of his membership in the supervisory board.

(2) Persons delegated by the works council shall be given a seat on the supervisory board by the business association's supreme body at its first meeting following such delegation, unless statutory grounds for disqualification exist in respect of the persons delegated. Failure to delegate such person shall have no effect on the supervisory board's operation, provided that all other statutory requirements are satisfied. In that case the seats of employee representatives may not be occupied, however, the supreme body is to elect at least three members for the supervisory board nonetheless.

(3) The company's supreme body shall recall an employee representative upon recommendation by the works council.

(4) If at the time of adopting the company's annual account it is determined that the number of employees dropped below two hundred during the previous financial year, the right of employee representatives to sit on the supervisory board shall cease.

Section 3:126

[Rights and obligations of employee representatives]

(1) Employee representatives shall have the same rights and same obligations as all other members of the supervisory board. If the opinion of the employee representatives unanimously differs from the majority standpoint of the supervisory board, the minority opinion of the employees shall be stated at the next meeting of the business association's supreme body.

(2) Employee representatives shall inform the company's employees concerning the activities of the supervisory board.

Section 3:127

[Prohibition of derogations]

Any provision of the instrument of constitution which provides stricter measures than what is prescribed in this Act for employee participation shall be null and void.

Section 3:128

[Non-mandatory employee participation]

Where employee participation in the supervisory board is prescribed by the instrument of constitution, this shall be subject to the provisions of this Act on employee participation.

4. Statutory Auditor

Section 3:129

[Responsibilities of the statutory auditor]

(1) The statutory auditor appointed by the supreme body shall be responsible for carrying out the audits of accounting documents according to the relevant regulations, and to provide an independent audit report to determine as to whether the annual account of the business association is in conformity with legal requirements, and whether it provides a true and fair view of the company's assets and liabilities, financial position and profit or loss.

(2) The statutory auditor may be an individual auditor or an audit firm shown in the register of auditors. Where auditing services are provided by an audit firm, this audit firm shall be required to designate the person who will be personally responsible for carrying out the audits.

(3) A member, executive officer or supervisory board member of the business association, and the family members of these persons may not serve as the statutory auditor. An employee of the business association may not serve as the statutory auditor during the period of employment and for a period of three years thereafter.

Section 3:130

[Commencement and term of assignment of the statutory auditor]

(1) The first statutory auditor shall be designated in the instrument of constitution, after which such auditors are appointed by the company's supreme body. Management shall enter into a contract with the auditor within ninety days following the date of delegation or appointment, under the terms and conditions and subject to the remuneration specified by the supreme body. If the contract is not concluded within the time limit specified above, the supreme body shall select a new auditor.

(2) The statutory auditor is appointed for a fixed term of maximum five years. The term of the statutory auditor's mandate may not be less than the period beginning when the auditor is appointed by the supreme body and ending at the time of the meeting convened to approve next year's annual account.

(3) Any provision of the instrument of constitution which derogates from Subsection (2) hereof shall be null and void.

Section 3:131

[Carrying out the duties of the statutory auditor]

(1) The statutory auditor may not provide any service to a business association, and may not collaborate with management in a way that may imperil his ability to carry out his auditing duties objectively and independently.

(2) The statutory auditor shall be invited to the sessions of the company's supreme body when discussing the company's financial report. The auditor must attend these meetings, however, if absent, the meeting will be held nonetheless.

(3) If the business association has a supervisory board, the auditor may attend the meetings of the supervisory board in an advisory capacity, or must attend such meetings when so requested by the supervisory board. The supervisory board shall put the items recommended by the auditor on the agenda.

5. Other Company Bodies

Section 3:132

[Other company bodies]

If the instrument of constitution or, by authorization thereof, the company's supreme body provides for the setting up of other organs in addition to the bodies and officers defined in this Act, it shall be without prejudice to the powers and responsibilities of the bodies and officers defined in this Act.

Chapter XXI

Transformation and Merger of Business Associations

Section 3:133

[Cases of and conditions for transformation]

(1) A business association may be converted into a business association, grouping or cooperative society of another corporate form.

(2) If a business association's equity is not sufficient to cover the subscribed capital prescribed for its specific corporate form over two consecutive financial years, and the members fail to provide for the necessary equity within a period of three months after approval of the annual account for the second year, the business association shall be required to adopt a decision within sixty days of this deadline for its transformation. Instead of transformation the business association may opt dissolution without succession or for merger.

Section 3:134

[Conclusion of transformation]

(1) Prior to the execution of transformation, the share of each member of the successor business association from the planned subscribed capital shall be determined, as shall the share of assets due to members who do not wish to transfer to the successor business association, and the procedure for settlement therefor.

(2) The share of assets due to members not wishing to take part in the successor business association shall be disbursed within a period of sixty days after the registration of the successor, unless an agreement concluded by the successor with the persons concerned provides otherwise.

Section 3:135

[Liability rules relating to transformation]

(1) The members who have decided to withdraw from the company upon transformation, if dissolved without succession, shall be liable for any debt of the predecessor which is not covered by the legal person established by transformation.

(2) Any member with unlimited liability who becomes a member with limited liability upon transformation shall be liable for any debt of the predecessor jointly and severally with other members of the legal person established by transformation with unlimited liability, for a preclusive period of five years following the time of registration of the successor.

Section 3:136

[Merger of business associations]

A business association may merge with another business association, and also with a cooperative society or a grouping.

Chapter XXII

Dissolution of a Business Association Without Succession

Section 3:137

[Liability of members in the event of dissolution without succession]

(1) In the event of dissolution of a business association without succession, claims that remain outstanding on the basis of the obligations of the business association that will cease to exist may be enforced within a five-year preclusive period against the former members of the business association.

(2) If the liability of a member for the obligations of the business association was unlimited during the company's existence, his guarantee obligation shall also be unlimited and joint and several with other members for the liabilities of the terminated business association. Any debt arising between members shall be covered by and shared among the members consistent with their share in the distributed assets of the business association.

TITLE XI

GENERAL PARTNERSHIPS

Section 3:138

[Definition of general partnerships]

By virtue of the memorandum of association for the establishment of a general partnership (közkereseti társaság or kkt.), the members of the partnership agree to make available to the

partnership the capital contribution necessary for its activities, and to undertake joint and several liability for the partnership's obligations not covered by the assets of the partnership.

Section 3:139

[Members' liability for the obligations of the partnership]

(1) Members of the general partnership shall undertake joint and several liability for the partnership's obligations not covered by the assets of the partnership.

(2) In legal proceedings judgment may be passed and enforcement may be carried against members of the partnership based on their liability provided for in Subsection (1) hereof.

(3) Members may also be sued together with the partnership. The court may order enforcement of the judgment against members if efforts for recovering the claim from the partnership failed.

(4) The liability of a new member for the obligations originating prior to his admission to the partnership shall be identical to that of all other members. Any agreement of the members to the contrary shall be null and void with respect to third parties.

Section 3:140

[Right of withdrawal of the creditors of members]

Creditors of members may not demand to recover their claims from the partnership's assets. Creditors' claims against members shall be covered to the extent of the partner's share from the partnership's assets, which is due upon the termination of his membership. If a creditor files to have this share attached, he shall be entitled to exercise the member's right of withdrawal and, as a result, shall be entitled to demand compensation from that member's share.

Section 3:141

[Acquisition of partnership share under marital community of property]

The amendment of the memorandum of association is required for the spouse of a member to gain admission into the partnership on the grounds of marital community of property or the division of marital property.

Section 3:142

[Competence of the meeting of members]

(1) The supreme body of a general partnership is the meeting of members.

(2) Members may tender the decision of any matter under the competence of the meeting of members by at least a three-quarters majority.

(3) In the matters conferred under the competence of the meeting of members, members may adopt a decision without having to hold a meeting.

Section 3:143

[Rules of adopting resolutions in the meeting of members]

(1) In the process of adopting resolutions, each member shall have an equal vote. Any clause of the memorandum of association to deprive a member of his voting right shall be null and void.

(2) The meeting of members shall adopt its resolutions by a simple majority of the votes calculated relative to the number of all eligible votes. Any provision of the memorandum of association to the contrary shall be null and void.

(3) Resolutions are passed by the simple-majority voting procedure.

(4) A resolution adopted by at least three-quarters majority is required for the removal of executive officers. A resolution adopted by the unanimous vote of all members shall be required for any amendment of the memorandum of association, and for the transformation, merger, division or termination without succession of the partnership.

(5) The amendment of the memorandum of association shall be signed by all members.

Section 3:144

[Management and representation]

(1) The management of general partnerships shall be conducted by one or more managing directors, delegated or elected from among the members. If no managing director has been delegated or elected, all members shall function as such.

(2) Any clause of the memorandum of association to appoint a non-member to serve as a managing director, or provides for the appointment of such person shall be null and void.

Section 3:145

[Functions of managing directors]

(1) Each managing director may act independently. Managing directors may raise an objection against the planned or executed actions of another managing director. In such cases, the meeting of members shall have powers to override the action in question. With the exception of urgent measures, the planned measure may not be taken until a resolution is adopted by the meeting of members.

(2) Where according to the memorandum of association several managing directors are to act together, and there is no consensus among them, any one of the managing directors shall be entitled to request a decision on the issue by the meeting of members. Urgent measures may be taken independently by the managing directors. All other managing directors shall be informed of such measures without delay.

Section 3:146

[Cases of termination of membership]

In addition to the common provisions relating to business associations, membership shall cease to exist:

- a) upon mutual agreement of the members;
- b) upon withdrawal of the member;
- c) upon transfer of partnership share;
- d) upon death or dissolution of the member;
- e) upon the occurrence of any grounds for exclusion or any reason giving cause to conflict of interest.

Section 3:147

[Cancellation of membership]

(1) Membership may be terminated by giving at least three months' notice in writing. Any exclusion or restriction of this right in a partnership established for an indefinite duration shall be null and void.

(2) Members may terminate their membership in writing, indicating the reason, if any other member of the partnership is engaged in a serious breach of the memorandum of association or in any conduct which seriously endangers cooperation with such member or the achievement of the purpose of the partnership.

(3) The partnership may bring action for the annulment of the termination of membership within a preclusive period of fifteen days from the effective date of the notice.

Section 3:148

[Transfer of partnership share]

Any member of a partnership may assign his share (rights and obligations) in the partnership, or a part thereof, either to another member or to a third party. The contract of transfer shall be executed in writing. The contract of transfer shall take effect upon the amendment of the memorandum of association in accordance with the transfer.

Section 3:149

[Death or dissolution of a member]

Based on an agreement with other members of the partnership, the heir of a member who has died, or the successor of a member that has ceased to exist, may join the partnership as a member. The heir or successor shall not be required to provide capital contribution upon gaining membership.

Section 3:150

[Settlement upon the termination of membership]

(1) If membership is terminated, the partnership must settle accounts with the former member, or with the member's heir or successor, except if the partnership share is transferred, or if the member's heir or successor joined the partnership.

(2) In the settlement process the market value of the partnership's assets at the time of termination of membership has to be determined, and the part corresponding to the member's capital contribution shall be paid to the former member, or to the member's heir or successor, in cash within three months from the time of termination of membership.

(3) Any provision of the instrument of constitution which excludes or restricts the obligation of settlement, or alters the rules thereof to the detriment of the member relative to the provisions of this Act shall be null and void.

Section 3:151

[Liability for the debts of the partnership upon the termination of membership]

(1) A former member of the partnership - including the successor of a dissolved member, who did not join the partnership - shall remain to be liable for the partnership's liabilities arising prior to the termination of his membership within a preclusive period of five years, in the same way as before the termination of his membership.

(2) The heir of a deceased member who did not join the partnership, shall remain to be liable for the partnership's liabilities arising prior to the time of his death within a preclusive period of five years, in accordance with the provisions on inheritance debts.

Section 3:152

[Dissolution of a partnership without succession]

(1) Apart from the general cases of dissolution of a legal person without succession, a general partnership shall be dissolved without succession if only one partner remains, and the partnership does not apply for the registration of a new member at the court of registry within a preclusive period of six months from that time.

(2) Until the new member is registered, or failing this until the time of dissolution without succession or until a liquidator is appointed the sole remaining member is entitled to decide matters falling within the competence of the meeting of members, and shall be regarded as the partnership's executive officer, provided that he is able to meet the requirements pertaining to executive officers. If no such member remains in the partnership, the court of registry shall appoint a supervising commissioner for the partnership.

Section 3:153

[Conversion between general partnerships and limited partnerships]

(1) The conversion of any general partnership into a limited partnership or any limited partnership into a general partnership is subject to the amendment of the memorandum of association, irrespective of the provisions on the transformation of business associations.

(2) If, in connection with the conversion of a general partnership into a limited partnership, the liability of a member who becomes the limited partner shall remain to have unlimited liability for the partnership's debts arising before the conversion within a preclusive period of five years.

(3) Financial settlement with the members who do not wish to participate in the partnership in its new form shall be governed by the provisions applicable to the termination of membership.

TITLE XII

LIMITED PARTNERSHIPS

Section 3:154

[Definition of limited partnerships]

By virtue of the memorandum of association for the establishment of a limited partnership (betéti társaság or bt.), the members of the partnership agree to make available to the partnership the capital contribution necessary for its activities, and at least one of the partners (hereinafter referred to as „general partner”) undertake joint and several liability together with the other general partners for the partnership's obligations not covered by the assets of the partnership, while at least one other partner (hereinafter referred to as „limited partner”) is not liable for the obligations of the partnership, unless this Act provides otherwise.

Section 3:155

[Rules applicable to limited partnerships]

The provisions on general partnerships shall also apply to limited partnerships subject to the exceptions set out under this Title.

Section 3:156

[Management]

A limited partner may not serve as the partnership's executive officer.

Section 3:157

[Changes in member's liability]

If the partnership's general partner becomes a limited partner, he shall remain liable in accordance with the provisions applicable to the general partner within a preclusive period of five years from the date of becoming a limited partner for the partnership's debts arising before the change.

Section 3:158

[Dissolution of a partnership without succession]

(1) Apart from the general cases of dissolution of a legal person without succession, a limited partnership shall be dissolved without succession if the membership of all general partners and all limited partners ceases to exist, and the partnership does not notify the court of registry within a preclusive period of six months from the time when its memorandum of association was amended so as to reinstate the conditions for functioning as a limited partnership, or that the limited partnership has been converted into a general partnership.

(2) If the partnership is left without an executive officer for the lack of any general partner or limited partner, or due to the number of members being reduced to one, until the partnership's memorandum of association is amended, or failing this until the time of dissolution without succession or until a liquidator is appointed, the member who meets the statutory requirements prescribed for executive officers shall be regarded as the partnership's executive officer. In that case, the limited partner may also serve as the partnership's executive officer. If no such member remains in the partnership, the court of registry shall appoint a supervising commissioner for the partnership.

TITLE XIII

PRIVATE LIMITED-LIABILITY COMPANIES

Section 3:159

[Definition of private limited-liability companies]

Private limited-liability companies (korlátolt felelősségű társaság or kft.) are business associations founded with an initial capital consisting of capital contributions of a predetermined amount, in the case of which the liability of members to the company extends only to the provision of their initial contributions, and to other contributions set out in the memorandum of association. Unless otherwise provided for in this Act, members shall not bear liability for the company's obligations.

Chapter XXIII

Foundation of the Company

Section 3:160

[Prohibition of public invitation]

Members may not be solicited by public invitation.

Section 3:161

[Definition and amount of initial capital and core deposit]

(1) The capital contribution of members is provided in the form of core deposits. The capital contributions of members may differ in terms of value, however, the amount of each contribution may not be less than one hundred thousand forints.

(2) Each member shall have one core deposit.

(3) Where several persons have agreed to provide a core deposit collectively, their liability for providing such core deposit shall be joint and several.

(4) The core deposits together comprise the initial capital, which may not be less than three million forints.

Section 3:162

[Provision of capital contribution in cash]

(1) Where according to the memorandum of association a member is required to provide less than half of their respective cash contribution before the application for registration is submitted, or if the memorandum of association provides for a time limit of over one year from the time of registration of the company for making available the part of the cash contribution that was not paid before the application for registration is submitted, the company shall not be allowed to pay any dividend insofar as the unpaid profit calculated relative to the members' core deposits according to the provisions on the payment of dividends reaches the initial capital together with the cash contributions which the members have already paid up.

(2) In the case provided for in Subsection (1), members shall bear liability for the company's debts up to the unpaid part of their cash contribution.

Section 3:163

[Asset contribution]

(1) If the value of asset contributions at the time of foundation reaches or exceeds half of the initial capital, it shall be made available to the company in its entirety before the time of submission of the application for registration.

(2) If the asset contribution was not made available to the company in its entirety at the time of foundation, the remaining asset contribution shall be provided by the time specified in the memorandum of association. Where the memorandum of association provides for a time limit of more than three years from the time of registration, the part exceeding the three-year period shall be null and void.

Chapter XXIV

Business Share

Section 3:164

[Definition of business shares]

(1) Business share means the whole of rights and obligations arising in connection with the core deposit. Business shares shall come to existence upon the company's registration.

(2) The business shares of members shall be consistent with their respective capital contributions. Identical membership rights shall be attached to equivalent business shares.

Section 3:165

[Jointly owned business shares]

(1) One business share may be owned by more than one person. These persons shall be treated as a single member from the standpoint of the company; their rights may be exercised only by their appointed representative, and they shall bear joint and several liability for the member's obligations. The joint holders of a business share shall appoint their representative from among themselves by way of exercising voting rights in the percentage of their respective ownership share.

(2) The appointed representative shall notify the company of all changes in the person or ownership ratio of co-owners of a business share. A change in the person of the appointed representative shall be reported to the company by the new representative.

Section 3:166

[Transfer of business share among members]

(1) Business shares may be freely transferred among the members of the company.

(2) Where the members are afforded the right in the memorandum of association to acquire a business share offered for sale in exchange for money in priority before third party buyers, such transaction shall be governed by the provisions on the right of preemption. This right shall accrue to members as commensurate with the percentage of their business shares.

Section 3:167

[Transfer of business shares to third persons]

(1) Business shares may be transferred to third persons only if the member concerned has paid up his capital contribution in full, with the exception where such transfer is effected in consequence of the termination of membership due to the member's failure to provide the capital contribution or supplementary payment, or due to exclusion.

(2) Where the right to acquire a business share offered for sale in exchange for money is accrued to other members, the company, or a person designated by the company, they may, in this order, exercise that right according to the provisions on the right of preemption. Any transfer of that right shall be considered null and void. The right to acquire a business share in priority before third party buyers shall accrue to members as commensurate with the percentage of their business shares.

(3) As regard the exercise of the right to acquire a business share in priority before third party buyers by the company, the appointment of a third party for exercising such right shall be decided by the members' meeting.

(4) An action for declaring a contract null and void that was concluded in violation of the right to acquire a business share in priority before third party buyers may only be brought within a preclusive period of one year following the date of the contract.

(5) If the member concerned, or the company or a person appointed by the company fails to make his position known, respectively, within fifteen or thirty days after the offer is communicated, he shall be considered to have forfeited such right.

(6) Where the company's consent is required under the memorandum of association for the transfer of a business share to a third party buyer, the granting of such consent shall be decided by the members' meeting. If the company fails to respond within a period of thirty days after receipt of notice for the proposed transfer, consent shall be considered to have been granted. Any clause of the memorandum of association to provide a longer time limit shall be null and void.

(7) The transfer of business shares to third party buyers in exchange for money cannot be validly excluded in the memorandum of association.

(8) The provisions contained in Subsections (2)-(6) shall also apply to the transfer of business shares within the framework of enforcement.

Section 3:168

[Common provisions relating to the transfer of business shares]

(1) Transfer of business shares shall be executed in writing. The memorandum of association need not be amended as a result of any transfer of business shares.

(2) In order for the change of ownership and date thereof to be entered in the register of members, the party acquiring the business share shall notify the company within eight days. The notice shall be executed in an authentic instrument or a private deed representing conclusive evidence, and the business share transfer contract shall be attached. The notice, in addition to the fact of acquiring the business share, shall also contain a statement that the party acquiring the business share acknowledges the provisions of the memorandum of association as binding.

Section 3:169

[Effects of the transfer of business shares]

(1) In the event of the transfer of business shares, the rights and obligations of the transferor attached to his membership shall pass to the party acquiring the business shares.

(2) A change in the person of a member stemming from the transfer of a business share shall take effect in respect of the company from the date when notified; the rights and obligations arising out of or in connection with membership shall accrue to the new holder of the business share from the date of notification, irrespective of registration.

Section 3:170

[Inheritance and transfer of business shares to the successor]

(1) In the event of a member's death, the heir, or if the member is a legal person, upon the transfer, merger or division of such legal person, or in the event of succession in respect of its

business share on the basis of law, the successor may request the managing director to be entered in the register of members upon providing proof of inheritance or succession.

(2) The managing director may refuse to register the heir or the successor if the persons authorized under the memorandum of association provide a statement on the acquisition of the business share according to the conditions laid down in the memorandum of association within a preclusive period of thirty days from the date of the heir's or successor's application for registration taking effect, and if they pay the market value of the business share to the heir or successor. Any clause of the memorandum of association to provide a time limit longer than thirty days shall be null and void.

Section 3:171

[Effect of the dissolution of a legal person member without succession on the business share]

Where a legal person member is dissolved without succession and its business share did not get transferred either before its removal from the registry or upon property distribution proceedings covering the business share as well, the company shall either withdraw the business shares in question or shall distribute them among the members in the percentage of their capital contribution.

Section 3:172

[Business shares held in community property]

(1) Where a member has acquired his/her business share funded from community property, in a matrimonial property action the court may award a business share or part of a business share to the non-member spouse - upon request - according to the provisions of this Act and the memorandum of association on the transfer of business shares, in which case the right to acquire a business share in priority before third party buyers and the requirement to provide the core deposit in full shall not apply.

(2) The provisions contained in Subsection (1) shall also apply if the spouses can agree on the distribution of marital property with respect to the business share.

Section 3:173

[Division of business shares]

(1) Business shares may be divided:

- a) in the case of transfer;
- b) in the event of succession upon the division of a legal person member, in respect of its business share;
- c) in the case of inheritance;
- d) upon the distribution of marital property;
- e) upon dissolution without succession in the absence of a new holder.

(2) The division of business shares shall be subject to the consent of the members' meeting.

(3) Any provision of the memorandum of association contrary to the rules contained in Subsections (1) and (2) shall be null and void.

Section 3:174

[Conditions for the acquisition of own business shares]

(1) Private limited-liability companies may acquire their own business shares by way of transfer by decision of the members' meeting.

(2) The company may purchase its own business shares from its assets in excess of the initial capital. The company may not acquire its own business shares if it is not authorized to pay out any sums in dividends. The annual report and the interim balance sheet may be taken into consideration for allocating funds for covering the consideration for the acquisition of own business shares within the six-month period following the balance sheet date.

(3) The company may acquire business shares for which the capital contribution has been provided in full.

(4) The amount of capital contributions underlying the company's own business shares may not exceed fifty per cent of the initial capital.

Section 3:175

[Rights attached to own business shares]

(1) A company may not exercise membership rights in connection with its own business shares; such business shares shall be disregarded for the purposes of quorum requirements.

(2) The company shall not be entitled to dividends on its own business shares. Any dividend that is payable on the company's own business shares shall be distributed among the members entitled to draw dividends in the percentage of their capital contribution.

(3) Within a period of one year following the purchase thereof, the company shall alienate the business shares acquired for consideration or shall convey them to the members in the percentage of their capital contributions, without compensation, or shall withdraw such business shares pursuant to the rules of capital reduction.

Section 3:176

[Withdrawal of business shares]

(1) The decision for the withdrawal of business shares lies with the supreme body, in consequence of which the rights and obligations arising out of or in connection with the business shares, and the membership of the holder of such business shares shall be terminated.

(2) Upon the withdrawal of business shares, the initial capital shall be reduced by the amount of the core deposit underlying the business shares in question.

Section 3:177

[Sale of business shares]

(1) If a member is excluded from the company by order of the court, or if membership is terminated due to the member's failure to provide the capital contribution or supplementary payment, the business share of such member must be disposed of.

(2) The former member and the company shall agree within fifteen days from the date of termination of membership on the conditions and on the mode of sale. The agreement shall fix the time limit within which the business share must be disposed of - which may not exceed three months -, and the minimum selling price, which may not be less than the total of the capital contribution and supplementary payment that the former member failed to provide. If no agreement is reached within the prescribed time limit, or if the business share is not disposed of within the time limit fixed in the agreement, the company shall dispose of the share in question

by way of public auction within forty-five days following the deadline prescribed for the agreement or for the sale.

(3) In the interest of carrying out the sales procedure the company shall be entitled to introduce measures and make statements as deemed necessary.

Section 3:178

[Auction notice]

(1) If the business share is sold by way of auction, the company shall publish an auction notice at least eight days before the scheduled date of the auction.

(2) The auction notice shall contain:

- a) the company's name and registered office;
- b) the place and time of the auction;
- c) important particulars of the business share offered;
- d) the reserve price; and
- e) terms and conditions of payment of the purchase price.

(3) The reserve price may not be lower than the sum the former member owes to the company due to his failure to provide the capital contribution and supplementary payment.

Section 3:179

[Implementation of the auction]

(1) Auctions shall be held in the presence of a notary public. The notary shall execute the auction report in an authentic instrument.

(2) Apart from the former member any person may bid for purchasing the business share. The price offered may not be lower than the reserve price. The binding period of the highest bidder shall cover the time until acceptance could normally have been expected, taking also into account any right of preemption that may exist for the business share in question.

(3) Based on the highest bid, a member of the company, the company itself and a third person designated by the company may exercise the right to acquire the business share in priority before others in accordance with the provisions on the transfer of business shares to third persons. If the entitled persons did not exercise such right, the highest bid made in the auction shall be accepted.

(4) In the event where the business share is sold by auction, the buyer shall pay the purchase price to the company, following which the company shall settle with the former member.

Section 3:180

[Allocation of the purchase price received]

(1) From the purchase price the company is entitled to lay claim to the capital contribution and supplementary payment that the former member failed to provide. If the purchase price exceeds that amount, the company is entitled to cover its costs of the sales procedure and the remaining sum shall be due to the former member.

(2) If the purchase price received is insufficient to cover the costs of sale in accordance with Subsection (1), the former member shall reimburse the company for the sum that the company was unable to recover from the purchase price.

Section 3:181

[Unsuccessful auction]

(1) If no bid is received in the auction covering at least the reserve price, the auction shall be considered unsuccessful.

(2) Within a period of six months from the date of exclusion of a member or from the termination of his membership, the business share may be offered for sale by public auction anytime and without any limitation.

(3) If either of the auctions fail, the company shall be entitled to withdraw the business share within thirty days.

(4) If the business share of a former member is not sold within a period of six months from the date of exclusion of the member or from the termination of his membership, the company shall withdraw the business share. If the business share is withdrawn, the former member shall be entitled to lay claim his portion of the company's capital according to the provisions on the allocation of the purchase price received from the sale of the business share.

Chapter XXV

Auxiliary Services and Supplementary Payment

Section 3:182

[Auxiliary services]

(1) If a member is personally involved in the company's activities in the absence of a special contract to that effect, compensation may be requested for such involvement in accordance with the relevant provisions of the memorandum of association. The company may demand compensation from a member for the omission of personal involvement if this is permitted by the memorandum of association.

(2) The transfer of a business share shall terminate the obligation to perform auxiliary services, unless the party acquiring the business share assumes such obligation with the consent of the company.

Section 3:183

[Supplementary payments]

(1) If the memorandum of association contains provisions to authorize the members' meeting to order an obligation upon the members to provide supplementary capital contributions in order to cover losses, the maximum amount payable by members on that basis, as well as the frequency of performing supplementary capital contributions shall be specified,

(2) The method as well as the timetable and deadlines for performing supplementary capital contributions shall be specified in the resolution of the members' meeting on ordering supplementary payments. The amount of supplementary capital contributions shall not be deemed to increase the members' core deposits. Supplementary payments may also be provided in the form of non-monetary contribution in due compliance with the regulations pertaining to asset contributions.

(3) The obligation of supplementary capital contributions shall be established and performed consistent with the percentage of core deposits.

(4) The provisions on non-performance of a member's capital contribution shall apply to any failure to provide supplementary capital contributions in due time.

(5) Supplementary capital contributions which are not required to cover losses shall be repaid to the members listed in the register of members. Such repayment may take place after full payment of all capital contributions. Supplementary capital contribution applicable to a member's own business share shall not be repaid.

Chapter XXVI

Distributions Made by the Company

Section 3:184

[Payment to the benefit of members]

(1) The company may effect any distribution from its own funds to a member, on account of his membership, during the company's existence solely in the cases defined in this Act, with the exception of the reduction of the initial capital, from the taxed profit for the current year, or from the taxed profit supplemented with available profit reserves from the current year. No distribution shall be made if the company's adjusted equity is below its initial capital or it would be reduced to drop below the initial capital if the distribution was made, or if the distribution would jeopardize the company's solvency.

(2) Any payment made in cash or otherwise shall be construed as distribution.

(3) Any distribution made in contradiction of Subsection (1) shall be repaid to the company.

(4) The provisions contained in Subsections (1)-(3) shall also apply if the member receives any payment for reasons other than his membership.

Section 3:185

[Dividend]

(1) Members shall be entitled to receive a share from the company's own funds that is available for distribution to the benefit of members, and has been ordered for distribution by the members' meeting, in the percentage consistent with their capital contribution (hereinafter referred to as „dividend“). Dividends shall be paid to the members entitled to exercise membership rights with respect to the company at the time of decision for the payment of dividends. Members shall be entitled to receive dividends in the proportion of the capital contributions they have already paid up.

(2) The members' meeting shall decide on the payment of dividends simultaneously with the approval of the financial report.

Section 3:186

[Interim dividend]

(1) The members' meeting may adopt a decision for the payment of interim dividends between the approval of two consecutive financial reports if:

a) according to the interim balance sheet, the company has funds sufficient to cover such interim dividends;

b) the amount distributed does not exceed the amount of profits earned after the closing of the books of the financial year to which the last financial report pertains, and/or the amount supplemented with the available profit reserves; and

c) the payment of such interim dividends may not result in the company's adjusted equity to drop below its initial capital.

(2) Interim dividends are paid by recommendation of the managing director. If the company has a supervisory board, the prior consent of the supervisory board is required for the recommendation of the managing director.

(3) If according to the annual account prepared after the distribution of interim dividends, there was no justification for the payment of dividends, such distribution must be returned by the members.

Section 3:187

[Prohibition of derogations]

Any clause of the memorandum of association to provide conditions which are more favorable for the members relative to what is contained in this Chapter relating to distributions made by the company shall be null and void.

Chapter XXVII

Organizational Structure of Companies

Section 3:188

[Members' meeting]

(1) The supreme body of a private limited-liability company is the members' meeting.

(2) The members' meeting shall have exclusive competence for the approval to conclude contracts which take place between the company and one of its members, its managing director, supervisory board member, auditor, or their close relatives.

Section 3:189

[Mandatory convocation of the members' meeting]

(1) The managing director shall without delay convene the members' meeting, or initiate its decision-making process without having to hold a meeting in order to provide for the necessary measures whenever it comes to his attention that:

- a) the company's equity dropped to half of the initial capital due to losses;
- b) the company's equity dropped below the amount limit defined by law;
- c) the company is on the brink of insolvency or has stopped making payments; or
- d) the company's assets do not cover its debts.

(2) In the cases provided for in Subsection (1), members are required to adopt decisions, in particular, concerning the subscription of supplementary capital contributions or on securing the initial capital in other ways, on any reduction of the initial capital, or in the absence of all these, on the company's transformation, merger, division or dissolution without succession. The related resolutions of the members' meeting shall be carried out within three months.

(3) If the reason referred to in Paragraph a) of Subsection (1), on account of which the members' meeting was called, is not eliminated within three months following the conclusion of the members' meeting, the company's equity must be reduced.

Section 3:190

[Agenda]

(1) The invitation of members to the members' meeting shall contain the agenda of the meeting. The invitation shall be sent at least fifteen days in advance. The memorandum of association shall not specify a time limit of less than three days.

(2) Where a member proposes certain additions to the agenda in accordance with the provisions on setting the items of the agenda, the matter proposed shall be construed to have been placed on the agenda if such proposal is delivered to the members and the managing director at least three days in advance.

Section 3:191

[Reconvened members' meeting]

(1) If the members' meeting fails to have a quorum, the reconvened members' meeting shall have a quorum for the issues of the original agenda irrespective of the voting rights represented by those present, if called for a date following the original time by not less than three and not more than fifteen days. Any provision of the memorandum of association providing for a convocation time limit of less than three days shall be null and void.

(2) Members' meetings reconvened due to the lack of a quorum may also be convened subject to the same conditions as indicated in the invitation to the original members' meeting.

Section 3:192

[Use of electronic means of communication in members' meetings]

The discussions of members' meetings held by way of electronic means of communication and the resolutions adopted shall be recorded so that they can be retrieved at any time in the future. Where a resolution adopted by the members' meeting has to be submitted to the court of registry, minutes shall be drawn up and it shall be signed by the managing director.

Section 3:193

[Minutes of the members' meeting]

(1) The responsibility for having minutes taken at the members' meetings lies with the managing director, except if the members' meeting is held by way of electronic means of communication. The minutes shall contain the place and time of the members' meeting, the persons present and the percentage of voting rights represented by such persons, significant events, statements and resolutions taking place during the members' meeting, the number of votes for and against resolutions, and the persons abstaining from or not taking part in the vote.

(2) The minutes shall be signed by the managing director and a member present at the meeting and elected to witness the minutes.

Section 3:194

[Book of resolutions]

The managing director shall enter all resolutions adopted by the members in the book of resolutions. The resolutions adopted by the members shall be recorded in the book of resolutions without delay.

Section 3:195

[Members' right of access to the documents]

(1) All members shall have access to the minutes of members' meetings and the recordings made on members' meetings held by way of electronic means of communication, as well as the book of resolutions, and may request copies of the contents thereof. Any provision of the memorandum of association to the contrary shall be null and void.

(2) Copies provided in writing shall be signed by the managing director.

Section 3:196

[Management]

(1)⁹ The management of a company shall be provided for by one or more managing directors. Any restriction or division of the power of representation vested upon the managing director, or rendering such managing director's actions conditional or subject to approval shall not be effective as against third parties.

(2) If a company has more than one managing directors, they shall be entitled to handle management issues independently, with the proviso that they are entitled to raise an objection against the planned or executed actions of any other managing director. In that case the objection shall be decided by the members' meeting, and the planned measure cannot be carried out pending such decision.

(3) If the memorandum of association provides that all members are entitled to exercise management and representation, the members able to comply with the general provisions pertaining to executive officers shall be considered managing directors.

(4) Where a company is left without a managing director the members' meeting may be convened and the decision-making process without having to hold a meeting may be initiated by any member. If the members' meeting is not convened within thirty days following the change, the members' meeting shall be convened at the request of any member or creditor by the court of registry, or the court shall delegate powers to convene the members' meeting or to initiate the decision-making process without having to hold a meeting upon such member.

Section 3:197

[Register of members]

(1) Managing directors shall maintain a register on the members of the company.

(2) The following shall be indicated in the register of members:

- a)* the name, home address or registered office, and the capital contribution of each member;
- b)* in connection with jointly owned business shares, the name and home address or registered office of the owners and their joint representative, and the amount of their capital contribution;
- c)* the amount of initial capital;
- d)* the provisions of the memorandum of association on any supplementary capital contributions and auxiliary services, as well as on the restriction or prohibition of the transfer of business shares.

⁹ Enters into force as under Subsection (6) of Section 185 of Act CCLII of 2013.

(3) The managing director shall enter all changes in the data registered, and shall submit the updated register of members to the court of registry as well.

Chapter XXVIII

Increase and Reduction of Initial Capital

Section 3:198

[Decision for the increase of initial capital through additional financial contributions]

(1) If each member has provided his respective share of capital contribution in full, the members may decide by a resolution adopted by at least a three-quarters majority to increase the initial capital through the provision of additional capital contributions.

(2) The resolution shall contain:

- a)* the amount of increase;
- b)* an indication of the type and value of the capital contribution required for the increase of the initial capital;
- c)* in the case of asset contribution, a description and the value of the asset to be provided, indicating also the persons entitled thereto;
- d)* an indication of the persons entitled to provide cash contributions for the eventuality where the holders of preferential rights did not undertake to provide the full amount of cash contributions, including the share of such designated persons in the capital increase; and
- e)* date of payment of the capital contributions.

(3) In the process of increasing the initial capital through the provision of additional capital contributions, the regulations on the provision of capital contributions, on the applicable deadlines and consequences in the event of delay, and on the liability for the value of asset contributions shall be duly applied.

Section 3:199

[Provision of capital contributions and exercising preferential rights]

(1) Where the initial capital is increased by financial contribution, the members shall have preferential rights within fifteen days following the date of decision for the capital increase.

(2) If any member fails to exercise his preferential rights within the prescribed time limit, it may be exercised in his stead by the other members within an additional fifteen days. If all members failed to exercise their preferential rights, the members' meeting shall designate other persons upon whom to confer the right to provide the financial contribution.

(3) Members shall be entitled to exercise preferential rights in the percentage of their capital contribution.

Section 3:200

[Amendment of the memorandum of association upon the increase of capital]

(1) If the entitled parties have made commitments in the resolution on the capital increase for the provision of capital contributions in a specific form and in a specific amount, the company is required to amend its memorandum of association so as to reflect the increase of capital. Without prejudice to the preferential rights of members, a decision for the increase of the initial capital

and for the amendment of the memorandum of association may be adopted in a single members' meeting.

(2) The new members participating in the capital increase shall supply a statement executed in an authentic instrument or in a private deed representing conclusive evidence for acknowledging the provisions of the memorandum of association as binding.

Section 3:201

[Capital increase from assets in excess of the initial capital]

(1) A decision may be adopted by at least a three-quarters majority of the members' meeting to increase the company's capital from its assets available in excess of the initial capital, if the company's increased initial capital will not exceed the company's equity, and, according to the balance sheet of the annual account prepared for the previous financial year, or according to the interim balance sheet of the current year, there are sufficient funds available for the capital increase. Cover for the increase of capital shall be verified by the company's financial report or interim balance sheet made out within six months to date.

(2) Any increase of the initial capital from assets in excess of the initial capital shall increase the capital contributions of members consistent with the percentage of their previous contributions.

Section 3:202

[Decision for the reduction of initial capital]

(1) Members may tender the decision by at least a three-quarters majority for the reduction of capital for the purpose of withdrawal of equity, consolidating losses or for increasing other capital components. Where the reduction of initial capital is subject to statutory requirement on the grounds specified in this Act, the members' meeting shall adopt a decision within thirty days after learning of the reason therefor.

(2) The resolution shall specify:

- a) the amount of reduction;
- b) the core deposit of each member after the capital reduction; and
- c) the reason for the reduction.

(3) The capital contributions of members shall be decreased by the amount of reduction in the percentage of their existing core deposits.

(4) The company may decide to reduce its capital below the minimum amount defined in this Act, if the capital increase decided simultaneously with the reduction of capital is implemented, and hence the initial capital reaches at least the minimum level prescribed in this Act.

Section 3:203

[Disclosure of the decision for the reduction of initial capital]

(1) The managing director shall notify the court of registry of the reduction of capital within thirty days thereof, and shall take measures for the disclosure of the capital reduction by way of public notice at least on two occasions. The two disclosures shall be made at least thirty days apart.

(2) The public notice shall contain the essence of the decision on the capital reduction, and - if the company's creditors are likely to request safeguards - a call to the company's creditors to make their request for safeguards known.

(3) The company shall send a copy of the public notice to the company's known creditors directly at the time of publication of the first public notice.

Section 3:204

[Safeguards to creditors]

(1) The holders of any claim against the company arising before the first disclosure of a public notice on the capital reduction may demand adequate safeguards from the company with the exception if:

a) the creditor's claim is already secured consistent with the risk related to the reduction of the capital;

b) it is not justified in light of the company's assets and liabilities and financial position after the capital reduction;

c) capital reduction is carried out for the purpose of re-allocation to a reserve account of funds tied up over and above the company's initial capital, and the company did not carry out capital reduction inside the previous five-year period for reasons of provisioning; or

d) capital reduction is mandatory.

(2) The reserve set aside from the initial capital under Paragraph *c)* of Subsection (1) may not exceed ten per cent of the company's initial capital. The appropriated reserve created in this fashion may be used to cover the company's losses or to increase the company's initial capital subsequently; no payments to members are permitted from this reserve.

(3) The company's creditors shall file any request for adequate safeguards in connection with the reduction of the company's initial capital within a thirty-day preclusive period following the second publication of the notice.

(4) The company shall provide adequate safeguards within eight days following the deadline for filing the proof of claim or, if a claim is refused, shall deliver the resolution concerning the refusal and the reasons therefor to the creditor in question. The creditor affected may file for the review of any decision of rejection, or if the safeguards provided are insufficient, to the court of registry within a preclusive period of eight days following receipt of the resolution.

(5) Reduction of the initial capital may not be registered until the creditor entitled thereto is provided adequate safeguards, or until the court ruling on the refusal of the creditor's request becomes operative.

Section 3:205

[Failure of reduction of the capital]

(1) The reduction of capital shall be considered to have failed if the company fails to provide adequate safeguards within the prescribed time limit to the creditors entitled thereto. Failure of reduction of the capital shall be notified to the court of registry.

(2) If the statutory reduction of capital has failed and the company fails to eliminate the reasons for statutory reduction within thirty days from the time of failure, the company shall adopt a decision for its transformation, merger, division or dissolution without succession.

Section 3:206

[Amendment of the memorandum of association and registration of the reduction of capital]

(1) The company may decide to amend its memorandum of association in accordance with the reduced capital if no creditor's claims have been notified within the prescribed time limit, or if the company has satisfied the creditors' request for adequate safeguards. The memorandum of association may be amended by the resolution on the reduction of capital if the company satisfies the request of eligible creditors for adequate safeguards.

The reduction of capital may be registered if the company is able to evidence the notification of creditors, and that the eligible creditors received adequate safeguards.

(3) Payments can be made to members as a result of capital reduction after the registration of the capital reduction.

Chapter XXIX

Dissolution of a Company Without Succession

Section 3:207

[Distribution of assets]

(1) In the event of dissolution of a company without succession, from the assets remaining after the satisfaction of creditors, the supplementary capital contributions shall be repaid first, and then the remaining assets shall be distributed among the members of the company consistent with the percentage of their core deposits contributed.

(2) If the company that will cease to exist held its own business shares, the commensurate part of assets shall be distributed among the other members in the percentage of their core deposits.

(3) If, upon commencement of dissolution or upon an order of liquidation, the initial capital of the company has not yet been paid up in full, the receiver in charge of the dissolution proceedings or the liquidator shall have the right to make outstanding payments due with immediate effect, and to order the performance thereof by the members, if this is necessary in order to satisfy the debts of the company.

Chapter XXX

Single-member Companies

Section 3:208

[Establishment of single-member companies]

(1) Where a private limited-liability company is established by a single person, the founder shall put the asset contribution at the company's disposal in its entirety before the application for registration is submitted. Any provision of the charter document to the contrary shall be null and void.

(2) Where all shares of a multi-member company are acquired by a single person, this too shall become a single-member company. As of that time the company shall continue to operate as a single-member company, however, a charter document shall be prepared instead of a memorandum of association if no new member is registered within one year from the time of being converted into a single-member company.

(3) As regards the liability of the single member of a private limited-liability company the provisions on qualified majority control shall apply mutatis mutandis.

Section 3:209

[Operating procedures of single-member companies]

(1) The contract between a single-member company and its sole member shall be executed in an authentic instrument or in a private deed representing conclusive evidence.

(2) A single-member company may not acquire its own business shares.

(3) If, due to the division of business shares or the increase of initial capital new members are admitted into a single-member company and in this way it becomes a company with multiple members, the members shall convert the charter document into a memorandum of association.

TITLE XIV

LIMITED COMPANIES

Chapter XXXI

General Provisions

Section 3:210

[Definition of limited companies]

Limited companies (részvénytársaság) are business associations founded with a share capital consisting of shares of a pre-determined number and nominal value, where the obligation of shareholders to the limited company extends to the provision of funds covering the nominal value or the accounting par value of shares. Unless otherwise provided for in this Act, shareholders shall not be held liable for the limited company's obligations.

Section 3:211

[Types of limited companies]

(1) Any limited company whose shares are listed on a stock exchange shall be recognized as a public limited company (nyrt.).

(2) Any limited company whose shares are not listed on any stock exchange shall be recognized as a private limited company (zrt.).

(3) A decision adopted by at least a three-quarters majority of the general meeting is required to change the corporate form of a limited company; such decision shall enter into effect in the case of conversion of a private limited company into a public limited company upon the admission of the company's shares for trading on a stock exchange, and vice versa, upon the delisting of the company's shares in the case of conversion of a public limited company into a private limited company.

Section 3:212

[Share capital]

(1) The sum total of the nominal value of all shares shall comprise the share capital of a limited company.

(2) The share capital of a private limited company may not be less than five million forints. The share capital of a public limited company may not be less than twenty million forints.

(3) The amount of cash contributions at the time of foundation may not be less than thirty per cent of the share capital.

(4) Any issue of shares below the nominal value is null and void. Liability as regards third parties for damages resulting from the issue of shares below the nominal value shall fall upon the founders if it takes place before the company is registered, on the grounds of non-contractual liability, or it shall fall upon the company if such shares are issued after the company is registered. If there is more than one founder, their liability shall be joint and several.

(5) The nominal value of shares may be determined as a percentage of the prevailing share capital of the company (capital stock). In that case only the percentage the share represents in the company capital shall be indicated on the share, whereas the amount of the share capital need not be shown.

Chapter XXXII

Shares

1. General rules, types of shares

Section 3:213

[Shares]

(1) Shares are equity securities representing membership rights in the issuing limited company, they are registered, have a nominal value, and are tradable.

(2) One share may have several owners, who shall be treated as a single shareholder in respect of the limited company; their rights may only be exercised by their joint representative and they shall bear joint and several liability for the obligations of shareholders.

Section 3:214

[Types of shares]

(1) The shares of private limited companies may be either printed on paper or may be registered as dematerialized shares; printed share certificates may be converted and recorded as dematerialized shares, and vice versa, dematerialized shares may be converted into printed securities.

(2) The shares of public limited companies may be issued in the form of dematerialized shares.

Section 3:215

[Definition of printed shares and dematerialized shares]

(1) Printed shares are certificates produced in a duly authorized print-shop, which shall inter alia contain:

- a)* the corporate name and registered office of the issuing limited company;
- b)* the serial number, series and nominal value of the share;

- c) the name of the first holder;
 - d) the date of the articles of association, or the amendment thereof, on which the issue is based;
 - e) the amount of the share capital, or the percentage the share represents in the capital, and the number of shares issued;
 - f) signatures of the authorized signatories of the issuing limited company; and
 - g) the securities codes.
- (2) If so required, printed share certificates shall contain:
- a) the rights attached to the type of shares, class of shares or series of shares in question, as set out in the articles of association;
 - b) any restriction of voting rights;
 - c) in the case of restriction on the transfer of the share, or making the same subject to the consent of the limited company, the content of such restriction or the company's right of consent.
- (3) Dematerialized shares are dematerialized securities embodying the content elements of printed share certificates with the following exceptions:
- a) the shareholder's name and other data required for identification are contained in the securities account maintained by a securities account manager on behalf of the shareholder;
 - b) it does not have a serial number; and
 - c) it does not have the signatures of the authorized signatories of the issuing limited company.
- (4) In the event of any changes in the particulars fixed in the share, the company shall replace or overstamp the printed share certificates affected by the change in due compliance with the provisions applicable to the increase of capital, or shall modify the dematerialized shares where appropriate.

Section 3:216

[Conditions for the issue or crediting of shares]

- (1) Shareholders may demand the disbursement of printed share certificates due to them, or the crediting of the dematerialized shares to their securities account following registration of the limited company, and the full payment of the share capital or, if the nominal value and the issue price of the shares differ, the issue price of the shares.
- (2) Within a period of thirty days upon fulfillment of the conditions contained in Subsection (1), a limited company shall take measures to produce the shares without delay, even if such action has not been demanded by shareholders.
- (3) Any shares issued prior to registration of the limited company, and/or prior to full payment of the share capital or the accounting par value of the shares shall be null and void.

Section 3:217

[Global notes]

- (1) Where printed securities are produced in a single note embodying several shares of the same series, as provided by the articles of association or if so requested by the shareholder, the rights attaching to the shares contained in the global note shall accrue to each share individually.
- (2) Upon the request of shareholders, global notes may be divided into several global notes of a smaller denomination at a later point in time, or into shares of the nominal value specified in the articles of association for the series of shares in question, provided that the costs of such conversion are covered by the shareholders in question.

Section 3:218

[Offering of shares]

- (1) Shares may be offered publicly or privately.
- (2) The shares of private limited companies may not be offered publicly.

Section 3:219

[Limiting the transfer of shares]

(1) Where a limited company restricts the transfer of shares in its articles of association, or if renders the transfer of shares subject to the company's approval, these restrictions shall apply in dealings with third parties if the restriction, including the details, is clearly discernable relying on the particulars of the share, or of the securities account in the case of dematerialized shares.

(2) Where preemption rights, redemption rights or purchase options are attached to shares under contract, this shall be considered valid in respect of the limited company or third parties if this is clearly discernable relying on the particulars of the share, or of the securities account in the case of dematerialized shares.

Section 3:220

[Transfer of shares upon the company's consent]

(1) Where the transfer of shares is rendered conditional upon the company's approval under the articles of association, it shall specify the reasons under which such approval may be refused. The decision on approval falls within the competence of the management board.

(2) If the management board fails to respond within a period of thirty days after the date of notification of the intention to transfer the shares, consent shall be considered to have been granted.

Section 3:221

[Determining the rightful holder of a share]

(1) In connection with the assignment of ownership of printed share certificates by means other than transfer, the management board shall record the transfer of title on the reverse side or allonge of the certificates in question at the new owner's request, and if supported by documentary evidence, with reference to said documentary evidence. Registering the change of ownership by the management board comprises part of the endorsement chain.

(2) Where dematerialized shares are acquired by means other than transfer, the securities account manager shall debit the previous shareholder's securities account and credit the shares transferred to the securities account of the new shareholder at the request of the new shareholder based on the document in proof of the acquisition.

2. Own shares

Section 3:222

[Own shares]

(1)¹⁰ Limited companies shall be entitled to acquire their own shares up to twenty-five per cent of the share capital. In determining the holding of own shares, the shares held by legal persons in which the limited company has majority control shall also be included as appertaining to the limited company, including the shares held by any foreign-registered business association that is recognized under national law as a private limited-liability company or a limited company. Furthermore, shares acquired or held by their owner for the benefit of the limited company shall also be considered as appertaining to the limited company, as well as the own shares that the limited company accepts as security for a claim.

(2) Limited companies shall not be entitled to subscribe for shares of their own issue in the process of foundation or when increasing the share capital.

(3) The shares whose nominal value or accounting par value is not paid up or made available in full may not be acquired as own shares.

(4) A limited company may acquire its own shares for consideration if the conditions for the payment of dividends are satisfied. The company shall be allowed to pay for its own shares from the assets available for payment as dividends.

Section 3:223

[Decision on the acquisition of own shares]

(1)¹¹ Own shares may be acquired by means of a contract for pecuniary interest upon the general meeting authorizing the management board in advance to acquire them, expressly specifying the type and class of shares that can be acquired, their quantity and nominal value, and the minimum and maximum amounts of consideration payable. Authorization may be granted for a period of eighteen months.

(2) The prior authorization of the general meeting is not required if the acquisition of shares is necessary to prevent an imminent serious threat to which the limited company is exposed. This provision shall not apply to take-over bids launched for the acquisition of a public limited company.

(3) No prior authorization of the general meeting is required for the acquisition of the limited company's own shares if acquired by way of court proceedings for the settlement of any legitimate claim of the company, or in the process of transformation.

(4)¹² The management board shall present at the next general meeting the reasons for which the own shares had to be acquired and the way they were acquired, the quantity and aggregate nominal value of the shares, the percentage they represent in the company's share capital, and also the price paid for the shares.

Section 3:224

[Unlawful acquisition of own shares]

¹⁰ Enters into force as under Subsection (7) of Section 185 of Act CCLII of 2013.

¹¹ Enters into force as under Paragraph b) of Subsection (30) of Section 185 of Act CCLII of 2013.

¹² Enters into force as under Paragraph c) of Subsection (30) of Section 185 of Act CCLII of 2013.

Where a limited company has acquired its own shares unlawfully, the shares thus acquired or, if their quantity cannot be determined, all of its own shares must be withdrawn by way of reducing the share capital within one year of the date on which they were acquired.

Section 3:225

[Exercising shareholder rights with own shares]

- (1) Own shares shall not entitle the limited company to exercise shareholder rights.
- (2) Own shares shall not count for the purposes of quorum of the general meeting, or in connection with exercising preferential subscription (takeover) rights.
- (3) Any dividend that is payable on the company's own shares shall be taken into account at nominal value as pertaining to shareholders with respect to the dividends payable on their shares.

Section 3:226

[Prohibition of derogations]

Any provision of the articles of association which provides more lenient requirements for the company relative to the provisions of this Act for the acquisition of own shares or as regards the rights that may be exercised with own shares shall be null and void.

3. Financial assistance for the acquisition of shares

Section 3:227¹³

[Financial assistance restrictions]

- (1) Public limited companies shall be allowed to provide financial assistance to third parties for the acquisition of shares issued by the public limited company only under market conditions, from the assets available for the payment of dividends, provided that the general meeting approved such decision by at least a three-quarters majority upon recommendation by the management board.
- (2) The recommendation shall contain the reasons for the financial assistance, the risks involved, the conditions, the price of the shares and the advantages the company is likely to gain by providing such financial assistance. The management board shall submit the recommendation to the court of registry.

4. Types of shares, classes of shares, series of shares

Section 3:228

[Types of shares, classes of shares, series of shares]

- (1) Limited companies may issue the following types of shares:
 - a) ordinary shares;
 - b) preference shares;
 - c) employee shares;
 - d) interest-bearing shares;

¹³ Enters into force as under Subsection (8) of Section 185 of Act CCLII of 2013.

e) redeemable shares.

(2) Within the category of preference shares, shares may belong to different classes of shares according to the shareholder rights to which the preference pertains, and within the same class of shares, shares of different content or shares representing different membership rights may be issued.

(3) Within one category or class of shares, several series of shares may be issued.

Section 3:229

[Ordinary shares]

(1) Ordinary shares mean shares other than preferential, employee, interest-bearing or redeemable shares, or any other types of shares specified in the articles of association.

(2) The total nominal value of all ordinary shares issued by limited companies shall at all times be higher than half of the limited company's share capital.

Section 3:230

[Preference shares]

(1) The articles of association of a limited company may, in defining the relevant conditions, provide for the issue of shares which grant certain preferences to their holders over other types of shares.

(2) For preference shares, the articles of association may define classes of shares to afford the following:

a) dividend preference;

b) upon dissolution of the limited company without succession, priority for a share from the assets to be distributed;

c) preference related to voting rights;

d) priority for the appointment of executive officers or supervisory board members;

e) the right of preemption; and

f) any combination of the preferential rights referred to in Paragraphs a)-e).

(3) The articles of association may contain provisions - and shall specify the conditions - for the issue of a series within a class of preference shares, where the shares will have to be exchanged - at the request of the shareholder - in accordance with the articles of association, for shares within another class of preference shares or for ordinary shares, or where the shares may be exchanged for shares within another class of preference shares or for ordinary shares by decision of the limited company.

Section 3:231

[Dividend preference shares]

(1) From after-tax profits to be distributed among shareholders, shares carrying dividend preference shall entitle their holders to dividends to a preferential degree over shares belonging to other categories and classes of shares.

(2) Where the voting rights attached to dividend preference shares are limited or precluded under the articles of association, and the limited company does not pay dividends to holders of dividend preference shares in any financial year, or the dividend paid is less than what should have been paid based on the dividend preference shares, voting rights attached to dividend

preference shares may be freely exercised until the annual account for the following financial year is adopted.

Section 3:232

[Shares conferring prior voting right]

(1) Holders of shares conferring prior voting right may exercise multiple voting rights to the extent defined in the articles of association. In respect of public limited companies the voting rights attached to one share may not exceed the voting rights corresponding to the nominal value of the share by a factor of ten; any provision of the articles of association to the contrary shall be null and void.

(2) Certain resolutions of the general meeting may be adopted solely upon the simple majority vote of the holders of shares present conferring prior voting right with veto rights, or if there is only one share conferring prior voting right in issue, such resolutions may be adopted if supported by the holder of this share.

Section 3:233

[Priority shares for the appointment of executive officers or supervisory board members]

(1) Holders of preference shares carrying the right to appoint executive officers are entitled - in the manner and under the procedure specified in the articles of association - to appoint one or more members of the management board, who will become members of the management board upon formally accepting the appointment.

(2) If the holders of preference shares fail to appoint an executive officer under the procedure and within the time limit specified in the articles of association, entitlement to appoint the executive officer passes according to the general provisions to the company body of original entitlement.

(3) The holders of preference shares shall also be entitled to remove the management board members they have appointed. Under the conditions laid down in the articles of association, the holders of preference shares shall be liable to remove the management board members they have appointed. If the holders of preference shares fail to comply with such obligation within the time limit set out in the articles of association, entitlement to remove the executive officer passes to the company body of original entitlement for the removal of executive officers. Even in such circumstances the holders of preference shares shall be entitled to appoint a replacement executive officer.

(4) Preference shares carrying entitlement for the appointment of executive officers may not be issued if the powers of the management board are exercised by a general director at the limited company.

(5) The provisions of Subsections (1)-(3) shall also apply to the appointment and removal of supervisory board members pursuant to preference shares carrying such entitlement.

(6) Public limited companies may not issue any shares attaching privileges for the appointment of executive officers or supervisory board members.

Section 3:234

[Shares conferring right of preemption]

(1) The articles of association of private limited companies may provide for the introduction of a class of shares which confer the right of preemption to the holders of such shares with respect to the shares of the issuer private limited company when offered for sale in exchange for money.

(2) If the shareholder fails to make his position known within fifteen days after the conditions for the sales offer, including the price, are communicated, he shall be considered to have forfeited his preemption right.

Section 3:235

[Preference shares of public limited companies]

Where a private limited company has decided to convert into a public limited company, the company's preference shares attaching privileges for the appointment of executive officers or supervisory board members, and its preference shares with the right of preemption, as well as any preference shares collectively embodying preferential rights other than dividend preference with preferential right to any liquidation surplus, shall be converted into preference shares or ordinary shares that can be issued by public limited companies as well, before the time of being listed on the stock exchange.

Section 3:236

[Issue of employee shares]

(1) Limited companies may issue employee shares and provide them to full-time and part-time employees free of charge or at a reduced price, below the share's nominal value.

(2) If dividend preference is conferred to employee shares under the articles of association, this right may be exercised after the holders of shares of a class with dividend preference attached.

(3) Employee shares may be issued simultaneously with the increase of the limited company's share capital, not to exceed fifteen per cent of the increased share capital.

Section 3:237

[Transfer and inheritance of employee shares]

(1) Employee shares may effectively be transferred only to other employees of the limited company, or to persons to whom this right is afforded under the articles of association on account of their previous employment at the company.

(2) If the employment of an employee is terminated, losing also his entitlement to acquire employee shares, the employee may transfer his employee shares before the first general meeting held after a period of six months following the date of termination.

(3) In the event of death of the holder of employee shares, the heir of the employee may transfer such employee shares before the first general meeting held after a period of six months:

- a) following the date of death of the testator, if no probate proceeding is held;
- b) following the operative date of the grant of probate adopted in probate proceedings with full effect;
- c) following the date when the judgment of the court becomes final, in the event of inheritance proceedings.

(4) If the former employee, or the heir, failed to dispose of the employee share, respectively, as provided for in Subsection (2) or within the time limit prescribed, the limited company may adopt a decision during the general meeting on the closure of the time limit for the withdrawal of the

employee shares in question, or to sell the employee shares converted into another type of share. In that case, former employees or their heirs shall be entitled to the nominal value of their shares, payable within thirty days from the date of withdrawal or transfer of the shares in question.

Section 3:238

[Interest-bearing shares]

(1) The articles of association may provide for the issue of shares entitling their holders to a pre-determined rate of interest up to ten per cent of the share capital.

(2) From the taxed profit of the current year supplemented with available profit reserves, holders of interest-bearing shares shall be entitled - in addition to other rights attached to the shares - to interest calculated according to the method shown on the shares after the nominal value thereof. No interest may be paid to shareholders if, in consequence, the equity capital of the company would drop below the share capital of the limited company.

Section 3:239

[Redeemable shares]

(1) The articles of association may provide for the issue of shares in a value not exceeding twenty per cent of the share capital that gives:

- a) the limited company the right to purchase;
- b) the shareholders the right to sell; or
- c) the right to purchase for the limited company and the right to sell for the shareholder.

(2) The limited company shall be able to exercise its right to purchase or to carry out its obligation arising in connection with the shareholder's right to sell shares for which the shareholder has paid the nominal value or the accounting par value in full, and if the shareholder in question has made available his asset contribution to the limited company.

(3) The limited company may not exercise its rights arising from the right to purchase and may not carry out its obligations arising from the right to sell if the limited company could not decide the payment of dividends. The financial report and the interim balance sheet may be taken into consideration for allocating funds necessary for exercising the right to purchase or the right to sell within the six-month period following the balance sheet date.

(4) The company shall withdraw the shares redeemed in accordance with the rules on the reduction of share capital.

Section 3:240

[Other types of shares]

A limited company may resolve to issue different types or classes of shares, other than those provided for in this Act, if it specifies in the articles of association the contents and the extent of membership rights attached to the shares to be issued.

Equity Bonds¹⁴

Section 3:240/A¹⁵

¹⁴ Enters into force as under Section 39 of Act CXXXV of 2013.

(1) A limited company may issue registered bonds in a value of up to half of its share capital, which shall be converted into shares upon the subsequent occurrence of certain objective requirements (equity bonds).

(2) The general meeting of the limited company may authorize the management board to the issue automatically or conditionally converted equity bonds.

5. Share certificates and interim shares

Section 3:241

[Share certificate]

Before the time of registration of the foundation of the limited company or the increase of its capital, upon request made by a person who provided capital contribution, the company shall make out a certificate which contains that person's name and the amount of capital contribution provided, and - unless there is evidence to the contrary - verifies the rights and obligations of the person indicated therein accrued in respect of the limited company.

Section 3:242

[Definition of interim shares]

(1) Following the registration of a limited company, or the registration of its increase of the share capital by the court of registry, interim shares shall be made out for the amount of contribution provided on shares subscribed or undertaken to be received by shareholders, for the period up to the full payment of the share capital (increased share capital) or the accounting par value of the shares. Interim shares issued prior to registration of the limited company or in a value exceeding the amount of financial contributions which were actually provided shall be null and void.

(2) Interim shares are treated as securities, to which the regulations on shares shall be applied, with the exception that the transfer of interim shares shall become valid in dealing with the company only upon the registration of the holder of such shares in the register of shareholders.

Section 3:243

[Form and contents of interim shares]

(1) Interim shares may be either printed on paper or may be registered as dematerialized shares, as provided for by the articles of association, regardless of the type of the share in question.

(2) Where interim shares are issued in a dematerialized form, such interim shares may be credited to shareholder's securities account at the time when their financial contribution, or the first installment, is provided according to the articles of association.

(3) The amount the shareholder has paid up before the interim share is issued shall be indicated on printed interim shares, or in the securities account in connection with dematerialized interim shares. Any additional financial contribution the shareholder has provided after the issue of interim shares shall be indicated - at the shareholder's request - on the interim shares, or new interim shares have to be issued in place of and upon the cancellation of the previous interim shares.

¹⁵ Enters into force as under Section 39 of Act CXXXV of 2013.

Section 3:244

[Rights attached to interim shares]

(1) Interim shares shall entitle their holders to exercise shareholders' rights in proportion to the contribution which they have already provided. The holders of preference shares shall not be entitled to any preferential rights until their financial contribution has been paid in full. In these cases the holders of preference shares shall be entitled to exercise shareholder rights afforded to holders of ordinary shares.

(2) If a shareholder transfers his interim shares to third parties, such shareholder shall be liable toward the limited company for the debts arising from the contributions to be provided on the shares subscribed or undertaken to be received by him under surety facilities. Where interim shares are transferred several times, all former shareholders shall be subject to surety liability jointly and severally.

(3) When the shares are produced, the management board shall request the shareholders to surrender their printed interim shares within the prescribed deadline, and to collect their printed share certificates. Where interim shares are not surrendered in due time, the company shall declare them ineffective by means of a resolution adopted by the management board. Printed share certificates may be collected and dematerialized shares are credited to the shareholder's securities account after interim shares are surrendered and rendered ineffective.

(4) Where interim shares are issued in a dematerialized form, management shall take action for having the interim shares deleted from the central securities account and from the securities accounts alike.

6. Register of shareholders

Section 3:245

[Definition of register of shareholders]

(1) Limited companies shall keep a register of shareholders, including holders of interim shares, in which to record the name and the home address or registered office of shareholders, or their proxy in the case of jointly owned shares, the name and home address or registered office of the joint representative, the number of shares or interim shares, and the percentage of control of shareholders for each series of shares.

(2) In the event of any change in the particulars of an issued share, which is also contained in the register of shareholders, the management shall update the register of shareholders accordingly.

(3) The register of shareholders shall be maintained by the management board of the limited company. The management board shall be entitled to subcontract the keeping of the register of shareholders; in the case of public limited companies, it shall be published along with the personal data of the subcontractor.

Section 3:246

[Entries of the register of shareholders, deletions, and the related legal effects]

(1) Shareholders may exercise shareholder rights in dealings with the limited company only upon being registered in the register of shareholders. The omission of admission into the register of shareholders shall not affect the shareholder's right of ownership of his shares.

(2) Any shareholder who has been formally identified must be registered in the register of shareholders upon request made to the keeper of the register. A registered shareholder shall be deleted from the register of shareholders at his request.

(3) The keeper of the register of shareholders may refuse to comply with the request of a formally identified person, if such person has acquired his shares in violation of the regulations on the transfer of shares set out by law or the articles of association.

(4) Any data that is deleted from the register of shareholders must remain identifiable.

(5) The resolutions adopted in connection with the register of shareholders shall be construed as corporate decisions.

Section 3:247

[Access to data recorded in the register of shareholders]

(1) The general public shall have unlimited access to registers of shareholders. The limited company or the appointed keeper of the register of shareholders shall provide access at its head office during working hours continuously.

(2) The subject of any data, current or deleted, contained in the register of shareholders may request a copy of the section which pertains to him from the keeper of the register of shareholders. Such copies shall be supplied free of charge and made available to the data subject within five days.

Section 3:248

[Recording identification procedures in the register of shareholders]

Where the identification procedure is requested by the public limited company, the keeper of the register of shareholders shall delete all data contained in the register of shareholders at the time of the identification procedure, and shall simultaneously enter the data obtained upon the identification procedure into the register of shareholders.

Chapter XXXIII

Foundation of Limited Companies

Section 3:249

[Private foundation]

Shareholders and capital may not be solicited for the foundation of a limited company by way of public invitation.

Section 3:250

[Contents of the articles of association]

(1) The articles of association shall, in addition to the generally binding content elements, contain:

a) the declaration of the founders concerning their commitment to subscribe for all shares, and on the division of the shares among themselves;

b)¹⁶ the amount of the share capital, the number and nominal value or accounting par value of the shares to be issued upon foundation, and the type of shares (printed or dematerialized);

c) the procedure for calling general meetings, as well as the conditions and method of exercising voting rights; and

d) the name of the first auditor.

(2) The founders may effectively provide in the articles of association for:

a) the object and value of asset contributions, the date when it is to be provided, the number and nominal value of shares to be provided in exchange, the name and home address or registered office of the parties providing the contribution and the name and home address or registered office of the auditor responsible for the preliminary valuation of the asset contribution as indicated in the articles of association;

b) the rights attached to the individual types, classes, and series of shares, and any restriction of certain rights attached to shares, the rules on conversion of shares into shares belonging to other types or classes, or series of shares, as well as the number and nominal value or accounting par value of shares belonging to certain types or classes of shares, separately for each series of shares;

c)¹⁷ the series, quantity and nominal value of convertible bonds, bonds with subscription rights or equity bonds, and the rules pertaining to such bonds;

d) any restriction on the transfer of shares, or making transfer subject to the consent of the limited company;

e) the provisions relating to the mandatory withdrawal of shares;

f) authorization conferred upon the management board to approve the interim balance sheet in connection with the exercise of rights attaching to redeemable shares, with the acquisition of own shares, the payment of interim dividends, and with the increase of the share capital financed from assets not comprising a part of the share capital.

Section 3:251

[Asset contribution]

(1)¹⁸ In connection with asset contributions, the auditor's report or that of another expert qualified for the asset in question shall be attached to the articles of association which shall contain the description and value, and a valuation of such asset contribution, and account of the valuation methods and a statement that no new qualifying circumstances with regard to the original valuation have occurred. In the said report the auditor or expert shall provide a statement indicating as to whether the value of such contribution - as previously determined by the founders - complies with the quantity and nominal value of the shares to be provided in exchange.

(2) No auditor or expert report is required if the shareholder that has provided the asset contribution has an audited financial report prepared within three months to date in relation to the date when the contribution was provided, if it contains the value of the contribution, or if the contribution is comprised of assets whose price is listed on the stock exchange.

¹⁶ Enters into force as under Paragraph d) of Subsection (30) of Section 185 of Act CCLII of 2013.

¹⁷ Enters into force as under Section 40 of Act CXXXV of 2013.

¹⁸ Enters into force as under Paragraph e) of Subsection (30) of Section 185 of Act CCLII of 2013.

Section 3:252

[Conditions of registration]

(1) A limited company may be registered only if, prior to the submission of the application for registration:

a) the founders who agreed to provide contributions in cash have paid at least twenty-five per cent of the nominal value or accounting par value of the shares which they have committed to subscribe for in the articles of association;

b) asset contributions have been made available to the company, with the exception if the value of such asset contributions is less than twenty-five per cent of the share capital.

(2) Shareholders shall pay up the nominal value or accounting par value of the shares to the limited company in full within one year from the date when the limited company is registered, and shall place asset contributions at the limited company's disposal in whole within three years from the date of registration.

(3) Any provision of the articles of association which provides for a later date than what is prescribed in this Section in connection with capital contributions shall be null and void.

Chapter XXXIV

Rights and Obligations of Shareholders

Section 3:253

[Equality of shareholders]

Shareholders holding shares that belong to the same series shall not be discriminated in any way in connection with the exercise of their shareholder rights.

Section 3:254

[Proof of qualification as a shareholder]

(1) Shareholders shall be entitled to exercise shareholder rights in dealing with the company in possession of the shares, or the certificate of deposit or certificate of ownership, following their entry into the register of shareholders.

(2) In connection with printed share certificates placed in securities depositories the operator of the depository shall make out a depository receipt at the shareholder's request concerning the shares placed in his custody.

(3) In connection with dematerialized shares, the operator of the securities account shall issue an ownership certificate at the shareholder's request concerning the shares held on the account.

(4) The depository receipt and the ownership certificate shall indicate the name of the limited company, the type and quantity of shares, the name and authorized signature of the operator of the securities depository of the securities account, and the name and home address or registered office of the shareholder. The depository receipt and the ownership certificate issued to permit its holder to attend the company's general meeting shall remain valid until the date of the general meeting, including the second meeting if reconvened.

(5) After the issue of an ownership certificate the operator of the securities account shall register any changes pertaining to the shares in the securities account only upon the withdrawal of the ownership certificate. The securities depository shall be required to withdraw the depository

receipt if the shares to which it pertains are released to the shareholder or his authorized representative.

(6) In the case of public limited companies, the ownership certificate is not required for exercising shareholder rights where entitlement is verified by way of the identification procedure.

Section 3:255

[Representation of shareholders]

(1) Shareholders may exercise shareholder rights through representatives. Executive officers, supervisory board members and the auditor may not function as a representative of a shareholder.

(2) Where a shareholder is represented by more than one agents, and if these agents are contradicted in their votes or statements, all such votes and statements shall be considered null and void.

Section 3:256

[Shareholder's representative]

A shareholder may appoint a proxy - after being registered in the register of shareholders - to exercise some or all rights of that shareholder before the limited company in his own name and for the benefit of the shareholder.

Section 3:257

[Right of attending the general meeting]

Shareholders shall have the right to participate, to request information and to make remarks and proposals at the general meeting. Shareholders are entitled, if holding shares with voting rights, to vote.

Section 3:258

[Right to information]

(1) The management board shall provide information at the latest three days before the date fixed for the general meeting to all shareholders which may be deemed necessary for discussions held in connection with the items placed on the agenda of the general meeting upon written request submitted at least eight days before the date fixed for the general meeting.

(2) The management board shall disclose the key data of the financial report and key data of the report of the management board and the supervisory board to the shareholders at least fifteen days before the general meeting.

(3) Any provision of the articles of association which excludes or restricts the right of shareholders to information shall be null and void.

Section 3:259

[Right to make additions to the agenda]

(1) Where a group of shareholders together controlling at least five per cent of the votes in a private limited company propose certain additions to the agenda in accordance with the provisions on setting the items of the agenda, the matter proposed shall be construed to have been

placed on the agenda if such proposal is delivered to the members and the management board within eight days of receipt of the invitation to the general meeting.

(2)¹⁹ Where a group of shareholders together controlling at least one per cent of the votes in a public limited company propose certain additions to the agenda in accordance with the provisions on setting the items of the agenda, or table draft resolutions for items included or to be included on the agenda, the matter proposed shall be construed to have been placed on the agenda if such proposal is delivered to the management board within eight days following the time of publication of notice for the convocation of the general meeting, and the management board publishes a notice on the amended agenda, and on the draft resolutions tabled by shareholders upon receipt of the proposal. The matter published in the notice shall be construed to have been placed on the agenda.

(3) Any provision of the articles of association which provides for a larger percentage of votes as a precondition for putting additional items on the agenda, or which provides for a shorter time limit for exercising such right relative to what is contained in this Act shall be null and void.

Section 3:260

[Right to vote]

(1) Voting rights attached to shares are determined by the nominal value of such shares. Any provision of the articles of association which confers greater voting rights to certain specific shares outside the cases provided for in this Act shall be null and void.

(2) Shareholders in any arrears in their capital contribution shall not be able to exercise their voting rights.

Section 3:261

[Conditions for any distribution to shareholders]

(1) The limited company may effect any distribution from its own funds to a shareholder, on account of his membership, during the company's existence solely in the cases defined in this Act, with the exception of the reduction of the share capital, from the taxed profit for the current year, or from the taxed profit from the current year supplemented with available profit reserves. No distribution can be made if the limited company's equity capital is below its share capital or it would be reduced to drop below the share capital if the distribution was made, or if the distribution would jeopardize the limited company's solvency.

(2) Within the meaning of Subsection (1), any payment made in cash or otherwise shall be construed as a distribution, with the exception of employee shares provided without compensation or at a discounted price, as well as shares provided without compensation from the share capital increased by the conversion of assets which do not form part of the share capital into share capital.

(3) With the exception of interest-bearing shares, limited companies shall not pay any interest on their shares.

(4)²⁰ A group of shareholders together controlling at least five per cent of the voting rights in a private limited company, a group of shareholders together controlling at least one per cent of the

¹⁹ Enters into force as under Subsection (9) of Section 185 of Act CCLII of 2013.

²⁰ Enters into force as under Subsection (10) of Section 185 of Act CCLII of 2013.

votes in a public limited company, and any creditor of the limited company who has a claim that is not yet due at the time of distribution and reaches ten per cent of the share capital may request the court of registry to appoint an independent auditor to examine the legality of such distribution within a preclusive period of one year from the time of distribution, with the costs advanced.

(5)²¹ Any distribution made in contradiction of Subsection (1) shall be repaid to the company when so requested by the limited company, provided that the company is able to prove that the shareholder was aware, or should have been aware of the absence of the conditions for distribution.

(6) The provisions of this Section shall also apply to distributions made to shareholders for reasons other than membership, which are otherwise incompatible with the principle of prudent management.

Section 3:262

[Dividends]

(1) Shareholders shall be entitled to receive a share from the limited company's taxed profit that is available and has been ordered for distribution by the general meeting in the percentage consistent with the nominal value of their shares. Dividends shall be paid to the shareholders listed in the register of shareholders at the time when the general meeting adopting the decision for the payment of dividends was held. Dividends may be paid by means other than cash if so permitted by the articles of association. Shareholders shall be entitled to receive dividends based on the capital contributions they have already paid up.

(2) In connection with the application of Subsection (1), the articles of association may stipulate specific rights or restrictions separately for each class of shares.

Section 3:263

[Interim dividend]

(1) The general meeting or, by authorization of the articles of association, the management board may adopt a decision for the payment of interim dividends between the approval of two consecutive financial reports if:

a) according to the interim balance sheet, the company has funds sufficient to cover such interim dividends;

b) the amount distributed does not exceed the amount of profits earned after the closing of the books of the financial year to which the last financial report pertains, and/or the amount supplemented with the available profit reserves; and

c) the payment of such interim dividends may not result in the company's adjusted equity capital to drop below its share capital.

(2) Interim dividends are paid by recommendation of the management board. If the company has a supervisory board, the prior consent of the supervisory board is required for the recommendation of the management board.

(3) If according to the annual account prepared after the distribution of interim dividends there was no justification for the payment of dividends, such distribution must be returned by the shareholder when so requested by the company.

²¹ Enters into force as under Subsection (10) of Section 185 of Act CCLII of 2013.

Section 3:264

[Conditions for the acquisition of assets]

(1) The prior consent of the general meeting of the limited company shall be required for any contract on the transfer of property to be concluded within two years from the company's registration between the company and its shareholders, where the value of the compensation to be provided by the company reaches one-tenth of its share capital. To this end, the provisions on asset contributions shall apply, with the proviso that the auditor or expert report shall be published.

(2) The prior consent of the general meeting is required also in the case where the contract above-specified is concluded between the company and a shareholder or his close relative, or any person in which the shareholder has majority control.

(3) The prior consent of the general meeting is not required where property is transferred under a contract of ordinary magnitude within the scope of the company's activities, by virtue of official resolution or by official auction, nor in connection with stock exchange transactions.

(4) In the application of this Section, the term shareholder shall cover persons holding shares in a company at the time when the decision to convert it into a public limited company is adopted, and following registration of the public limited company any shareholder who controls at least ten per cent of the voting rights.

Section 3:265

[Prohibition of derogations]

Any clause of the articles of association to provide conditions which are more favorable for the shareholder relative to what is contained in this Chapter shall be null and void.

Section 3:266

[Exercising minority rights]

A group of shareholders together controlling at least one per cent of the votes in a public limited company shall have entitlement to exercise minority rights.

Section 3:267

[Obligations of shareholders]

(1) Shareholders shall be required to pay up and make available to the limited company the cash and asset contributions covering the nominal value or accounting par value of the shares they have received or subscribed. With the exception of a reduction of share capital, shareholders may not be exempted from this obligation.

(2) Within the time limit set out in the articles of association, shareholders are required to pay the nominal value or accounting par value of their shares when so notified by the management board according to the conditions laid down in the articles of association. Shareholders may satisfy their payment obligation prior to receiving the said notice.

(3) Where a shareholder's relationship is terminated due to his failure to provide in due time the capital contribution undertaken, and the obligation to provide the contribution on the shares subscribed or undertaken to be subscribed by the shareholder is not assumed by another person, the share capital must be reduced consistent with the contribution committed by such shareholder in default.

(4) The value of the contribution provided by shareholders in default shall be due to such shareholders following the reduction of the share capital, or when the replacement shareholder performs his contribution towards the company.

Chapter XXXV

Organizational Structure of Limited Companies

1. The general meeting

Section 3:268

[General meeting]

- (1) The supreme body of a limited company is the general meeting.
- (2) In public limited companies the general meeting shall have exclusive jurisdiction to lay down the guidelines and framework for a long-term salary and incentive scheme for executive officers, supervisory board members and executive employees.
- (3) In public limited companies issues delegated under the competence of the general meeting may not be resolved without having to hold a meeting.

Section 3:269

[General Provisions Relating to the convocation of general meetings]

The invitation for the general meeting shall, in addition to the generally binding content elements, contain:

- a) the procedure for holding the general meeting;
- b) the conditions for exercising voting rights, as laid down in the articles of association;
- c) the place and time of the reconvened general meeting in the event of failure to meet quorum requirements.

Section 3:270

[Mandatory convocation of the general meeting]

(1) The management board shall, with simultaneous notice to the supervisory board, call a general meeting within a period of eight days in order to provide for the necessary measures, or initiate a decision-making process without having to hold a meeting, whenever it comes to the notice of any member that:

- a) the limited company's equity has dropped to two-thirds of the share capital due to losses;
- b) the limited company's equity dropped below the amount limit defined by law;
- c) the limited company is on the brink of insolvency or has stopped making payments; or
- d) the limited company's assets do not cover its debts.

(2) In the cases provided for in Subsection (1), shareholders are required to adopt decisions within or without a general meeting to determine the ways to eliminate the causes referred to in Subsection (1), or shall adopt decisions on the company's transformation, merger or division, or in the absence of these, on its dissolution. The related resolutions of the general meeting shall be carried out within three months.

(3) If the reason referred to in Paragraph *a*) of Subsection (1), on account of which the general meeting was called is not eliminated within three months following the conclusion of the general meeting, the company's share capital must be reduced.

Section 3:271

[Special rules for convening the general meeting of private limited companies]

(1) In the case of private limited companies, the general meeting shall be called by means of an invitation sent to the shareholders at least fifteen days prior to the first day of the general meeting.

(2) The invitation to the general meeting may be sent by way of electronic means to the shareholders who specifically requested it.

Section 3:272

[Special rules for convening the general meeting of public limited companies]

(1)²² In the case of public limited companies, the invitation for the general meeting shall be posted on the company's website at least thirty days prior to the first day of the general meeting. The invitation for the general meeting shall inter alia contain the conditions for exercising the right to make additions to the agenda, and shall indicate the place where draft resolutions and the originals of complete documents to be submitted to the general meeting are available.

(2) If an extraordinary general meeting is called in consequence of the shareholders' opinion relating to a public takeover offer for the shares of a public limited company or at the request of the person having obtained a qualifying holding upon the successful conclusion of the public takeover offer, the general meeting shall be convened at least fifteen days in advance.

(3)²³ Public limited companies shall publish on their website, at least twenty-one days before the general meeting, the following information:

a) the total number of shares and voting rights at the date of the convocation, including separate totals for each class of shares;

b) the proposals relating to the items on the agenda and the related reports of the supervisory board, including the draft resolutions;

c) the forms to be used to vote by proxy and to vote by correspondence, unless those forms are sent directly to each shareholder.

(4)²⁴ Public general meeting materials may be sent by way of electronic means to the shareholders who specifically requested it at the time of publication of such general meeting materials.

Section 3:273

[Access to the general meeting]

²² Enters into force as under Subsection (11) of Section 185 of Act CCLII of 2013.

²³ Enters into force as under Subsection (12) of Section 185 of Act CCLII of 2013.

²⁴ Enters into force as under Subsection (13) of Section 185 of Act CCLII of 2013.

(1) The names of shareholders and proxies wishing to participate in the general meeting of the private limited company shall be entered into the register of shareholders before the beginning of the general meeting. If the articles of association contains provisions to specify the time by which the above entry has to be made, it may not be earlier than the second working day before the general meeting; any provision of the articles of association to the contrary shall be null and void.

(2) The names of shareholders and proxies wishing to participate in the general meeting of the public limited company shall be entered into the register of shareholders at the latest by the second working day preceding the beginning of the general meeting. Any provision of the articles of association to the contrary shall be null and void.

(3) In the general meeting shareholders rights may be exercised only by the persons whose names are contained in the register of shareholders at the time it was closed. The transfer of shares before the opening day of the general meeting shall not affect the right of a person whose name is contained in the register of shareholders from attending the general meeting and from exercising his shareholder's rights.

(4)²⁵ If the articles of association of the public limited company provides the option to shareholders to exercise their voting right by correspondence before the general meeting, the only condition attached to the exercising of such right may be the requirement of identification of the shareholder.

Section 3:274

[Attendance list]

(1) The shareholders present at the general meeting shall be entered into an attendance list, which shall contain the name and home address or registered office of the shareholder or his representative, the quantity of his shares and the number of votes he has, and any changes during the general meeting in the persons of those present.

(2) Attendance lists shall be signed by the chairman of the general meeting and the keeper of the minutes.

Section 3:275

[Quorum]

(1) If the general meeting fails to have a quorum, the reconvened general meeting shall have a quorum for the issues of the original agenda irrespective of the voting rights represented by those present, if called for a date following the original time by not less than three days in the case of private limited companies and by not less than ten days and not more than twenty-one days in the case of public limited companies. Any provision of the articles of association providing for a convocation time limit of less than three or ten days, and more than twenty-one days shall be null and void.

(2) The general meeting may adjourn its session once by not more than thirty days.

(3) The adjourned meeting shall reconvene subject to the same quorum requirement as the original general meeting. In respect of public limited companies any provision of the articles of association to the contrary shall be null and void.

²⁵ Enters into force as under Subsection (14) of Section 185 of Act CCLII of 2013.

(4) When the adjourned meeting reconvenes, the provisions on calling the general meeting and on the election of the officers of the general meeting shall not apply.

Section 3:276

[Majority required for resolutions]

(1) The general meeting shall decide by at least a three-quarters majority on the amendment of the articles of association, on changing the company form, on the transformation, merger or division of the company, on its dissolution without succession, and on the reduction of its share capital.

(2) Where an amendment to the articles of association is adopted in connection with the implementation of a general meeting resolution to increase or reduce the share capital (i.e. to determine the size of the share capital), the approval of the general meeting for the amendment of the articles of association shall be considered granted when the resolution to increase or reduce the share capital is adopted.

(3) In connection with public limited companies the provisions on the requirement of unanimous decision for the amendment of the instrument of constitution shall not apply.

Section 3:277

[Consent to general meeting resolutions]

(1) Any resolution of the general meeting that discriminates against the rights attached to a certain series of shares may only be passed if, according to the procedure set out in the articles of association, the shareholders of the share series in question grant their explicit consent. In the course thereof, the provisions on the restriction or exclusion of the voting rights attached to such shares may not be applied, not including the prohibition of exercising voting rights attached to own shares.

(2) Any provision of the articles of association of a public limited company contrary to Subsection (1) hereof shall be null and void.

Section 3:278

[Minutes]

(1) The events of general meetings shall be recorded in minutes, containing the following:

- a)* the corporate name and registered office of the limited company;
- b)* the place and time and the procedure for holding the general meeting;
- c)* the names of the chairman of the general meeting, the keeper of the minutes, the person appointed to witness the minutes and the official vote counters;
- d)* key events and proposals made during the general meeting;
- e)*²⁶ draft resolutions, for each resolution at least the number of shares for which votes have been validly cast, the proportion of the share capital represented by those votes, the total number of votes validly cast as well as the number of votes cast in favor of and against each resolution, and the number of abstentions from the vote.

(2) The minutes shall be signed by the keeper of the minutes and the chairman of the general meeting, and shall be witnessed by an elected shareholder present.

²⁶ Enters into force as under Subsection (15) of Section 185 of Act CCLII of 2013.

(3) The management board of the limited company shall archive and safeguard the minutes of the general meeting and the attendance list among its own documents.

(4) The management board of a public limited company shall submit the minutes of the general meeting and the attendance list to the court of registry within a period of thirty days after the close of the general meeting.

(5) Any shareholder may request a copy of the minutes of general meetings or an abstract of a part of the minutes from the management board.

Section 3:279

[Public disclosure of resolutions]

Public limited companies shall make their general meeting resolutions available to the public.

Section 3:280

[Conditions for holding general meeting by conferencing]

(1) If according to the articles of association shareholders are allowed to participate in the general meeting by way of electronic communications equipment instead of appearing in person, shareholders may freely decide the way in which they wish to participate. The shareholders who wish to attend the general meeting in person shall so notify the limited company at least five days in advance. Any shareholders who fail to notify the limited company concerning their intention to participate in due time shall be treated as participating in the general meeting through electronic communications equipment.

(2) All costs arising in connection with the use of electronic communications equipment on the part of the limited company shall be borne by the limited company, and they may not be charged to the shareholders.

(3) A general meeting may not be held by conferencing if objected to in writing by a group of shareholders controlling at least five per cent of the total number of votes - indicating the reason - within five days after the date of receipt of the invitation or from the date of publication of the public notice, and if they request that the general meeting be held the conventional way.

Section 3:281

[Implementation of the general meeting by conferencing]

(1) Before the opening of a general meeting that is held by conferencing, the entitlement of shareholders wishing to participate in person shall be checked on the basis of the data contained in the register of shareholders. The articles of association, or a general meeting resolution adopted by authorization of the articles of association, shall define the procedure for checking the identification of shareholders participating through a telecommunications connection, along with the voting procedure and the authentic conclusion of the results, furthermore, define the procedure for the election of general meeting officers, and the requirements for shareholders to make their opinions known and to make proposals.

(2) The discussions of a general meeting held by conferencing and the resolutions adopted shall be recorded using a reliable medium so that it can be retrieved at any time in the future. Where the discussions of the meeting have been recorded, minutes shall be drawn up based on the said recording and it shall be signed by a member of the management board.

2. Management

Section 3:282

[Composition and procedures of the management board]

(1) Limited companies shall be managed by the management board. The management board is comprised of three natural persons. Any provision of the articles of association which provides for a management board of less than three members shall be null and void.

(2) The management board shall elect its chairman from among its members.

(3)²⁷ The management board shall exercise its rights and perform its duties as an independent body. Any restriction or division of the power of representation vested upon members of the management board, or rendering such member's actions conditional or subject to approval shall not be effective as against third parties.

(4) The management board shall adopt its decisions by a simple majority of the votes of the members present. Any clause of the articles of association providing for a lower voting ratio shall be null and void.

Section 3:283

[General director exercising the rights of the management board]

Where so provided for by the articles of association of private limited companies, the general director shall function as the chief executive officer in exercising the powers of the management board.

Section 3:284

[Reporting]

(1) The management board shall prepare a report on the management, the financial situation and the business policy of the company at least once every year for the general meeting, and at least once every three months for the supervisory board, if the limited company has one.

(2) Any provision of the articles of association which excludes or restricts the management board's obligation of reporting shall be null and void.

Section 3:285

[Public limited companies in the one-tier system]

(1) Where the articles of association of a public limited company so provides, it shall be controlled by the board of directors under the one-tier system instead of the management board and the supervisory board. The board of directors shall discharge the duties of the management board and the supervisory board conferred upon them by law.

(2) The provisions of this Act on management boards shall also apply to boards of directors.

Section 3:286

[Composition of the board of directors]

²⁷ Enters into force as under Subsection (16) of Section 185 of Act CCLII of 2013.

(1) The board of directors is comprised of five natural persons. The board of directors shall elect its chairman from among its members. Any provision of the articles of association which provides for a board of directors of less than five members shall be null and void.

(2) The majority of the board of directors - with the exception set out in Subsection (3) - shall be made up of independent persons. Any provision of the articles of association which provides for a lower ratio of independent members shall be null and void.

(3) The requirement for the majority of the board of directors to be made up of independent persons shall not apply if the limited company is a controlled company belonging to a recognized group.

Section 3:287

[Independence of the member of the board of directors]

(1) A board member shall be considered independent if apart from his seat on the board of directors and apart from any transaction conducted within the company's usual activities, aiming to satisfy the board member's personal needs he is not holding any other office.

(2) A member of the board of directors shall not be considered independent if he:

a) is an employee of the limited company or a former employee for five years following the termination of such employment;

b) provides services to the limited company or its executive officers for consideration as an expert or other similar services under personal service contract;

c) is a shareholder of the limited company controlling at least thirty per cent of the votes, whether directly or indirectly, or is a close relative or domestic partner of such person;

d) is a close relative or domestic partner of any - non-independent - executive officer or executive employee of the limited company;

e) is entitled to receive financial benefits based on his board membership if the limited company operates profitably, or receives any other form of remuneration from the company apart from the salary for his board membership, or from a company that is affiliated to the limited company;

f) is engaged in a partnership with a non-independent member of the board of directors in another business association on the strength of which the non-independent member attains control;

g) is an auditor of the limited company, or an employee or partner of the audit firm, for three years following the termination of such relationship;

h) is an executive officer or executive employee of a business association, whose independent board member also holds an executive office in the public limited company.

(3) Any provision of the articles of association which provides more lenient requirements concerning independence relative to what is contained in Subsections (1)-(2) shall be null and void.

Section 3:288

[Employee participation in the board of directors]

(1) If the public limited company has a board of directors, the procedures for exercising the rights stemming from employee participation shall be laid down in an agreement between the board of directors and the works council.

(2) The general provisions for contracts shall also apply to the agreements concluded under Subsection (1).

Section 3:289

[Company governance and management report]

(1) The management board of a public limited company shall present to the annual general meeting the company governance and management report prepared according to the rules applicable to the actors of the given stock exchange.

(2) The report shall be approved by decision of the general meeting. The general meeting's resolution and the approved report shall be posted on the website of the limited company.

(3) Any provision of the articles of association which derogates from this Section shall be null and void.

3. Supervisory Board, Audit Committee, Auditor

Section 3:290

[Supervisory board of limited companies]

(1) In addition to the cases provided for by the common provisions relating to business associations, public limited companies shall install a supervisory board even if the company does not use the one-tier system. In that case the provisions pertaining to the ratio of independent members of the board of directors and to their independence shall apply to the supervisory board.

(2) Public limited companies may not have a peremptory supervisory body.

(3) In the case of private limited companies, if so requested by a group of shareholders together controlling at least five per cent of the voting rights, a supervisory board shall be installed.

(4) Any provision of the articles of association to the contrary of this Section shall be null and void.

Section 3:291

[Audit committee]

(1) Public limited companies are required to set up audit committees, which shall provide assistance to the supervisory board or the board of directors in supervising the financial report regime in selecting an auditor, and in working with the auditor.

(2) The general meeting shall elect the audit committee from among the independent members of the supervisory board or the board of directors. At least one member of the audit committee shall have competence in accounting or auditing.

(3) Any provision of the articles of association contrary to the rules contained in Subsections (1) and (2) shall be null and void.

(4) The audit committee is comprised of three members. Any provision of the articles of association which provides for a audit committee of less than three members shall be null and void.

Section 3:292

[Auditor]

All limited companies shall employ an auditor; any provision of the articles of association of a public limited company to the contrary shall be null and void.

Chapter XXXVI

Increase of Share Capital

1. Common provisions relating to the increase of share capital

Section 3:293

[Decision for the increase of share capital]

(1) The decision for the increase of a limited company's share capital lies with the general meeting. Different methods of increasing the share capital may be decided and implemented at the same time.

(2) The general meeting's resolution on the increase of share capital shall be considered effective if the holders of the types or classes of shares which are considered affected under the articles of association grant their explicit consent to the increase of the share capital by way of the means specified in the articles of association. In the course thereof, the provisions on the restriction or exclusion of the voting rights attached to such shares may not be applied, not including the prohibition of exercising voting rights attached to own shares.

(3) Any provision of the articles of association of a public limited company contrary to Subsection (2) hereof shall be null and void.

Section 3:294

[Empowerment of management board to increase the share capital]

(1) The general meeting of the limited company may authorize the management board to increase the share capital. The amount limit by which the management board is allowed to increase the limited company's share capital and a period of up to five years during which the increase of capital is to be executed shall be specified in the authorization.

(2) The authorization granted to the management board for the increase of share capital also constitutes an entitlement for the management board to adopt decisions relating to the increase of share capital, which otherwise fall within the competence of the general meeting by law or according to the articles of association.

2. Share capital increase through the issue of new shares

Section 3:295

[Preconditions for increasing the share capital]

Limited companies may increase their share capital through the issue of new shares only if the nominal value or the accounting par value of all previously issued shares are paid up in full, and all asset contributions are made available to the company.

Section 3:296

[General meeting resolutions]

(1) The resolution of the general meeting adopted for increasing the share capital through the issue of new shares shall specify the following:

- a) the method of increasing the share capital;
- b) the amount of increase of the share capital, the planned lowest increase;
- c) the draft of the amendment of the articles of association in connection with the increase of share capital, including the quantity and the series of the new shares to be issued, the rights attached to the types of shares, classes or series of shares belonging to such series, the method of production, the nominal value or accounting par value of the shares, as well as the terms of payment of the nominal value or accounting par value of the shares;
- d) a description and value of asset contributions, the quantity and other characteristics of shares to be provided in exchange, the name (corporate name), home address or registered office of the person providing such contribution, and the name, registered office (home address) of the auditor conducting preliminary assessment, and the date when they are made available;
- e) the time limit for making a statement undertaking the obligation to subscribe shares or the subscription deadline.

(2) The resolution containing the general meeting's decision for increasing the share capital through the private offering of new shares shall indicate the persons the general meeting has authorized to subscribe for the shares, provided that the persons otherwise eligible do not intend to exercise their pre-emptive subscription rights concerning the shares in question. The same general meeting resolution shall also specify the quantity of shares that may be subscribed by any one person.

(3) Subscription right to the shares may be granted if the person designated made a preliminary statement of commitment to subscribe for the shares and to provide the appropriate consideration. The limited company shall abide by the statement of commitment above-specified.

(4) The regulations on the provision of capital contributions, on the applicable deadlines and consequences in the event of delay, on the valuation of asset contributions and on the liability for the value thereof shall be duly applied.

(5) In the case of public limited companies, the auditor or expert report on the valuation of asset contributions shall be published.

Section 3:297²⁸

[Exercise of preferential rights]

(1) The general meeting shall be empowered according to the conditions laid down in the articles of association to decide on the issue of bonds with subscription rights, where such bonds feature preference to their holder for the subscription of shares in the event of increasing the share capital through the issue of new shares.

(2) Where the share capital is increased by way of a cash infusion, the shareholders and holders of convertible bonds and bonds with subscription rights for the subscription of shares shall have preferential rights for the subscription of shares. The ranking of persons entitled to exercise preferential rights and the time limit for exercising preferential rights shall be specified in the articles of association.

(3) The limited company shall allow at least fifteen days for the exercise of preferential rights.

²⁸ Enters into force as under Section 41 of Act CXXXV of 2013.

(4) The limited company shall inform the shareholders, by way of the procedure laid down in the articles of association, and the holders of convertible bonds and bonds with subscription rights concerning the nominal value or accounting par value of shares which may be acquired, and the first and last days of the period during which such right can be exercised.

(5) An equity bond may be converted into a share on the basis of pre-determined objective requirements, consequently, it carries no preferential rights.

Section 3:298

[Amendment of the articles of association]

(1) The general meeting adopting a decision for the increase of share capital may amend the articles of association in connection with the share capital increase - depending on the outcome of commitments made for the subscription of shares, or on the outcome of the actual subscription of shares - as of the last day of the time limit prescribed for the statement, or for the closure of subscription. Another general meeting is not required in connection with the increase of share capital.

(2) If a conditional amendment of the articles of association has not been implemented or if in connection with the increase of share capital the general meeting is to adopt a decision concerning an issue which the conditional amendment of the articles of association has failed to provide for properly, the general meeting shall adopt a decision for the amendment of the articles of association within sixty days following the time limit available for making the statement of commitment or after the successful conclusion of the subscription of shares.

(3) Dividends may be paid for the first time on new shares issued with a view to increasing the share capital in connection with the financial year during which the increase of share capital was registered.

Section 3:299

[Failure of increasing the capital]

(1) The share capital increase shall be considered to have failed if the persons eligible refuse to undertake the commitment for the subscription of shares in the nominal value or accounting par value sufficient to cover the planned or lowest increase of share capital, or if the shares have not been subscribed.

(2) Failure of the share capital increase shall be reported to the court of registry within a period of thirty days after the expiration of the time limit prescribed for making the commitments for the subscription of shares (hereinafter referred to as „subscription deadline”).

3. Share capital increase from the assets not forming part of the share capital

Section 3:300

[Preconditions for increasing the share capital]

A limited company may transfer all or part of its assets other than the share capital to increase the share capital, if, according to the balance sheet of the annual account for the previous financial year or the interim balance sheet of the current year there are sufficient additional funds available for the capital increase, and if the company's share capital will not exceed its adjusted equity capital. The annual report or the interim balance sheet may be taken into consideration for

determining the size of funds in excess of the share capital within the six-month period following the balance sheet date.

Section 3:301

[Implementation of the increase of share capital]

(1) The resolution of the general meeting adopted for increasing the share capital shall provide for the amendment of the articles of association and shall specify if the increase of share capital is carried out by way of the issue of new shares, overstamping, or exchange.

(2) The shares embodying the increased share capital shall be conveyed to the company's shareholders free of charge, in proportion to the nominal value of their shares.

4. Share capital increase through the issue of employee shares

Section 3:302

[Issue of employee shares]

(1) In the event of an issue of employee shares, the consideration to be covered by the limited company shall be covered from the limited company's assets not forming part of the share capital.

(2) If the capital is increased by way of the issue of employee shares, the provisions on the private offering of new shares, and/or on the increase of share capital by funds transferred from the assets of the company other than the share capital shall apply.

5. Share capital increase through the conversion of convertible bonds, or equity bonds into shares²⁹

Section 3:303³⁰

[Conditional increase of the share capital]

(1) The limited company may adopt a decision for the conditional increase of share capital through the issue of convertible or equity bonds.

(2) The total of the nominal value of the convertible or equity bonds issued may not exceed half of the limited company's share capital.

(3) At the bond holder's request, convertible bonds shall be exchanged for shares under the conditions set out in the articles of association. Equity bonds shall be converted into shares upon the subsequent occurrence of certain requirements specified in the bonds.

(4) In the resolution of the general meeting on the conditional share capital increase, the following shall be defined:

- a)* an indication of whether the bonds are offered privately or publicly;
- b)* the quantity and nominal value or accounting par value of the bonds to be issued, the series of the bonds (bond attributes), and the place and time of subscription;
- c)* the conditions and the time for converting the bonds into shares;

²⁹ Enters into force as under Section 42 of Act CXXXV of 2013.

³⁰ Enters into force as under Subsection (17) of Section 185 of Act CCLII of 2013.

- d) the maturity of the bonds and the conditions for paying interest or other yield on such bonds;
- e) if the bonds are issued privately, the persons entitled to receive them and the quantity, nominal value, accounting par value and series of the bonds they are entitled to subscribe for.

Section 3:304

[Consequences of bond issue]

- (1) If the bond issue is successful, the general meeting shall amend the articles of association within sixty days following the time limit prescribed for the subscription of bonds.
- (2) If the subscription of bonds fails, the management board shall notify the court of registry thereof within thirty days following the closure of the subscription process.

Section 3:305³¹

[Requesting shares in place of bonds and conversion of bonds into shares]

- (1) Within the maturity time of the convertible bonds, bond holders may demand in writing shares in exchange for their bonds within a period of time set forth by the general meeting, upon the submission of such bonds - in the case of printed bonds - to the management board.
- (2) Following the provision of a statement for the conversion of convertible bonds, upon the occurrence of the requirement for the conversion of equity bonds, the bond holder shall be entitled to receive share certificates.
- (3) Following the expiry of the time limit prescribed for the filing of the notice referred to in Subsections (1), or upon the occurrence of the requirement for the conversion of equity bonds, the management board shall - in the case of equity bonds - establish the occurrence of the requirement and shall forthwith take measures for the registration of the share capital increase, with the proviso that this shall not require amendment of the articles of association. In the course of increasing the share capital the provisions on registration and on the issue and crediting of shares shall apply mutatis mutandis.

6. Issue of shares of the type consistent with the increased share capital

Section 3:306

[Share capital increase with printed shares]

- (1) In respect of printed share certificates, within a period of sixty days after registration of the increase of share capital, the management board shall inform the shareholders by means of a written notice made out in accordance with the articles of association, of the place and the opening and closing date of the acceptance of shares to be exchanged, and the provision of new, exchanged or overstamped share certificates, depending on the mode of capital increase.
- (2) A period of at least thirty days shall be allowed for the delivery of shares to the limited company. The management board shall retire all shares deposited in exchange according to the regulations on securities, following the expiry of the prescribed deadline.
- (3) Where any shareholder fails to surrender the shares to be overstamped or exchanged to the management board within the time limit specified in the notice, the management board shall declare these shares invalid. The resolution for declaring such shares invalid shall be made

³¹ Enters into force as under Subsection (18) of Section 185 of Act CCLII of 2013.

public. Shareholders' rights may not be exercised with shares that have been declared invalid as of the operative date of the resolution therefor.

(4) In lieu of the shares declared invalid, the limited company shall issue new shares which are to be given to the holders of shares which have been declared invalid.

(5) In connection with the implementation of capital increase, the shares held by the limited company shall not be treated as own shares, and the limited company may not exercise shareholders' rights with such shares.

(6) No period of limitation applies to any claim of shareholders for new, exchanged or overstamped share certificates under this Section.

Section 3:307

[Share capital increase with dematerialized shares]

In connection with dematerialized shares, the management board shall notify the central depository and the operator of the shareholder's securities account following registration of the increase of share capital within fifteen days concerning the changes in the securities holdings of the shareholder in question in consequence of the increase of share capital.

Chapter XXXVII

Reduction of Share Capital

Section 3:308

[Cases and restrictions of capital reduction]

(1) Limited companies may reduce their share capital at their discretion, however, in the cases defined in this Act reduction of the share capital is mandatory.

(2) With the exception set out in Subsection (3), the company's share capital may not be reduced below the amount limit defined by law.

(3) The company may decide to reduce its capital below the minimum amount defined in this Act, if the capital increase having been decided simultaneously with the reduction of capital is implemented, and hence the share capital reaches at least the minimum level prescribed in this Act.

Section 3:309

[General meeting resolution]

(1) The decision for the reduction of share capital lies with the general meeting. A resolution of the general meeting is not required for the reduction of share capital if the limited company's articles of association prescribed the mandatory withdrawal of shares and the reduction of share capital in the event that certain specific conditions occur before the shares of the series in question are issued.

(2) The invitation to a general meeting convened to adopt a decision for the reduction of share capital shall contain, in addition to the generally binding content elements, information concerning the amount of reduction of share capital, the reason and the procedure of implementation, and the conditional reduction of share capital where applicable.

(3) The resolution of the general meeting on the reduction of share capital shall inter alia contain:

- a) as to whether the share capital is reduced for the purpose of withdrawal of equity, consolidating losses or for increasing other capital components;
- b) the amount by which the share capital is being reduced, and the shares affected by the capital reduction; and
- c) the procedure for the implementation of the reduction of share capital.

(4) The resolution on the reduction of share capital shall also provide for the amendment of the articles of association required on account of the capital reduction. Such resolution of the general meeting shall be effective upon compliance with the conditions for capital reduction. If a general meeting resolution is not required for the reduction of share capital, the amendment of the articles of association required on account of the capital reduction falls within the competence of the management board.

(5) The general meeting's resolution on the reduction of share capital shall be considered effective if the holders of the types or classes of shares which are considered affected under the articles of association grant their explicit consent to the reduction of the share capital by way of the means specified in the articles of association. In the course thereof, the provisions on the restriction or exclusion of the voting rights attached to such shares may not be applied, not including the prohibition of exercising voting rights attached to own shares.

(6) Where the share capital is reduced by way of disinvestment, the amount due to the shareholders shall be determined taking into account - in proportion to the share capital - the assets in excess of the share capital. If the company's own funds are below the share capital, for the reduction of share capital by way of disinvestment a decision is first required for the reduction of the share capital to cover losses.

Section 3:310

[Implementation of the reduction of share capital]

(1) In the event of share capital reduction, own shares held by the limited company shall be withdrawn first.

(2) Reduction of share capital shall be implemented by reducing the quantity or the nominal value of share, or by using these two methods in tandem.

Section 3:311

[Mandatory reduction of share capital]

(1) Where reduction of the share capital is prescribed mandatory in this Act, the company's general meeting shall adopt a decision for reduction of share capital within sixty days following the event giving rise to the obligation.

(2) If the share capital is to be reduced below the threshold specified by law, and if the shareholders fail to supplement the share capital within three months following the event giving rise to the obligation, the general meeting of the limited company shall adopt a decision for the company's transformation, merger with another company, division or dissolution without succession.

Section 3:312

[Public disclosure of the reduction of share capital]

(1) The management board shall take measures within thirty days following the date of the resolution on capital reduction for the disclosure of such resolution by way of public notice at least on two occasions. The two disclosures shall be made at least thirty days apart.

(2) The public notice shall contain the essence of the decision on the capital reduction, and - if the company's creditors are likely to request safeguards - a call to the company's creditors to make their request for safeguards known.

(3) The company shall send notice to the company's known creditors directly at the time of publication of the first public notice.

Section 3:313

[Safeguards to creditors]

(1) The holders of claims against the company arising before the first publication of a public notice on the capital reduction may demand adequate safeguards from the company with the exception if:

a) the creditor's claim is already secured consistent with the risk related to the reduction of the capital;

b) it is not justified in light of the limited company's assets and liabilities and financial position after the capital reduction;

c) capital reduction is carried out for the purpose of re-allocation to a reserve account of funds tied up over and above the limited company's share capital, and the company did not carry out capital reduction within the previous five-year period for reasons of provisioning; or

d) capital reduction is mandatory.

(2) The reserve set aside from the share capital under Paragraph *c)* of Subsection (1) may not exceed ten per cent of the limited company's share capital. The appropriated reserve created in this fashion may be used to cover the company's losses or to increase the limited company's share capital subsequently; no payments to shareholders are permitted from this reserve.

(3) The company's creditors may file a request for adequate safeguards in connection with the reduction of the limited company's share capital within a thirty-day preclusive period following the second publication of the notice.

(4) The company shall provide adequate safeguards within eight days following the deadline for filing the proof of claim or, if a claim is refused, shall deliver the resolution concerning the refusal and the reasons therefor to the creditor in question. The creditor affected may file for the review of any decision of rejection, or if the safeguards provided are insufficient, to the court of registry within a preclusive period of eight days following receipt of the resolution.

(5) Reduction of the share capital may not be registered until the creditor is provided adequate safeguards, or until the court ruling on the refusal of the creditor's request becomes operative.

Section 3:314

[Failure of the reduction of share capital]

(1) The management board shall notify the court of registry concerning the failure of reduction of the share capital within thirty days.

(2) If the statutory reduction of the share capital has failed and the limited company fails to eliminate the reasons for statutory reduction within ninety days from the time of failure, the

limited company shall adopt a decision for its transformation, merger with another company, division or dissolution without succession.

Section 3:315

[Reduction of share capital involving printed shares]

(1) In respect of printed share certificates the amount of shares may be reduced by way of withdrawal of shares, whereas the nominal value may be reduced through the exchange of shares for new issues with lower nominal value, or by changing the nominal value of existing shares by way of over stamping.

(2) Within a period of sixty days after registration of the reduction of share capital, the management board shall inform the shareholders by means of a notice made out in accordance with the articles of association, of the place and the opening and closing date of the acceptance of shares to be withdrawn, over stamped or exchanged, and of the place and time for the delivery of new share certificates produced for the purpose of exchange, or over stamped share certificates. A period of at least thirty days shall be allowed for the delivery of share certificates. The management board shall retire all shares deposited for the purpose of withdrawal or in exchange according to the regulations on securities, following the expiry of the prescribed deadline.

(3) Should a shareholder fail to surrender the shares to be withdrawn, over stamped or exchanged to the management board within the time limit specified in the notice, the management board shall declare these shares invalid. The resolution for declaring such shares invalid shall be made public. Shareholders' rights may not be exercised with shares that have been declared invalid as of the operative date of the resolution therefor.

(4) In lieu of the shares declared invalid - excluding withdrawn shares -, the company shall issue new shares to be given to the holders of shares which have been declared invalid.

(5) In connection with the implementation of capital increase, the shares held by the limited company shall not be treated as own shares, and the limited company may not exercise shareholders' rights with such shares.

(6) No period of limitation applies to any claim of shareholders for new, exchanged or over stamped share certificates under this Section.

Section 3:316

[Reduction of share capital involving dematerialized shares]

In connection with dematerialized shares, the management board shall notify the central depository and the operator of the shareholder's securities account following registration of the reduction of share capital within fifteen days concerning the changes in the securities holdings of the shareholder in question in consequence of the reduction of share capital.

Section 3:317

[Distributions to shareholders]

Payments may be made to shareholders following the time of registration of the reduction of share capital, and unpaid cash contributions related to shares and asset contributions not yet provided may be cancelled after that time.

Chapter XXXVIII

Special Regulations Concerning the Transformation, Merger and Division of Limited Companies

Section 3:318

[Transformation]

(1) If a limited company is converted, the shares shall become invalid upon the registration of the legal person established by transformation.

(2) The executive officers of the successor business association shall take measures within thirty days after receipt of the resolution on registration for having the printed share certificates which have become invalid transferred to the successor, or for having such dematerialized shares deleted from the central securities account, and from the relevant securities accounts. The printed share certificates surrendered shall be destroyed by the successor. These measures shall be governed by the provisions applicable to the implementation of the reduction of share capital.

Section 3:319³²

[Merger]

In respect of convertible or equity bonds the limited company being established through the merger shall provide such entitlements to bond holders, which are at least equivalent to the entitlements they possessed in the predecessor business association, unless each of the bond holders gives his consent to the change of entitlement. Holders may also claim the redemption of convertible or equity bonds, or bonds with subscription rights issued by the merging companies from the successor limited company. The provisions of this Subsection need not be applied if, upon the issue of the security, the position of bond holders has been defined in advance in case a merger should take place subsequently.

Section 3:320³³

[Merger meetings]

If there are several types or classes of shares, the provisions on the approval of the general meeting resolution shall be applied in the process of adopting a resolution on the merger.

Section 3:321³⁴

[Division of limited companies]

(1) Public limited companies may not be divided.

(2) As regards the division of limited companies, the provisions on the merger of limited companies shall also apply.

Chapter XXXIX

³² Enters into force as under Subsection (19) of Section 185 of Act CCLII of 2013.

³³ Enters into force as under Subsection (20) of Section 185 of Act CCLII of 2013.

³⁴ Enters into force as under Subsection (21) of Section 185 of Act CCLII of 2013.

Dissolution of a Limited Company Without Succession

Section 3:322

[Consequences of dissolution]

(1) If the limited company has issued preference shares with respect to any liquidation surplus, the privileges granted by such preference shares shall be taken into account when distributing the assets of the company remaining after the settlement of debts.

(2) If, before the opening of dissolution procedures, or before the order of liquidation, the share capital of the limited company has not yet been paid up in full, the receiver in charge of dissolution proceedings or the liquidator shall have the right to make outstanding cash contributions and asset contributions due with immediate effect, and to order the performance thereof by the shareholder, if this is necessary in order to satisfy the debts of the limited company.

Chapter XL

Single-member Limited Companies

Section 3:323

[Different rules applicable to single-member limited companies]

(1) Where a limited company is established by a single person undertaking the commitment to acquire all shares of the company, the founder shall put the asset contribution at the company's disposal in full before the application for registration is submitted. Any provision of the articles of association to the contrary shall be null and void.

(2) Where all shares of a multi-member limited company are acquired by a single person, this too shall become a single-member company.

(3) A single-member limited company may not acquire its own shares.

(4) The contract between a single-member limited company and its sole member shall be executed in writing.

(5) As regards the liability of the single member of a limited company the provisions on qualified majority control shall apply *mutatis mutandis*.

TITLE XV

ACQUISITION OF A QUALIFYING HOLDING

Section 3:324

[Extra commitments of members with a qualifying holding]

(1) Where a member of a private limited-liability company or a shareholder of a private limited company - directly or indirectly - controls at least three-quarters of the votes, the court of registry shall be notified thereof within fifteen days from the time of acquisition of such qualifying holding for the purpose of registration and publication.

(2) Within a sixty-day preclusive period reckoned from the date of notification of the acquisition of a qualifying holding, any member (shareholder) of the company may request that

his shares be purchased by the owner of the qualifying holding. The owner of a qualifying holding must purchase such shares at the market value prevailing at the time when the request was submitted, which value may not be lower than the value the shares represent in the company's own capital.

(3) If the company is dissolved without succession, at the request of the creditors the owner of the qualifying holding shall cover any claim for which no satisfaction had been provided, provided that dissolution without succession was brought about in consequence of the poor business decisions of the owner of the qualifying holding. This provision is not applicable in the case where the company is wound up without going into liquidation.

PART FOUR

COOPERATIVE SOCIETIES

TITLE XVI

GENERAL PROVISIONS

Section 3:325

[Definition and principal activities of cooperative societies]

(1) A cooperative society (szövetkezet) is a legal person established with a capital made up of the members' contributions; it operates under the principle of open membership and variable capital with the objective of lending assistance to its members so as to satisfy their economic and societal needs, where the obligation of its members toward the cooperative society covers the provision of capital contribution and their personal involvement as provided for in its statutes. Members shall not bear liability for the cooperative society's obligations.

(2) The activities of cooperative societies may include sales, purchases, production and services.

Section 3:326

[General provisions relating to members of cooperative societies]

(1) The number of members that are not natural persons in a cooperative society may not exceed twenty per cent of the total number of members; the legal person members of a cooperative society set up as a cooperative society shall be ignored when calculating the number of members that are not natural persons.

(2) The number of members of the cooperative society refusing personal involvement in operations may not exceed one-quarter of all members.

(3) The capital contribution provided by any one member in a cooperative society may not exceed fifteen per cent of the capital; the capital contribution provided by members that are not natural persons may not exceed one-third per cent of the capital.

(4) Members may not be solicited by public invitation.

Section 3:327

[General provisions relating to operations of cooperative societies]

(1) Where authorization by the competent authority is prescribed mandatory by law to engage in a certain activity, the cooperative society may only start up and pursue the activity in question when in possession of such authorization.

(2) Activities subject to qualification may be pursued by cooperative societies only if there is at least one person among its participating members, employees, or among the persons working to the benefit of the cooperative society under a long-term civil relationship concluded with the cooperative society, who satisfies the qualification requirements set out in the relevant legislation.

Section 3:328

[Making legal statements]

(1) Legal acts pertaining to the cooperative society must be made in writing. This provision shall also apply to the cooperative society's decisions, and to the delivery of legal statements and decisions to the recipient.

(2) Where a legal act relating to the cooperative society is mandatory, or where certain action is mandatory, it shall be made or carried out without delay.

(3) Where a legal statement made in writing has been sent by way of post, it shall be considered received - if sent to a resident recipient - at the point in time indicated on the notice of receipt or, in the case of registered mail, on the fifth working day following dispatch, in the absence of proof to the contrary.

(4) A legal statement relating to the cooperative society can be made or can be delivered by means of electronic communication if so permitted by the statutes, and if it provides for the relevant conditions for and the means thereof.

Section 3:329

[Registration of cooperative societies]

(1) The formation of a cooperative society shall be notified to the court of registry within thirty days from the date when the statutes is executed in a notarized document or countersigned by a lawyer or legal counsel. If the establishment of a cooperative society is subject to approval by the authorities, notification to the court of registry shall be made within fifteen days upon receipt of the final authorization.

(2)³⁵ The provisions on pre-companies shall apply to cooperative societies mutatis mutandis.

(3)³⁶

Section 3:330

[Arbitration procedure]

(1) In accordance with the statutes or under agreement between the parties concerned, any dispute in the area of company law shall be settled by way of binding arbitration.

(2) Cooperative dispute shall mean:

³⁵ Enters into force as under Subsection (22) of Section 185 of Act CCLII of 2013.

³⁶ Shall not enter into force as under Paragraph a) of Subsection (31) of Section 185 of Act CCLII of 2013.

a) any dispute arising out of or in connection with the cooperative membership between the cooperative society and its members, including former members, covering also the judicial review of decisions of cooperative bodies;

b) legal disputes among the members in connection with the statutes, or as pertaining to the operation of the cooperative society; and

c) any dispute between the cooperative society and its executive officers or supervisory board members, arising out of or in connection with their office.

Section 3:331

[Instrument of constitution of cooperative societies]

(1) The statutes of a cooperative society shall also function as its instrument of constitution. The statutes shall be adopted upon the unanimous declaration of intent of at least seven persons.

(2) When adopted, the statutes shall be signed by all founding members. The statutes may be signed on behalf of a member by his representative holding an authorization fixed in an authentic instrument or in a private deed representing conclusive evidence.

(3) The statutes shall be drawn up in a notarial document, or in a private document countersigned by a lawyer or the legal counsel of a founder. This provision shall also apply to amendments of the statutes and when the amendment is recorded in the minutes, with the proviso that it may be countersigned by the legal counsel of the member or by the legal counsel of the cooperative society.

(4) In addition to the standard contents of the mandatory layout of the instrument of constitution of a legal person, the statutes of a cooperative society shall specify:

- a) the amount of capital contribution that is to be subscribed by each member;
- b) potential ways of personal involvement of members;
- c) description of economic cooperation between the cooperative society and its members;
- d) the regulations relating to the fellowship fund;
- e) the types and forms of benefits to be provided to natural person members and their families, as well as the conditions and procedures for awarding them;
- f) the bodies of cooperative societies and their powers;
- g) the grounds for exclusion of executive officers and members, and the reasons giving cause to conflict of interest; and
- h) the procedure for calling general meetings, as well as the conditions and method of exercising voting rights.

(5) Of the standard contents of the mandatory layout of the instrument of constitution of a legal person, the amount of capital contribution to be provided by each member for the cooperative society shall be specified in the statutes at the time of foundation.

Section 3:332

[Capital contribution of members]

(1) Capital contribution may also be provided in the form of receivables, if it is acknowledged by the debtor or based on a final court ruling. Commitments of members for performing work or for any other personal involvement or service shall not be accepted as a form of non-monetary capital contribution.

(2) Each member is required to make available at least thirty per cent of his cash contribution before the application for registration is submitted, together with all of his asset contributions.

The members of the cooperative society refusing personal involvement in operations shall make available their cash contribution in full before the application for registration is submitted.

(3) Any member who did not pay up his cash contribution before the time of submission of the application for registration in full shall provide the remaining portion within one year from the date of registration.

(4)³⁷ Any member of a cooperative society may assign his share (rights and obligations) in the capital of the cooperative society, or a part thereof, either to another member or to a prospective member seeking admission to the cooperative society. The contract of transfer shall be executed in writing.

Section 3:333

[Non-compliance with the obligation of capital contribution]

(1) If a member fails to provide his capital contribution committed in the statutes or in the application for admission by the time prescribed, management shall call upon such member, with the applicable consequences indicated, to provide the contribution within thirty days.

(2) In the event of non-compliance within the thirty-day time limit, the membership of the member who failed to provide the capital contribution shall be terminated on the day following the expiration of such time limit. Management shall notify the member concerning the termination of his membership. The former member shall be held liable for damages caused to the cooperative society by virtue of his failure to provide the capital contribution in accordance with the provisions on liability for damages for loss caused by non-performance of an obligation.

(3) Any provision of the statutes which provides more lenient sanctions than what is prescribed in this Act upon members for failure to provide the capital contribution shall be null and void.

Section 3:334

[Fellowship fund]

(1) The assets placed in the fellowship fund by decision of the general meeting from which to provide benefits to members and their family members may not be distributed among the members.

(2) If the cooperative society is transferred into a business association or dissolved without succession, the fellowship fund shall be transferred - following settlement with all creditors - to an organization specified by the statutes.

(3) Benefits provided from the fellowship fund shall not be taken into consideration in connection with shares from the profit, nor in connection with the settlement of accounts upon the termination of membership.

TITLE XVII

ORGANIZATIONAL STRUCTURE OF COOPERATIVE SOCIETIES

Chapter XLI

³⁷ Enters into force as under Subsection (23) of Section 185 of Act CCLII of 2013.

General Meeting

Section 3:335

[Competence of the general meeting]

(1) The supreme body of a cooperative society is the general meeting, which consists of all members.

(2) The following shall fall within the competence of the general meeting:

- a)* amendment of the statutes;
- b)* election and removal of executive officers and supervisory board members, establishing their remuneration;
- c)* election and removal of the auditor and establishing his remuneration;
- d)* transferring a certain part of the cooperative's assets into the fellowship fund, and decisions on the general principles for the appropriation of the fellowship fund;
- e)* approval of the financial report, decision regarding the appropriation of taxed profits;
- f)* decision concerning the merger or division of the cooperative society, transformation into a business association or dissolution without succession;
- g)* decision for launching a petition for the opening of bankruptcy proceedings, and on the approval of a composition agreement;
- h)* decision for winding up the cooperative society going into liquidation, and on the approval of a composition agreement reached during the liquidation proceedings;
- i)* decision for ordering supplementary payment.

Section 3:336

[Convocation and agenda of the general meeting]

(1) The general meeting shall convene at least once a year. Any clause of the statutes providing for less frequent meetings shall be null and void.

(2) The invitation for the general meeting shall, in addition to the generally binding content elements, contain:

- a)* an indication if the college of delegates or a section meetings is convened; and
- b)* the place and time of the reconvened general meeting in the event of failure to meet quorum requirements, and a warning to different quorum regulations.

(3) In connection with the issues proposed for the agenda of the general meeting the administrative body shall provide information to all members.

(4) Upon written request, any matter supported by at least ten per cent of all members shall be included in the agenda. The request shall be submitted at least eight days prior to the scheduled date of the general meeting to the administrative body. The amended agenda shall be conveyed to the members at least three days prior to the scheduled date of the general meeting.

(5) Any resolution adopted at a general meeting which was unduly convened and held and is therefore considered invalid, shall become valid with retroactive effect from the date when the resolution was adopted if declared valid by the unanimous decision of all members within thirty days of the day on which the general meeting was held.

Section 3:337

[Rights of members at the general meeting]

(1) Members shall be entitled to make recommendations relating items of the agenda and to exercise their voting rights. At the general meeting each member shall have one vote irrespective of their capital contribution.

(2) Members in any arrears in their capital contribution prescribed in the statutes shall not be allowed to exercise their voting rights.

(3) Members may exercise their membership rights through representatives. The chairman and members of the administrative body and the supervisory board, and the auditor may not serve as representatives. The authorization shall be executed in an authentic instrument or in a private deed representing conclusive evidence. One representative may represent several members at the general meeting, however, the maximum number of members one representative may represent shall not exceed ten per cent of all members of the cooperative society.

Section 3:338

[Quorum, decisions]

(1) If the general meeting fails to have a quorum, the reconvened general meeting shall have a quorum for the issues of the original agenda irrespective of the number of those present, if called for a date following the original time by not less than three and not more than fifteen days. Any provision of the statutes providing for a convocation time limit of less than three days shall be null and void.

(2) The affirmative votes of two-thirds of the members attending and one-half of all members are required for the amendment of the statutes.

(3) The decision concerning the merger or division of a cooperative society, for its transformation into a business association or dissolution without succession the affirmative votes of at least two-thirds of all members are required.

(4) The general meeting shall adopt its resolutions by open voting; the decisions for the election and recall of executive officers and members of the supervisory board shall be adopted by voting by secret ballot.

Section 3:339

[Reconvened, adjourned general meetings]

(1) The reconvened general meeting may pass resolutions on any issue on the original agenda.

(2) If so indicated in the invitation, the general meeting may resolve to adjourn the general meeting with respect to certain items on the agenda, and continue at a later time. This general meeting, however, may not address any other issues.

Section 3:340

[Minutes]

(1) The responsibility for having minutes drawn up at general meetings lies with the management. The minutes shall contain the place and time of the general meeting, the persons present, significant events, statements and resolutions taking place during the general meeting, the number of votes for and against resolutions, and the persons abstaining from or not taking part in the vote.

(2) The attendance list and the documents for authorizations for representation shall be annexed to the minutes.

(3) The minutes shall be signed by the presiding chairman, the keeper of the minutes and the two cooperative members appointed to witness the minutes.

(4) The minutes shall be made available to any member for inspection and excerpts or copies of the minutes may be requested from the administrative body at the requesting member's expense.

Section 3:341

[Section meeting]

(1) If the statutes provide for section meetings in the stead of a general meeting, the sectors of section meetings and the venues of section meetings shall be provided for in the statutes.

(2) Section meetings shall be held with the same agenda; the decisions of the general meeting shall be announced by the administrative body after adding up all the votes cast on the section meetings.

(3) The resolutions adopted by section meetings shall be delivered to the members within fifteen days of the count of votes.

(4) Other aspects of section meetings shall be governed by the provisions governing general meetings.

Section 3:342

[College of delegates]

(1) Where the statutes provide for a college of delegates, the number of delegates required according to the number of members, the procedure for their election and their term shall be specified in the statutes.

(2) Where section meetings are held on a regular basis, delegates for the college of delegates shall be elected separately for each section meeting.

(3) Any non-delegate member of the cooperative society may attend the college of delegates in an advisory capacity.

(4) Furthermore, the provisions governing general meetings shall also apply to the powers and the procedures of colleges of delegates with the exception that at least two-thirds of all delegates shall constitute a quorum for the college of delegates and for the reconvened college of delegates.

Chapter XLII

Management of Cooperative Societies

Section 3:343

[Administrative body]

(1) Cooperative societies shall be managed by the administrative body consisting of at least three members. Any provision of the statutes which provides for a administrative body of less than three members shall be null and void.

(2) The general meeting shall elect the chairman and members of the administrative body for a term of five years, or - if the cooperative society is established for a shorter period - for that period.

Section 3:344

[Administrative body operating procedures]

(1) The administrative body shall exercise its rights and perform its duties as an independent body.

(2) The administrative body shall have a quorum if at least two-thirds of its members are present. The administrative body shall adopt its resolutions by simple majority of the members present. Any clause of the statutes providing for a lower voting ratio shall be null and void. The session of the administrative body shall be called by the chairman or a member of the administrative body he has appointed. The administrative body shall determine its own rules of procedure.

(3) The administrative body is vested with powers to decide all matters which are not conferred under the competence of the general meeting or the supervisory body by law or the statutes.

(4) The responsibility to convene the general meeting, including the preparation and execution of its decisions lies with the administrative body.

(5) The administrative body shall give account concerning its activities, the financial situation and the business policy of the cooperative society at least once every year for the general meeting, and at least once every three months for the supervisory board. Any clause of the statutes providing for less frequent reporting shall be null and void.

Section 3:345

[Director of operations]

If the cooperative society has less than fifteen members, the statutes may provide for the office of director of operations in lieu of the administrative body, vested with the same powers as the administrative body.

Section 3:346

[Executive officers of cooperative societies, grounds for exclusion and the reasons giving cause to conflict of interest]

(1) Executive officers of cooperative societies are the chairman and members of the administrative body or the director of operations.

(2) Executive officers of cooperative societies may hold membership in that cooperative society. The member of the cooperative society with legal personality shall appoint a natural person to exercise management on its behalf.

(3) Apart from the grounds for exclusion applicable to the executive officers of legal persons, the close relative or domestic partner of any executive officer or supervisory body member of the cooperative society may not function as the executive officer of that cooperative society.

(4) Executive officers of cooperative societies may not acquire any share - not including the shares of public limited companies - and may not hold an executive office in a cooperative society or business association that is engaged in the pursuit of the same economic activity as its main activity, as the cooperative society in which they hold an executive office. In the event of accepting a new executive office, within fifteen days of accepting such office the executive officer shall notify any other cooperative society and business association in which he already serves as an executive officer or a supervisory board member.

(5) With the exception of everyday dealings, an executive officer and his close relatives may not conclude any transactions falling within the scope of the main activities of the cooperative society in his own name or on his own behalf.

(6) Claims for damages caused by an executive officer to the cooperative society by any infringement of the regulations on conflicts of interest may be enforced for a period of one year from the occurrence of such damage.

Section 3:347

[Actions of executive officers]

(1) The executive officer shall manage the cooperative society independently, based on the primacy of the cooperative society's interest. The executive officer shall discharge his duties bond to the relevant legislation, the statutes and the resolutions of the general meeting. The executive officer may not be instructed by the members of the cooperative society and his competence may not be negated by the general meeting.

(2) Following termination of the cooperative society without succession, claims for damages caused by executive officers to the cooperative society in that capacity may be brought by the members with membership at the time of the cooperative society's removal from the registry, within a preclusive period of one year following the time of removal. Members may enforce any claim for compensation up to their rightful share from the assets distributed upon termination of the cooperative society.

(3)³⁸ In the event of a cooperative society's dissolution without succession, creditors may bring action for damages up to their claims outstanding against the cooperative society's executive officers on the grounds of non-contractual liability, should the executive officer affected fail to take the creditors' interests into account in the event of an imminent threat to the cooperative society's solvency. This provision is not applicable in the case where the cooperative society is wound up without going into liquidation.

Section 3:348

[Termination of executive officers]

In addition to the grounds for the termination of the mandate of executive officers set out under the common provisions applicable to legal persons, the mandate of the executive officer of a cooperative society shall cease to exist upon the termination of membership.

Chapter XLIII

Supervisory Body

Section 3:349

[Supervisory body]

(1) The supervisory body of a cooperative society is comprised of three members. Any provision of the statutes which provides for a supervisory body of less than three members shall be null and void.

(2) Members of the supervisory body are elected for a term of five years, or - if the cooperative society is established for a shorter period - for that period.

³⁸ Enters into force as under Subsection (24) of Section 185 of Act CCLII of 2013.

(3) The regulations governing personal service contracts shall also apply to members of the supervisory body.

Section 3:350

[Supervisory body operating procedures]

- (1) The supervisory body shall have a quorum if at least two-thirds of its members are present.
- (2) Meetings of the supervisory body are called by the chairman.
- (3) The supervisory body shall establish its own rules of procedure.
- (4) The supervisory body shall give account of its activities to the general meeting at least once a year. Any provision of the statutes providing for a less frequent reporting obligation shall be null and void.

Chapter XLIV

Auditor

Section 3:351

[Responsibilities of the auditor]

- (1) The auditor shall be responsible for carrying out the audits of accounting documents according to the relevant regulations, and to provide an independent audit report to determine as to whether the annual account of the cooperative society is in conformity with legal requirements, and whether it provides a true and fair view of the cooperative society's assets and liabilities, financial position, and profit or loss.
- (2) The auditor of a cooperative society may be an individual auditor or an audit firm shown in the register of auditors. Where auditing services are provided by an organization, this organization shall be required to designate the person who will be personally responsible for carrying out the audits.
- (3) A member, executive officer or supervisory board member of the cooperative society and the family members of these persons may not serve as the auditor of that cooperative society. An employee of the cooperative society may not serve as the auditor during the period of employment and for a period of three years thereafter.

Section 3:352

[Commencement and term of assignment of the auditor]

- (1) The first auditor of the cooperative society shall be designated in the statutes, after which the auditors are appointed by the general meeting. Management shall enter into a contract with the auditor within ninety days following the date of delegation or appointment, under the terms and conditions and subject to the remuneration specified by the general meeting. If the contract is not concluded within said time limit, the general meeting shall select a new auditor.
- (2) The auditor is elected for a term of five years, or - if the cooperative society is established for a shorter period - for that period. The term of the auditor's mandate may not be less than the period beginning when the auditor is appointed by the general meeting and ending at the time of the general meeting convened to approve next year's annual account; any provision of the statutes to the contrary shall be null and void.

Section 3:353

[Carrying out the duties of the auditor]

(1) The auditor may not provide any service to a cooperative society, and may not collaborate with management in a way that may imperil his ability to carry out his auditing duties objectively and independently.

(2) The auditor shall treat all secrets of the cooperative society strictly confidential.

(3) The auditor shall be invited to the general meeting when discussing the cooperative society's financial report. The auditor must attend these meetings, however, if absent, the meeting will be held nonetheless. The general meeting may not adopt a decision concerning the financial report without hearing the auditor's opinion.

(4) The auditor may attend the meetings of management and - if the cooperative society has a supervisory body - the meetings of the supervisory body in an advisory capacity, or must attend such meetings when so requested by the supervisory body. The supervisory body shall put the items recommended by the auditor on the agenda.

TITLE XVIII

COOPERATIVE MEMBERSHIP

Section 3:354

[Commencement of membership]

(1) Membership in a cooperative society shall commence upon the foundation of the cooperative, or by way of application submitted upon admission.

(2) In the application for admission the applicant shall declare to abide by the provisions of the statutes of the cooperative society and shall indicate the capital contribution agreed upon. If the application for admission specified a commitment for personal involvement, the specifics of such involvement shall be explained in detail.

(3) The provision of capital contributions shall be governed by the rules applicable to the foundation of cooperative societies, where submission of the application for registration and registration shall be understood as the date of admission.

(4)³⁹ Prospective members seeking admission to the cooperative society are not required to provide any capital contribution insofar as another member transfers his share from the cooperative society's assets, or a part thereof, upon such new member.

Section 3:355

[Register of members]

Cooperative societies shall keep a register of their members, containing the member's name and home address, or registered office of members that are not natural persons, the amount of the member's capital contribution, and the date of commencement and termination of membership. The register shall be accessible to the general public subject to proof of concern.

Section 3:356

³⁹ Enters into force as under Subsection (25) of Section 185 of Act CCLII of 2013.

[Members fundamental rights]

(1) Members shall have equal rights in the governance and control of the cooperative society, irrespective of their capital contributions.

(2) The profits of a cooperative society may be distributed among its members. Half of the cooperative society's profits shall be distributed among the members in proportion to their personal involvement; any provision of the statutes which provides for a distribution ratio in connection with personal involvement in less than half of the profits shall be null and void.

Section 3:357

[Supplementary payments]

(1) If the statutes contains provisions to authorize the general meeting to order an obligation upon the members to provide supplementary capital contributions in order to cover the cooperative society's losses, members may be obligated to provide additional contributions once in a year, in proportion to their capital contribution, and such payment may not exceed thirty per cent of the member's capital contribution.

(2) Supplementary capital contributions which are not required to cover losses shall be repaid to the members. Such repayment, however, may only take place after full payment of the agreed capital contribution.

(3) The provisions on non-performance of capital contribution shall apply to any failure to provide supplementary capital contributions.

Section 3:358

[Termination of membership]

Membership shall terminate:

- a) upon the member's withdrawal from the cooperative society;
- b) if the member did not provide his capital contribution (supplementary payments) within the time limit specified by the statutes or in the general meeting resolution;
- c) upon the member's death (dissolution);
- d) upon the member being excluded by court order;
- e) upon the cooperative being terminated by way of transformation, merger or division, or if dissolved without succession.

Section 3:359

[Withdrawal of members]

Any member wishing to withdraw from the cooperative society shall notify the administrative body in writing. Membership may be terminated after three months from the date of the notice of withdrawal; any provision of the statutes providing for a time limit of over three months shall be null and void in respect of the part exceeding the three month period.

Section 3:360

[Exclusion of members]

(1) A member of a cooperative society can be excluded from the cooperative society by court ruling based on a claim launched by the cooperative society against such member, if the

continued membership of the person in question would seriously jeopardize the cooperative society's objective. Membership shall terminate upon the member's exclusion.

(2) A procedure for the exclusion of a member may be opened upon a resolution adopted by the general meeting by at least a three-quarters majority of all members. The member affected may not vote on that issue.

(3) The action showing the grounds for exclusion shall be brought within a fifteen-day preclusive period from the date of the general meeting's resolution.

(4) The court may suspend the membership rights of the member affected upon request, before the final court ruling, if continued exercise of such membership rights would seriously harm the cooperative society's interests. Such suspension shall not affect the member's right to a share of the profit.

(5) During the period of suspension of membership rights, the statutes may not be amended, an action for the exclusion of another member may not be opened, and a decision may not be taken to resolve the transformation, merger or division of the cooperative society, or its dissolution without succession.

Section 3:361

[Settlement upon the termination of membership]

(1)⁴⁰ If membership is terminated, the member or his successor shall be entitled to the value of his capital contribution, plus the increments in the equity capital earned during the membership period in the percentage said contribution represents in the capital, with the tied up reserve deducted, if it was not appropriated to cover any losses. The above-specified share shall be disbursed within three months from the termination of membership; any provision of the statutes providing for a time limit of over three months shall be null and void in respect of the part exceeding the eight year period.

(2)⁴¹ Upon the termination of membership, at the member's request any asset he has provided to the cooperative for common use shall be returned to the member or to his successor if not seeking admission to join the cooperative society, provided that the asset in question is still in the cooperative's possession. Said disbursement shall take place in conjunction with the settlement referred to in Subsection (1). If the asset provided for common use is no longer in the cooperative's possession as a result of normal wear and tear, the cooperative society shall not be held liable to pay any compensation. If the above-specified asset is used following the termination of membership, a fee shall be paid to the former member or to his successor if not seeking admission to join the cooperative, for the period until such asset is returned.

TITLE XIX

PROTECTION OF MINORITY STAKEHOLDERS

Section 3:362

⁴⁰ Enters into force as under Subsection (26) of Section 185 of Act CCLII of 2013.

⁴¹ Enters into force as under Paragraph f) of Subsection (30) of Section 185 of Act CCLII of 2013.

[Convocation of the general meeting]

(1) Members of the cooperative society together controlling at least five per cent of the voting rights may, at any time, request that the general meeting be convened, indicating the reason and the purpose thereof, or the passing of a decision out of session. If management fails to comply with such request within eight days of the date of receipt, and fails to convene the general meeting at the earliest possible date, or fails to provide for the passing of a decision without a meeting, the court of registry shall convene the general meeting at the request of the members making the proposal, or shall empower the requesting members to convene the general meeting within the prescribed deadline, or to carry out the procedure for the passing of a decision out of session.

(2) The expected costs shall be covered by the requesting members. The general meeting shall decide in a session convened at the request of minority stakeholders or by way of a decision adopted without a meeting whether the costs incurred be borne by the cooperative society or the persons convening such meeting.

Section 3:363

[Requesting special audits]

(1) If the general meeting has refused - or did not present for decision - a proposal that the last financial report, or any economic event which has occurred in connection with the activities of management during the last two years, or any commitment be examined by an auditor to be engaged specifically for this purpose, such examination shall be ordered at the expense of the cooperative society, and the auditor shall be appointed, by the court of registry upon a request by any one member or members controlling at least five per cent of the votes submitted within a thirty-day preclusive period calculated from the date when the general meeting was held.

(2) The court of registry shall refuse the request in the event of abuse of minority rights by the members presenting the request.

(3) The cooperative society's auditor may not be appointed to carry out such special audits.

(4) The costs of the audit shall be advanced and borne by the cooperative society. The cooperative society may charge the costs upon the member concerned if requesting the audit was manifestly unfounded.

Section 3:364

[Initiating the enforcement of claims]

If the general meeting has refused - or did not present for decision - a request to enforce a claim against the members, executive officers, supervisory board members or against the auditor of the cooperative society, any one member or members controlling at least five per cent of the votes may move within a thirty-day preclusive period calculated from the date of the general meeting to enforce such claim themselves on behalf and for the benefit of the cooperative society.

Section 3:365

[Prohibition of derogations]

Any provision of the statutes which derogates from the provisions of this Title to the detriment of minorities shall be null and void.

TITLE XX

TRANSFORMATION, MERGER AND DIVISION OF COOPERATIVE SOCIETIES

Section 3:366

[Transformation, merger and division of cooperative societies]

(1) Transformation, merger or division may be initiated by at least ten per cent of the members or by the administrative body.

(2) The members who decided to withdraw from the cooperative society upon transformation, merger or division shall be liable for a period of five years following the time of their withdrawal for any liability of the cooperative society arising before the termination of his membership, which have not been covered by the successor, up to the amount of the emolument to which they are entitled upon termination of their membership.

(3) A cooperative society may be converted into a private limited-liability company or a limited company.

(4) A limited company established upon the transformation of a cooperative society may only be established privately.

TITLE XXI

TERMINATION OF COOPERATIVE SOCIETIES

Section 3:367

[Termination of cooperative societies]

Apart from the general cases of dissolution of a legal person without succession, a cooperative society shall be dissolved without succession if the number of its members drops below seven, and the cooperative society does not apply for the registration of an adequate number of new members at the court of registry within a preclusive period of six months from that time.

PART FIVE

GROUPINGS

Section 3:368

[Definition of groupings]

(1) A grouping (egyesülés) is a cooperative association with legal personality, founded by its members in order to improve the efficiency of their financial management, to coordinate their economic activities, and to represent their professional interests. The purpose of a grouping is not to make profits for itself; its members shall bear unlimited, joint and several liability for debts exceeding the grouping's assets.

(2) A grouping may also pursue other service and joint economic activities (economic auxiliary activities) in support of its coordination duties.

(3) The common provisions relating to business associations shall apply to groupings subject to the exceptions set out in this Part.

Section 3:369

[Memorandum of association of groupings]

(1) In addition to the standard contents of the mandatory layout of the instrument of constitution, the memorandum of association of a grouping shall specify:

a) the responsibilities for facilitating and coordinating the business activities of members, and the related interest representation activities;

b) the division of operating costs among members, the amount and method of settlement of the payments of individual members;

c) in the event of the withdrawal of a member, the conditions for disbursing the share of assets due to that member;

d) the order of distributing assets that remain following the dissolution of the grouping.

(2) If so required, the memorandum of association shall inter alia define:

a) the economic auxiliary activities;

b) the amount of assets of the grouping necessary for conducting economic auxiliary activities;

c) within the framework of economic auxiliary activities, the extent of voting rights of individual members, and the method of exercising such rights;

d) the rules for keeping separate records on the income from, and the costs and expenses of economic auxiliary activities, and appropriating after-tax profits from economic auxiliary activities as determined based on these records;

e) the conditions relating to other services of value (hereinafter referred to as „ancillary services”) due from members.

Section 3:370

[Financial issues between the company and its members]

(1) Members are entitled to use the services provided by the grouping without compensation; they are entitled to a share of after-tax profits from economic activities provided to third parties.

(2) Members may be entitled to remuneration for such ancillary services.

(3) After-tax profits arising from economic activities shall be distributed among members in proportion to their contributions. Otherwise, profits shall be distributed among members in equal proportions.

Section 3:371

[Members' meeting]

(1) The supreme body of a grouping is the members' meeting. Members may not be represented at the members' meeting by the director, the supervisory board members or the auditor.

(2) The members' meeting shall convene at least once every year, or as necessary. Any clause of the statutes providing for less frequent meetings shall be null and void.

(3) The members' meeting has a quorum if members representing at least three-quarters or more of the votes are present.

Section 3:372

[Powers of the members' meeting, decision-making]

(1) The following shall fall within the exclusive competence of the members' meeting:

- a) drawing up the rules pertaining to the management and control of the grouping's internal organization;
- b) laying down the strategy for coordination and interest representation activities, and for economic auxiliary activities;
- c) approval of the grouping's financial report;
- d) decision on the appropriation of after-tax profits from economic auxiliary activities;
- e) adopting resolutions to define the tasks to be implemented in the business administration of members;
- f) decision on dissolution without succession, transformation, merger or division of the grouping;
- g) approval of admission to the grouping, and approval of the restriction of liability of new members;
- h) election and removal of the director, as well as the exercise of employer's rights related to the director;
- i) election of the supervisory board, where applicable, the removal of its members, and establishing their remuneration;
- j) if the grouping employs an auditor, appointment and removal of the auditor, and establishing his remuneration;
- k) amendments to the memorandum of association;
- l) initiating the exclusion of a member;
- m) decisions to conclude or amend contracts the values of which exceeds the value limit specified in the memorandum of association, or which are concluded between the grouping and one of its members outside the scope of its ordinary activity;
- n) decisions on all issues which are conferred under the competence of the members' meeting by this Act or the memorandum of association.

(2) In connection with issues of coordination and interest representation all members shall have one vote. The memorandum of association may, however, grant multiple voting rights to certain members, with the restriction that no single member may acquire more than fifty per cent of the votes.

(3) Within the scope of economic auxiliary activities, as well as on the issues listed under Paragraphs f)-g) and l)-m) of Subsection (1) hereof, voting rights shall be established in proportion to the capital contributions provided, or failing this, equivalent votes shall be granted.

(4) An unanimous decision by the members shall be required:

- a) for changing the activity of the grouping;
- b) for changing the number of votes of the individual members;
- c) altering the conditions for passing resolutions.

(5) A majority of at least three-quarters of the votes shall be required to resolve the dissolution of the grouping without succession, transformation, merger or division, to grant approval for the admission of new members and to initiate the exclusion of members, as well as to amend the memorandum of association for any other reason, if such amendment does not fall within the scope of Subsection (3).

(6) A majority of at least three-quarters of the votes shall be required in order to adopt a resolution aiming to establish obligations to be implemented within the business administration of members. Such resolution may be adopted with the consent of the member concerned.

Section 3:373

[Management and representation of groupings]

(1) Management and representation of a grouping shall be carried out by the director within the framework of the resolutions of the members' meeting.

(2) The memorandum of association may contain provisions to confer management upon a management board consisting of three members. In that case, the members of the management board shall be treated as directors. The decision for the election of members of the management board, their term in office, remuneration and dismissal, and on the approval of the management board's rules of procedure lies with the members' meeting.

Section 3:374

[Accession]

(1) According to the conditions contained in the memorandum of association, any person may join a grouping.

(2) Decisions for admission lie with the members' meeting, including the date of admission, the related obligations, and the extent of the voting rights of the new member within the scope of the economic auxiliary activities.

(3) New members shall be liable for the obligations of the grouping arising prior to their admission, unless the resolution approving admission exempts new members from such liability previously.

(4) The fact and date of the admission, as well as the exemption from liability shall be entered in the register. Exemptions shall be considered effective in dealings with third parties as of the date of such entry.

Section 3:375

[Termination of membership]

(1) Membership shall terminate:

a) if the member failed to provide his capital contribution defined in the memorandum of association within the prescribed deadline of not less than fifteen days, despite having been asked to do so;

b) upon withdrawal of the member;

c) upon the member's exclusion;

d) upon death or dissolution of the member without succession;

e) if the existence of such is considered unlawful;

f) upon the transfer of membership rights.

(2) The transfer of membership rights shall be governed by the regulations on admission.

(3) Members may withdraw from the grouping at the end of the year. Notice of intention to withdraw shall be submitted at least three months before the end of the year.

Section 3:376

[Rules of accounting with departing members]

(1) Accounts shall be settled with departing members according to the status existing at the time of withdrawal. The members' meeting shall decide when and in what installments the share of assets due to the departing member is to be disbursed. The date set for disbursement shall not

jeopardize the continued operation of the grouping, and disbursement shall be completed within a period of one year.

(2) If disbursement does not take place upon the member's withdrawal, a proportionate share of after-tax profits shall be due to the departing member commensurate with his assets yet to be disbursed.

(3) In the event of the member's death or dissolution, the provisions of Subsections (1)-(2) shall apply to rendering accounts with the member's legal successor or heir. If, however, the successor or heir intends to continue the activity of the member, he may join the grouping upon the consent of the members' meeting. In that case, liability for obligations arising prior to the termination of the membership of the predecessor shall be borne by the new member assuming the membership rights.

Section 3:377

[Distribution of assets upon termination of the grouping]

In the event of dissolution of a grouping without succession, the assets remaining after settlement of all debts shall be distributed among the members in equal proportions, or, if capital contributions were provided by the members, it shall be distributed in proportion to the capital contributions of such members.

PART SIX

FOUNDATIONS

TITLE XXII

DEFINITION OF FOUNDATIONS, SETTING UP FOUNDATIONS, ASSETS OF FOUNDATIONS

Section 3:378

[Definition of foundations]

Foundations (alapítvány) are legal persons set up to pursue the long-term objective defined in the charter document. The founder shall define in the charter document the funds made available to the foundation and the organizational structure of the foundation.

Section 3:379

[Limitations on the activities of foundations]

(1) A foundation may not be formed with the objective of performing economic activities.

(2) Foundations are authorized to perform economic activities only if they are directly connected to the achievement of the foundation's goals.

(3) A foundation may not be a partner with unlimited liability in another legal entity, may not set up another foundation, and may not join another foundation.

(4) Unless otherwise provided for in this Act, a foundation may not be established in the interest of its founder, any member current or future, any officer of the foundation, any member

of a foundation organ, or the family members of these persons. This provision shall be without prejudice to the contractual remuneration of the foundation's officers.

Section 3:380

[Setting up a foundation by more than one founders]

- (1) A foundation may be set up by several persons jointly.
- (2) Where a foundation is established by several persons, founder's rights shall be exercised by these persons jointly.

Section 3:381

[Withdrawal of legal statement for setting up a foundation]

Before the time of registration the founder shall be entitled to withdraw his legal statement for setting up a foundation.

Section 3:382

[Provision of funds]

- (1) The founder shall provide the funds required for the foundation's purpose as provided for in the charter document.
- (2) The founder shall place at the foundation's disposal funds to cover at least the expenses for taking up operations at the latest by the time of submission of the application for registration.
- (3) The founder shall place at the foundation's disposal the whole of the committed assets within one year after the time of registration of the foundation.
- (4) If the founder fails to place the whole of the committed assets at the foundation's disposal by the deadline specified in the charter document, the board of trustees shall call upon the founder to comply within the prescribed time limit. In the event of non-compliance within the prescribed time limit, the court of registry - acting upon notice received from the board of trustees - shall suspend the exercise of founder's rights. During the period of suspension the court of registry shall exercise founder's rights.
- (5) The suspension of founder's rights shall not relieve the founder of his obligation undertaken in the charter document.

Section 3:383

[Joining a foundation]

- (1) A foundation may accept new members upon the contribution of funds, subject to the conditions set out in the charter document.
- (2) If the new member is granted entitlement to exercise founder's rights under the charter document, such rights may be exercised after the accession in conjunction with other persons having the same entitlement.

Section 3:384

[Management and protection of the foundation's assets]

- (1) Foundations shall manage and use their assets in accordance with their purpose, as provided for in the charter document.

(2) The founder and new members may not appropriate the foundation's assets for other purposes and may not demand to recover such assets; any provision of the charter document to the contrary shall be null and void. This provision shall also apply to the founder's and any new member's successor as well.

Section 3:385

[Beneficiaries]

Financial benefits may be provided from the foundation's assets, consistent with the foundation's objectives, to persons designated as beneficiaries in the charter document, or in the absence of such instruction, by the appropriate foundation organ.

Section 3:386

[Founder and his family member named as beneficiary]

(1) The founder and any new member can be named as beneficiary if the foundation is established for the purpose of caring for the founder's scientific, literary and artistic works.

(2) The family members of the founder and any new member can be named as beneficiary if the foundation is established for the purpose of caring for the family member's scientific, literary and artistic works, or the caring, nursing or maintenance of the family member, covering the family member's medical expenses, and supporting his education by way of scholarship or otherwise.

Section 3:387

[Claims which may be lodged by the beneficiary against the foundation]

The designated beneficiary may not make any claims against the foundation, except if:

a) the charter document properly specifies the person of the beneficiary, the benefits due to such person, and the date when the benefits are due; or

b) the board of trustees has adopted a decision for providing benefits to the beneficiary and delivered this decision to the beneficiary, and the beneficiary accepted the applicable conditions.

TITLE XXIII

SETTING UP A FOUNDATION BY WAY OF TESTAMENTARY DISPOSITION

Section 3:388

[Setting up a foundation by way of testamentary disposition]

(1) A foundation may be set up by means of a holographic will or an agreement as to succession. In these cases the testamentary disposition is to contain the content elements of the charter document.

(2) In the case of a foundation set up by means of a holographic will or an agreement as to succession, the application for the foundation's registration shall be handled by a person designated to sit on the board of trustees. If neither of the persons designated to sit on the board

of trustees provides for the registration of the foundation, it will be handled by the guardian ad litem appointed by the court of registry.

(3) A foundation set up by means of a holographic will or an agreement as to succession shall enter into existence with retroactive effect from the date of registration.

(4) The person dealing with the registration of the foundation shall be entitled to take action in connection with the foundation's assets and shall provide for the protection of such assets.

Section 3:389

[Setting up a foundation by way of enjoinder]

(1) Setting up a foundation may be ordered by the testator by means of enjoinder. The enjoinder shall specify the purpose of the foundation to be established and the funds of the foundation, as well as a person vested with the right to demand that the foundation be established.

(2) If the person who is the subject of the enjoinder fails to comply, the person entitled to demand the starting of the foundation may bring court action to demand to have the foundation's charter document drafted by court verdict and to order the heir or the legatee to provide funds for starting the foundation. The person entitled to demand the starting of the foundation may request the court of registry to register the foundation based on the said court ruling.

Section 3:390

[Failure to start a foundation by way of testamentary disposition]

(1) If the foundation is not started in the public interest as provided for in a will or an agreement as to succession, the testator's grant shall be treated as a public interest enjoinder, and the assets designated for the foundation shall be handled in the interest of implementing the purpose of the foundation.

(2) If the private foundation provided for in a will or an agreement as to succession is not started, the assets thus affected shall form part of the estate.

TITLE XXIV

CHARTER DOCUMENT

Section 3:391

[Mandatory layout of the charter document]

(1) In addition to the standard contents of the mandatory layout of the instrument of constitution of a legal person, the charter document of a foundation shall specify:

a) if it was established for a fixed or unfixed duration, and the fixed-term of the foundation if applicable;

b) the rules for the management and appropriation of the foundation's assets;

c) the rules for the commencement and termination of membership in the board of trustees, if such mandate is awarded for a fixed or unfixed duration, the fixed-term of membership in the board of trustees if applicable, and the grounds for exclusion of members of the board of trustees, and the reasons giving cause to conflict of interest;

d) the rules for determining the remuneration of members of the board of trustees.

(2) The charter document shall - if necessary - provide for:

- a) the rules for delegating founder's rights upon a specific foundation organ;
- b) the rules for the transfer of founder's rights;
- c) granting permission for joining the foundation in exchange for the contribution of funds, the conditions thereof, and the founder's and other rights of the new member;
- d) the pursuit of economic activities, and the framework thereof;
- e) the powers of foundation organs, including their rules of procedure;
- f) the convocation of founders' meetings, including the operational arrangements for such meetings;
- g) the formation of foundation organs not provided for in this Act, laying down their rules of procedure, and for the appointment, recall and remuneration of members of such organs;
- h) the detailed rules for representing the foundation, including the designation of a party entitled to exercise employer's rights in connection with the foundation's employees;
- i) the range of beneficiaries, or naming specific persons as beneficiaries, and for the services and rights which are due to the beneficiaries;
- j) naming the person to whom the foundation's remaining assets will be transferred in the event of the foundation's dissolution without succession.

(3)⁴² The founder shall, in the charter, be entitled to confer legal personality upon an organizational unit of the foundation.

Section 3:392

[Interpretation of the charter document]

The charter document shall be interpreted in accordance with the entire understanding of the founder, with a view to achieving the foundation's objective.

Section 3:393

[Amendment of the charter document]

(1) Any amendment of the charter document aiming to alter the foundation's purpose shall be considered annulled, except if the foundation has fulfilled its purpose, or if achieving the foundation's objective is no longer possible and the foundation has enough funds for its new objective.

(2) Any amendment of the charter document aiming to diminish the foundation's assets, or to change the person designated as the beneficiary for the eventuality of dissolution without succession - if a new member joined the foundation - shall be considered null and void.

TITLE XXV

THE EXERCISING OF FOUNDER'S RIGHTS

Section 3:394

[Exercising founder's rights in the founder's absence]

⁴² Enters into force as under Subsection (27) of Section 185 of Act CCLII of 2013.

(1) In the event of the founder's death or dissolution without succession, or if permanently unable to exercise founder's rights, founder's rights shall be exercised by a person or foundation organ designated in the charter document, or failing this, by the board of trustees.

(2) If founder's rights are exercised by a person other than the founder, the provisions of this Act pertaining to the founder shall apply to the person or organ effectively exercising founder's rights.

(3) Where a specific foundation organ has authority to exercise founder's rights, such foundation organ shall not be able to exercise founder's rights in dealings with its own members and director, including other persons with authority to supervise the organ in question.

(4) If the right to exercise founder's rights has not been delegated upon any person or organ as provided for in Subsections (1)-(3), founder's rights shall be exercised by the court of registry.

Section 3:395

[Founders' meetings]

(1) If a foundation is started by several persons, where founder's rights are exercised collectively in the form of a body, in matters not regulated by the charter document the provisions on the general meeting of associations shall apply to the founders' meeting.

(2) In exercising founder's rights by way of the founders meeting, any founder who cannot be located and who fails to exercise his founder's rights despite of being so advised by means of public notice shall be disregarded.

(3) The provisions contained in Subsection (2) shall also apply if a designated organ of the foundation exercises founder's rights in the form of a body.

Section 3:396

[Assignment of the rights and obligations of founders]

The founder shall be entitled to assign founder's rights and obligations upon having provided the capital contribution in accordance with the charter document.

TITLE XXVI

FOUNDATION ORGANS

Section 3:397

[Board of trustees]

(1) The board of trustees functions as the foundation's managing body. Members of the board of trustees are the executive officers of the foundation.

(2) The board is comprised of three natural persons, at least two of which shall be residents of Hungary.

(3) No beneficiary of the foundation or his close relative may hold a seat on the board. Any provision of the charter document to the contrary shall be null and void.

(4) The founder and his close relatives may not have majority in the board of trustees. Any provision of the charter document to the contrary shall be null and void.

(5) The founder may appoint a trustee to function as a single-member managing body of the foundation. The provisions pertaining to the board of trustees shall also apply to the trustee.

Section 3:398

[Provisions relating to membership in the board of trustees]

- (1) Members of the board are elected for a specified or unspecified duration.
- (2) The person exercising founders' rights shall have authority to recall any member of the board of trustees before the expiry of his mandate, if he considers that the foundation's purpose is in imminent jeopardy.

Section 3:399

[Board of trustees operating procedures]

- (1) If the founder did not reserve the right to delegate the chairman of the board of trustees and did not transfer this right to another officer of the foundation or to another foundation organ, members of the board of trustees shall elect a chairman from among themselves.
- (2) The board of trustees shall convene at least once a year, called by the chairman. Any clause of the charter document providing for less frequent meetings shall be null and void.
- (3) The board of trustees shall be convened at the request of either of its members, with the purpose and the reason indicated. If so requested, the chairman of the board of trustees shall take measures within eight days from the date of receipt of the request for calling the meeting. If the chairman of the board of trustees fails to comply with the request, the requesting member shall have authority to convene the meeting.

Section 3:400

[Supervisory body]

- (1) If the foundation has a supervisory body, it shall carry out its activities on the founder's behalf, and shall once a year give account of its activities to the person exercising founder's rights.
- (2) The grounds for exclusion of members of the board of trustees, and the reasons giving cause to any conflict of interest shall also apply to members of the supervisory body.

Section 3:401

[Other foundation organs]

Other foundation organs should not undermine the rights of the board of trustees, the supervisory body or the auditor.

TITLE XXVII

TRANSFORMATION AND DISSOLUTION OF FOUNDATIONS

Section 3:402

[Transformation of foundations]

- (1)⁴³ A foundation may not be transformed to another type of legal person. A foundation may merge only with another foundation or may be divided into foundations only.

⁴³ Enters into force as under Subsection (28) of Section 185 of Act CCLII of 2013.

(2) The founder may decide to merge the foundation with another foundation, or to divide the foundation, upon having provided the capital contribution specified in the charter document.

(3) Merger or division must not be allowed to impair the foundation's assets, and may not jeopardize the foundation's purpose.

Section 3:403

[Dissolution of foundations]

(1) A foundation shall cease to exist if:

- a) the foundation has fulfilled its purpose, and a new objective has not been determined;
- b) fulfillment of the foundation's purpose is no longer possible, and revisiting the objective or merging with another foundation cannot be done; or
- c) the foundation is not pursuing any activity with a view to fulfilling its goal for a period of three years.

(2) The founder shall not have the right to dissolve the foundation.

(3) Upon the occurrence of any reason for termination, the board shall notify the person or organ exercising founder's rights to take the necessary measures and shall relate said reason for termination to the supervisory body and the auditor as well.

(4) If the person or organ exercising founder's rights fails to take proper action based on the reason for termination within thirty days, the board shall then report the reason for termination to the court of registry. Members of the board of trustees shall bear joint and several liability towards third parties for damages arising from non-compliance with the obligation of notification in due time.

(5) In the event of the foundation's dissolution without succession, the assets of the foundation remaining after all creditors' claims are satisfied shall be provided for in the certificate of dissolution.

Section 3:404

[Assets of the foundation after dissolution without succession]

(1) In the event of the foundation's dissolution without succession, the assets of the foundation remaining after all creditors' claims are satisfied shall be given to the person so designated in the charter document, with the proviso that the assets due to the founder, any new member, other benefactor, or their family members may not exceed the funds that the founder, new member, other benefactor, or their family members have provided to the foundation.

(2) Upon the foundation's dissolution without succession, the founder may dispose of the assets he has provided for the benefit of another foundation or an association having the same or similar objective, if the charter document fails to provide for the appropriation of the assets in such cases, or if such provision cannot be executed.

(3)⁴⁴ The court of registry shall assign the assets to an organization designated by law, if the charter document or the founder does not provide for the assets of the dissolved foundation, or if the person designated in the charter document, or the foundation, association the founder has designated refuses to accept it, or cannot acquire it.

⁴⁴ Enters into force as under Subsection (29) of Section 185 of Act CCLII of 2013.

(4)⁴⁵

PART SEVEN

STATE INVOLVEMENT IN CIVIL RELATIONS

Section 3:405

[The State as a subject at law]

- (1) The State shall participate in civil relations as a legal person.
- (2) The minister vested with powers to oversee State property shall represent the State in civil relations.

Section 3:406

[Liability for the obligations of the State]

The State and legal persons being part of general government shall remain liable for their obligations arising out of or in connection with civil relations even in the absence of budgetary appropriations.

BOOK FOUR

FAMILY LAW

PART ONE

PRINCIPLES

Section 4:1

[Protection of the institution of marriage and the family]

- (1) The institution of marriage and family life is protected by law.
- (2) The provisions of this Act shall be applied with a view to reconciling family life and individual interests.

Section 4:2

[Protection of the interests of children]

- (1) In family law the interests and rights of children merit enhanced protection.
- (2) All children have the right to grow up in their own family.
- (3) If raising a child in his own family is not an option, all possibilities should be explored to find ways for the child to grow up in a family environment and to maintain prior family ties.
- (4) The right of children to grow up in their own families, or alternatively in a family setting, and to maintaining prior family ties may be limited in cases defined by law, under exceptional circumstances and in the best interests of the child.

⁴⁵ Shall not enter into force as under Paragraph b) of Subsection (31) of Section 185 of Act CCLII of 2013.

Section 4:3

[Principle of equality of spouses]

In family life and in family affairs spouses shall be considered equals; they shall have equal rights and obligations.

Section 4:4

[Principle of fairness and protection of the weaker party]

Family relations should be resolved under the principle of fairness and in due consideration of the protection of the party who is considered weaker in standing up for his/her interests.

PART TWO

THE INSTITUTION OF MARRIAGE

TITLE I

THE ACT OF MARRIAGE

Section 4:5

[Contracting marriage]

(1) Marriage shall be considered contracted if a man and a woman together appears before the registrar in person and declare their intention to marry. Such declaration cannot be made subject to a condition or time limit.

(2) After the exchange of wedding vows, the registrar shall declare the parties united in marriage, and shall record the fact of marriage in the marriage registry.

(3) Marriage shall not be contracted in the absence of the conditions set out in Subsection (1). A non-existent marriage shall be treated as if it has never been contracted.

Section 4:6

[Establishing the existence or non-existence of marriage]

(1) If the existence or non-existence of a marriage cannot be clarified in administrative proceedings, an action for determining the existence or non-existence of a marriage may be brought by either of the spouses, the public prosecutor, or by any person who has a legal interest therein.

(2) The action shall be brought by a spouse against the other spouse, or by the public prosecutor or a third party authorized to bring action against both spouses. If the party against whom the action is to be brought is no longer alive, the guardian ad litem appointed by the court shall be named as the defendant in the action.

(3) The judgment on the existence or non-existence of the marriage applies to all parties involved.

Section 4:7

[Actions prior to marriage]

(1) Before marriage both parties to the marriage shall declare in front of the registrar that no legal impediment exists as to their marriage, and they shall verify that the legal requirements for their marriage are satisfied.

(2) The registrar shall schedule the marriage for a date thirty days after the time of receipt of the notification of intent to marry. In justified cases, the notary may grant exemption from that time limit.

(3) Where either of the parties to the marriage suffers in a terminal illness, the statement of the parties shall suffice in place of verifying all legal requirements of marriage, and marriage may be contracted immediately upon notification.

Section 4:8

[Formalities of marriage]

(1) Marriage shall take place publicly, in an office of the local authority before two witnesses.

(2) At the request of the parties the marriage may take place privately, or - subject to authorization by the notary - in a place other than the office of the local authority, if deemed appropriate.

TITLE II

ANNULMENT OF MARRIAGE

Chapter I

Causes of Annulment of Marriage

Section 4:9

[Legal age for marriage]

(1) The marriage of a minor shall be considered void if entered into without the prior consent of the guardian authority.

(2) In cases provided for by law, the guardian authority may authorize the marriage of a minor of limited legal capacity over the age of sixteen years.

(3) The guardian authority shall interview the parent or guardian before deciding on the granting or refusal of the authorization. If the parent has no authority to exercise parental custody in major issues relating to the child's affairs, or if his whereabouts are unknown or if any insurmountable obstacles exist, the aforesaid interview is not required.

(4) A marriage entered into without the guardian authority's permission or before the age of sixteen years shall become valid after six months following the date of the spouse reaching legal age with retroactive effect to the date of marriage, if the spouse affected does not challenge the existing marriage within such preclusive period, or if the court dismisses - at his request - any action previously brought on the same grounds by another person.

Section 4:10

[Marriage of an incompetent person placed under guardianship]

(1) The marriage of any person under guardianship invoking fully limited legal competency at the time of marriage shall be invalid.

(2) The marriage of a person under guardianship shall become valid after six months following the date of termination of guardianship with retroactive effect to the date of marriage, if the spouse who is the reason for invalidity does not challenge the existing marriage within such preclusive period, or if the court dismisses - at his request - any action previously brought on the same grounds by another person.

Section 4:11

[Marriage of an incompetent person]

(1) The marriage of any person who was legally incompetent at the time of marriage shall be invalid.

(2) The marriage shall become valid after six months following the date of the spouse regaining legal competency with retroactive effect to the date of marriage, if the spouse who is the reason for invalidity does not challenge the existing marriage inside such preclusive period.

Section 4:12

[Family ties, relations]

(1) Marriage shall be invalid if it takes place:

a) between relatives in direct line;

b) between siblings;

c) between a person and the biological descendant of his/her sibling; and

d) between the adoptive parent and the adopted person during the existence of the adoption.

(2) The marriage between a person and the biological descendant of his/her sibling shall not be considered invalid if the notary grants an exemption from the impediment to marriage before or after the marriage takes place. An exemption may be granted if the matrimonial union of the spouses does not jeopardize the health of their children to be born as a result of such relation.

Section 4:13

[Existing marriage]

(1) Marriage shall be declared invalid if one of the parties to the marriage is already married.

(2) The latter marriage shall become valid from the date of dissolution of the previous marriage. If the court declared the previous marriage annulled, the latter marriage shall become valid retroactively from the date when it took place.

Chapter II

Annulment of Marriages

Section 4:14

[Annulment of a marriage]

(1) A marriage shall be considered annulled upon the act of a court in voiding the marriage in an action brought for such reason (hereinafter referred to as „action for annulment”).

(2) The judgment for annulment of the marriage applies to all parties involved.

(3) An annulled marriage shall be subject to the legal effects set out in this Act.

Section 4:15

[Right to bring an action for annulment]

(1) Actions for annulment may be brought during the existence or after the dissolution of the marriage.

(2) Unless otherwise provided for in this Act, an action for annulment may be brought by either of the spouses, the public prosecutor, or by any person who has a legal interest in the nullity of the marriage.

(3) In the event of death of the person who brought the action, any person with a vested interest may take his/her place in the action.

Section 4:16

[Limitation of the right to bring an action]

(1) If a marriage was declared invalid due to the absence of permission to marry for reason of minority or for reason of guardianship the spouse who was the reason for invalidity may bring action for annulment after reaching legal age, or after the termination of guardianship. The action for annulment may be brought within six months from the time of reaching legal age, or from the time of termination of guardianship.

(2) An action for annulment may be brought on the grounds of incompetency at the time of marriage by the spouse who was legally incompetent at the time of marriage. The action for annulment may be brought within six months from the time of regaining legal competency, as from the day when legal competency was in fact re-established. In the event of the spouse's death before regaining legal competency, the public prosecutor may bring action for annulment of the marriage within six months from the date of the spouse's death.

(3) The deadlines specified in Subsections (1)-(2) shall apply with prejudice.

(4) If the spouse having exclusive right to bring action under Subsections (1)-(2) dies, any person who has the right to bring an action for annulment may join the action in his/her place.

Section 4:17

[Exercising the right to bring action]

(1) An action for annulment shall be brought by the entitled party in person.

(2) Any spouse whose capacity in legal actions has been partially limited may bring action without the consent of his/her legal representative.

(3) If the entitled party is incompetent, the action may be brought in his/her name by the legal representative upon the guardian authority's consent.

Section 4:18

[Respondents in actions for annulment]

The action for annulment shall be brought by a spouse against the other spouse, or by the public prosecutor or a third party authorized to bring action against both spouses. If the party against whom the action is to be brought is no longer alive, the guardian ad litem appointed by the court shall be named as the defendant in the action.

Section 4:19

[Validity of marriages]

The provisions pertaining to actions for the annulment of marriages shall apply mutatis mutandis to actions for the validity of marriages.

TITLE III

TERMINATION OF MARRIAGES

Section 4:20

[Cases of termination of a marriage]

(1) Marriage shall cease to exist:

- a)* in the event of the death of one of the spouses;
- b)* if dissolved by court order.

(2) The marriage shall be considered terminated if the other spouse re-married - if the registry entry on the spouse's death or the court ruling declaring the person in question dead or on the legal presumption of death is abolished upon the latter marriage - provided that neither of the parties to the marriage had been aware that the death did not occur.

(3) In the cases provided for in Paragraph *a)* of Subsection (1) and in Subsection (2) hereof, the date of dissolution of the marriage shall be the day shown as the date of death on the death certificate or in the relevant court decision. In the case of Paragraph *b)* of Subsection (1) the marriage shall be considered terminated on the effective date of the final judgment granting divorce.

Section 4:21

[Dissolution of marriage]

(1) The court shall dissolve the marriage at the request of either of the spouses, in the event of breakdown of the marriage due to irreconcilable differences. The marriage shall be considered to have broken down if the relationship of the spouses has been destroyed and there is no reasonable expectation of reconciliation judging from the events that led to destruction of their life as a couple, or based on the length of their separation.

(2) The court shall dissolve the marriage irrespective of what is contained in Subsection (1), if so requested by the spouses based on their mutual agreement reached without undue influence reflecting their final intent.

(3) Dissolution of the marriage under Subsection (2) should be possible if the spouses agreed upon parental custody in connection with their common child, including visitation rights between the separated parent and the child, the maintenance of the child, use of the spouses common home, and also on spousal support where applicable, and if the court sustained their settlement agreement.

(4) If the spouses agreed to exercise parental supervision jointly, no agreement is required in terms of visitation rights, however, the child's home must be specified.

(5) The dissolution of marriage shall be carried out in consideration of the best interest of the common child.

(6) In exercising parental supervision, in the relationship between parent and child and in making arrangements for the maintenance of the child, the best interest of the child must be given priority.

Section 4:22

[Mediation]

Before filing for divorce, or during the divorce action the spouses shall have access to mediation - of their own accord or by recommendation of the court - attempting to reconcile their differences or to settle any disputes they may have in connection with the divorce by way of an agreement. The agreement reached in conclusion of the mediation process may be fixed in a court settlement.

Section 4:23

[Bringing action for the dissolution of marriage; effect of divorce]

(1) An action for the dissolution of marriage shall be filed by a spouse against the other spouse, in person.

(2) Any spouse whose capacity in legal actions has been partially limited may also bring action without the consent of his/her legal representative.

(3) If the spouse is incompetent, the action may be brought in his/her name by the legal representative upon the guardian authority's consent.

(4) The decree of divorce applies to all parties involved.

TITLE IV

PERSONAL RELATIONS OF SPOUSES

Chapter III

General Provisions

Section 4:24

[Obligation of cooperation and support]

(1) Spouses must be loyal and faithful to each other; they shall cooperate in their common goals and shall support one another.

(2) In cases defined by law, the obligation of support shall remain in force after the dissolution of the marriage.

Section 4:25

[Collective and individual power of decision]

In family life and in family affairs spouses shall make decisions collectively, in their personal affairs the spouses shall decide themselves, in the best interest of the family, taking also into account the interest of their children and their own.

Section 4:26

[Choosing a home]

Spouses shall choose their home jointly, in agreement with each other.

Chapter IV

Married Names

Section 4:27

[Provisions on surnames in marriage]

(1) Upon marriage, the wife shall have the option:

a) to keep her birth name, or her name immediately before the time of marriage;

b) to bear her husband's full name with an indication of marital status, possibly with her name immediately before the time of marriage attached;

c) to bear her husband's surname with an indication of marital status and with her name immediately before the time of marriage attached; or

d) to bear her husband's surname with her own forename.

(2) Upon marriage, the husband shall have the option:

a) to keep his birth name, or his name immediately before the time of marriage; or

d) to bear his wife's surname with his own forename.

(3) Upon marriage, the husband and the wife may choose to use both of their surnames merged together as their married name, with their own forename attached. The surname part of a merged married name may consist of two segments at most.

(4) In the cases provided for in Paragraphs *b)-d)* of Subsection (1), Paragraph *b)* of Subsection (2) and in Subsection (3) hereof the spouses shall use a common married name.

(5) Subject to the exception set out in Subsection (3), only one of the parties to the marriage may use the other's surname as a married name.

(6) The parties to the marriage may agree as to the use of name under Subsections (1)-(3). In the absence of an agreement, the spouses shall continue to use their name from before the marriage, except if the wife uses the married name in Paragraph *b)* or *c)* of Subsection (1).

Section 4:28

[Provisions on surnames after termination of marriage by dissolution or annulment]

(1) Following the dissolution or annulment of marriage, the former spouses shall continue to use the name used during their marriage. If either of them wishes to do otherwise, he/she may so notify the registrar following the dissolution or annulment of marriage. Even in this case the ex wife shall not be able to use her ex husband's name with an indication of marital status, if she did not use that name during the marriage.

(2) The court may - at the former husband's request - ban the former wife from using a surname with an indication of marital status, if the wife is sentenced to imprisonment by final verdict for an intentional criminal offense.

(3) If re-married, the wife and the husband shall be entitled to retain the married name from his or her previous marriage, with the exception that the wife shall not use her ex husband's name with an indication of marital status, and this right shall not be reinstated after the termination of latter marriage either.

TITLE V

SPOUSAL SUPPORT

Section 4:29

[Entitlement for maintenance]

(1) Following the termination of matrimonial relationship, either spouse shall be entitled to demand maintenance from his/her spouse, or ex spouse in the case of divorce, if unable to support him/herself for reasons beyond his/her control.

(2) If the spouse or former spouse develops the need for support after a period of five years following the termination of matrimonial relationship, maintenance may be demanded in cases of exceptional circumstances.

(3) If the matrimonial relationship of the spouses lasts for less than one year, and their marriage did not produce a child, the former spouse shall be entitled to maintenance - if in need - for a duration corresponding with the length of their marriage. In cases of exceptional circumstances, the court may order maintenance payments for a longer period of time.

Section 4:30

[Undeserving maintenance]

(1) A spouse or former spouse shall be considered unworthy of maintenance:

a) if the irretrievable breakdown of their marriage is attributable to his/her gross misconduct or reprehensible lifestyle; or

b) if he/she engaged after the termination of matrimonial relationship in any conduct intended to do harm to his/her spouse, former spouse or their any resident family member.

(2) In determining unworthiness, the actions of the spouse or former spouse invoking it shall be taken into consideration.

Section 4:31

[Ability to provide maintenance]

A person shall not be obligated to support his/her spouse if this would seriously jeopardize his/her ability to provide for him/herself or for his/her child.

Section 4:32

[Agreement to provide lump-sum maintenance]

By agreement of the spouses executed in an authentic instrument or in a private document countersigned by an attorney, the spouse subject to maintenance obligation shall meet this obligation by providing assets of kind value or in a lump-sum payment. In that case the spouse to whom maintenance is provided shall not make any maintenance claim in the future, even if otherwise made eligible by this Act.

Section 4:33

[Maintenance of relatives]

The amount of maintenance, the means of providing and the duration such maintenance, including any changes thereof, the enforcement of any maintenance claim retroactively, the cessation of right to maintenance and the termination of maintenance shall be governed by the common provisions on the maintenance of relatives, with the proviso that the right to spousal support shall cease if the entitled party re-marries or enters into a domestic partnership.

TITLE VI

RIGHTS IN PROPERTY ARISING OUT OF A MATRIMONIAL RELATIONSHIP

Chapter V

General Provisions

Section 4:34

[Property relationships of spouses]

(1) Parties to the marriage and spouses may arrange their relationship in terms of property by means of a marital agreement for the duration of their matrimonial relationship.

(2) Unless otherwise provided by the marital agreement, marital community of property (matrimonial property regime) shall exist between the spouses for the duration of the matrimonial relationship.

Section 4:35

[Temporal scope of provisions relating to property rights]

(1) The statutory matrimonial property regime shall enter into effect from the beginning of life partnership, even if the spouses lived together as domestic partners before the marriage. Upon entering into marriage the existence of life partnership shall be presumed.

(2) Any temporary disruption in life partnership shall not affect the continuity of the matrimonial property regime, statutory or contractual, except if the assets in question are distributed among the parties.

Section 4:36

[Property consequences of invalid marriages]

(1) If both spouses acted in good faith when entering into an invalid marriage, the same property consequences shall apply - including the use of the common home - as if the marriage was valid. In that case, if the marriage is declared invalid, both spouses shall be entitled to make property claims as if the court had dissolved the marriage at the time invalidity was established, or - if invalidity was established after the death of one of the spouses - as if the marriage had been terminated upon the spouse's death.

(2) If only one of the spouses acted in good faith when entering into an invalid marriage, the provisions set out in Subsection (1) may be applied upon the request of the bona fide spouse.

(3) The property claims of the bona fide spouse referred to in Subsection (1) may be enforced by his/her heir as well.

(4) The invalidity of the marriage shall be without prejudice to any contract concluded by the spouses together, or by either one of them with a bona fide third party.

Chapter VI

Marital Community of Property

1. Community property and separate property

Section 4:37

[Community property]

(1) Marital community of property means property acquired by the spouses during the community of property, irrespective of whether such property is acquired together or separately.

(2) Community property of the spouses shall include the burdens of their common assets and - unless this Act provides otherwise - they shall collectively shoulder the debts arising out of or in connection with obligations undertaken by either of the spouses during community of property.

(3) The spouses shall be entitled to an undivided and equal share of the marital property.

(4) Community property shall not include those assets, burdens and debts which are treated as separate property of either spouse.

Section 4:38

[Separate property]

(1) Separate property of a spouse shall include:

- a)* any property acquired before marital community of property;
- b)* any property acquired by gift, bequest, devise, or inheritance, and any received without compensation during marital community of property;
- c)* any right of the spouse as the proprietor of intellectual property, except for the royalties due during community of property;
- d)* any compensation received for personal injury;
- e)* personal effects and articles of personal use of customary value; and
- f)* assets acquired in exchange for the spouse's separate property and anything of value acquired for such property.

(2) The proceeds on separate property that remain during matrimonial relationship after handling and maintenance charges and other burdens are deducted shall be considered community property.

(3) The assets comprising a part of separate property of either spouse, which replace any furnishing and household item normally used in everyday life during matrimonial relationship shall become community property after five years of marriage.

Section 4:39

[Burdens and liabilities on separate property]

(1) Apart from statutory maintenance obligations, any debt arising out of or in connection with an act that took place before the onset of matrimonial relationship shall be charged to the separate property.

(2) Separate property shall include the burdens on assets comprising part of separate property and the interest on any debt treated as separate liability.

(3) Separate property shall include any debt incurred during matrimonial relationship:

a) that is incidental to the acquisition or maintenance of the separate property, excluding the expenses related to the acquisition of the proceeds of such separate property and to the maintenance of assets which are used or utilized by the spouses collectively;

b) that is based on any obligation stemming from the spouse's disposition relating to his/her separate property;

c) that was undertaken without any consideration by the spouse upon community property, without the consent of the other spouse;

d) resulting from any unlawful and intentional conduct, or gross negligence of the spouse, if the debt is in excess of the other spouse's enrichment.

(4) The separate property status of the debt shall not affect the other spouse's liability in dealing with third parties.

Section 4:40

[Presumption of community property status]

(1) Unless otherwise provided for in this Act, the assets of the spouses shall be presumed to comprise a part of community property during the existence of community of property.

(2) During the existence of community of property, the fulfillment of any obligation relating to community property or to the separate property of either spouse shall be presumed to have been executed from the community property of the spouses.

Section 4:41

[Contracts between spouses]

(1) Any exchange or sales contract, contract of gift and loan agreement between spouses during matrimonial relationship, including any acknowledgement of debt between spouses shall be considered effective if executed in an authentic instrument or in a private document countersigned by a lawyer. This provision shall not apply to giving away movable property as gift of common value, if the gift has in fact been delivered.

(2) Where an agreement of the spouses concerns the community property or separate property status of an asset, burden or liability, or it alters the ratio of these properties, such agreement shall be considered effective in dealing with third parties if the third party was aware, or should have been aware that the asset in question belonged to community property or separate property under the agreement.

2. Using and handling assets considered community property

Section 4:42

[Use and handling of assets considered community property]

(1) The assets of community property may be used by either of the spouses for their intended purpose. Neither of the spouses should exercise this right with prejudice to the rights and lawful interest of the other spouse.

(2) The asset of community property should be managed by the spouses collectively. Either of the spouses may request the other spouse's consent for taking measures which are deemed necessary for the protection and maintenance of assets comprising part of community property. Urgent measures for the protection of assets may be implemented by either spouse without the consent of the other spouse, however, the spouse should be notified thereof without delay.

(3) During the time between the termination of life partnership and the division of community property, the use and handling of asset of community property shall be governed by the provisions on common property, unless otherwise provided for in this Act.

Section 4:43

[Use and administration of assets required for the pursuit of profession or for business purposes]

(1) The right of use and administration of assets comprising part of community property, which are required for the pursuit of profession or private entrepreneurial activities shall accrue to the spouse who is engaged in the pursuit of that profession or business activity, provided that the other spouse consented to the exclusive exercise of such rights. Consent shall be considered granted if the other spouse was aware, or should have been aware of the pursuit of that profession or business activity, and did not object.

(2) If the spouse is a member or shareholder of a sole proprietorship, a cooperative society or a business association, he/she shall be able to exercise membership or shareholder rights of his/her own accord, even if capital contribution was provided from the marital community property. The spouse shall be informed on a regular basis concerning the outcome of operations of the sole proprietorship, cooperative society or business association.

(3) In exercising the right of use or administration under Subsections (1)-(2), and also in exercising membership or shareholder rights the spouse shall take due account of the other spouse's interest. The spouse shall be held liable for damages caused by any breach of such obligations in accordance with the general provisions on non-contractual liability.

Section 4:44

[Costs and expenses]

(1) The costs of maintenance and administration of the assets of community property, the costs of maintaining the common household and the expenses of supporting and raising the common child of the spouses shall primarily be covered from the community property.

(2) If the community property is insufficient to cover the costs and expenses defined in Subsection (1), they shall be covered from the spouses' separate property as commensurate. If only one of the spouses has any separate property, the funds required to cover said outstanding expenses shall be made available by that spouse.

3. Disposition over community property

Section 4:45

[Disposition over common property during community of property]

(1) During community of property the spouses shall be able to make any disposition relating to their community property collectively, or subject to the other spouse's consent.

(2) As regards an agreement concluded by one of the spouses during the community of property, no formal requirements apply to the other spouse's consent.

Section 4:46

[Presumption of spousal consent]

(1) Any contract for pecuniary interest concluded by a spouse during the community of property shall be presumed - unless otherwise provided for in this Act - to have been concluded with the other spouse's consent if the contracting third party was aware, or should have been aware that the other spouse had not given his/her prior consent for the contract.

(2) If the spouse concluded the contract aimed at satisfying his/her everyday needs or within the framework of the pursuit of his/her profession or business activity, the other spouse may invoke the lack of his/her consent if having specifically expressed to the contracting third party his/her objection before the contract was concluded.

Section 4:47

[Disposition over community property during the time period between the termination of marital community of property and the division of community property]

(1) During the time period between the termination of marital community of property and the division of community property, as regards disposition over community property the provisions on disposition over community property during marital community of property shall apply with the exception that either spouse, in due observation of prudential management requirements, may, without the other spouse's consent:

a) exercise control of the assets used within the framework of the pursuit of his/her profession or business activity, or reserved for such purposes;

b) exercise control of those movable property, which had been transferred to his/her exclusive possession following the termination of marital community of property by agreement of the spouses;

c) undertake commitments aimed at the protection, maintenance, restoration and preservation of community property; and

d) satisfy debts owed on community property, in a manner where the debt may not become more onerous for the community property.

(2) The provision contained in Subsection (1) shall not affect the obligation of reimbursement prevailing at the time of division of the community property.

Section 4:48

[Special rules applicable to common home and contribution to company capital]

Neither of the spouses shall be entitled to dispose over the real estate property containing the jointly owned family home of the spouses during community of property, or during the time period between the termination of marriage and the division of community property without the other spouse's consent, and may not use community property as capital contribution for a sole proprietorship, business association or cooperative society. In that case the other spouse's consent shall not be presumed.

4. Responsibility stemming from exercising the right of disposition

Section 4:49

[Liability of spouses in respect of contracts in dealings with third parties]

(1) Where a spouse enters into a contract involving community property, he/she shall cover any debts arising out of or in connection with such contract from his/her separate property and from his/her share of the community property.

(2) Where a spouse did not take part in concluding a contract that the other spouse entered into with his/her consent, the liability of the non-participating spouse in dealings with third parties shall be covered from the community property up to his/her share at the time when the debt falls due.

Section 4:50

[Legal effects of contracts concluded without spousal consent]

Where a spouse did not consent to a contract concluded by the other spouse regarding community property, and no consent can be presumed or the presumption has been rebutted, the spouse shall not be held liable for any obligation arising out of or in connection with that contract. A contract concluded without the spouse's consent shall have no legal force in respect of such spouse if the acquiring party acted in bad faith or had a gratuitous advantage originating from the contract. If the other spouse concluded the contract with his/her relative, bad faith and gratuitous nature shall be presumed.

Section 4:51

[Liability toward third parties in the case of unjust enrichment]

Where a spouse made any gain in consequence of a contract or any other form of legal obligation entered into by the other spouse, he/she shall be held liable in dealings with third parties on the grounds of unjust enrichment even if otherwise exempt from liability.

Section 4:52

[Responsibility of the spouse who negotiated the contract towards the other spouse]

Where a spouse enters into a contract which carries any liability for the other spouse, without the consent of that spouse, he/she shall be liable to compensate the other spouse for damages arising in connection with that contract on the grounds of non-contractual liability, unless he/she is able to verify that the contract was made in light of the other spouse's interest and presumed intent, specifically, if the contract was made with a view to safeguarding the community property.

5. Termination of community of property

Section 4:53

[Termination of community of property]

Community of property shall terminate if:

- a) the spouses precluded community of property for future considerations by means of a marital agreement;
- b) excluded by court order during matrimonial relationship; or
- c) the matrimonial relationship is terminated.

Section 4:54

[Termination of community of property by court order]

(1) In justified cases the court shall, during the matrimonial relationship, dissolve community of property at the request of either of the spouses. This shall, in particular, include if:

a) the other spouse accumulated debts by way of entering into any contract without the consent of the requesting spouse or by means of non-contractual liability of a measure that jeopardizes his/her share of the community property;

b) an enforcement procedure is opened against the other spouse engaged in private entrepreneurial activities, or an enforcement procedure or liquidation proceeding is opened against the sole proprietorship, cooperative society or business association in which the other spouse has unlimited liability, and such proceedings jeopardize his/her share of the marital community property; or

c) the other spouse is placed under guardianship invoking fully limited legal competency or under conservatorship invoking partially limited legal competency in respect of his/her financial affairs, and the appointed conservator is a person other than the spouse.

(2) Unless otherwise instructed by the court, community of property terminates on the last day of the month following the date on which the resolution on termination becomes final.

Section 4:55

[Legal effects of the termination of community of property by court order]

If the court terminates the community of property, the property relations of the spouses shall henceforth be governed by the provisions on the separation of property during their life partnership.

Section 4:56

[Reestablishment of community of property by court order]

If the reason under which the court ordered the termination of community of property no longer exist, upon the spouses' mutual request, the court shall reinstate community of property during marital relationship for future considerations.

6. Distribution of community property of the spouses

Section 4:57

[Distribution of community property]

(1) If community of property is terminated either spouse may request the division of community property. If marriage is terminated upon the spouse's death, this right shall accrue upon the heir.

(2) If community property is divided by way of an agreement between the spouses, the agreement shall be considered valid if executed in an authentic instrument or in a private document countersigned by an attorney. This provision shall not apply to the division of movable community property, if division has already been carried out.

(3) If the spouses failed to reach an agreement regarding the division of community property, or it does not cover all claims arising out of the community of property, an action may be brought

before the court for the division of community property and for the settlement of open claims, if any.

Section 4:58

[Settlement of claims relating to community property]

Claims arising out of or in connection with marital community of property shall be settled uniformly.

Section 4:59

[Claims for compensation between community property and separate property]

(1) In the process of division of community property, claims can be made for compensation for any expenses made from community property on separate property, from separate property on community property and from the separate property of one spouse on the separate property of the other spouse, including the settlement of debts from the property of the other spouse. Compensation claims shall be settled in accordance with the provisions on determining the value of the spouses' share.

(2) Compensation for any expenditures made from separate property for covering common expenses may be claimed under exceptional circumstances.

(3) There shall be no right of compensation if it has been waived by the spouse. There are no formal requirements for the waiver, however, the burden of proof lies with the spouse who relies on the waiver.

(4) Where an expenditure results in considerable increase in the value of real estate property, the spouse entitled to compensation may also lay claim to an ownership share consistent with the increase in the property's value.

(5) There shall be no right of compensation for any missing community property or separate property if there is no community property at the time when community of property is terminated, and the spouse liable to provide compensation has no separate property either.

Section 4:60

[Value and disbursement of community property share]

(1) The share of a spouse from community property shall be established based on the status and value prevailing at the time of termination of community of property. Any change in value between the time of termination of community of property and the division of community property shall be taken into consideration, except if it is attributable to any conduct of either spouse.

(2) The division of specific items of community property shall be governed by the provisions on the termination of joint ownership, with the proviso that division in kind is not allowed even if objected to by either of the spouses on reasonable grounds.

(3) The provisions of Subsection (2) shall also apply to the division of rights and claims comprising part of community property.

Section 4:61

[Distribution of assets and liabilities]

(1) In determining the distribution of assets among the spouses in terms of ownership of certain items, the court shall first and foremost take into account the spouses' uniform statement.

(2) The assets which are required for the pursuit of profession or private entrepreneurial activities by either spouse shall in principle accrue to the spouse who is engaged in the pursuit of that profession or business activity.

(3) If one of the spouses is a member or shareholder of a business association where the capital contribution of that spouse was provided from the community property, the court may assign a share of ownership in the business association to the other spouse - at this/her request - under the provisions on the transfer of corporate membership rights, if his/her share from the community property cannot be allocated otherwise in accordance with the provisions on the disbursement of a share from the community property subject to the provisions set out in Subsection (1).

(4) If the asset carries any debt, in the property relationships of spouses it shall be covered by the spouse who gained ownership of the asset following distribution. The distribution of debts shall apply in respect of the creditor according to the rules on the assumption of debts.

Section 4:62

[Disbursement of separate property]

Separate property existing at the time of termination of community of property shall be allocated in kind, except when this is not possible on account of the mixing of assets or if division is likely to considerably diminish the value of community property or separate property.

Chapter VII

Marriage Contracts

1. General provisions

Section 4:63

[Mandatory layout of marriage contracts]

(1) The function of the marriage contract is to permit the parties to the marriage or the spouses to define a property regime - in lieu of marital community of property - with a view to governing their property relationships during the marriage from the time specified in the agreement.

(2) In the marriage contract the parties may define several different property regimes relating to certain specific assets, and they may even deviate from the rules on statutory and optional property regimes, if such deviation is not precluded by this Act.

Section 4:64

[Conditions for the conclusion of marriage contracts]

(1) The marriage contract shall be concluded in person by the parties to the marriage or the spouses.

(2) The approval of the guardian authority is required for the validity of marriage contracts, if the spouse is under the age of eighteen years or his/her capacity in respect of making legal statement relating to property has been partially limited.

Section 4:65

[Formal requirements for and keeping records of marriage contracts]

(1) A marriage contract shall be considered valid if executed in an authentic instrument or in a private document countersigned by an attorney.

(2) A marriage contract shall be considered effective in dealing with third parties if the contract is recorded in the national register of marriage contracts, or if the spouses are able to prove that the third party was aware, or should have been aware that such contract existed, including its contents.

Section 4:66

[Amendment to and termination of marriage contracts]

(1) The spouses shall be able to amend or terminate the marriage contract during their matrimonial relationship.

(2) Any amendment to and the termination of marriage contracts shall be governed by the provisions on the scope and validity of contracts.

Section 4:67

[Protection of third parties]

(1) A marriage contract shall not contain any clause having retroactive effect for changing, to the detriment of a third party, any obligation a spouse may have in dealing with third parties arising before the marriage contract was concluded.

(2) Where an agreement of the spouses alters the community property or separate property status of an asset in derogation from the relevant provisions of the marriage contract. such agreement shall be considered effective in dealing with third parties if the third party was aware, or should have been aware that the asset in question belonged to community property or separate property under the agreement.

Section 4:68

[Testamentary disposition]

If the marriage contract contains provisions for the disposition over the spouses' assets in the event of their death, the rules pertaining to joint wills shall apply to such dispositions.

2. Marital property acquisition regime

Section 4:69

[Marital property acquisition regime]

(1) If the parties to the marriage or the spouses agree to install a marital property acquisition regime in the marriage contract, they shall be considered independent in their property acquisitions during their matrimonial relationship, therefore the rules on separation of property shall apply between them. After the termination of marriage, either of the spouse may demand a share of the growth in assets which is considered to have been acquired jointly.

(2) Jointly acquired property means the net value, at the time of termination of marriage, of the spouse's property remaining after his/her debt share and separate property are deducted.

(3) As regards marital property, the property existing at the time of termination of matrimonial relationship shall be presumed to have been acquired jointly.

(4) Specific assets, burdens and debts to be taken into account as separate property shall be determined relying on the provisions of the matrimonial property regime on separate property. In addition to existing separate property, the value of any separate property which the spouses spent during their matrimonial relationship on jointly acquired property or on the separate property of the other spouse shall also be considered to comprise a part of separate property. Compensation for any shortage in separate property shall be permitted only if expressly specified.

Section 4:70

[Protection of a spouse's share from jointly acquired property]

(1) A spouse may request, during marriage, to have the value of his/her share from the jointly acquired property established, as well as adequate safeguards up to such value or the termination of the marriage contract if the other spouse accumulated debts by way of entering into any contract without his/her knowledge in a value that exceeds his/her share of the assets treated as jointly acquired property.

(2) Guaranteeing jointly acquired property as under Subsection (1) shall be without prejudice to any right of a third party holding a previous claim against the other spouse.

(3) If the other spouse refuses to cooperate in establishing the value of jointly acquired property and in providing adequate safeguards despite of having been asked to do so, or prevents such efforts, the spouse may bring action in the court.

(4) The court shall have powers to terminate the contract at the request of either spouse on the grounds referred to in Subsection (1), and may order the separation of property between the spouses for future considerations.

Section 4:71

[Sharing of jointly acquired property]

(1) The sharing of jointly acquired property from the property existing at the time of termination of the matrimonial relationship may be requested in accordance with the provisions of the matrimonial property regime on the division of community property. The spouse shall not lay any claim to assets which are required for the pursuit of profession or private entrepreneurial activities of the other spouse, nor shall he/she do so in respect of any share of the other spouse in the capital of a business association, even if he/she contributed to the funding thereof.

(2) Either spouse shall be entitled to half of all jointly acquired properties.

3. Separation-of-property system

Section 4:72

[Separation-of-property system]

If the spouses excluded marital community of property fully in the marriage contract for future purposes, or limited it for certain specific acquisitions, assets, burdens and debts, the excluded segments of the property shall be governed between the spouses under the system of separation of property.

Section 4:73

[Use and handling of assets; covering debts, costs and expenses]

(1) If, based on court order or a contract between the parties to the marriage or the spouses separation of property is instituted, said parties or spouses shall have access to and use their own assets independently during matrimonial relationship, and they shall autonomously control such assets and be liable for their own debts.

(2) The costs of maintaining the common household and the expenses of supporting and raising the common child of the spouses, as well as the child of one of the spouses living in their household with the other spouse's consent shall be covered by the spouses together even if they live under the separation-of-property system. Any clause allowing complete or near complete exemption for either spouse from such costs and expenses shall be null and void. Work done in the household and in raising a child shall be construed as a contribution to costs.

4. Termination of the marriage contract

Section 4:74

[Cases of termination of a marriage contract]

(1) A marriage contract may be terminated by the parties before the beginning of their marital relationship, or either of them may withdraw from the contract. During their matrimonial relationship, the parties may extinguish the contract for future purposes.

(2) Furthermore, a marriage contract shall be terminated:

a) by order of the court in the cases defined in this Act; or
b) if matrimonial relationship is terminated, except if it takes place upon the death of either of the spouses, in which case the contract may take effect as the spouse's joint will.

(3) If the contract terminates upon the parties' mutual consent or by way of the right of either spouse to terminate it as afforded in the contract, the property relations of the spouses shall be governed by the provisions on marital community of property during their matrimonial relationship from the time of termination.

(4) The termination of the contract shall be considered effective in dealing with third parties from the time when the contract is removed from the register or when the third party gains knowledge of the termination of the contract.

Section 4:75

[Settlement, distribution of assets]

If the marriage contract is terminated either spouse may request settlement and the distribution of community property according to the property regime fixed in the contract.

Chapter VIII

Use of the Common Home of the Spouses

Section 4:76

[Common home of the spouses]

(1) Common home of the spouses means a dwelling in which the spouses live together and which is owned by either or both them, or in which either or both spouses have tenancy or lease rights.

(2) Minor children of the spouses shall be given the right of tenancy in the common home of the spouses.

(3) In the application of this Chapter, the minor child of a spouse holding exclusive legal title for the home shall also have the right of tenancy.

Section 4:77

[Restriction of the right of disposition over the common home]

(1) During marriage and also after its termination until the right of tenancy is settled the use of a home occupied on the basis of the spouses' common legal title shall be controlled by either spouse together with the other spouse, or with the other spouse's consent. Consent may not be presumed.

(2) The dissolution of the marriage or the termination of matrimonial relationship shall not in itself terminate the right of tenancy of the spouse who resides in the home under the other spouse's legal title.

(3) During marriage, and also after the termination of marriage until the right of tenancy is settled a spouse shall not be allowed to make any decision concerning the home used under his/her exclusive legal title without the consent of the other spouse, where such decision would put the other spouse or the child living in the home at a disadvantage.

Section 4:78

[Contractual arrangement of the right of tenancy]

(1) The parties to the marriage or the spouses may make prior arrangements for the use of the common home of the spouses for the dissolution of the marriage or the termination of matrimonial relationship. The agreement shall be considered valid if executed in an authentic instrument or in a private document countersigned by an attorney.

(2) The agreement shall apply to a common home that replaces the home existing at the time of its entry into effect, if the agreement so provides.

(3) The parties shall also have the option to make arrangements for the use of the common home in the marriage contract.

Section 4:79

[Applicability of the right of tenancy of children]

(1) If in the agreement for the prior arrangement of the right of tenancy the parties agree on providing continued housing for their children with the right of tenancy following the dissolution of the marriage or the termination of matrimonial relationship, the agreement shall also apply to their child born after the agreement was concluded.

(2) If the agreement does not contain the provision defined in Subsection (1), or the provision seriously harm the right of the minor child with the right of tenancy for adequate housing, the court may override such provision regarding the use of the common home of the spouses following the dissolution of the marriage or the termination of the matrimonial relationship in the interest of the child.

Section 4:80

[Right of tenancy after the termination of matrimonial relationship]

(1) Following the termination of matrimonial relationship the spouses may agree to continue using the common home. There are no formal requirements for such an agreement.

(2) In the absence of an agreement for the prior arrangement of the right of tenancy, or any other agreement concluded after the termination of matrimonial relationship, further use of the common home following the dissolution of the marriage or the termination of matrimonial relationship shall be decided by the court at the request of either of the spouses.

(3) If either spouse requests in a divorce action or in an action for the distribution of community property the termination of joint ownership of the common home, the court shall provide for the use of the spouses' home together with the termination of joint ownership.

(4) The right of tenancy of a child shall be ensured in the former common home to best accommodate his/her living conditions, except if adequate housing is available elsewhere.

Section 4:81

[Sharing the use of a home occupied under common legal title; omission of sharing]

(1) If the spouses have a common legal title for using their home, the court shall order the shared use of the home, if this is possible based on the attributes of the home. Shared use of a home is permitted also if the home can be fitted for shared use by minor alterations, provided that one or both spouses verify their entitlement of making such alterations and the technical requirements thereof, and if they agree to advance the costs of such works. In the event of dispute, the court shall decide on bearing the costs of such works.

(2) In the case of shared use of the home, the spouses shall have exclusive use of certain specific rooms and areas of the home, and shared use of other areas. Shared use of the home shall not affect the rights and obligations of the spouses in dealings with third parties.

(3) The court may refrain from ordering the shared use of a home with due regard to the parties' relevant circumstances if:

a) the spouses or one of the spouses have a vacant home in the same community, or such home can be made vacant by means of a unilateral statement; or

b) one of the spouses moved out from home on his/her own volition, without the intent to return, and - if he/she exercises parental supervision - he/she has properly provided the right of tenancy for the minor child.

(4) A home, that is otherwise suitable, shall not be shared if one of the spouses is engaged in actionable conduct on account of which shared use is likely to cause serious harm to the interest of the other spouse or the minor child.

Section 4:82

[Termination of the right of tenancy of one of the spouses]

(1) If use of a home used under common legal title of the spouses is not shared, the court shall abolish the right of tenancy of one of the spouses and shall order such spouse to vacate the home, unless one of the spouses moves out from home on his/her own volition, without intent to return.

(2) Moreover, the court shall abolish the right of tenancy of one of the spouses and shall order such spouse to vacate the home also if, even though the home is considered suitable for shared

use, the other spouse offers an adequate replacement home for the spouse in question, and if such arrangement of tenancy does not harm the interest of a minor child with the right of tenancy.

Section 4:83

[Use of a home occupied under the exclusive legal title of one of the spouses]

(1) If the common home of the spouses is used under the exclusive legal title of one of the spouses, following the dissolution of the marriage or the termination of the matrimonial relationship the court shall authorize that spouse to continue using the home.

(2) The court shall order the shared use of a home that is considered suitable, if having granted parental authority for the other spouse over at least one of the minor children with right of tenancy, or if moving out of the home by the other spouse would be gravely unjust, taking into account the length of the marriage and the circumstances of that spouse.

(3) On an exceptional and duly justified basis, the court may grant entitlement to a spouse for the exclusive use of a home owned exclusively by the other spouse, or in which the other spouse has beneficial rights, if that parent has parental authority over a minor child with the right of tenancy and the housing for the minor child cannot be provided otherwise. In that case, the spouse shall have tenant status, with the proviso that his/her right of tenancy may be terminated by offering an adequate replacement subject to notice.

(4) The court may order shared use of a home or exclusive right of tenancy as provided for under Subsections (2)-(3) for a fixed period of time, or subject to some condition.

Section 4:84

[Compensation for the value of the right of tenancy]

(1) The spouse required to vacate the home under contract or by court order shall be entitled to lay claim for compensation in the monetary value of his/her right of use.

(2) No compensation may be claimed:

a) if the spouse agreed under contract to vacate the home and waived any claim for housing or compensation; or

b) if the court deprived the spouse of the right of tenancy for a specific period of time, or subject to some condition.

(3) In determining the amount of compensation the value of the right of tenancy of a child shall be taken into consideration for the benefit of the spouse who henceforward provides housing for the child under his/her parental authority.

(4) Compensation shall be due immediately at the time of moving out of the home, except if:

a) the court has ordered the spouse to vacate the home on account of his/her wrongful conduct, and simultaneous performance would seriously harm the interest of the remaining spouse and the minor child; or

b) use of the home is provided for in the action for the division of community property, and the court shall apply the value of the right of use in the process of distributing the assets.

(5) Instead of compensation, the spouse remaining in the home may offer an adequate replacement home for the spouse moving out.

Section 4:85

[Rearranging the right of tenancy]

(1) If the court has ordered the shared use of a home, or ordered the spouse who is the owner or holder of beneficial interest to vacate the home, either spouse may request rearrangement of the right of tenancy on the pretext that his/her relevant lawful interests or the interest of the common child of minor age are in jeopardy under the current arrangement due to changes in the circumstances underlying the arrangement in question.

(2) The provisions in Subsection (1) shall not affect the spouse's right to request termination of his/her former spouse's co-tenancy following the order of shared use, under the relevant provisions of this Act pertaining to co-tenancy.

PART THREE

LEGAL ASPECTS OF CIVIL PARTNERSHIPS UNDER FAMILY LAW

TITLE VII

MAINTENANCE OBLIGATIONS IN CIVIL PARTNERSHIPS

Section 4:86

[Entitlement for maintenance]

(1) Following the termination of civil partnership, either partner shall be entitled to demand maintenance from his/her partner if unable to support him/herself for reasons beyond his/her control, if their civil partnership existed for at least one year and it produced a child.

(2) If the former partner develops the need for support after a period of one year following the termination of civil partnership, maintenance may be demanded in cases of exceptional circumstances.

Section 4:87

[Undeserving maintenance]

(1) A former partner shall be considered unworthy of maintenance:

a) if the breakdown of their relationship is attributable to his/her gross misconduct or reprehensible lifestyle; or

b) if engaged after the termination of civil partnership in any conduct intended to do harm to his/her former partner or the partner's resident family member.

(2) In determining unworthiness, the actions of the former partner invoking it shall also be taken into consideration.

Section 4:88

[Ability to provide maintenance]

A person shall not be obligated to support his/her former partner if this would seriously jeopardize his/her ability to provide for him/herself or for his/her child.

Section 4:89

[Agreement to provide lump-sum maintenance]

By agreement of the partners executed in an authentic instrument or in a private document countersigned by an attorney, the partner subject to maintenance obligation shall meet this obligation by providing assets of kind value or in a lump-sum payment. In that case the partner to whom maintenance is provided shall not make any maintenance claim in the future, even if otherwise would be eligible under this Act.

Section 4:90

[Order in which maintenance is provided between spouses and domestic partners]

Former partners shall be entitled to maintenance in line with a separated or former spouse.

Section 4:91

[Maintenance of relatives]

The amount of maintenance, the means of providing and the duration such maintenance, including any changes thereof, the enforcement of any maintenance claim retroactively, the cessation of right to maintenance and the termination of maintenance shall be governed by the common provisions on the maintenance of relatives, with the proviso that the right to maintenance in civil partnership shall cease if the entitled party enters into another civil partnership or into marriage.

TITLE VIII

RIGHT OF TENANCY IN CIVIL PARTNERSHIPS

Section 4:92

[Settlement of the right of tenancy in court]

In the absence of an agreement for the prior arrangement of the right of tenancy relating to the common home, or any other agreement concluded after the termination of civil partnership, further use of the common home following the termination of partnership shall be decided by the court at the request of either of the partners.

Section 4:93

[Use of a home occupied under the common legal title of the partners]

(1) Further use of the common home used under the common legal title of the partners shall be decided by the court in accordance with the provisions governing the use of a home used under common legal title of spouses.

(2) In its decision for the further use of the home used under the common legal title of the partners following the termination of their partnership, the court shall take due account of the right of a common child of minor age with the right of tenancy for adequate housing.

Section 4:94

[Entitlement of either partner for use of a home occupied under the exclusive legal title of the other partner]

(1) Following the termination of civil partnership, the court may award the right to a former partner - at his/her request - to continue using the common home occupied under the exclusive legal title of the other partner, if their civil partnership existed for at least one year and if this is justified in the interest of providing adequate housing under the right of tenancy of a minor child born during their relationship.

(2) In the cases provided for in Subsection (1), the court shall primarily order the shared use of a home that is considered suitable.

(3) On an exceptional and duly justified basis, the court may grant entitlement to a former partner for the exclusive use of a home owned exclusively by the other partner, or in which the other partner has beneficial rights, if that partner has parental authority over at least one of the common minor children with the right of tenancy and the housing for the minor child cannot be provided otherwise.

(4) The court may order shared use of a home or exclusive right of tenancy as provided for under Subsections (2)-(3) for a fixed period of time, or subject to some condition.

(5) The former partner granted exclusive right of tenancy shall have tenant status, with the proviso that his/her right of tenancy may be terminated by offering an adequate replacement subject to notice.

(6) Shared use of a home used under the former partner's exclusive legal title may not be demanded by the other partner if he/she has a vacant home elsewhere, or a home that can be made vacant by means of a unilateral statement.

Section 4:95

[Rearranging the right of tenancy]

(1) If the court has ordered the shared use of a home, or ordered the partner who is the owner or holder of beneficial interest to vacate the home, either of the former partners may request rearrangement of the right of tenancy on the pretext that his/her relevant lawful interests or the interest of the common child of minor age are in jeopardy under the current arrangement due to changes in the circumstances underlying the arrangement in question.

(2) The provisions in Subsection (1) shall not affect the former partner's right to request termination of his/her former partner's co-tenancy following the order of shared use, under the relevant provisions of this Act pertaining to co-tenancy.

PART FOUR

KINSHIP

TITLE IX

FAMILY RELATIONSHIP

Section 4:96

[Family relationship]

(1) Lineal descent refers to a blood relative in the direct line of descent.

(2) Collateral descent refers to relatives not in direct line of descent, having at least one common ancestor.

Section 4:97

[Basis of family relationships]

- (1) Family relationship in direct line between parent and child is established by descent or by way of adoption.
- (2) A child shall be related to all his/her parent's relatives upon descent or adoption.

TITLE X

RELATIONSHIP BY DESCENT

Chapter IX

Establishment of Paternity

Section 4:98

[Facts establishing paternity]

Paternity is established:

- a)* by way of wedlock;
- b)* by way special procedures for the purpose of human reproduction in the case of civil partnerships (hereinafter referred to as „reproduction procedure”);
- c)* by way of acknowledgement of paternity; or
- d)* by way of court decision.

Section 4:99

[Presumption based on wedlock]

(1) Unless otherwise provided for in this Act, the man with whom the mother lived in wedlock from the time of conception of the child until the birth of the child, or at least during a part of this period, shall be considered the father of that child. The invalidity of the marriage shall not affect the presumption of paternity.

(2) The presumed time of conception means the time period between the one hundred and eighty second day and the three hundredth day elapsed since the date of the child's birth, including both deadlines. If the child is claimed to have been born before or after the presumed time of conception, it may be verified by evidence.

(3) If the woman remarried after the termination of her previous marriage, the latter husband shall be considered the father of a child born during the latter marriage, even if three hundred days did not lapse between the date her previous marriage was terminated and the date on the child was born. If this presumption is rebutted, the former husband shall be considered the father of the child.

Section 4:100

[Presumption based on reproduction procedure]

(1) If paternity cannot be established relying on a presumption based on the mother's marriage, the man who was involved in a reproduction procedure with the mother during their partnership shall be considered the father of the child if descent is the result of such reproduction procedure.

(2) If following a successful reproduction procedure, before the birth of the child the mother enters into marriage with another man, it shall not invoke the presumption of paternity in respect of the husband.

(3) The mother's partner shall be considered the father of the child in accordance with Subsection (1) also if the presumed time of conception did not lapse between the time when the mother's previous marriage was terminated and the date when the child was born.

Section 4:101

[Presumption based on acknowledgement of paternity]

(1) If the mother was not married between the beginning of the time of conception and the date when the child was born, and did not participate in a reproduction procedure invoking the presumption of paternity, or if the presumption of paternity was rebutted, the man who admitted in a fully enforceable acknowledgement of paternity that he is the father of the child shall be considered the father of that child.

(2) The man who makes an acknowledgement of paternity must be at least sixteen years older than the child.

(3) An acknowledgement of paternity can be made from the beginning of the time of conception of the child. If the acknowledgement of paternity is made before the birth of the child, the declaration shall become fully enforceable when the child is born.

(4) The acknowledgement of paternity shall be made in person. An acknowledgement of paternity made by a minor of limited legal capacity and any person whose capacity in respect of making legal statements relating to descent has been partially limited shall be considered effective with the consent of his/her legal representative. If the legal representative is unavailable for any extended period of time to give consent, or if refuses to consent, the guardian authority may do so in his stead.

(5) An acknowledgement of paternity shall be construed fully enforceable with the consent of the mother and the child's legal representative, and with the consent of the child if over the age of fourteen years. If the mother is the child's legal representative, consent may be granted in that capacity as well, except if there exists a conflict of interest between mother and child. In this event, the guardian authority shall appoint a caretaker officer to represent the minor. If the mother or the child is not alive, or if unable for any extended period of time to make a statement, the consent shall be granted by the guardian authority.

(6) If at the time the acknowledgement of paternity is made a paternity suit is in progress for establishing paternity with respect to another man, the acknowledgement of paternity shall become fully enforceable - even if the statements of consent referred to in Subsection (5) are available - if the paternity suit failed to conclusively establish paternity.

(7) If a fully enforceable acknowledgement of paternity is made with respect to a child of legal age, the child shall have the option to decide to take up the name of his/her biological father or to keep his/her existing surname. If the child fails to exercise this option, the presumption of paternity shall not affect his/her name.

Section 4:102

[Formal requirements and scope of a fully enforceable acknowledgement]

(1) Acknowledgement and consent shall be executed in a statement made before the registrar, the court, the guardian authority or a career consulate officer, or shall be executed in a notarial document. Consent may also be granted before an honorary consul with authority to issue consular certificates. Once the statement or the document is signed, the acknowledgement of paternity may not be withdrawn.

(2) The fully enforceable acknowledgement of paternity applies to all parties affected.

Section 4:103

[Presumption based on court decision]

(1) If a child's father cannot be identified based on the mother's marriage, reproduction procedure or fully enforceable acknowledgement of paternity, paternity may be established by way of judicial process.

(2) The court shall establish a man as the child's father if that man is alleged to have engaged in sexual intercourse with the mother at the time of conception, and upon careful consideration of all the circumstances there are reasonable grounds to consider that the child was conceived upon such sexual contact.

(3) If paternity is established by way of judicial process with respect to a child of legal age, the child shall have the option to decide to take up the name of his/her biological father or to keep his/her existing surname. If the child fails to exercise this option, the presumption of paternity shall not affect his/her name.

(4) The judgment establishing paternity applies to all parties involved.

(5) If descent results from a reproduction procedure, paternity may not be established by way of judicial process with respect to a man who made a donation of gamete or embryo for the procedure.

Section 4:104

[Persons entitled to bring paternity suit]

(1) An action for establishing paternity by way of judicial process may be brought by the mother, the child - or by the child's descendant after his/her death -, or by the father.

(2) The minor child may join the action on his/her mother's side with the guardian authority's consent.

(3) If descent results from a reproduction procedure, no action may be brought by a man who made a donation of gamete or embryo for the procedure.

Section 4:105

[Exercising the right to bring action]

(1) An action for the establishment of paternity shall be brought by the entitled party in person.

(2) As regards an acknowledgement of paternity made by a minor of limited legal capacity or by any person whose capacity in respect of making legal statements relating to descent has been partially limited, such an action may be brought with the consent of the legal representative. If the legal representative is unavailable for any extended period of time to give consent, or if refuses to consent, the guardian authority may do so in his stead.

(3) If the entitled party is incompetent, the action may be brought in his/her name by the legal representative with the guardian authority's consent.

(4) The mother may proceed in the action as her child's legal representative.

Section 4:106

[Respondents in paternity suits]

(1) Actions for the establishment of paternity shall be filed against the father, whereas the father shall bring such action against the child.

(2) If the child did not join his/her mother in an action brought by the mother, the mother shall bring action against the child as well. In this event, the guardian authority shall appoint a caretaker officer to represent the child.

(3) If the party against whom the action is to be brought is no longer alive or cannot be located, the guardian ad litem appointed by the court shall be named as the defendant in the action.

Chapter X

Contested Presumption of Paternity

Section 4:107

[Grounds for challenging the presumption of paternity]

(1) The presumption of paternity may be challenged alleging that the man presumed to be the father did not have sexual contact with the mother of the child at the time of conception, or that he could not have fathered the child based on the relevant circumstances.

(2) If the presumption of paternity is based on a fully enforceable acknowledgement of paternity, it may be challenged alleging that:

a) the statement is not fully enforceable in the absence of the relevant legal requirements;

b) the acknowledgement of paternity was made in error, or under misrepresentation or duress;

or

c) the acknowledgement of paternity was made for the purpose of circumventing the law.

(3) If descent results from a reproduction procedure, presumption of paternity may be contested if the mother's husband or partner has not given his prior consent for the procedure.

Section 4:108

[Exclusion of challenging the presumption of paternity]

The presumption of paternity may not be contested if:

a) descent results from a reproduction procedure, except if the mother's husband or partner has not given his prior consent for the procedure; or

b) paternity was established by way of judicial process.

Section 4:109

[Persons entitled to challenge the presumption of paternity]

(1) The presumption of paternity may be challenged by the presumed father, the mother, the child, or by the child's descendant after his/her death.

(2) Alleging that the acknowledgement of paternity was made in error, or under misrepresentation or duress, the presumption of paternity may be challenged by the father only.

(3) The mother may bring action with the guardian authority's consent, jointly with her minor child.

(4) The mother's former husband shall be entitled to challenge the presumption of paternity if, based on the presumption, the mother's new husband is considered the father, however, if that presumption is rebutted, the former husband would have to be considered the father.

(5) Alleging that the acknowledgement of paternity was made for the purpose of circumventing the law, the public prosecutor and the guardian authority shall have the right to challenge the acknowledgement of paternity.

Section 4:110

[Exercising the right to bring action]

(1) An action shall be brought by the entitled party in person.

(2) A minor of limited legal capacity or any person whose capacity in respect of making legal statements relating to descent has been partially limited shall be entitled to bring action with the consent of his/her legal representative. If the legal representative is unavailable for any extended period of time to give consent, or if refuses to consent, the guardian authority may do so in his stead.

(3) If the entitled party is incompetent, the action may be brought in his/her name by the legal representative with the guardian authority's consent.

(4) The mother may proceed in the action as her child's legal representative.

Section 4:111

[Time limits for bringing action]

(1) An action for challenging the presumption of paternity may be brought by the minor child and the mother subject to the guardian authority's consent, before the child reaches the age of three years. Other entitled parties may challenge the presumption of paternity within a period of one year from the date when presumption of paternity is established.

(2) If the presumed father made the fully enforceable acknowledgement of paternity in error, or under misrepresentation or duress, he may bring action for challenging the presumption within one year from the date on which he detected such error or misrepresentation, or from the date of cessation of duress.

(3) If no action had been brought under Subsections (1)-(2) before the child reached the age of majority, during the following one-year period the child shall have the right to bring action on his/her own accord.

(4) Where an entitled party gained knowledge of any fact giving rise to challenge is based, he/she may challenge the presumption of paternity within a period of one year from the date after learning of such reason.

Section 4:112

[Respondents in actions challenging the presumption of paternity; effect of judgment]

(1) An action to rebut the presumption of paternity shall be brought jointly by the child and the mother against the father, by the father against the child, or against both the child and the father if

brought by others. The mother shall be named as a defendant in such actions as well - unless brought by the child -, except when this is not possible due to her death.

(2) If the child was born during the mother's new marriage, within three hundred days reckoned from the date of dissolution of the mother's previous marriage, the mother's former husband shall also be named in the action as a defendant.

(3) If the party against whom the action is to be brought is no longer alive or cannot be located, the guardian ad litem appointed by the court shall be named as the defendant in the action.

(4) The judgment to rebut the presumption of paternity applies to all parties involved.

Section 4:113

[Provisions on surnames and visitation rights after the rebuttal of the presumption of paternity]

(1) If the court's decision is in favor of the claim for the rebuttal of the presumption of paternity, the court may, in justified cases:

a) authorize the child to retain his/her surname; and

b) award visitation rights to the man who raised the child in his family as his own over a long period of time.

(2) The child shall be entitled to retain the surname referred to in Paragraph a) of Subsection

(1) also if paternity status has been conveyed to another man.

Section 4:114

[Challenging the presumption of paternity in non-contentious proceedings]

(1) No action for the rebuttal of the presumption of paternity is necessary if it exists based on the mother's marriage, matrimonial relationship was terminated at least three hundred days previously, and the natural father of the child wishes to make a fully enforceable acknowledgement of paternity to declare that he is the father of the child.

(2) In the case provided for in Subsection (1), upon the joint request of the presumed father, the mother and the man who wishes to make a fully enforceable acknowledgement of paternity to declare that he is the father of the child, the court shall establish in non-contentious proceedings that the child's father is not the mother's husband or former husband. In the same action paternity shall be established by means of fully enforceable acknowledgement of paternity.

(3) The time limits for bringing action for challenging the presumption of paternity shall not apply to the opening of the proceedings referred to in Subsection (2).

Chapter XI

Maternity

Section 4:115

[Legal status of mothers]

(1) The woman giving birth to the child shall be considered the mother of that child.

(2) If the mother's person cannot be established, the child may bring action requesting the court to award mother's status to the person he/she designates. In the event of the child's death, this right shall accrue upon his/her descendants.

(3) An action for establishing maternity by way of judicial process may also be brought by a person who claims to be the mother of the child.

(4) If descent results from a reproduction procedure, no action may be brought by a woman who made a donation of gamete or embryo for the procedure.

Section 4:116

[Action for a negative declaration]

The child, or his/her descendant after the child's death, or the natural mother may bring action requesting the court to establish that the person shown in the registry of births as the mother is not the woman who gave birth to the child, provided that the wrong entry of maternity cannot be remedied by way of an administrative procedure.

Section 4:117

[Exercising the right to bring action]

(1) A maternity suit shall be brought by the entitled party in person.

(2) A minor of limited legal capacity or any person whose capacity in respect of making legal statements relating to descent has been partially limited shall be entitled to bring action with the consent of his/her legal representative. If the legal representative is unavailable for any extended period of time to give consent, or if refuses to consent, the guardian authority may do so in his stead.

(3) If the entitled party is incompetent, the action may be brought in his/her name by the legal representative with the guardian authority's consent.

Section 4:118

[Respondents in maternity suits, legal effects of any change in maternity]

(1) The action shall be brought by the child or his/her descendant against the mother or the person shown in the registry of births as the mother, or by the mother against the child or the person shown in the registry of births as the mother.

(2) If descent results from a reproduction procedure, maternity may not be established by way of judicial process with respect to a woman who made a donation of gamete or embryo for the procedure.

(3) If in an action for establishing maternity by way of judicial process any change in maternity status stemming from the woman's marriage has an effect on the presumption of paternity, the husband who is to be considered the father of the child by way of presumption based on wedlock shall also be named as defendant in the action.

(4) If the party against whom the action is to be brought is no longer alive, the guardian ad litem appointed by the court shall be named as the defendant in the action.

(5) In the event of any change in maternity, the child shall have the option to decide to take up the name of his/her biological mother or to keep his/her existing surname. In justified cases the court may authorize the child to retain his/her surname.

(6) The judgment delivered in a maternity suit applies to all parties involved.

TITLE XI

ADOPTION

Chapter XII

Purpose and Conditions of Adoption

Section 4:119

[Purpose of adoption]

- (1) Adoption shall be considered to establish a family relationship between the adoptive parent, his/her relatives and the adopted child in the interest of allowing the child to grow up in a family.
- (2) Only minor children can be adopted.

Section 4:120

[General conditions of adoption]

- (1) For the adoption an identical petition shall be submitted by the person wishing to assume the parenting of a child and by that child's legal representative, together with the consent of the child's parents and the spouse of the adoptive parent.
- (2) As to his/her adoption, a minor of limited legal capacity over the age of fourteen years may be adopted with his/her consent. A minor of sound mind under the age of fourteen shall be heard and his/her opinion shall be taken into consideration where deemed appropriate.
- (3) In the adoption process efforts should be made to ensure a degree of continuity in the child's upbringing, with particular regard to his/her family ties, nationality, religion, mother tongue and cultural background.
- (4) Adoption shall be authorized by the guardian authority.
- (5) Moreover, after the requirements set out in this Act are satisfied, the guardian authority shall authorize the adoption if it is deemed to be in the child's best interest. In the interest of the minor child, in its adoption decision the guardian authority shall give preference to adoptive parents living in wedlock.

Section 4:121

[The adoptive parent]

- (1) The adoptive parent must be at least twenty-five years of age with legal capacity, must be at least sixteen years and at most forty-five years of the child's senior, and who is considered suitable to adopt the child based on his/her personality and other circumstances. In the case of adoption by a relative or spouse, the requirement of age difference shall not apply.
- (2) In the case of adoption as a common child, the age and age difference requirement set out in Subsection (1) shall be satisfied by either of the adoptive parents. If the adoptees are siblings, the age of the older child shall be taken into consideration.
- (3)⁴⁶ Any person whose parental supervision has been terminated by court order, or who has been excluded from public affairs, and whose child is under foster care may not adopt a child.

⁴⁶ Enters into force as under Paragraph a) of Subsection (3) of Section 186 of Act CCLII of 2013.

Section 4:122

[Establishing suitability for adoption]

(1) Suitability for adoption shall be determined by the guardian authority following the preliminary procedure and preparation carried out in accordance with the relevant legislation.

(2) The suitability of relatives and the parent's spouse, including a person who has been raising the child with the parent's consent in his/her own household for a period of not less than one year and, in the case of international adoption, of the person wishing to assume the parenting of a child shall be determined by the guardian authority in the procedure for the authorization of adoption. This provision shall also apply for determining the suitability of any person who raises a child in his/her own household against compensation by decision of the guardian authority (hereinafter referred to as „child protection foster parent”).

Section 4:123

[Children for adoption]

(1) Apart from the adoption of the minor child of the spouse, a child may be adopted if his/her parents are not alive, or if his/her parents are unable to raise him/her properly.

(2) An adopted child may, during the term of adoption, be adopted by the spouse of the adoptive parent, or by others after the adoptive parent's death. If an adopted child is adopted after the adoptive parent's death, the previous adoption shall cease.

Section 4:124

[Eligibility for adoption]

(1)⁴⁷ The guardian authority shall declare a child placed under foster care eligible for adoption for a period of not more than two years if the parent's right of custody had not been terminated and if the parent:

a) has failed - for reasons within his/her control - to keep regular contact with his/her child for a period of one year, or no contact of any kind for a period of half a year, and fails to make any changes in his/her life style and/or other circumstances, on account of which foster care cannot be eliminated; or

b) changes - for reasons within his/her control - his/her permanent or habitual residence without leaving the address of the new permanent or habitual residence, and efforts for obtaining such address proved ineffective within a period of six months.

(2) In justified cases, the time limit referred to in Subsection (1) may be extended by not more than two years.

(3)⁴⁸ In the case provided for in Paragraph *a)* of Subsection (1), the parent shall be advised in the resolution ordering foster care concerning the legal effects of eligibility for adoption.

(4) The guardian authority shall, upon declaring the child eligible for adoption, suspend the parent's right of access in the interest of the child's adoption.

(5)⁴⁹ If the adoption of a minor fails to materialize, and the guardian authority subsequently terminates foster care, the resolution declaring the child eligible for adoption shall be abolished.

⁴⁷ Enters into force as under Subsection (1) of Section 186 of Act CCLII of 2013.

⁴⁸ Enters into force as under Paragraph b) of Subsection (3) of Section 186 of Act CCLII of 2013.

Section 4:125

[Parental consent for open adoption]

(1) Open adoption means when the biological parent approves the adoption to an adoptive parent known to him/her.

(2) The parent may withdraw his/her statement of consent within a period of six weeks following the birth of the child for the benefit of caring for and bringing up the child by the parent or another relative of the child. The parent shall be informed of the possibility of withdrawal.

(3) Upon giving consent for adoption, the parent's right of custody terminates when the child reaches the age of six weeks. Termination of the parent's right of custody shall be declared by the guardian authority.

(4) With the exception if the child is adopted by a relative or by the parent's spouse, an open adoption process shall be carried out with the involvement of the regional child protection social services or an organization specializing in adoptions.

Section 4:126

[Parental consent for confidential adoption]

(1) Confidential adoption means when the biological parent agrees to the adoption of his/her child in a manner maintaining the person and the identifying information of the adoptive parents as secret, or where the parent's consent is not required in accordance with this Act. The statement of consent can be made before the birth of the child as well.

(2) The parent may withdraw his/her statement of consent within a period of six weeks following the birth of the child for the benefit of caring for and bringing up the child by the parent or another relative of the child. The parent shall be informed of the possibility of withdrawal.

(3) If the child is over the age of six years or suffers in any mental disorder, the approval of the guardian is required for the validity of the statement of consent.

(4) Within the meaning of Subsection (2), the parent's rights of custody terminates when the child reaches the age of six weeks. Termination of the parent's right of custody shall be declared by the guardian authority.

(5) In the process of confidential adoption the parent is not notified of the adoption and may not seek remedy against the decision on adoption.

(6) In the process of confidential adoption the natural identification data of the biological parent and the adoptive parent shall not be disclosed between them.

Section 4:127

[Adoption without parental consent]

(1) No consent is required for adoption from a parent:

a) whose parental supervision was terminated by final court order;

⁴⁹ Enters into force as under Paragraph c) of Subsection (3) of Section 186 of Act CCLII of 2013.

b)⁵⁰ whose child had been placed in foster care, and the guardian authority declared such child eligible for adoption;

c) who is incompetent for reasons other than minority;

d) who cannot be identified or cannot be located, and the measures introduced to identify or locate such person failed; or

e) who abandoned his/her child - with a view to passing on the responsibility of raising the child - at a place designated by a medical institution, without revealing his/her identity, and did not come forward within six weeks to reclaim the child.

(2) No consent is required for adoption from the adoptive parent's spouse if:

a) the spouse is incompetent or cannot be located; or

b) the matrimonial relationship of the spouses was terminated.

Section 4:128

[Care before adoption]

(1) Following the submission of a petition for adoption and after the consent of the parties concerned, the person wishing to assume the parenting of a child shall provide care for that child in his/her home for a period of at least one month. Adoption may be authorized if the above specified period of caring for the child proves to be successful.

(2) Adoption may be authorized without the period of caring referred to in Subsection (1) if:

a) the adoptive parent and the biological parent are married;

b) the adoptive parent has been caring for the child in his/her own home for at least one year with the biological parent's consent; or

c) the child being cared for is adopted by his/her child protection foster parent, who has been providing for the child's care and upbringing for a period of at least one year.

Section 4:129

[International adoption]

(1) International adoption means when the child moves permanently to another country in consequence of the adoption, irrespective of the adoptive parent's nationality and irrespective of whether or not the child's citizenship is changed.

(2)⁵¹ Save where the child is adopted by a relative or by the parent's spouse, a child may be adopted internationally if declared eligible for adoption, or if placed under foster care, provided that the child, after having been placed under foster care, if eligible for adoption, was not adopted in Hungary because the measures taken for the child's adoption had failed.

Section 4:130

[Prohibition of financial gain]

Adoption shall not be authorized if it is likely to result in any financial advantage for the parties, other persons or organizations involved in the adoption process, in excess of their justified expenses.

⁵⁰ Enters into force as under Paragraph d) of Subsection (3) of Section 186 of Act CCLII of 2013.

⁵¹ Enters into force as under Paragraph f) of Subsection (3) of Section 186 of Act CCLII of 2013.

Section 4:131

[Effect of adoption, follow-up procedures]

(1) Adoption enters into effect on the date on which the resolution on adoption becomes legally binding. If the adoptive parent dies during the adoption process, the legal effects of the adoption, if authorized, shall take effect upon the death of the adoptive parent.

(2) After the adoption the organization delegated by law or the regional child protection social services shall monitor and promote the child's well-being and his/her development for a period of up to five years following the operative date of the resolution on adoption.

Chapter XIII

Legal Effects of Adoption

Section 4:132

[Child's status in the adoptive parent's family; adoption as a common child]

(1) As regards the adoptive parent and his/her relatives, the adoptee receives the legal status as the adoptive parent's child.

(2) The person adopted by both spouses together or separately, shall be construed as the common child of the spouses. Furthermore, if either spouse adopts the child of the other spouse, that child shall also be considered as a common child.

(3) Adoption will have effect on the descendants of the adopted person.

Section 4:133

[Legal effects on the rights and obligations deriving from descent]

(1) The act of adoption eliminates the rights and obligations accrued upon relationship by descent in connection with parental supervision and the maintenance of relatives, except when one of the spouses adopted the child of the other spouse.

(2) Where one of the spouses adopts the child of the other spouse, and the marriage during which the child was born terminated upon the death of either spouse, the adoption shall not affect the rights of access of the relatives of the deceased spouse.

(3) Where a relative of either spouse adopts the child upon the death of both spouses, the adoption shall not affect the rights of access of the relatives of the other spouse.

(4) On an exceptional and duly justified basis, in the case of open adoption the guardian authority may grant rights of access for the biological parent who has given consent for the adoption of his/her child by the spouse of the other parent.

Section 4:134

[Name of the adoptee]

(1) The adopted child shall use the surname of the adoptive parent accrued by birth or through marriage, with the exception if the adoptive parent uses the full name or surname of her spouse with an indication of marital status. If the adoptive parent uses as her married name her spouse's or former spouse's name without an indication of marital status, or their surnames merged together as their married name, the adoptee's new surname may be - by decision of the adoptive

parent - the spouse's or former spouse's surname, the merged married name or the adoptive parent's birth name. Where a parent has adopted more than one child, they may all use the same surname.

(2) Where a child is adopted as a common child, the adoptive parents shall specify in the petition for adoption their choice of the surname of one of the adoptive parents the adopted child should use. By agreement of the adoptive parents, the adopted child may use the surnames of the adoptive parents merged together also if the adoptive parents have not merged their surnames. If the spouses did not adopt the child together, in the absence of their agreement the child shall use the surname of the de facto adoptive parent.

(3) The guardian authority may exceptionally permit the adoptee to retain his/her surname.

(4) On an exceptional and duly justified basis, the guardian authority may authorize the adoptee to change his/her forename. The forename shall be decided by the adoptive parents.

(5) The surname and forename of the adopted person shall be established at the time when the authorization for adoption is granted.

Section 4:135

[Right of adoptees to access information about biological relations]

(1) The adoptee shall have the right to request information from the guardian authority as to whether he/she was adopted, about his/her biological parent, about whether he/she has any siblings, and - over the age of fourteen years - shall have access to the natural identification data of his/her biological parent and sibling. A child over the age of fourteen years may submit such request without the permission of his/her legal representative. The parties to the adoption process shall be informed thereof.

(2) Before the disclosure of such information the biological parent and the sibling shall be interviewed. If the adopted person is a minor, the adoptive parent or other legal representative shall also be interviewed. If the sibling is a minor, the prior consent of his/her legal representative is required for the interview. If the biological parent or the sibling is incompetent, their legal representative shall be interviewed as well.

(3) If the biological parent, the sibling, the adoptive parent or other legal representative cannot be located, or if any insurmountable obstacles exist, the aforesaid interview is not required.

(4) The natural identification data of the biological parent or sibling shall not be released to the adoptee if:

a) it was not possible to interview the biological parent, the sibling, the adoptive parent or other legal representative for they could not be located or any insurmountable obstacles existed;

b) the biological parent and the sibling did not permit the disclosure of their natural identification data; or

c) it is not in the minor child's best interest, in particular if the court deprived the biological parent of his/her rights of custody on account of his/her wrongful conduct causing serious injury to, or endangering the interest of, his/her child, including the child's physical integrity mental or moral development.

(5) If the biological parent is not alive at the time the request referred to in Subsection (1) is submitted, his/her natural identification data may be disclosed to the adopted child, except if he/she already blocked the disclosure of his/her personal data previously.

Section 4:136

[Disclosure of the biological parent's medical information]

The guardian authority shall, at the request of:

- a) the legal representative of the adopted child under the age of fourteen years;
- b) the legal representative or the adopted child over the age of fourteen years;
- c) the adoptee of legal age;

disclose information on the biological parent's medical data, excluding natural identification data, which are construed important from the point of view of the adopted person's health. The data requested by an adopted child over the age of fourteen years shall be communicated to the legal representative as well.

Chapter XIV

Nullity and Dissolution of Adoption

Section 4:137

[Nullity of adoption]

(1) Adoption shall be abolished if the adoptive parent provides a fully enforceable acknowledgement of paternity so as to confirm that he is the father of the adoptee, or if the adoptive parent is declared by binding court decision to be the father or the mother of the adopted child.

(2) If adoption is abolished, it shall be construed as if the adoption had not taken place.

Section 4:138

[Dissolution of adoption upon mutual request]

(1) The guardian authority shall have powers to dissolve the adoption upon the parties mutual request.

(2) If the adopted child is a minor, adoption may be dissolved only if it is in the child's best interest. During the procedure the guardian authority may interview the adopted child's biological parents as well, except when any insurmountable obstacles exist.

(3) Adoption shall cease at the time the guardian authority's resolution becomes legally binding. If either party should die during the process, the legal effects of adoption, if dissolution is authorized, shall be considered terminated with retroactive effect to the date when the petition was submitted.

(4) Dissolution will have effect on the adoptive parent, the adoptive parent's relatives, the adopted person and on the descendants of the adopted person.

Section 4:139

[Dissolution of adoption upon unilateral request]

(1) Adoption shall be dissolved by the court if either the adoptive parent or the adopted person engaged in conduct such that made life under adoption unbearable for the other party. If the adopted child is a minor, adoption may be dissolved on an exceptional and duly justified basis upon the adoptive parent's request.

(2) Upon the death of the adoptive parent, the adoption may be dissolved in the interest of allowing the adoptee to regain his/her family status on the basis of descent.

(3) Dissolution of adoption by judicial process may be requested by either of the parties. If the adopted child is a minor, the guardian authority may bring action for the dissolution of adoption. If the party against whom the action is to be brought is no longer alive, the guardian ad litem appointed by the court shall be named as the defendant in the action. If the adoptive parent dies during the procedure, the guardian ad litem appointed by the court shall be named as the defendant in the action.

(4) If there are more than one adoptive parent, and one of them is alive at the time the action is brought, dissolution of adoption may be requested by the living adoptive parent on behalf of the deceased adoptive parent as well. Such action may be based on the conduct shown with respect to either of the adoptive parents.

(5) If the adopted child is a minor, the court shall hear the biological parents as well, except if any insurmountable obstacles exist.

Section 4:140

[Effect of judgment for the dissolution of adoption]

(1) Adoption shall be abolished on the date on which the decree of dissolution becomes legally binding. If either party should die during the process, the legal effects of adoption, if dissolution authorized, shall be considered terminated with retroactive effect to the date when the petition was submitted.

(2) The decree of dissolution of adoption will have effect on the adoptive parent, the adoptive parent's relatives, the adopted person and on the descendants of the adopted person.

(3) The decree of dissolution of adoption applies to all parties involved.

Section 4:141

[Effect of decree for the dissolution of adoption relating to the adoptive parents separately]

If adoption was dissolved with effect to only one of the adoptive parents, adoption shall be abolished with respect to this parent and his/her relatives, unless the guardian authority or the court provides otherwise.

Section 4:142

[Provisions relating to surnames upon dissolution of adoption]

Following dissolution of adoption the adoptee and his/her descendant may not retain the surname accrued through the adoption. In justified cases the guardian authority or the court may authorize, upon request, the persons concerned to retain the surname accrued through adoption.

Section 4:143

[Protection of rights accrued through the deceased adoptive parent]

The dissolution of adoption shall not affect the rights accrued before the opening of the guardian authority's proceedings or the legal action with respect to the deceased adoptive parent. In that case, the estate already devolved cannot be reclaimed.

Section 4:144

[Legal effects of dissolution of adoption on relationships by descent]

Following the dissolution of adoption, rights and obligations accrued upon relationship by descent shall resume, if they were lost upon the adoption, with the exception of rights and obligations stemming from parental custody.

Chapter XV

Legal Statements Relating to Adoption

Section 4:145

[Legal statements relating to adoption]

(1) Subject to the exceptions set out in Subsections (2)-(3), legal statements relating to adoption shall be made in person. Minors of limited legal capacity shall also be allowed to make legal statements in person, without the consent of their legal representative.

(2) As regards the legal acts, under family law, of a minor of limited legal capacity the consent of his/her legal representative is required in respect of making legal statements relating to adoption.

(3) Legal statements relating to adoption may be made by the legal representative of an incompetent person in his stead. A minor of sound mind under the age of fourteen years shall be heard by the guardian authority.

(4) The adoptive parent may not act as the legal representative of the adoptee in connection with the dissolution of adoption. In that case, the guardian authority shall appoint a caretaker officer to represent the minor adoptee.

TITLE XII

PARENTAL CUSTODY

Chapter XVI

General Provisions Relating to Parental Custody

Section 4:146

[Legal status of minors; rights and obligations stemming from parental custody]

(1) Minor children are under parental custody or guardianship.

(2) Parental custody covers the right to select the minor child's name, to provide care, to determine the child's place of residence, to handle his/her financial affairs, including the right and obligation of representing the child in legal forums, and the right to exclude guardianship and other forms of social care.

Section 4:147

[Principles of exercising parental supervision]

(1) Parental supervision shall be exercised by the parents in collaboration with one another in the interest of the child's physical, intellectual and moral development.

(2) In exercising parental supervision jointly the rights and obligations of the parents shall be equal.

Section 4:148

[Involving children in the decision-making process]

The parents shall inform their child concerning the decisions that pertain to the child as well, and they shall permit the child of sound mind to express his/her views before the decision is made, and to partake in making the decision itself together with his/her parents in cases defined by law. The parents shall take the child's opinion into account, giving due weight consistent with the child's age and degree of maturity.

Section 4:149

[Limiting parental supervision in exceptional cases]

The court or other competent authority may restrict or withdraw the parent's rights of custody in exceptional and justified cases specified by law, where this is deemed necessary for the protection of the child's best interest.

Chapter XVII

Scope of Parental Custody

1. Naming the child

Section 4:150

[Selecting the child's name]

(1) The child shall be given - by agreement of the parents - the birth name or the married surname of his/her mother or father. If the parents are not married the child may not use the mother's married name from a previous marriage, if the mother uses that name with an indication of marital status. The child may use the parents' merged surname as his/her surname, even if the parents did not merge their surnames after the marriage, or if the parents did not marry. The surname of the child may consist of two segments at most.

(2) If the parents are married all common children born during their marriage shall have the same surname, except if the parents modified their surname during the marriage. If the parents use a common married name, their child may use the parents' common married name. If one of the parents uses their merged surname as a married name, the child shall be given - by agreement of the parents - the other parent's name without an indication of marital status or the parents' merged surname.

(3) If there is no person who should be considered the child's father, the child shall use his/her mother's surname accrued by birth or through marriage, with the exception if the mother uses the full name or surname of her husband with an indication of marital status.

(4) The mother may request the guardian authority to enter an imagined person in the registry of births as the father of her minor child. In entering an imagined person as the father, the mother shall have the option to decide for the child to use the name of such imagined father. In the event of failing to supply a statement to that effect, the child shall retain use of the mother's name.

(5) If there is no person who should be considered the child's father, upon reaching the age of majority the child may request to enter an imagined person in the registry of births as his/her father - if it was not previously done - and may also request to have the name of the father shown in the registry removed. In that case, the child shall also have the option to decide whether or not he/she wishes to use the surname of the imagined father in the future.

(6) The forename of the child is determined by the parents.

Section 4:151

[Name given by the guardian authority]

(1) The guardian authority shall determine the child's name if:

a) the parents exercising parental supervision jointly fail to notify the guardian authority concerning their agreement on the child's surname and forename within thirty days of being asked to do so; or

b) both parents are unknown.

(2) The guardian authority shall determine the child's forename if the parent having the right of custody fails to decide on the child's forename despite being asked to do so by the registrar or the guardian authority, within thirty days of such request.

2. Care, training and instruction of children

Section 4:152

[Taking care of the child, selecting his/her home and residence]

(1) It is the parents' right and obligation to care for the child, and to provide the necessary conditions for the child's continuous maintenance and development.

(2) Parents shall provide a home for their child in their own household. Unless otherwise provided for by the court or the guardian authority, the child's place of residence shall be the parents' home even if the child temporarily resides elsewhere.

(3) The parent or the guardian authority shall have the right to demand the child be released by any person who unlawfully holds the child in custody.

(4) A child over the age of sixteen years shall be allowed to leave the parents' home or any other place of residence designated by the parents, with the guardian authority's authorization, without the parents' consent, if that is not contrary to his/her interest. Leaving the parents' home or any other place of residence designated by the parents shall not in itself affect parental custody, with the exception of personal care and upbringing.

(5) The agreement of both parents is required for the child's residence abroad for any extended period of time for the purpose of studies or work, or other similar reason, either by him/herself or together with one of the parents.

(6) Parental authorization is required for the child's moving to another country.

Section 4:153

[Raising and development of children, career guidance]

(1) The parents shall have the right to choose the path for the child's upbringing and development.

(2) Taking into account the child's abilities, the parents and the child shall jointly decide the possible path for the child's career.

(3) Any dispute arising between parent and child in connection with setting the career path and, in that context, with the child's education and schooling shall be decided by the guardian authority.

Section 4:154

[Involvement in caring for and raising the child by a person in direct contact with the child within the family]

Where a child is raised in a home of a person other than the parents, or in a home maintained by such person and the parents together, this person may be involved - by agreement of the parent having the right of custody - in exercising certain rights and obligations relating to caring for and raising the child.

3. Management of the assets of the child

Section 4:155

[Executors of the child's property]

(1) It is the right and obligation of the parents having rights of custody to manage all of the child's property which are not removed from their administration under this Act.

(2) If the child was given any property under the condition that his/her parents should be deprived of access to such property, the guardian authority shall appoint a trustee - taking into consideration the recommendation of the settlor - for the administration of such property (hereinafter referred to as „trustee”). If the third person granting the property excluded one of the parents from managing the property, the other parent otherwise entitled to manage the property shall manage the property.

Section 4:156

[Parent's right as the exclusive executor of the property of the child]

(1) Where custody is exercised by the parents jointly, the parents may give a power of attorney collectively or separately authorizing the other parent to administer the child's property in the other parent's stead. The power of attorney shall be considered valid if executed in an authentic instrument or in a private document countersigned by an attorney.

(2) In connection with contracts of minor importance, the parent acting on the child's behalf may be considered by bona fide third parties as acting in the name of the other parent as well.

(3) Where custody is exercised by the parents jointly, the guardian authority shall have powers to delegate a parent to administer the child's property if deemed necessary for the child's best interest.

Section 4:157

[Appropriation of the child's property and income]

(1) The parents shall use the child's assets remaining after covering the incremental costs applicable to the assets for financing the child's justified needs.

(2) The parents shall be allowed to allocate the child's assets for covering the costs of maintenance in accordance with the provisions of this Act on the maintenance of the child.

(3) If the child is raised in the parent's home and he/she has an income, the parent shall be entitled to ask for appropriate contribution to household expenses.

Section 4:158

[Fiduciary responsibility of the parents]

(1) The parents shall administer their child's property without having to provide security and without the obligation to give account.

(2) In managing their child's property, the parents shall follow the same rules of prudential management as applicable to their own affairs. In the event of any breach of this obligation committed intentionally or through serious negligence, the parents shall provide compensation for damages on the grounds of non-contractual liability.

Section 4:159

[Limitation of the parent's right to manage the child's assets]

In the event of any breach of the obligation of parents having rights of custody in managing their child's assets, thus causing serious injury to the child's interest, the guardian authority may, in justified cases:

- a) order that the child's money and other valuables be transferred to the guardian authority, if such assets are not immediately required for ongoing expenses according to the principle of prudential management;
- b) order the parents to provide collateral security;
- c) place the management of assets under its supervision;
- d) order the parents to give account of management practices as a trustee; and/or
- e) impose restrictions on or withdraw the right of management from the parents, or their right of representation in certain financial matters or specific groups of matters.

Section 4:160

[Disbursement of the child's assets]

If the parents' asset management right is terminated, they shall release the assets to the child of legal age, or to the person to whom management of the assets has been entrusted.

4. Legal representation of the child

Section 4:161

[Legal representation of the child]

(1) It is the right and obligation of the parents having rights of custody to represent their child in matters of a personal and financial nature.

(2) The parent having no asset management right may not act as a legal representative of the child's in matters of a financial nature.

Section 4:162

[Exclusion of parental representation in making legal acts]

The parent's power of representation shall not cover the child's legal statement which must be made in person under the relevant legislation.

Section 4:163

[Exclusion of parental representation on the grounds of conflict of interest]

(1) Unless otherwise provided for in this Act, the parent may not represent his/her child in matters in which the parent him/herself, his/her spouse, domestic partner, relative in direct line or any other person under the parent's legal representation is the opposing party.

(2) If, owing to a conflicting interest or physical obstacle, a parent acting as the legal representative is not able to proceed pursuant to the law or a guardian authority's order, the guardian authority shall appoint a caretaker officer to represent the child.

(3) The appointment of a caretaker officer may be requested by either of the parties affected or by any authority, and one may be appointed ex officio. The parent shall notify the guardian authority without delay with a view to having a caretaker officer appointed, if unable to proceed for the reasons defined in Subsection (2).

(4) The caretaker officer shall act with the same authority as a guardian.

Chapter XVIII

Exercising Parental Supervision

1. Agreement of parents on exercising parental custody

Section 4:164

[Joint exercise of parental custody]

(1) Unless otherwise provided for in an agreement between the parents, or by the guardian authority or the court, parental custody shall be exercised by the parents jointly, even if they are separated.

(2) If the parents are separated, in exercising parental supervision they shall ensure that the child's life is well balanced.

(3) In matters where immediate attention is required, in the case of joint custody either parent shall have the right to decide on his/her own in the child's interest, of which the other parent must be notified immediately.

Section 4:165

[Agreement between separated parents on the division of rights of custody and on joint parental supervision]

(1) If the parents are living separate and apart, the rights and obligations relating to parental supervision may be shared among them, and they may agree to delegate the right of custody to one of them. Such agreement of the parents shall be implied if the child has been living with one of the parents undisturbed over a long period.

(2) In a matrimonial suit or in an action brought in connection with the exercise of certain rights of custody, at the parents' mutual request the court shall - upon weighing the child's best

interest - sustain the parents' agreement relating to custody, and in that context, to the child's residence or to the arrangement made under Subsection (1) concerning parental supervision, or shall pass judgment thereof.

Section 4:166

[Decision on disputes arising out of or in connection with joint custody]

If, in the case of joint custody, the parents fail to agree on certain issues, the guardian authority shall decide such issues, with the exception of issues connected to the right of freedom of conscience and religion.

2. Settlement of parental custody by way of judicial process

Section 4:167

[Settlement of parental custody by way of judicial process]

(1) In the absence of an agreement between the parents living separate and apart the court shall decide - upon request or ex officio if deemed necessary for the protection of the child's best interest - which parent shall have the right of custody.

(2) The court shall make the above decision with a view to finding the best way to ensure the child's physical, intellectual and moral development.

Section 4:168

[Delegation of separated parent for exercising certain rights of custody]

(1) If the court award the right of custody to one of the parents, the parent living separate and apart from the child shall not be able to exercise parental authority, with the exception of major issues relating to the child's well-being.

(2) The court may delegate certain rights upon the parent living separate and apart from the child in connection with caring for and the upbringing of the child, and - exceptionally - for exercising full or partial powers in financial management and in handling the child's financial affairs. Where deemed necessary for the protection of the child's best interest, the court may restrict or withdraw the right of decision in terms of major issues relating to the child's well-being.

Section 4:169

[Placement of a child with a third party]

(1) If the court considers that the exercise of custody by the parents jeopardizes the child's best interest, it may place the child under the care of a third party, provided that such third party requests the placement him/herself. In that case, that person shall be appointed as the guardian, while the parent's rights of custody are suspended.

(2) In the case provided for in Subsection (1), the court shall first and foremost place the child with a person who has a history in caring for and raising the child in accordance with the child's best interest.

Section 4:170

[Changes in exercising certain rights of custody and in the placement of a child]

(1) Changes in exercising certain rights of custody and in the placement of a child with a third party may be requested in court in the event of considerable changes taking place subsequently in the circumstances underlying the parents' agreement or the court's decision, and in consequence changes are in the child's best interest. In consequence of changes in the relevant circumstances, the child's interest shall not be invoked by the parent if the change is attributable to his/her wrongful conduct, especially if the parent has abducted or holds off the child unlawfully.

(2) If, in the case of joint custody, the parents are no longer able to cooperate, the court shall abolish joint custody at the request of either parent.

Section 4:171

[Action brought in disputes in connection with the exercise of certain rights of custody and with the third-party placement of a child]

(1) An action may be brought in disputes in connection with changes in exercising certain rights of custody and with the third-party placement of a child, or for the modification of placement by the parent and by the guardian authority.

(2) With the exception set out in Subsection (3), the action shall be brought by either parent against the other parent, or by the guardian authority against both parents.

(3) An action for the modification of placement with a third party shall be brought against the person with whom the child has been placed.

(4) During the action the court shall hear both parents, except if any insurmountable obstacles exist. In justified cases, or if requested by the child him/herself, the court shall hear the child as well either personally or through an expert. If the child is over the age of fourteen years, the decision relating to custody and his/her placement can be made upon the child's agreement, except when the child's choice is considered to jeopardize his/her development.

Section 4:172

[Mediation in actions brought in disputes in connection with the exercise of certain rights of custody]

In justified cases, the court may order the parents to submit to mediation in the interest of properly exercising parental supervision and to ensure their cooperation to that end, including the right to maintain direct contact between the parent living separate and apart and the child.

3. Rights and obligations of a parent living separate and apart from his/her child

Section 4:173

[Cooperation obligations of parents]

The parent having the right of custody and the parent living separate and apart from his/her child shall cooperate in the interest of the child's balanced development, with due respect for and without any disturbance of the family life of each other.

Section 4:174

[Obligation of the parent living with the child to provide information]

The parent having custody shall inform the parent living separate and apart concerning the child's development, health and studies at prearranged intervals, and shall provide all information requested by the parent living separate and apart relating to the child.

Section 4:175

[Joint rights in custody]

(1) The parents living separate and apart shall exercise their rights jointly having regard to major issues relating to the child's well-being, also if custody has been awarded to one of the parents by agreement of the parents or by court decision, with the exception if the court has restricted or withdrawn the right of supervision of the parent living separate and apart from his/her child.

(2) Major issues relating to the child's well-being shall cover the naming of a minor child and changing the child's name, relocation of the child's residence to a place other than one where his/her parent lives, or to abroad for long term residence or for the purpose of settlement, changing the child's citizenship and decisions relating to the schooling or career path of the child.

(3) If the parents living separate and apart are unable to reach an agreement in connection with any of the jointly exercised parental rights referred to in Subsection (2), the guardian authority shall decide on the matters in question.

Section 4:176

[Obligation of the parent living separate and apart to provide information]

If, in connection with caring for and upbringing the child as well as with exercising powers in financial management and in handling the child's financial affairs, the court delegates certain rights upon the parent living separate and apart from the child, and parental authority shall, in that respect, be exercised by the parent living separate and apart. The parent living separate and apart shall inform the parent having the right of custody of such activities.

Section 4:177

[Mediation in proceedings of the guardian authority]

The guardian authority may - upon request or ex officio if deemed necessary for the protection of the child's best interest - order the parent having the right of custody and the parent living separate and apart to submit to mediation in the interests of ensuring the cooperation and to safeguarding the rights of the parent living separate and apart, including communication between the parent living separate and apart and the child.

4. Visitation rights

Section 4:178

[Right to maintain contact]

(1) The child shall have the right to maintain on a regular basis a personal relationship and direct contact with his/her parent living separate and apart. The parent or other person raising the child shall ensure that the right to maintain personal relationship can be exercised undisturbed.

(2) Unless otherwise provided for by the court or the guardian authority, the parent living separate and apart from his/her child has the right and obligation to maintain contact with his/her child.

(3) The parent shall have the right to maintain contact with his/her child even if his/her right of parental supervision is suspended, with the exception if an injunction is in effect for an offense committed against the child or any family member living with the child in the same household.

(4) On an exceptional and duly justified basis, in the interest of the child the parent may be authorized to maintain contact with his/her child:

a) even if his/her right of parental supervision has been withdrawn by the court;

b) even if the parent has given consent for the adoption of his/her child by the spouse of the other parent; or

c) where the parent's right of parental supervision has been suspended on account of giving consent for the adoption of his/her child by an unknown person, or because the parent abandoned his/her child - with a view to passing on the responsibility of raising the child - at a place designated by a medical institution, without revealing his/her identity, and did not come forward within six weeks to reclaim the child, and the child has not been adopted.

(5)⁵² In the case provided for in Subsection (4), authorization may be granted to the parent to maintain contact with his/her child by the court that has withdrawn the right of parental supervision, or - if the child was placed under foster care - by the guardian authority.

Section 4:179

[Other family members with visitation rights]

(1) Rights of access shall also be allotted to the grandparents, siblings and - if the parent or grandparent is not alive or is unable to maintain contact for reasons within his/her control for any extended period of time - to the sibling and spouse of the child's parent.

(2) If the marriage during which the child was born terminated upon the death of either of the child's parents, and the spouse adopted the child of the other spouse from his/her previous marriage, this shall not affect the rights of access of the persons referred to in Subsection (1).

(3) Upon the child's request, visitation rights may be granted to the former stepparent, foster parent or guardian, and any person whose presumption of paternity for the child was rebutted by the court, if the child was raised in their home for a longer period of time.

Section 4:180

[Contents of visitation rights]

(1) Visitation rights shall cover the right of access for maintaining personal contact with the child, the removal of the child from his/her home or place of residence on a regular basis, for a prearranged period of time, spending longer time with the child at specific times, such as school breaks and lengthy holidays, as well as maintaining contact by ways other than personally.

(2) Unless otherwise provided for by the court or the guardian authority in the child's interest, the right of visitation applies also to traveling with the child to foreign destinations for prearranged durations within the framework specified in Subsection (1).

⁵² Enters into force as under Paragraph e) of Subsection (3) of Section 186 of Act CCLII of 2013.

(3) Unless otherwise provided for by the court or the guardian authority, the costs of transport relating to the removal of the child shall be covered by the person exercising visitation rights.

Section 4:181

[Agreement on visitation rights]

(1) In a matrimonial suit or in an action brought in connection with the exercise of certain rights of custody the parents may reach an agreement relating to visitation rights; in the absence thereof the court shall decide - upon request or ex officio if deemed necessary for the protection of the child's interest - about visitation rights. If there is no matrimonial suit or action in connection with the exercise of certain rights of custody in progress, in the absence of the parents agreement on visitation rights the decision lies with the guardian authority. The parties concerned and the child of sound mind shall be heard before such decision is made.

(2) The court or the guardian authority shall adopt a decision relating to visitation rights taking into account the child's age, health and living conditions, the parents' personal circumstances, as well as the opinion of the child of sound mind.

(3) The resolution of visitation rights shall provide for the time intervals of visits, the duration of such visits, whether visits are made systematically or periodically, any supervision that might be required during the visits, as well as the place where the child is collected and returned, the time and method of exchange, the notification obligation when the visit is cancelled and for rescheduling cancelled visits.

(4) If the right of visitation has been decided in court, subsequent changes may be requested from the court within two years after the operative date of the resolution.

Section 4:182

[Obligation to provide information; rescheduled visitation]

(1) The parties shall communicate to the other party without delay any obstacle that may arise in relation to visitation.

(2) If visitation is cancelled due to reasons beyond the beneficiary's control, it shall be rescheduled at the earliest available time, within six months at the latest.

Section 4:183

[Responsibility for preventing the exercise and violation of visitation rights]

(1) If the party having the right of visitation or the party who is to abide by such right obstructs the visits or violates the right of access without due cause, shall be liable to compensate the other party for damages.

(2) Upon request the guardian authority shall order the party who obstructs the visits or violates the right of access without due cause to cover the verifiable costs and expenses incurred in consequence of his/her actions to obstruct the visits or violating the right of access.

Section 4:184

[Restriction and withdrawal of rights of access]

The guardian authority or - in a matrimonial suit or action in connection with the exercise of certain rights of custody - the court may, in the interest of the child, restrict or withdraw the

visitation rights of the parent or other person having the right of access, if engaged in any wrongful conduct.

Section 4:185

[Implementation of resolutions relating to visitation rights]

The responsibility for the implementation of resolutions relating to visitation rights lies with the guardian authority.

Chapter XIX

Suspension and Termination of Parental Custody Rights

1. Suspension of parental custody rights

Section 4:186

[Suspension of parental custody rights]

(1) Parental custody rights shall be suspended if:

- a)* the parent is incompetent;
- b)* the parent is a minor and of limited legal capacity, excluding the right and obligation of the minor parent over the age of sixteen years of caring for and upbringing the child;
- c)* the parent's capacity in respect of exercising rights of custody has been partially limited;
- d)* the parent cannot be located or effectively prevented in carrying out his/her parental responsibilities;
- e)* the guardian authority approved the child's placement with a family;
- f)* the parent has given consent for adoption of his/her child below the age of six weeks;
- g)*⁵³ the guardian authority took the child under foster care and the parent's right of custody did not terminate or had not been terminated by court order;
- h)* the court ordered the placement of the child with a third party; or
- i)* the parent is under the force of an injunction for an offense committed against the child or any family member living with the child in the same household.

(2) During life partnership parental custody rights shall be suspended in respect of the parent who lives together with the other parent who has been deprived of custody rights.

(3) Until the binding conclusion of an action for the termination of parental custody or an action brought in connection with the exercise of certain rights of custody, custody rights of a parent shall be suspended if the guardian authority temporarily placed his/her child with the other parent living separate and apart, with another person or an institution.

2. Temporary family placement

Section 4:187

[Temporary family placement]

⁵³ Enters into force as under Paragraph g) of Subsection (3) of Section 186 of Act CCLII of 2013.

(1) When requested by the parents exercising joint custody or by the parent having the right of custody, the guardian authority - upon hearing the other parent living separate and apart - may approve to temporarily place the child under the care of a family named by the requesting parent for health reasons, justified absence or other family reasons, provided that such temporary placement is in the child's best interest.

(2) The guardian authority shall approve temporary family placement if, based on his/her personality and other circumstances, the parent in the receiving family is considered suitable for caring for the child, for providing for his/her upbringing and for handling guardianship duties, and agrees to do so him/herself.

(3) The guardian authority shall confer guardianship duties upon the parent or parents of the receiving family.

Section 4:188

[Parent's rights and obligations in the case of temporary family placement]

(1) During the term of temporary family placement the parent's rights of custody shall be suspended.

(2) The parent shall have the right to maintain contact, as well as joint decision rights in major issues relating to the child's well-being.

(3) In particularly justified cases the guardian authority may delegate upon the parent the right of legal representation in financial management and in handling the child's financial affairs.

(4) Temporary family placement shall not affect the parent's maintenance obligation.

Section 4:189

[Review of temporary family placement]

(1) The guardian authority shall review annually the conditions underlying temporary family placement.

(2) The guardian authority shall terminate temporary family placement when so requested by the parent of the child or by the parent of the receiving family, or if maintaining it would be harmful to the child's development.

3. Cessation, termination and restoration of the parent's right of custody

Section 4:190

[Cessation of the parent's right of custody]

(1) Parental custody rights shall cease:

- a) when the child reaches the age of majority;
- b) upon the adoption of the child, except when the child is adopted by the parent's spouse;
- c) if the parent has given consent for the adoption of the child, or if the parent has given consent for the adoption of his/her child below the age of six weeks, at the time the child reaches the age of six weeks, except if the parent has withdrawn the statement of consent; or
- d) if the parent has abandoned the child - with a view to passing on the responsibility of raising the child - at a place designated by a medical institution, without revealing his/her identity, and did not come forward within six weeks to reclaim the child.

(2) If the parents have joint custody, in the event of death of either parent custody shall pass on to the surviving parent.

(3) In the event of death of the parent who had exclusive parental custody or exclusive right to exercise certain rights of custody, custody shall pass on to the surviving parent, provided that his/her right of custody was not terminated by court ruling.

(4) If custody passed on to the surviving parent in accordance with Subsection (3), the guardian authority shall call upon that parent to exercise parental custody rights. The surviving parent may not be called upon to exercise parental custody rights if his/her rights of custody are suspended on account of his/her incompetency or limited capacity due to his/her minority, if the parent's capacity in respect of exercising rights of custody has been partially limited, or because the parent cannot be located or effectively prevented in carrying out his/her parental responsibilities, or if this is manifestly contrary to the child's best interest.

Section 4:191

[Termination of the parent's right of custody by judicial process]

(1) The court shall terminate parental custody if:

- a) the parent has engaged in any wrongful conduct causing serious injury to, or endangering the interest of, his/her child, including the child's physical integrity mental or moral development; or
- b)⁵⁴ the child was placed with another person or under foster care, and the parent whose right of custody was suspended failed - for reasons within his/her control - to make any changes in his/her life style and/or other circumstances, on account of which placement or foster care was ordered.

(2) If the parent was sentenced to imprisonment by court verdict for an intentional criminal offense committed against either of his/her children, the court shall have powers to deprive the parent of custody of all of his/her children. The above-specified court decision may also apply to any child yet to be born.

(3) A parent who has been deprived of custody rights by final court decision shall not be allowed to adopt a child or to accept the office of guardianship, to accept the placement of a child and - unless otherwise provided by the court or the guardian authority - shall not have the right to maintain contact with his/her child.

Section 4:192

[Reinstatement of the parent's right of custody by judicial process]

If the reason under which the court ordered the termination of the parent's right of custody no longer exist, the court shall reinstate parent's right of custody, provided that there is no other reason for the termination thereof.

Section 4:193

[Persons entitled to bring action for the termination and reinstatement of parent's right of custody, respondents in actions]

(1) An action for the termination or reinstatement of parental custody may be brought, respectively, by the other parent or by both parents. In both cases the child, the guardian authority and the public prosecutor shall also be entitled to bring action.

⁵⁴ Enters into force as under Paragraph h) of Subsection (3) of Section 186 of Act CCLII of 2013.

(2) A minor of limited legal capacity and any parent whose capacity in respect of exercising rights of custody has been partially limited may bring action for the termination or reinstatement of parental custody in person, with the consent of his/her legal representative. If the parent or the child is incompetent, the action may be brought in his/her name by the legal representative with the guardian authority's consent.

(3) The action for the termination of parental custody shall be filed against the parent who is to be deprived of custody. The action for having parental custody restored shall be brought against the person at whose claim the court decided to terminate parental custody; if that person requests the reinstatement of parental custody, the action shall be brought against the other parent. If the party against whom the action is to be brought is no longer alive, the guardian ad litem appointed by the court shall be named as the defendant in the action.

(4) The judgment delivered in an action for the termination or reinstatement of parental custody shall apply to all parties involved.

TITLE XIII

MAINTENANCE OF RELATIVES

Chapter XX

Common Provisions Relating to the Maintenance of Relatives

Section 4:194

[Entitlement for maintenance]

(1) Any person who is unable to support him/herself through no fault of his/her own, and who has no spouse or former spouse who owes maintenance may claim maintenance from his/her relatives.

(2) A person of legal age shall be considered unworthy of maintenance if engaged in gross misconduct against the person owing maintenance or any resident family member, or pursues a lifestyle because of which maintenance cannot reasonably be expected from the person owing maintenance taking into account their relationship and the conduct of the person owing maintenance.

(3) If the parent fulfilled his/her obligation to maintain and care for the child and to provide for his/her upbringing, the child may allege unworthiness in the event of the parent's flagrant misconduct against him/her.

Section 4:195

[Ability to provide maintenance]

Unless otherwise provided for in this Act, a person shall not be obligated to support another person if this would seriously jeopardize his/her ability to provide for him/herself or for a person ranked higher in the chain of entitlement for maintenance.

Section 4:196

[Persons owing maintenance, chain of maintenance obligation]

(1) Unless otherwise provided for by this Act, maintenance obligation shall be conferred upon relatives in direct line with respect to each other.

(2) Maintenance obligation shall primarily prevail in the relation of the parent and his/her child and vice versa.

(3) If a child to whom maintenance is owed has no parent from whom to claim maintenance, his/her distant relatives in the ascending line shall be required to provide maintenance.

(4) If the person to whom maintenance is owed has no children, his/her distant relatives in the ascending line shall be required to provide maintenance.

(5) The maintenance obligation of any relative who is closer in the line of descent to the person to whom maintenance is owed shall precede that of the more distant relative.

(6) The dependant to be supported may not claim maintenance from his/her relative alleging his/her inability to enforce maintenance claim from a person ranked higher in the chain of entitlement for maintenance due to his/her unworthiness.

Section 4:197

[Maintenance of siblings]

Any minor who has no relative in direct line from whom to claim maintenance shall be supported by his/her sibling of legal age, provided that such sibling is capable of doing so without jeopardizing his/her own maintenance and the maintenance of his/her spouse, domestic partner and any dependant relative in direct line.

Section 4:198

[Maintenance of stepchildren]

(1) The spouse shall provide support in his/her home to his/her spouse's dependant minor child (hereinafter referred to as „stepchild”) who was brought by his/her spouse to their common home with his/her consent.

(2) The stepparent's maintenance obligation shall not affect the biological parent's obligation to pay maintenance.

Section 4:199

[Maintenance of stepparents and foster parents]

(1) A stepchild shall be required to support his/her dependant stepparent if the stepparent had provided for his/her maintenance for a long time previously.

(2) A foster child shall be required to support under the conditions set out in Subsection (1) a person who had provided for his/her maintenance in his/her own home for a long time previously without receiving anything in exchange, and if such person is other than his/her biological, adoptive or stepparent (hereinafter referred to as „foster parent”).

Section 4:200

[Chain of entitlement for maintenance among blood relatives and in family relationships]

Entitlement for maintenance shall accrue:

a) to blood children, stepchildren and foster children, in the same line; and

b) to the biological parent and - if other legal requirements are satisfied - stepparent and foster parent, in the same line.

Section 4:201

[Division of maintenance obligations]

(1) Maintenance obligation shall be shared among several persons owing maintenance in the same line in proportion to their income and financial standing.

(2) If a person owing maintenance is exempted from maintenance obligation, his/her share of maintenance shall pass on to others in the same line, or failing this to persons owing maintenance ranked after them.

(3) Where a person owing maintenance provides care personally to the person to whom maintenance is owed, the related activities and other burdens shall be taken into consideration in determining the maintenance obligation.

Section 4:202

[Chain of entitlement for maintenance]

Where a person owes maintenance to more than one person, and he/she is unable to support all of them, in the chain of entitlement priority shall be given:

- a)* to a minor child versus a child of legal age;
- b)* to a child versus the spouse, former spouse and former domestic partner;
- c)* to the spouse in line with the former spouse and former domestic partner versus the parent;
- d)* to the parents in the same line versus other relatives; and
- e)* of the other relatives, to the descendant versus relatives in the ascending line and to closer relatives versus distant ones.

Section 4:203

[Derogation from the chain of order]

Upon request the court may, where justified, derogate from the chain of entitlement for maintenance and from the chain of maintenance obligation.

Section 4:204

[Determining the amount and the means of maintenance]

The amount and the means of maintenance shall primarily be governed by the agreement between the person entitled to and the person owing maintenance. In the absence of an agreement, the entitled person may bring action to request the court to establish maintenance.

Section 4:205

[Amount of maintenance]

(1) The court shall determine the amount of maintenance upon due consideration of the entitled person's justified needs and on the financial ability of the person owing maintenance.

(2) Justified needs shall cover the justified expenses and the costs of living of the person entitled to maintenance.

(3) The maintenance of a descendant and a minor sibling shall inter alia cover the costs of development and education.

(4) The obligation of maintenance of a relative in need of care due to his/her old age, health, disability or other reason shall cover the costs of nursing and care, as well as other related services which are deemed necessary.

(5) If the need of the person entitled to maintenance is limited, a supplemental support shall be provided. If the need of the person entitled to maintenance is absolute, but his/her relatives whose principle responsibility it is to provide maintenance are unable to provide support commensurate for his/her justified needs, a supplemental support may be requested from the relatives next in line.

(6) The maximum amount the person owing maintenance is required to provide shall not exceed half of his/her income.

Section 4:206

[Means of maintenance]

(1) Unless otherwise provided for in this Act, maintenance shall primarily be provided in money (hereinafter referred to as „alimony”).

(2) At the request of either of the parties, the court may order another form of maintenance if deemed justified based on the parties' circumstances, and if the other party does not object.

(3) Alimony shall be paid in advance for each time period.

Section 4:207

[Establishing the amount of alimony]

Alimony payments shall be established in a fixed amount. The court may order in its judgment that alimony payments should be adjusted each year automatically, from the first of January of the following year, based on the annual consumer price index published by the Központi Statisztikai Hivatal (*Central Statistics Office*).

Section 4:208

[Maintenance actions]

(1) An action for maintenance due to minors may be brought on the minor's behalf by the guardian authority, whereas an action for maintenance due to a parent may be brought on the parent's behalf - with his/her consent - by the district office as well.

(2) A relative owing maintenance, who him/herself provides maintenance and care, may bring action against the others who owe maintenance in his/her own right.

(3) A maintenance claim may be enforced in court with retroactive effect to a period more than six months previously if the entitled person was delayed with reasonable cause in enforcing the claim. No maintenance claim shall be enforced in court with retroactive effect to more than three years.

Section 4:209

[Duration of maintenance]

(1) Court-ordered maintenance payments are established for an indefinite duration.

(2) Maintenance payments may be ordered for a definite duration or pending certain condition, if there is reason to believe that the need of the person entitled to maintenance will cease after a certain period of time or under certain conditions.

Section 4:210

[Modification of the amount or the means of maintenance]

(1) In the event of any change in the circumstances underlying maintenance based on the agreement of the parties or court-ordered maintenance, where the provision of maintenance under the existing arrangement infringes upon the relevant lawful interest of either party, modification of the amount or the means of maintenance may be requested. Modification of agreement-based maintenance may not be requested by the party if he/she should have had calculated with the possibility of changes in the circumstances, or if the changes are attributable to his/her conduct.

(2) The organ or person responsible for making payments on behalf of the person owing maintenance shall be required to inform the entitled person - at his/her request - of the amount of wages and other benefits of the person owing maintenance.

Section 4:211

[Termination of the maintenance obligation]

(1) The person to whom the maintenance payments are in fact delivered is required to notify the court - and the person owing maintenance - if the entitled person is no longer in need of maintenance. The said person shall be held liable in accordance with the general provisions of civil law for damages caused by any breach of such obligations. Upon receipt of notice, the court shall order the termination of maintenance obligation without litigation.

(2) The person owing maintenance may request the termination of the maintenance obligation if the underlying conditions no longer apply due to changes in the relevant circumstances, or if the person entitled to maintenance failed comply with the notification requirement under Subsection (1).

Section 4:212

[Cessation of right to maintenance and the obligation to provide maintenance]

(1) The right to maintenance shall cease upon the death of the person entitled to maintenance, at the end of the fixed term or when the condition is met.

(2) The maintenance obligation shall terminate upon the death of the person owing maintenance. Any outstanding maintenance unpaid by the time of death of the person owing maintenance shall pass on the heir in accordance with the rules on liability for the debts under the succession.

Chapter XXI

Maintenance of Minor Children

Section 4:213

[Application of the provisions relating to maintenance of relatives]

The common provisions on the maintenance of relatives shall also apply to the obligation of parents to support their minor children subject to the exceptions set out in this Chapter.

Section 4:214

[Presumption of need]

The need of minor children for support shall be presumed. This presumption shall remain to apply until the child reaches the age of majority, not exceeding the age of twenty years, if the child is pursuing studies in a secondary school.

Section 4:215

[Obligation of parents to provide child support]

(1) Providing support for minor children shall precede the parent's own maintenance. This provision shall not apply if the justified necessities of the child are covered by his/her income acquired by gainful employment or by his/her earnings on assets, or if the child has any other relative in direct line from whom to claim maintenance.

(2) If the child's maintenance cannot be ensured as under Subsection (1), the guardian authority may authorize the parents to access the child's property and allocate funds to the extent required to cover the costs of his/her maintenance.

Section 4:216

[Means of child support]

(1) The parent caring for the child shall provide maintenance in kind, whereas the parent living separate and apart shall provide maintenance primarily in the form of money (hereinafter referred to as „child support”).

(2) The parent may be ordered to pay child support also if the child lives in his/her home, however, he/she does not provide for the child's maintenance.

Section 4:217

[Agreement of parents on child support]

(1) As regards the amount of child support and the means of payment shall in principle be governed by the agreement of the parents.

(2) By agreement of the parents, the parent living separate and apart from his/her child shall meet his/her maintenance obligation by providing assets of kind value or in a lump-sum payment. Such agreement shall be considered valid if it specifies the time period for which the child support is provided, and if it is approved by the guardian authority, or by the court in the case of court settlement.

(3) The court may award child support irrespective of the agreement referred to in Subsection (2) if deemed necessary in the child's best interest or to prevent any serious harm to the interest of either of the parties due to unforeseeable and considerable changes in the relevant circumstances.

Section 4:218

[Court-ordered child support]

(1) In the absence of an agreement between the parents, the court shall adjudicate child support.

(2) In determining the amount of child support the following shall be taken into consideration:

- a) the child's justified needs;
- b) the income and financial situation of both parents;

- c) other children - own, step or foster children - living in the parents' home, and the children whom are to be supported by the parents;
- d) the child's own income; and
- e) any child and family welfare benefits, and any allowances provided under the social security and similar system to the child and the parents on the child's behalf.

(3) The child's justified needs shall inter alia include the regular expenditures covering necessities of life, and the costs of his/her health care, education and development. In the event of any extraordinary expense arising in the child's interest, which cannot be covered from the child support even under due foresight, the person owing maintenance shall be required to cover a proportionate part of such expense as well.

(4) The amount of child support awarded shall generally be between fifteen and twenty-five per cent of the parent's average income for each child. The average income shall usually be calculated based on the total income of the parent acquired over a period of one year before the action was brought.

Chapter XXII

Maintenance of an Adult Child Pursuing Further Studies

Section 4:219

[Application of the provisions relating to maintenance of relatives and minor children]

The common provisions on the maintenance of relatives and the obligation of parents to support their minor children shall apply to the maintenance of adult children subject to the exceptions set out in this Chapter.

Section 4:220

[Entitlement of an adult student child for maintenance]

(1) Irrespective of presumption of need, adult children of working age pursuing further studies shall be entitled to maintenance, if considered justified for the pursuit of studies within a reasonable timeframe. The child shall inform his/her parent of his/her intention to pursue further studies without delay.

(2) The studies referred to in Subsection (1) shall cover continued training and education providing skills and qualifications for the planned career path, basic and masters training for acquiring a university or college degree, as well as post-secondary vocational education. Any interruption of studies beyond the child's control shall not affect the continuity of studies.

(3) The parent shall not be obligated to support his/her adult child pursuing further studies if:

- a) the child is unworthy of support;
- b) if the child fails to fulfill the obligation of studies and to take examinations on a regular basis, for reasons within his/her control; or
- c) this would seriously jeopardize the parent's ability to provide for him/herself or for his/her minor child.

(4) A child of legal age shall be considered unworthy of maintenance if fails to maintain contact with the person owing maintenance without due cause.

(5) The parent may be obligated to provide maintenance for his/her child pursuing further studies over the age of twenty-five years under exceptional circumstances.

Section 4:221

[Amount of maintenance]

In determining the amount of maintenance the justified needs of the child pursuing further studies, the child's own income and financial situation and the grants and other benefits received for his/her studies as provided for by the relevant legislation, as well as the financial standing of the parents shall be taken into consideration.

Section 4:222

[Obligation of notification on the pursuit of studies]

The institution providing training and education for the child pursuing further studies shall inform the parent - upon request - required to provide maintenance concerning the child's progress in studies, or if studies are terminated.

PART FIVE

GUARDIANSHIP

TITLE XIV

APPOINTMENT OF A GUARDIAN

Section 4:223

[Minor child placed under guardianship]

A minor who is not under parental supervision shall be placed under guardianship.

Section 4:224

[Responsibilities of the guardian]

Unless otherwise provided for by this Act, the guardian shall provide for the care and upbringing of the child, shall manage the child's property and shall function as the child's legal representative.

Section 4:225

[Reporting the need for the appointment of a guardian]

(1) The close relative of a minor child and the person who provides for the child shall forthwith notify the guardian authority if a guardian has to be appointed for the minor. The court and other authorities shall also notify the guardian authority if they accrue positive knowledge in the course of official proceedings that a guardian has to be appointed for a minor. Where there is a need for the appointment of a guardian, it may be notified by any person.

(2) The guardian authority shall appoint a guardian ex officio.

Section 4:226

[Designated guardian]

(1) The office of guardianship shall primarily accrue to a person designated by the parent having the right of custody in an authentic instrument or testamentary disposition as the guardian. Where both parents have the right of custody, and they named different guardians, the guardian authority shall appoint one of them in due consideration of the child's best interest.

(2) A designated guardian may be overlooked if:

- a) he refused the office of guardianship;
- b) he is excluded from the office of guardianship by this Act;
- c) he is unable to accept the office of guardianship; or
- d) his appointment is likely to harm the minor's interest.

Section 4:227

[Appointed guardian]

(1) If no guardian has been designated, the guardian authority shall primarily appoint a close relative as guardian, if such relative is considered suitable. If there is no such relative, the guardian authority shall appoint another family member as guardian, or a person deemed competent, preferably from among the persons who were previously involved in the child's upbringing.

(2) With the exception of protective guardianship, the guardian authority shall appoint a separate guardian for each minor. For siblings living in the same home the same person shall be appointed as guardian, provided that this is not contrary to the minors' best interest.

Section 4:228

[Taking into account the opinion of a child of sound mind]

In the process of appointment of a guardian, the opinion of a minor child of sound mind shall be taken into account, giving due weight consistent with the child's age and degree of maturity. A person whom the child over the age of fourteen years specifically and justifiably objected may not be appointed as guardian for that child.

Section 4:229

[Mandatory appointment of a guardian]

A person shall be appointed as guardian:

- a) if the guardian authority temporarily placed the child in his care;
- b) if the child was placed in his care by court order; or
- c) if he has accepted the child within the framework of family placement approved by the guardian authority.

Section 4:230

[Protective guardianship]

A child shall, in particular, be placed under protective guardianship:

- a)⁵⁵ if he/she has been taken under custody;

⁵⁵ Enters into force as under Paragraph i) of Subsection (3) of Section 186 of Act CCLII of 2013.

- b) if he/she was temporarily placed under the care of child protection foster parents, in a children's home or other residential care institution, and an action for the termination of parental custody has been brought against his/her parent; or
- c) if his/her parent has given consent for the confidential adoption of his/her child.

Section 4:231

[Multiple guardianship]

(1) Under exceptional circumstances, more than one guardian may be appointed for a child. Multiple guardianship may be ordered if:

- a) the parents raising the child in their own home mutually agreed to accept guardianship;
- b) two close relatives of the minor under guardianship agreed to accept guardianship collectively;
- c) management of the assets or handling certain other matters of the child requires special expertise; or
- d) it is in the best interest of the child under protective guardianship.

(2) In the case provided for in Paragraph c) of Subsection (1), the guardian authority shall define specifically the sharing of duties among the guardians.

(3) If the guardian exceeds his powers, his legal statement shall be considered effective in dealings with third parties, however, the guardian shall compensate the person in his custody on the grounds of non-contractual liability.

Section 4:232

[Conditions for entering the office of guardianship]

(1) Any person of legal age may be appointed as guardian, who is not subject to the disqualifying factors defined in this Act, and who is considered suitable based on his personality and other circumstances.

(2) With the exception of protective guardianship, a person who accepts the office may be appointed as a guardian.

Section 4:233

[Exclusion from the office of guardianship]

(1)⁵⁶ The following may not be appointed to serve as a guardian:

- a) any person who is under guardianship or conservatorship;
- b) any person whose parental custody rights were terminated or who has been excluded from public affairs by court order;
- c) any person whose parental custody rights have been suspended upon the child being placed under foster care;
- d) any person whose child had been declared eligible for adoption; or
- e) any person whom the parent having the right of custody excluded by means of an authentic instrument or will.

⁵⁶ Enters into force as under Subsection (2) of Section 186 of Act CCLII of 2013.

(2) If the parent having the right of custody excluded from guardianship the person whom the other parent designated for the office of guardian, the guardian authority shall decide on the appointment in due consideration of the minor child's best interest.

TITLE XV

EXERCISE OF GUARDIANSHIP

Section 4:234

[Exercise of guardianship]

(1) The guardian shall carry out his responsibilities in the child's best interest. The guardian shall permit the child of sound mind to participate in the preparation of decisions pertaining to him/her and to express his/her views before such decisions are made.

(2) Unless otherwise provided for in this Act, the provisions on the rights and obligations of the parent having the right of custody shall also apply to the rights and obligation of the guardian.

Section 4:235

[Limits of the guardian's responsibilities]

(1) The guardian shall not be entitled to determine or change the child's name, and may not issue a statement of consent for the adoption of the child.

(2) The approval of the guardian authority is required for the validity of statements made by the guardian, if the legal statements concerns the child's family status and bringing action in that context.

Section 4:236

[Rights and obligations of the guardian relating to financial affairs]

The guardian shall deliver to the guardian authority the child's money and other valuables, if such assets are not immediately required for ongoing expenses according to the principle of prudential management.

Section 4:237

[Supervision of the guardian by the guardian authority]

(1) The guardian shall carry out his/her functions under the regular supervision - or guidance in the case of protective guardianship - of the guardian authority. The guardian shall give information concerning his/her activity to the guardian authority at any time.

(2) The guardian authority may limit the guardian's authority in the child's interest, and may override his measures ex officio or at the request of the child under his custody or of the child's close relative. In this respect, the parent shall be treated as a close relative even if his/her right of parental custody has been suspended.

(3) The guardian authority shall consult with the guardian before making any decision pertaining to major issues of the child under guardianship, and shall hear the child of sound mind and - in justified cases - the child's close relatives as well.

Section 4:238

[Covering the costs and expenses of the guardian]

(1) Unless otherwise provided for in this Act, the benefits serving the child's life necessities shall be paid to the guardian.

(2) The guardian shall use the child's income for the child's maintenance only. If the child has no parent from whom to claim maintenance, the guardian authority may authorize the guardian to access the child's property and allocate funds to the extent required to cover the costs of his/her maintenance.

(3) The guardian may request compensation from the child's income for his justified costs and expenses incurred in connection with the child's maintenance. In the absence of sufficient income, the guardian authority shall provide compensation for said costs and expenses.

(4) Subsections (2)-(3) shall not apply in connection with protective guardianship.

Section 4:239

[Obligation of the guardian to give account]

(1) Unless otherwise provided for by this Act, the guardian shall give account of his financial management activities to the guardian authority once a year.

(2) If the income of the child under guardianship does not exceed the limit specified by the relevant legislation, the guardian authority may authorize the guardian to give account by the simplified procedure, with the exception of protective guardianship. If the office of guardianship is held by a close relative, the guardian may be exempted even from the obligation to give account by the simplified procedure.

(3) In justified cases other than the ones provided for in Subsections (1)-(2), the guardian authority shall be entitled to order the guardian - ex officio or if so requested by the child of limited legal capacity under guardianship, or by his/her family member - to give ad hoc accounts.

TITLE XVI

TERMINATION OF GUARDIANSHIP AND THE OFFICE OF GUARDIAN

Section 4:240

[Termination of guardianship and the office of guardian]

(1) Guardianship shall terminate if the child under guardianship dies, placed under parental supervision or reaches the age of majority.

(2) The office of the guardian shall cease to exist:

- a) if guardianship is terminated;
- b) upon the guardian's death;
- c) upon the guardian's dismissal; or
- d) upon the guardian's removal.

Section 4:241

[Dismissal of the guardian]

(1) The guardian authority shall dismiss a guardian from office:

- a) if so requested by the guardian citing substantial reasons;
- b) the guardian proves incompetent for the office of guardianship; or

c) the guardian authority gains knowledge, after the appointment, of any circumstance, or any subsequent hindrance on account of which the guardian is to be disqualified from holding the office of guardianship.

(2) The guardian authority may, under exceptional circumstances, relieve the guardian from office if another appears better suited to be appointed as guardian.

Section 4:242

[Removal of the guardian]

(1) The guardian authority shall remove the guardian from office, if the guardian abuses his functions, fails to fulfill his obligations or if he engages in conduct by which to cause serious injury to or endanger the interest of the child under guardianship, or on account of which the guardian is deemed unworthy of office.

(2) If there are reasonable grounds to believe that the guardian should be removed, and any delay is likely to entail a risk, the guardian authority shall suspend the guardian from office.

Section 4:243

[Obligations of the guardian upon the termination of guardianship]

(1) When his office is terminated, the guardian shall prepare a report on his activities and a final statement of account on the assets managed, and present it to the guardian authority.

(2) The claims arising out of or in connection with the guardian's obligation to give account shall lapse within one year from the date of delivery of the resolution releasing the guardian from the responsibility of asset management. If the party affected becomes aware of the reason underlying a claim at a later point in time, the deadline shall be reckoned from that time, provided that the claim has not yet lapsed under the statute of limitations.

Section 4:244

[Guardian's liability for damages]

The guardian shall be held liable for damages caused to the child under custody by his asset management actions in accordance with the general provisions on non-contractual liability.

BOOK FIVE

RIGHTS IN REM

PART ONE

POSSESSION

TITLE I

POSSESSION AND PROTECTION OF POSSESSION

Chapter I

Possession Acquisition and Loss of Possession

Section 5:1

[Possessor]

(1) Possessor is the person in possession of a thing as his own, or who keeps possession of a thing under temporary right.

(2) Where there is a person who maintains actual possession of a thing under temporary right (secondary possessor), the person from whom the possession actually originates shall also be considered a possessor (principal possessor).

(3) The person from whom a thing is temporarily conveyed without legal basis to the actual control of another person is also deemed a possessor.

Section 5:2

[Acquisition of possession]

The person who actually controls a thing is considered to have acquired possession of that thing.

Section 5:3

[Transfer of possession]

(1) The transfer of possession shall materialize upon the conveyance of physical control of the thing on the basis of an agreement therefor. Transfers of possession shall be governed by the provisions on contracting and on the validity of contracts.

(2) Transfer of possession shall be considered done by means of an agreement between the possessor and the acquirer of possession if:

a) the party acquiring possession already has physical possession of the thing as a secondary possessor; or

b) the transferor maintains physical possession of the thing as a secondary possessor.

(3) Transfer of possession shall be considered completed upon the possessor relinquishing physical possession of the thing, if so agreed by the possessor and the acquirer of possession.

(4) If the thing is held by a third party, transfer of possession shall be considered completed upon conveying the claim for the thing to the party acquiring possession, if so agreed by the possessor and the acquirer of possession.

Section 5:4

[Loss of possession]

(1) The possessor shall lose possession if definitively abandoning physical possession of the thing, or if possession of the thing is acquired by others.

(2) Possession shall not cease if the possessor is unable to maintain physical possession of the thing temporarily.

(3) Upon the possessor's death or dissolution with succession, possession of the thing shall pass to the heir or successor after the succession has been opened, or upon succession. The possessory status of the heir or successor shall be determined by the possessory title of the testator or other predecessor.

Chapter II

Protection of Possession

Section 5:5

[Possessor's right to protection]

(1) If the possessor is deprived of his possession without legal basis or is restrained in maintaining such possession (hereinafter referred to as „unlawful arbitrary conduct”), he shall be entitled to protection of his possession.

(2) The possessor is entitled to protection of his possession against anybody, with the exception of the person from whom he has acquired the possession by unlawful arbitrary action.

(3) The secondary possessor shall be entitled to protection in dealings with the principal possessor according to his title.

(4) In the case of joint possession, protection of possession shall accrue to each possessor individually, and each possessor shall be entitled to demand the thing to be rendered available for joint possession.

(5) Joint possessors are also entitled to protection of possession against each other according to their title.

Section 5:6

[Arbitrary action]

(1) A possessor shall be entitled to act arbitrarily to avert any unlawful arbitrary action to the extent necessary for the protection of his possession.

(2) A person shall be allowed to act arbitrarily in the interest of reacquiring a lost possession only if the time lost through the use of other means of protection would frustrate protection of the possession.

Section 5:7

[Possessory action]

(1) In the event of unlawful arbitrary action, the possessor shall be entitled to bring action requesting the court to restore the original state of possession or to order the discontinuance of restraint.

(2) The court shall decide on the basis of eligibility for holding possession. Entitlement of the party disturbed in peaceful possession shall be presumed.

Section 5:8

[Protection of possession on the basis of actual possessory status]

(1) The possessor shall be entitled to file a request within one year with the notary for having the original state of possession reestablished or for the discontinuance of restraint.

(2) The notary shall order the reestablishment of the original state of possession and prohibit the trespasser from continuing in this conduct, unless it is evident that the person who has requested protection is not entitled to possession or has been obliged to tolerate such restraint. Upon request, the notary may also resolve the issues of profits, damages, and costs.

(3) This resolution of the notary may not be appealed by way of an administrative procedure. The party who finds the resolution of the notary adopted in relation to protection of possession prejudicial may bring action against the other party within fifteen days of receipt of the decision requesting the court to have the resolution overturned.

(4) The resolution of the notary adopted in relation to protection of possession shall be carried out within three days of the date of the resolution. The action shall not stay the execution of the resolution adopted by the notary, unless the notary's decision *inter alia* covers the issues of profits, damages and costs, and the party concerned brought action in this respect, or in connection with possession.

(5) The court may order the suspension of the execution of the resolution adopted by the notary in relation to possession, if the resolution is likely to be overturned in light of the information available.

TITLE II

WRONGFUL POSSESSION

Section 5:9

[Status of wrongful possessor, obligation to surrender possession]

(1) Any person who wrongfully holds a thing in his possession shall be required to surrender the thing to its rightful possessor.

(2) The wrongful possessor may refuse to surrender the thing until his demands claimed in connection with possession are satisfied. The possessor who has acquired the thing by committing a criminal offense or in another violent or treacherous way may not refuse to surrender the thing.

(3) Unless otherwise provided for in this Act, the principles of *negotiorum gestio* shall apply to the legal status of the wrongful possessor.

Section 5:10

[Claim of the wrongful possessor for compensation, right of removal]

(1) The wrongful possessor shall be entitled to demand compensation regarding the necessary expenses related to the thing, with the exception of minor expenses normally required for the maintenance of the thing, and shall be entitled to remove the equipment and accessories he has created.

(2) The wrongful possessor, if acting in good faith, may also demand compensation for his useful expenses that are not covered by proceeds, or - if acting in bad faith - may demand compensation according to the principles of unjust enrichment.

(3) The wrongful possessor shall exercise the right of removal without damaging the thing.

Section 5:11

[Surrendering the proceeds of a thing, liability of wrongful possessor]

(1) The wrongful possessor shall be required to surrender the existing proceeds from a thing to the party entitled thereto, unless he has acquired possession in return for a consideration and has acted in good faith.

(2) The bona fide wrongful possessor shall not be responsible to provide compensation for proceeds he has consumed or failed to collect for the duration until possession is reclaimed from him before the notary or the court, and shall not be liable for damages caused to the thing. The bona fide wrongful possessor shall not be responsible to provide compensation for proceeds he has consumed or failed to collect, any attempt made for the recovery of the thing notwithstanding, which he has or should have collected under his presumed right until the time of the recovery action, and shall not be liable for damages caused to the thing while exercising his presumed right.

(3) The mala fide wrongful possessor shall reimburse the value of the proceeds he has consumed or failed to collect, and shall be liable for all damages according to the principles of non-contractual liability that would not have occurred in the thing had it been in the possession of the entitled party.

Section 5:12

[The wrongful possessor's right to sell and use the thing]

(1) If the entitled party fails to remove the thing within a reasonable period of time, despite being requested to do so, and the relocation of the thing would involve unreasonable difficulties or require an advance on costs, the wrongful possessor shall be allowed to sell or use the thing.

(2) Perishable things and things where any delay is likely to induce substantial loss of value shall be sold or utilized, if possible.

(3) The sum received from the sale or consideration of a used thing shall accrue to the entitled party.

(4) In respect of other issues, the provisions on unjust enrichment shall apply to the status of wrongful possessor.

PART TWO

OWNERSHIP RIGHTS

TITLE III

GENERAL RULES OF OWNERSHIP

Chapter III

Ownership in General

Section 5:13

[Ownership]

(1) Ownership means the rights of an owner to lawfully exercise the full and exclusive right to control property within the framework of law and without prejudice to the rights of others.

(2) The owner shall have the right of possession, right of use, right of beneficial enjoyment and the right to dispose over property.

(3) The owner shall have the right to avert all forms of unlawful intrusions.

Chapter IV

Objects of Ownership

Section 5:14

[The thing]

(1) There may be ownership of all things of a tangible nature which are capable of appropriation.

(2) The provisions pertaining to things shall also apply to money and securities, including natural resources that can be utilized as capital goods.

(3) The provisions pertaining to things shall apply to animals in accordance with the statutory provisions laying down derogations consistent with their natural characteristics.

Section 5:15

[Components]

Ownership extends to everything that is permanently enjoined with a thing in such a way that disjunction would cause the thing or its disjoined part to be destroyed or would significantly reduce its value or usefulness.

Section 5:16

[Accessories]

When in doubt, ownership shall also extend to parts that are not components but are usually necessary or beneficial for the proper use or maintenance of a thing.

Section 5:17

[Scope of ownership of real estate property]

(1) The ownership of real estate property covers the airspace above the land and the land mass underneath to the extent of potential use of the property.

(2) The ownership of real estate property shall not extend to the treasures of the earth, nor does it extend to natural resources.

Section 5:18

[Ownership of land and buildings]

(1) Ownership of a building shall accrue to the owner of the land, unless there is an agreement between the owner of the building and the owner of the land to contrary.

(2) At the discretion of the real estate property's owner, the building and the land on which it stands may be entered in the real estate register as separate properties.

Section 5:19

[Regulating land use between the owner of the land and the owner of the building by way of contract]

(1) If the land owner and the owner of the building entered into a contract to regulate their rights and obligations relating to the construction of the building and the use of the land, that contract shall be considered effective in dealings with third parties if it was recorded in the real estate register.

(2) The land owner and the owner of the building may enter into an agreement to stipulate that the owner of the building shall be permitted to sell or encumber the building only with the land owner's consent. The owner of the building may demand the land owner to give consent if the sale or encumbrance does not jeopardize the fulfillment of the building owner's obligations or the purpose for which the building was constructed as fixed in the contract.

Section 5:20

[Right of preemption in the event of separation of ownership of a building and the land]

In the cases where the ownership of a building and that of the land on which it stands are separated, the owner of the land shall have right of preemption in respect of the building, while the owner of the building shall have right of preemption in respect of the land.

TITLE IV

CONTENT AND PROTECTION OF OWNERSHIP RIGHTS

Chapter V

Right of Possession

Section 5:21

[Right of possession]

The owner has the right of possession and is entitled to protect his possession.

Chapter VI

Right of Use and Right of Beneficial Enjoyment

1. General provisions

Section 5:22

[Use, beneficial title, bearing of costs and liability for damages]

The owner is entitled to use and enjoy the benefits of a thing, and shall bear the expenses on the thing as well as the liability for damages for which no compensation can be demanded from any one.

Section 5:23

[General limitation of use under private law]

When using a thing, the owner shall refrain from engaging in any conduct that would needlessly disturb others, especially his neighbors, or that would jeopardize the exercise of their rights.

2. Neighborhood rights

Section 5:24

[Right to earth-support]

The owner may not deprive the neighboring building from its necessary earth-support without providing another appropriate means of stabilizing it.

Section 5:25

[Right of access to the neighboring land]

(1) The owner shall permit access to his land for compensation if it is necessary for doing works of public interest, harnessing animals, gathering fruit from branches reaching over his land, removing branches or roots, or for other important reasons.

(2) The owner shall have access to the neighboring land for compensation if it is necessary for the construction, demolition, reconstruction or maintenance of a building located on his land.

3. Specific cases of use

Section 5:26

[Emergency]

(1) In the event of danger constituting a direct threat to the life, safety or property of another person that cannot be prevented in any other way, the owner shall tolerate his property to be accessed and used, or damaged to the extent necessary for abolishing emergency. This obligation shall be binding on the owner in the case of an emergency endangering another person's property only if the imminent damage is estimated to substantially exceed the damage likely to be caused to the owner as a consequence of the intervention.

(2) Owners shall be entitled to demand compensation according to the principles of non-contractual liability from persons in an emergency, and indemnification from persons who caused unjustifiably great damage in the course of eliminating the emergency.

(3) If a danger that threatens the life, physical integrity or property of several persons is prevented by sacrificing some endangered articles, the damage originating therefrom shall be borne jointly by the affected persons in proportion to their risked interests, if such sacrifice was necessary; this provision shall also apply to the sharing of costs necessary for preventing the danger.

Section 5:27

[Use for public purposes]

(1) The owner of a real estate property is obliged to tolerate persons authorized by other legislation to use his property for a period of time, obtain the right of use or restrain ownership rights in other ways to the extent that is necessary for the performance of their duties. In such

cases, the owner of the real estate property shall be entitled to compensation according to the extent of the hindrance.

(2) If the restraint terminates or considerably impedes the proper use of the real estate property, the owner may request that the real estate property be purchased or expropriated.

4. Encroachment

Section 5:28

[Bona fide encroachment]

(1) If the owner had a house built beyond the boundary line of his land in good faith, the neighbor shall be entitled to demand the builder:

a) pay compensation for damages for the use of the part of land occupied and for the depreciation in value caused therewith;

b) purchase the part of the land occupied if the land is divisible; or

c) purchase the entire parcel of land.

(2) A neighbor may demand that the builder purchase his entire land if:

a) the encroachment has rendered the remaining part of the land unusable; or

b) the exercise of a right or profession related to the land has become impossible or considerably more expensive due to the encroachment.

(3) The court shall have powers to invoke either of the sanctions defined in Subsection (1) instead of the one selected by the neighbor. The court shall not invoke a sanction that is protested by both parties.

Section 5:29

[Mala fide encroachment]

(1) If the builder has acted in bad faith or the neighbor protested against the encroachment at a time when restoration of the original state would not have caused unreasonable harm to the builder, the neighbor shall be entitled to demand the builder to:

a) demolish the building; or

b) transfer ownership of his land and the building in return for proper compensation for the land and the building.

(2) In addition to what is contained in Subsection (1), the neighbor shall - at his discretion - have the rights laid down in the provisions on bona fide encroachment.

(3) The costs of demolition and of the restoration of the original state shall be borne by the builder. The builder shall have possession of the material recovered.

Chapter VII

Right of Disposition

1. General provisions relating to the right of disposition

Section 5:30

[Scope of the right of disposition]

(1) The owner has the right to surrender the possession, use or beneficial enjoyment of a thing to another person, to pledge it as collateral or encumber it in another way, and, furthermore, to transfer or abandon ownership.

(2) The ownership of real estate property may not be abandoned.

2. Restraint on alienation and encumbrance

Section 5:31

[Constitution of restraint on alienation and encumbrance]

(1) With a view to safeguarding the right of ownership of a thing, the owner may impose a restraint on alienation and encumbrance or a restraint on alienation in dealings with third parties. With regard to real estate property, the right secured by the restraint shall also be indicated in the real estate register.

(2) The restraint on alienation and encumbrance and the restraint on alienation shall cease to have effect when the right to which pertains terminates.

Section 5:32

[Effects of restraint on alienation and encumbrance]

(1) The entitled party's consent is required for any disposition contrary to the restraint on alienation and encumbrance. A disposition contrary to the restraint on alienation and encumbrance shall be ineffective with respect to the person whose right it is intended to protect. A disposition contrary to the restraint on alienation and encumbrance becomes effective upon the statement of consent that is made by the person whose right is to be protected by the restraint to the person who made the disposition.

(2) The restraint on alienation and encumbrance shall not apply to any acquisition of right for consideration by persons acting in good faith.

(3) The provisions on restraint on alienation and encumbrance shall also apply if the restraint is limited to alienation, or if the right of disposition is not limited in any other way.

Section 5:33

[Constitution of restraint on alienation and encumbrance on the strength of legislation or by court ruling]

Where the restraint on alienation and encumbrance is invoked on the strength of legislation or by court ruling for the benefit of specific persons, the provisions on contractual restraint on alienation and encumbrance shall apply.

Section 5:34

[Registration of transactions in breach of restraint on alienation and encumbrance]

In the case of any restraint on alienation and encumbrance registered on a real estate property, or one that applies to a real estate property invoked on the strength of legislation or by court ruling in the absence of registration, the change of ownership or any encumbrance of the property may be entered into the real estate register if the person whose right the restraint on alienation and encumbrance is intended to protect provides a statement of consent.

Chapter VIII

Protection of Ownership Rights

Section 5:35

[Exclusion of prescription of ownership claims]

Ownership claims shall not lapse.

Section 5:36

[Protection of ownership rights]

(1) The owner may demand the termination of illegal intrusions or influences and to demand from the wrongful possessor to surrender the thing.

(2) If the secondary possessor unlawfully conveyed possession of the thing to a third party, the owner shall be entitled to demand, in the name of the secondary possessor, from the third party to return the thing to the secondary possessor. If the secondary possessor refuses to collect the thing, the owner shall be entitled to demand surrender of the thing on his own behalf.

(3) As regards the owner's request for having the thing surrendered, where the owner acquired ownership without effective transfer, by way of assignment of a claim for the thing, the possessor of the thing shall be entitled to refer to all objections to which he would have been entitled as against the claim of the owner for having the thing surrendered.

(4) Pursuant to the regulations on the protection of possession, the owner may arbitrarily restrain or prevent any and all illegal intrusion or influence that impedes, restricts, or obliterates the exercise of his ownership rights.

Section 5:37

[Requests for registration in the real estate register]

The owner of a real estate property, if he has acquired ownership title from an owner other than the holder of record, may request to have his ownership registered in the real estate register.

TITLE V

ACQUISITION OF OWNERSHIP

Chapter IX

Acquisition by Transfer

Section 5:38

[The transfer]

(1) For the acquisition of ownership of movable property by way of transfer, a contract for transfer or other legal title is required and, in that context, possession of the thing shall be conveyed.

(2) For the acquisition of title to real estate property by way of transfer, a contract for transfer or other legal title is required and, in that context, the change of owners shall be registered in the real estate register.

Section 5:39

[Acquisition of ownership from a person other than the owner]

(1) Ownership by transfer may be acquired only from the owner of the thing.

(2) Where ownership is acquired in good faith, in the course of trade for consideration, the transferee shall acquire ownership by way of transfer even if the transferor was not the owner.

(3) Acquisition in the course of trade for consideration shall also include when the buyer makes a purchase from a seller who enters into a sales contract in his own name, within the framework of legitimate business activities.

(4) Upon the acquisition of ownership as under Subsection (2) the rights of the third party on the thing arising before the time of transfer shall cease, in connection with which the party acquiring ownership acted in good faith.

Section 5:40

[Acquisition of money and securities]

Any person acquiring money or securities by way of transfer shall become the owner even if the transferor was not the owner.

Chapter X

Acquisition of Ownership by Means of Administrative Decision and Official Auction

Section 5:41

[Acquisition of ownership by means of administrative decision or official auction]

(1) Any person who has acquired a thing in good faith by means of official resolution or official auction shall gain ownership irrespective of who the previous owner was.

(2) Ownership by way of administrative decision shall be considered acquired when possession is transferred in the case of movable property, or when the acquisition of title is registered in the real estate register in the case of real estate property, unless the administrative decision provides otherwise.

(3) In the case of official auction the auction buyer shall acquire ownership when possession of the movable property is transferred by the auctioneer, or when the acquisition of title is registered in the real estate register in the case of real estate property.

(4) Upon the acquisition of ownership of the thing by means of official resolution or official auction, the rights of the third party on the thing shall cease, except when the party acquiring ownership by means of official resolution or official auction did not act in good faith in respect of those rights.

Section 5:42

[Acquisition of ownership by the State without indemnification by means of administrative decision]

(1) The State, if it acquires ownership by operation of law or pursuant to a court decision or other official resolution without indemnification, shall be liable, to a bona fide person, for the ex-owner's obligations existing at the time of acquisition of ownership on the basis of legislation, court decision, or other administrative decision, or a contract for pecuniary interest to the extent of the value of the property. However, the State shall be liable only if the creditor filed for enforcement on the ex-owner's assets and the enforcement procedure has been unsuccessful.

(2) Acquisition of ownership by the State shall not affect the rights of a bona fide third person that have been entered in the real estate register.

Chapter XI

Expropriation

Section 5:43

[Expropriation]

(1) Ownership of real estate property may be acquired under exceptional circumstances for public use against immediate, full and unconditional compensation.

(2) Compensation shall be provided by the persons who acquire ownership by condemnation.

Chapter XII

Adverse Possession

Section 5:44

[Conditions for and legal effects of adverse possession]

(1) A person who has had notorious possession of a real estate property for fifteen years, or any movable property for ten years as his/her own, shall acquire ownership through adverse possession.

(2) Upon the acquisition of ownership of movable property by way of adverse possession the rights of a third party on the thing shall cease if such had arisen before the adverse user acquired possession, and if in connection with which the duration of adverse possession has expired, except when the adverse user did not act in good faith in respect of those rights.

(3) The existence of restraint on alienation and encumbrance does not preclude the acquisition of title by way of adverse possession, if other conditions for adverse possession are met.

(4) An ownership share of a thing may also be acquired under the general provisions on adverse possession.

Section 5:45

[Adverse possession by deed]

Title shall be considered acquired by way of adverse possession after five years if the possessor acquired possession of the real estate property from the owner by means of a written contract, which gives him the right to demand registration of his title in the real estate register if the

contract meets the prescribed formal requirements and if the possessor has paid the amount of consideration.

Section 5:46

[Succession in adverse possession]

A new possessor shall be entitled to add to the period of his own adverse possession the time that qualified as duration of adverse possession during the possession of his predecessor.

Section 5:47

[Exclusion of adverse possession]

(1) Any person who has taken possession of a thing by committing a crime or in another violent or treacherous way shall not acquire ownership through adverse possession.

(2) Ownership of real estate property shall not be acquired through adverse possession, if the conditions for adverse possession are met only for a section of the land and that parcel of land is indivisible.

Section 5:48

[Suspension of the duration of adverse possession]

If an owner is not in the position to exercise his ownership rights for an excusable reason, adverse possession shall not take place for one year from the termination of the impediment, even if the duration of adverse possession has elapsed or there is less than one year left.

Section 5:49

[Discontinuance of adverse possession]

(1) Adverse possession is considered discontinued if:

- a) the owner brings action to enforce his claim for having the thing surrendered;
- b) the owner exercises his ownership rights in connection with the thing; or
- c) the possessor loses the property against his will and fails to reacquire it within one year, or does not file for court action within one year to have the thing returned by its new possessor.

(2) If adverse possession is discontinued, the duration of adverse possession that has elapsed up to that date may not be taken into consideration, and the period of adverse possession begins again following the termination of the reason for discontinuance.

Chapter XIII

Acquisition of Ownership of Products, Produce, and Progeny

Section 5:50

[Acquisition of ownership of products, produce, and progeny]

(1) Any person who has a right in respect of a thing of another person, which entitles him to take possession of products, produce or progeny, shall acquire ownership by separation, if he has not previously acquired ownership thereof. If the entitled person does not possess the thing from

which the product, produce, or progeny originates, he shall become owner by taking possession thereof.

(2) If the right of a person entitling him to acquisition of ownership of a product, produce, or progeny ceases before he acquires ownership thereof, such person may demand - in the absence of an agreement to the contrary - that the owner or the new holder provide compensation up to the value of the products, produce, or accession under the principle of unjust enrichment, and in proportion to his work, and up to the extent of his expenses that cannot be recovered from elsewhere.

(3) A bona fide possessor acquires ownership of products, produce, or progeny of a thing by separation up to the day on which he becomes mala fide, or the thing is reclaimed from him before a court or notary.

Chapter XIV

Accretions

Section 5:51

[Acquisition of accretions]

The owner of a parcel of land shall acquire ownership of everything that has become part of the land subsequently, except if it belongs to another under any title.

Chapter XV

Acquisition of Derelict Property

Section 5:52

[Acquisition of derelict property]

(1) Ownership of a derelict movable property shall be considered acquired by any person who takes possession of the thing to acquire ownership.

(2) A movable property shall be considered derelict if it was never previously owned by any person or that was abandoned by its owner with intent to relinquish ownership.

Chapter XVI

Acquisition of Ownership of Game and Fish

Section 5:53

[Acquisition of game and fish]

(1) Game, the fish living in rivers and natural lakes, and other useful aquatic animals comprise the property of the State.

(2) Game that was killed or captured or that has fallen on hunting grounds shall be owned by a party authorized to hunt, and who owns the hunting ground where the animal was killed or captured, or where it has fallen, provided that his hunting right applies to that game. In the absence of such hunting right the game shall become the property of another authorized hunter, if

the land from where the game migrated is owned by that person, and if he has hunting rights for the game that was killed or captured or that has fallen.

(3) The ownership of fish and other useful aquatic animals shall be acquired by the person authorized to exercise fishing rights.

Chapter XVII

Found Property

Section 5:54

[Acquisition of found property]

(1) A person who finds a thing that is presumably owned by somebody else and takes possession thereof, shall be considered to have acquired that thing if he claims ownership thereof, provided that:

a) he has done everything within his power in order to return the thing to its rightful owner, and
b) the owner or any other person authorized to collect it has not come forward to take possession of the thing within one year, or within three months in the case of live animals, of the day on which it was found.

(2) If the thing is found by several persons collectively, the rights and obligations of the finder shall accrue to the co-finders equally and collectively. Co-finder shall also mean the person who had been the first to discover the thing and had endeavored to take possession thereof, however, another person managed to take possession before him.

Section 5:55

[Finder's obligations]

(1) The finder shall deliver the thing he has found to the person who lost it, to its owner or any other person authorized to collect it, or to the notary of jurisdiction by reference to the place where it was found, within eight days from the date of the find.

(2) If delivered to the competent notary, the finder shall declare whether he wishes to lay claim for ownership of the thing. The notary shall make out a certificate on the finder's claim.

Section 5:56

[Notary's actions]

(1) If the person having entitlement to collect the thing can be identified, the notary shall give the thing to its rightful holder without delay.

(2) If the person having entitlement to collect the thing cannot be identified, the notary shall retain possession of the thing for a period of three months from the date of receipt. If the rightful owner fails to come forward during that time, the thing shall be released to the finder, if he filed a claim for it at the time of delivery.

Section 5:57

[Limitations of finder's rights and resolution of any rights on the thing]

(1) The finder shall be entitled to use the thing without causing any physical harm to the thing, however, he shall not be entitled to alienate it or encumber it, and may not allow others to use it.

(2) Upon the acquisition of ownership by the entitled party the rights of any third party on the thing shall cease.

Section 5:58

[Sale of thing that has been found]

(1) If the rightful holder did not come forward within three months from the date of delivery, and the finder did not file a claim for it at the time of delivery, the notary shall sell the thing that had been found.

(2) The provisions on the sale of assets seized during administrative enforcement shall also apply to the sale of found things.

Section 5:59

[Things found in publicly accessible places]

(1) The finder shall relinquish possession of things found in publicly accessible buildings and areas or on the vehicles of a public transportation company to an employee of the operator of such buildings or means of transportation without delay. The finder may not lay claim to such things.

(2) If the person having entitlement to collect the thing can be identified, the operator shall notify such person and shall give the thing to its rightful holder without delay if he comes forward.

(3) If the person having entitlement to collect the thing cannot be identified, the operator shall retain possession of the thing for a period of three months from the date of receipt, or, if lacking facilities for safeguarding, deliver it to the notary within eight days from the date of receipt.

(4) If the rightful holder did not come forward within three months to claim the thing, the operator or the notary shall sell the thing in question.

Section 5:60

[Procedures applicable to perishable things and things that cannot be safeguarded]

If the thing that has been found is perishable or cannot be safeguarded, the notary, the office or the company shall provide for its sale without delay.

Section 5:61

[Owner's rights]

If the rightful owner comes forward before the time of sale, the things shall be released to him, or if comes forward after the sale, the sum received shall be paid to him. The rightful owner shall forfeit his/her right to the thing, or to the sum received upon sale if he fails to come forward within one year from the date when the thing was found.

Section 5:62

[Finder's fee]

(1) If a thing that has been found is of substantial value and its finder does not acquire ownership thereof, he shall be entitled to a reasonable finder's fee on condition that he has done

everything within his power to have the thing returned to its owner. Co-finders shall be entitled to an equal share of the finder's fee.

(2) The finder may refuse to give up the thing that has been found until his claim for cost reimbursement and for the finder's fee is satisfied.

(3) The finder shall have those rights also if he has released the found thing to the authorities. The authority shall be allowed to deliver the thing to the person entitled to collect it and to pay him the purchase price received with the finder's consent, except the person entitled to collect the thing has deposited the value of the thing with the authorities. The sum deposited replaces the thing found.

Section 5:63

[Ownership and allocation of the purchase price received if the rightful owner does not come forward]

If the owner of a thing that has been found, the person who lost it or any other person authorized to collect it does not come forward within a period of one year, or three months in the case of live animals, and the finder does not acquire ownership thereof, ownership or the purchase price received for the sale of the thing shall accrue to the State.

Section 5:64

[Treasure finds]

(1) If a person finds a valuable thing which has been hidden by unknown persons or the ownership of which has otherwise been forgotten, he shall be obliged to offer it to the State.

(2) If the State does not claim the thing, it shall become the property of the finder; otherwise the finder shall be entitled to a finder's fee proportionate to the value of the thing.

(3) If the found thing described in Subsection (1) is classified as protected cultural goods, its ownership may be claimed by the State.

Chapter XVIII

Processing, Conversion, Merger, Mixing, Annexation, Remodeling, In-building, Building on the Land of Another

Section 5:65

[Processing and conversion]

(1) A person who manufactures a new thing for himself in good faith by processing or converting another person's thing shall reimburse the value of the thing or surrender ownership of the new thing in return for reimbursement of the value of his work, whichever is chosen by the owner of such thing.

(2) If the value of the work significantly exceeds the value of the processed or converted thing, the owner of the thing may demand compensation for the value of the thing.

(3) If the person performing the processing or conversion has acted in bad faith, the right to choose shall accrue to the owner of the material.

(4) If the owner of the material opts to acquire ownership of the new thing, he shall pay compensation only up to the extent of his actual gains.

(5) If ownership of the new thing is acquired by the person performing the processing operation, the rights of any third party on the thing shall cease. If title to the new thing belongs to the owner of the material, any right on the material shall apply to the new things as well.

Section 5:66

[Composites and compounds]

(1) If the objects of several persons are merged or combined in a way that the separation of such objects may only be accomplished by inflicting substantial damage or unreasonably high cost, or if it cannot be accomplished at all, ownership of the final product shall be claimed jointly by the persons affected in proportion to the value of the objects in existence at the time when merged or combined.

(2) If, based on its value, quality, economic function or for any other reason, either of the merged or mixed things should be considered as a main component of the new thing created by merging or mixing, the owner of such thing shall have the option to either retain ownership of the thing created by merging or mixing and compensate the other owners, or to surrender it to them in return for compensation.

(3) The right to choose may not be claimed by the person who himself caused the merger or mixing in bad faith. In that case the mala fide former owner may demand compensation only up to the extent of actual gains.

(4) If the thing created by merging or mixing is given to joint ownership in accordance with the relevant provisions of this Act, the rights of third parties on the things affected by the merger or mixing shall accrue to the ownership shares replacing those things. If there is a right on one of the things, and the thing created by merging or mixing becomes the property of the person who owns the other thing, the right on the thing shall cease, unless otherwise provided for in this Act. Any right on the thing shall pass to the thing created by merging or mixing, if it becomes the property of the same person who owned the thing on which the right existed.

Section 5:67

[Sale of a converted, processed, merged or compounded thing]

(1) If ownership of a converted, processed, merged or compounded thing is claimed by neither of the parties, it shall be sold, and the received price shall be divided among the entitled parties in accordance with their ownership share.

(2) In that case, the party who is entitled to claim compensation only up to the extent of his actual gains shall be entitled to no more than that part of the received price which remains after the satisfaction of those entitled to full indemnification.

Section 5:68

[Annexation]

(1) If any person who, using his own material, in good faith builds an annex attached to the building of another, and thereby considerably increases the value of that building, ownership of the final product of such building shall be claimed jointly by the builder and the owner of the building, unless there is an agreement to the contrary (hereinafter referred to as „annexation”). The ownership shares shall be determined based on the value of the whole property and the

attached building section, in the percentage the attached section represents in the whole building at the time when the annexation is finished.

(2) Consideration for construction works which are not treated as annexation may be demanded according to the principle of unjust enrichment.

(3) The provisions on mala fide builders shall also apply to mala fide annexation.

Section 5:69

[In-building]

(1) If a person uses another person's material for building on land, upon which the materials used shall become permanently attached to the land, such material shall become the property of the land owner, unless there is an agreement to the contrary between the owner of the material and the owner of the land.

(2) If a person uses another person's material for construction, upon which the materials used shall irretrievably become part of the building, such material shall become the property of the owner of the building, unless there is an agreement to the contrary between the owner of the material and the owner of the building.

Section 5:70

[Building on the land of another]

(1) If a person builds a structure in good faith on another person's land without entitlement, ownership of the structure shall be acquired by the owner of the land, however, he shall reimburse the builder to the extent of his actual gains. The court shall be entitled to compel such builder to buy the land or a part thereof (if the land is divisible) at the request of the land's owner.

(2) The builder shall acquire ownership of the land or an adequate part thereof if the value of the building considerably exceeds the value of the land or the relevant part of the land. At the request of the land owner, the court may resolve that the builder has acquired ownership of the building alone; in such a case, the builder shall have right of use on the land.

Section 5:71

[Builder mala fide]

(1) If the builder has acted in bad faith or if the owner of the land protested against the construction at a time when the restoration of the original state would not have caused unreasonably great damage to the builder, the provisions on encroachment shall be applied.

(2) A builder shall be considered to have acted in bad faith if before the beginning of construction works he knew or should have known under the circumstances that such building infringes upon the owner's ownership rights.

Section 5:72

[Provisions on joint ownership]

The provisions of this Chapter shall apply also if the co-owner processes or converts a jointly owned thing, or expands or remodels a jointly owned building, or builds an annex to such building, or if the co-owner develops a jointly owned land.

TITLE VI

JOINT OWNERSHIP AND CONDOMINIUMS

Chapter XIX

Joint Ownership

Section 5:73

[Definition of joint ownership]

- (1) Ownership of the same thing, by specific shares, can be claimed by two or more persons.
- (2) In the event of doubt, the property shares of the joint owners shall be equal.

Section 5:74

[Co-owner's rights of possession and use]

Each co-owner has the right to possess and use the thing; however, none of them shall exercise this right if it adversely effects the rights and relevant lawful interests of the others in connection with the thing.

Section 5:75

[Beneficial title in joint property, bearing of costs and liability for damages]

Proceeds from a thing shall be claimed by the co-owners in proportion to their ownership shares; costs and expenses related to the thing, as well as obligations originating from co-ownership, and any damage to the thing shall be borne by the co-owners in the same proportion.

Section 5:76

[Protection of joint property]

Any of the co-owners is entitled to carry out works that are essential for the preservation and maintenance of the thing, and each co-owner shall be obliged to bear his share of such costs. If possible, the co-owners shall be notified before such expenses are incurred.

Section 5:77

[Rights on the materials of joint property created from multiple components]

If joint property is created from multiple components, the rights of third parties on the things arising before the commencement of joint ownership shall accrue to the ownership shares replacing those things.

Section 5:78

[Passing resolutions]

(1) Unless there is an agreement to the contrary, the co-owners shall adopt decisions on issues of relevance to the joint property by simple majority. Each owner shall have voting rights in accordance with his ownership share.

- (2) A unanimous decision by the co-owners shall be required for:
 - a) expenses exceeding the scope of standard operating procedures;

b) transferring ownership of the entire thing, encumbering the entire thing, or making any commitment relating to the entire thing.

Section 5:79

[Challenging a resolution adopted by simple majority before a court]

(1) If a decision infringes reasonable management or results in a significant injury to the lawful interests of the opposing persons, such minority shall be entitled to contest the decision in court. The action shall not stay the execution of the decision, although the court may suspend execution of the decision where deemed necessary.

(2) This provision shall also apply if there is disagreement among the co-owners as to whether the proposed work is absolutely necessary for the preservation and maintenance of the condition of the thing.

(3) In the absence of a decision, the court may rule on matters relating to possession, use, or utilization at the request of either of the co-owners in accordance with the ownership shares, the rights and lawful interests of co-owners on the thing, and according to the requirements of prudential management.

Section 5:80

[Right of disposition over one's own share of the property]

Each of the co-owners may freely dispose of his share of the property.

Section 5:81

[Right of preemption, right of first refusal for lease or tenancy]

(1) In relation to the property share of a co-owner the other co-owners shall have the right of preemption or the right of first refusal for lease or tenancy before third persons.

(2) If the seller is certain that any person other than the ones shown in the real estate register also owns a share in the real estate property, his obligation to disclose the offer shall also apply with respect to such a person according to the general provisions. In the case of non-registered property owners, the legal effects arising from non-compliance with the disclosure obligation shall not apply to acquisitions of right by persons acting in good faith.

(3) The co-owners may exercise their right of preemption or the right of first refusal for lease or tenancy with respect to the ownership share offered in proportion to their ownership shares. If the co-owners fail to reach an agreement but, if either of the co-owners - by himself or jointly with another co-owner - endorses the offer for the ownership share in question, the right of preemption or the right of first refusal for lease or tenancy shall accrue exclusively to him, or them. If there is more than one such co-owner acting on his own, the owner shall have the right to select one, whereupon the right of preemption or the right of first refusal for lease or tenancy shall accrue to the co-owner selected.

(4) The statutory right of preemption shall precede the preemption rights of co-owners afforded under this Act.

(5) Co-owners shall be able to exercise their right of preemption also in auctions conducted in enforcement procedures.

Section 5:82

[Protection of joint property]

Any of the co-owners may act independently to protect joint property.

Section 5:83

[Request for termination of co-ownership]

(1) Any of the co-owners may demand termination of co-ownership; any waiver of this right shall be null and void.

(2) Termination of co-ownership may not be ordered by the court if the termination of co-ownership falls on an inopportune day.

Section 5:84

[Termination of co-ownership]

(1) Objects of co-ownership shall be divided primarily in kind. The objects of co-ownership, or a part thereof, may be given by court into the ownership of one or several co-owners in return for the payment of an appropriate consideration if it is justified with regard to the circumstances of the co-owners. This requires the agreement of the co-owner acquiring ownership, unless ownership of part of a real estate property is transferred by court order to the co-owner residing in such property and such action does not violate the reasonable interests of the tenant.

(2) If co-ownership cannot otherwise be terminated, or division in kind would cause a significant decrease in value or prevent proper use, the objects of co-ownership shall be sold and the price received shall be appropriately divided among the co-owners. Co-owners shall also have the right of preemption in respect of selling before third persons.

(3) If any co-owner acquires ownership of the object of co-ownership, adequate consideration, or the minimum purchase price, if sold by auction, shall be determined by court ruling. The minimum purchase price established by court ruling may not be altered in the process of enforcement neither by the bailiff nor by the court.

(4) Where co-ownership of a real estate property that is occupied by one of the co-owners has to be terminated, the court shall order such person to vacate the property, or - if the order to vacate the property infringes the tenant's equitable interest - shall award use rights for him in proportion of his ownership share. The depreciating effect of such right of use shall be borne by the co-owner who maintains tenancy in the real estate property when the amount of compensation payable upon acquisition or the division of the auction purchase price is determined. In the event of considerably overstepping the right of use awarded by court order or as afforded by law, the court shall terminate such right of use upon the owner's request.

(5) Joint ownership of a real estate property may also be terminated by way condominium conversion, provided that the conditions for condominium conversion are satisfied. If joint ownership is terminated by court decision by way of condominium conversion, the bylaws of the condominium shall be substituted by the court ruling.

(6) The court shall not resort to any mode of termination of co-ownership such that is objected to by all of the co-owners.

Chapter XX

Condominiums

Section 5:85

[Condominiums]

(1) A condominium is established when in a building at least two independent units for residential or non-residential purposes or at least one independent unit for residential and one for non-residential purposes defined in the bylaws and technically separated pass into the private ownership of condominium owners, whereas the building sections, building equipment, areas and dwelling units, which are not owned individually, shall pass into the joint ownership of condominium owners.

(2) If the land on which the building stands is not commonly owned, the condominium owners shall have land use rights.

(3) Common elements of joint ownership shall comprise an independent property together with the individually owned residential and other non-residential units.

(4) The ownership share of the individual unit owners in the common elements and the ownership rights in condominium units and other non-residential units may not be transferred separately from one another and may not be encumbered.

(5) The provisions pertaining to joint ownership shall also apply to condominium properties.

PART THREE

LIMITED RIGHTS IN REM

TITLE VII

LIENS, MORTGAGES AND OTHER PLEDGES

Chapter XXI

Effect of a Lien

Section 5:86

[Lien]

(1) Upon the failure of the obligor of the secured claim (hereinafter referred to as „designated lienor”) to perform, a lien holder shall be entitled to seek satisfaction prior to other claims against the property pledged as security for his claim (hereinafter referred to as „pledged property”).

(2) The right to satisfaction shall not be affected by any rights acquired after pledging, unless this Act provides otherwise.

Section 5:87

[Effect of a lien]

A lien shall take effect:

- a) when the lien holder and the lienor enter into an agreement to that effect; and
- b) the lienor has the right of disposition over the pledged property.

Section 5:88

[Establishment of a lien]

A lien shall be considered established upon entering into a pledge agreement and in that context it is necessary:

- a) to have the lien registered in the relevant register (mortgage); or
- b) to transfer possession of the pledged property to the lien holder (possessory lien).

Section 5:89

[Pledge agreement]

(1) The pledge agreement contains an arrangement between the lienor and the lien holder on pledging a specific item to secure a specific claim.

(2) Under the pledge agreement the lienor undertakes the obligation to:

- a) transfer possession of, or control over, the pledged property to the creditor in the case of possessory lien;
- b) grant approval for the registration of a mortgage; and
- c) either inform the obligor of a hypothecated claim in writing on having the lien established, or to make out a statement thereof and deliver it to the lien holder, whichever method is chosen by the lien holder.

(3) The pledge agreement shall be considered effective if the pledged property and the secured claim are defined properly.

(4) The pledged property may be described by type and quantity, or by elaborate description by which it may be identified. The description may also pertain to certain assets which do not yet exist, or over which the lienor has no right of disposition.

(5) A claim secured by a pledge shall be determined in a way by which it may be identified, with an indication of the - one or more - underlying relationship and showing the amount, or in any other way suitable for the identification of the secured claim. The description may also pertain to certain claims which do not yet exist.

(6) Pledge agreements shall be executed in writing. As regards the possessory lien, the pledge agreement may be replaced by a security issued by the creditor, authorizing the holder of such document to collect the pledged property in exchange for the sum shown in the security, within the time limit specified in the security.

Section 5:90

[Consumer pledge agreement]

If the lienor is a natural person and the pledged property is primarily used for a purpose which is not required for the pursuit of profession, private entrepreneurial activities or business operations of the lienor, furthermore, the claim secured by a pledge is not a result of the lienor's profession, private entrepreneurial activities or business operations, the provisions of pledge agreements shall apply subject to the following exceptions:

- a) the property pledged may be an individually determined asset that is owned by the lienor, or an asset which the lienor will acquire by means of a loan or respite of payment the lien holder has provided;
- b) the definition of the secured claim shall include the sum as well.

Section 5:91

[Effect of the pledge agreement between the parties]

The rights and obligations established under this Act with respect to the lien holder and the lienor shall also apply to the parties to a pledge agreement with respect to each other even if the lien has not been formally established.

Section 5:92

[Statutory lien]

The pledge agreement shall be replaced by the statutory provision under which the holder of a claim is afforded lien rights.

Section 5:93

[Registration of mortgages]

(1) Mortgages are to be registered:

- a) in the real estate register in the case of real estate properties;
- b) in the collateral register in the case of movable properties, rights and receivables.

(2) Where ownership of a movable property or right is recorded in a public register (hereinafter referred to as „registry”), mortgage shall be considered established if registered in the relevant registry.

(3) Registration in the real estate register or in the registry shall be effected based on the pledge agreement or upon the lienor’s consent for registration if:

- a) the pledge agreement or the consent for registration uniquely identifies the pledged property; and
- b) the lienor is shown as the owner or beneficial user of the thing or right in the real estate register or registry.

(4) A pledged property shall be registered in the collateral register only if uniquely identified or if a detailed description is provided. Registration shall not be prevented even if the pledged property to be registered does not exist, or the lienor has no right of disposition at the time of registration.

Section 5:94

[Transfer of possession in the case of possessory lien]

(1) Transfer of possession may also be satisfied if possession is maintained jointly by the lien holder and the lienor, or if the asset concerned is safeguarded on their behalf by a third party pledgee.

(2) If the thing is held by a third party, and the transfer of possession is considered completed upon conveying the claim for the thing to the party acquiring possession, possessory lien shall be considered established upon the owner having notified the secondary possessor concerning the pledge.

(3) No possessory lien shall be established if the transfer of possession is carried out by means of an agreement between the owner and the creditor to that effect, where the owner retains possession as a secondary possessor.

Section 5:95

[Arrangement of collateral security]

- (1) Collateral security may be arranged:
- a)* on money and securities in the form of possessory lien;
 - b)* on dematerialized securities in the form of possessory lien or by way of the means specified in Subsection (2);
 - c)* on payment account balances by way of the means specified in Subsection (2);
 - d)* on other assets defined by law by way of the means specified in Subsection (4).
- (2) On dematerialized securities and payment account balances collateral security may be arranged:
- a)* by way of an agreement between the account holder, the payment service provider and the lien holder, under which the payment service provider shall execute the account holder's orders with the lien holder's consent, and shall execute the lien holder's orders without the account holder's consent; or
 - b)* to the benefit of the payment service provider by way of a pledge agreement between the account holder and the payment service provider in itself.
- (3) The payment service provider shall indicate the lien established as provided for in Subsection (2) on all account statements and other similar documents.
- (4) If collateral security is provided in the form of assets defined by law, the collateral security shall be considered arranged if the collateralized asset is transferred from the possession of the collateral provider to the possession or control of the collateral taker, or otherwise removed from the unrestricted control by the collateral provider.

Section 5:96

[Lien holder's agent]

- (1) Any one or more lien holders shall have the right to designate a lien holder's agent in the pledge agreement or any other written document. The appointment shall be executed in writing.
- (2) The appointment of lien holder's agent shall be considered effective in dealings with third parties as of the time when the agent is registered in the real estate register, registry or collateral register, in his capacity as a lien holder's agent.
- (3)⁵⁷ The withdrawal of the appointment of a lien holder's agent shall be considered effective in dealings with third parties as of the time when the lien holder is registered in the real estate register, registry or collateral register.
- (4) If the lien holder's agent is registered, the real estate register, the registry and the collateral register shall not contain the names of the lien holders in whose name and on whose behalf the lien holder's agent is acting.
- (5) The lien holder's agent registered in the real estate register, registry or collateral register shall be subject to the rights and obligations of the lien holder, in that context the lien holder's agent shall act in his name and on the lien holder's behalf.
- (6) While the lien holder's agent is registered the lien holder shall not exercise the rights stemming from the lien, however, he shall bear full liability for the actions of the agent as if he had acted himself.
- (7) The transfer of a claim secured by a pledge shall not affect the rights and obligations of the lien holder's agent.

⁵⁷ Enters into force as under Subsection (2) of Section 187 of Act CCLII of 2013.

(8) The lien holder's agent shall handle and keep records of all assets and funds he has received or acquired upon the enforcement of a pledge or by other means in connection with the pledge, separately from one another and from his own assets. Creditors of a lien holder's agent shall not lay claims in respect of:

- a) claims against the lienor and claims due to the lien holder;
- b) sums of money received by the lien holder's agent and kept or handled separately, which are apparently due to the lien holder.

Chapter XXII

Claims Secured by Pledge

Section 5:97

[Secured claims]

- (1) Lien may be established on one or more existing or future, conditional or unconditional pecuniary claims of a specific amount or the amount of which can be determined.
- (2) If the lien is not arranged for a pecuniary claim, the lien shall guarantee the claim for damages resulting from the failure to satisfy a claim, or shall guarantee other receivables.
- (3) No lien shall be established on claims that cannot be enforced in court.

Section 5:98

[Scope of liability assumed through pledged property]

- (1) The scope of liability assumed through pledged property shall be adjusted to the size of the claim for the guaranty of which the property was pledged.
- (2) The liability guaranteed by a pledged property shall include the interests on the claim, the costs of enforcing the claim and the lien as well as to the reasonable costs spent on the pledged property.
- (3) If the parties set a limit up to which the lien holder may seek satisfaction from the pledged property, the lien shall guarantee the claim and the associated costs up to that limit.

Section 5:99

[Transfer of secured claims]

- (1) Upon the assignment or transfer by other means of the secured claim, the lien shall be transferred to the new holder of the claim. The transferor of the claim shall surrender, to the new holder, the pledged property, or shall provide the permit for registration of the transfer of the lien.
- (2) If only a part of the secured claim is transferred, the previous and the new lien holder shall receive the same rank for the lien in proportion to their respective claim.
- (3) The lien shall be transferred together with the claim secured by a pledge.

Section 5:100

[Seceded lien]

- (1) The lien holder shall be allowed to transfer the lien - under contract, to guarantee his debt - without having to transfer the secured claim (hereinafter referred to as „seceded lien”) to the

holder of his debt. Based on the seceded lien, the rights of the lien holder shall pass on to the party acquiring the lien (hereinafter referred to as „seceded lien holder”).

(2) The contract on the transfer of the lien shall specify the claim to which the seceded lien pertains. Said contract shall be executed in writing.

(3) The transfer of the lien shall be considered effective in dealings with third parties as of the time when the seceded lien holder is registered in the real estate register, registry or collateral register, or when the third party receives notice on the assignment of the lien in accordance with the provisions on assignment.

(4) The seceded lien holder shall exercise his rights stemming from the lien without jeopardizing the recovery of the original secured claim.

(5) Upon the termination of the claim secured by a seceded lien, the seceded lien shall revert to the original lien holder. The seceded lien holder shall be entitled to re-assign the lien to the original lien holder before the termination of the secured claim. The seceded lien must be transferred together with the claim secured by the seceded lien.

Chapter XXIII

Pledged Property

Section 5:101

[Pledged goods]

(1) Any asset of value can be pledged as security.

(2) Only movable property shall be the subject matter of possessory lien.

(3) With the exception of the ownership share in a joint property, or the share of the lienor on a thing that is owned by more than one person, or a specific part of a divisible claim, a fraction or part of a thing or a right may not be pledged as security.

(4) If the pledged property is a right or claim, the ownership right to the pledged property shall be understood as the right or the claim and the owner of the pledged property shall be understood as the holder of the right or claim, unless otherwise provided for in this Act and unless otherwise suggested by the nature of the pledged property.

(5) The provisions on liens established on claims shall apply if the pledged property is a right.

Section 5:102

[Pledged property identified by detailed description]

If the pledged property registered in the collateral register has been identified by detailed description, the lien shall at all times pertain to those things, rights and claims identified by said detailed description, over which the lienor has the right of disposition. Lien shall remain in effect even after the right of disposition ceases, if the pledged property has been sold outside the course of trade or to a mala fide buyer making the acquisition for consideration.

Section 5:103

[Components, accessories and profits of pledged property]

(1) The lien shall be effective on a thing together with all its components. When in doubt, the lien shall also extend to all accessories of the thing.

(2) The lien shall also extend to the products, produce, and progeny of the thing and other benefits of the pledged property.

(3) The lien shall not cover the components and accessories detached from the real estate property before the effective date of the right to satisfaction according to prudential management requirements, if ownership thereof had been transferred and they have been removed from the property.

Section 5:104

[Things and other valuables as pledged property substitutes]

(1) A security deposit, reimbursement, or other value, provided as alternative security for the destruction or depreciation of the pledged property, or any claim thereof, shall replace the pledged property or supplement the pledged collateral.

(2) Any compensation received for the expropriation of the pledged property, or the claim thereof shall replace the pledged property.

(3) If the lien holder sells the pledged property to avoid damages, the sale price received shall replace the pledged property.

(4) If the pledged property registered in the collateral register has been sold by the lienor within the framework of prudential management, the proceeds from the sale shall replace the property originally pledged.

(5) If the lienor processes, converts, or blends or mixes the pledged property with other assets, the new thing created by the processing, conversion, merger or mixing operation shall replace the property originally pledged.

(6) If the lienor or the designated lienor made available a new property in the originally pledged property's stead, or a supplemental property in the event of any depreciation of the pledged property, the new pledged property shall replace, or shall be added to, the property originally pledged.

(7) The funds or assets received on the basis of a lien provided to satisfy a hypothecated claim or a lien provided to guarantee a hypothecated claim, or any surety or other form of guarantee shall replace the property originally pledged.

(8) Possessory lien shall be established on any funds or assets received by the seceded lien holder upon calling the seceded lien in security for a claim underlying the transfer of the lien.

Section 5:105

[Multiple pledge]

(1) If a lien is established on more than one pledged property to secure the same claim, the relevant register shall indicate that the lien is universal. No indication of universality is required if all properties are pledged by the same lienor, and the lien is registered in the collateral register.

(2) If the lien is universal, all of the pledged properties shall serve as security for the entire claim. The lien holder shall have the right to determine the order of enforcement of the pledge, however, the right to satisfaction covers only as many pledged properties as necessary to provide satisfaction.

Chapter XXIV

Rights and Obligations of the Parties Before the Effective Date of the Right to Satisfaction

Section 5:106

[Possession, use and utilization of the property pledged in the form of possessory lien]

(1) The holder of the property subjected to possessory lien shall keep the pledged property in his possession and shall keep it in good condition.

(2) The parties' rights and obligations relating to the possession, and the use and utilization of the pledged property shall be governed by the provisions on deposits for pecuniary interest, with the proviso that the lienor shall not be entitled to recover the pledged property during the term of the possessory lien.

Section 5:107

[Protection of guarantee by possessory lien]

(1) The debtor or the designated lienor shall be entitled to monitor the condition and use of the pledged property.

(2) If any loss in value of the pledged property jeopardizes satisfaction of the claim, and the debtor fails to restore the condition of the pledged property in spite of so requested by the creditor within the prescribed time limit, or fails to provide adequate replacement or additional guarantee to cover the loss of value, the creditor shall have the right to sell the pledged property - acting in the place of the debtor and on his behalf - with a view to preventing further depreciation. The creditor shall be entitled to sell the pledged property without issuing a warning and without setting a time limit, if any insurmountable obstacles exist or if any further delay in waiting for the debtor's action is likely to result in further depreciation.

(3) If the debtor or the designated lienor offers adequate other assets in replacement and this does not jeopardize the right to satisfaction, the creditor shall return the pledged property.

(4) In connection with a divisible pledged property whose value can be clearly determined relying on the collateral security and other publicly accessible information or in the case of any changes in the value of the secured claim the debtor is required to provide additional security, and the creditor is required to release any excess collateral to the debtor.

(5) The debtor shall be entitled to use any insurance settlement, compensation or other value received in exchange for the pledged property to restore the pledged property, provided that this does not jeopardize the satisfaction of the secured claim.

Section 5:108

[Possession, use and utilization of the mortgaged property]

(1) The mortgagor is entitled to keep the mortgaged property in his possession, use it and utilize it for its intended purpose, and shall keep the mortgaged property in good condition.

(2) The mortgagor registered in the collateral register shall be entitled to process, convert, merge or mix the mortgaged property identified by detailed description within the framework of prudential management.

Section 5:109

[Protection of the mortgaged property]

(1) The mortgage holder shall be entitled to check the condition and use of the mortgaged property.

(2) In the event the mortgagor or a third person is endangering the condition of the mortgaged property, the mortgage holder shall be entitled to exercise the rights of the exposed party in order to eliminate the danger.

(3) If any loss in value of the mortgaged property jeopardizes satisfaction of the claim, and the mortgagor fails to restore the condition of the mortgaged property in spite of so requested by the mortgage holder within the prescribed time limit, or fails to provide adequate replacement or additional guarantee to cover the loss of value, the mortgage holder shall have the right to sell the mortgaged property with a view to preventing further depreciation.

(4) The mortgagor shall be entitled to use any insurance settlement, compensation or other value received in exchange for the mortgaged property to restore the mortgaged property, provided that this does not jeopardize satisfaction of the secured claim.

Section 5:110

[Protection of a hypothecated claim as lien guarantee]

After the debtor of a hypothecated claim is notified in writing concerning the establishment of a lien, containing an indication of the hypothecated claim and the lien holder, the amendment to the contract between the lienor and the debtor of the hypothecated claim shall cease to apply to the lien holder. The debtor shall be entitled to enforce, against the lien holder, the objections and to offset the counterclaims that arise with regard to the lienor on the legal grounds prevailing at the time of notification.

Section 5:111

[Rights and obligations of the debtor of a hypothecated claim]

(1) The debtor of a hypothecated claim shall be liable to perform to the lienor insofar as an instruction is given that indicates the name and registered office of the lien holder, or home address or habitual residence or account number for a natural person. After that the debtor may effect performance as instructed.

(2) The performance instruction shall invoke the legal effect referred to in Subsection (1), if the instruction is incorporated into the notice of hypothecation, otherwise it originates from the lienor, or if the lien holder is able to verify that the claim has in fact been hypothecated by way of a pledge agreement or other reliable means. If the notice of hypothecation indicated the lien holder, but it did not contain any performance instruction, a performance instruction may be given only by the lien holder.

(3) The lien holder may send a performance instruction after the effective date of the right to satisfaction.

(4) By way of derogation from Subsection (1), the performance instruction shall not affect the rights and obligations the payment service provider has under the account or deposit contract in terms of the account holder.

(5) At the lien holder's request, the lienor shall produce the documents necessary for enforcing the hypothecated claim. If the maturity of a hypothecated claim depends on the legal statement of the lien holder or on a condition to be met by him, the lien holder shall be entitled to make the legal statement or satisfy the condition required for maturity.

Chapter XXV

Collateral Register

Section 5:112

[Basic principles of the collateral register]

(1) The collateral register contains the mortgages established on non-registered movable properties, rights and claims separately for each lienor, as well as other security rights provided for in this Act.

(2) The collateral register is made available to the general public, accessible on the internet free of charge, without personal identification.

Section 5:113

[Statements constituting the basis for the collateral register]

(1) Making entries into the collateral register, the modification and deletion of entries shall take place by means of a standard electronic form described in the relevant legislation, made out by the lien holder and/or the lienor, based on a written statement made on the internet website of the collateral register, without there being any need to examine the contents of the statements.

(2) The statement made by the lien holder shall be notified to the lienor, and the statement made by the lienor shall be notified to the lien holder immediately after the statement is made, by way of electronic means.

(3) Statements can be made by persons registered in the collateral register as users.

(4) In the process of making a statement, natural persons may proceed in the name of legal persons and other organizations registered as users if designated by the relevant organization at the time of registration, or subsequently, as representatives authorized to act in their name and on their behalf.

(5) Statements can be made following the electronic identification of the person acting in his own name or in the name of others.

Section 5:114

[Registration of a lien]

(1) A statement for the registration of a lien can be made by the lien holder or the lienor.

(2) If the statement for the registration of a lien is made by the lien holder, the lien shall be registered on the strength of that statement if the lienor authorized the registration by making a statement by way of electronic means on the internet website of the collateral register.

(3) If the statement for the registration of a lien is made by the lienor, the lien shall be registered on the strength of that statement.

Section 5:115

[Contents of the statement for the registration of a lien]

(1) The statements made for the registration of lien shall inter alia contain:

- a) the lienor's name and other particulars provided for in specific other legislation;
- b) the lien holder's name and other particulars provided for in specific other legislation;

c) the name of the natural person acting in the name of a legal person or other organization, and other particulars provided for in specific other legislation;

d) a unique identification or detailed description of the pledged property.

(2) The statement for the registration of a lien may also contain the amount limit available for the lien holder to seek satisfaction from the pledged property.

Section 5:116

[Contents of the collateral register]

The collateral register shall contain the following information for each registered lien:

a) the contents of the statement for the registration of a lien;

b) the time of registration of the lien; and

c) the entry number.

Section 5:117

[Cancellation of liens]

(1) Statements for the cancellation of a lien can be made by the lien holder and by the lienor both.

(2) If the statement for the cancellation of a lien is made by the lien holder, the lien shall be cancelled on the strength of that statement.

(3) If the statement for the cancellation of a lien is made by the lienor, the lien shall be cancelled on the basis of that statement if the lien holder:

a) gave consent for the cancellation of the lien; or

b) did not make a statement for maintaining the entry within a period of thirty days from the date of the lienor's statement for the cancellation of a lien.

(4) The lien holder must consent to the cancellation of the lien, or shall not be entitled to make a statement for maintaining the entry if his secured claim no longer exists or has no legal relationship which may result in a secured claim in the future.

Chapter XXVI

Ranking of Liens

Section 5:118

[Ranking based on the establishment of the lien]

If the same pledged property is encumbered by more than one lien, the lien holders shall be satisfied in the order in which the liens were established.

Section 5:119

[Ranking of lien on an asset provided in place of a pledged property or to supplement the pledged collateral]

A lien on an asset provided in place of a pledged property or to supplement the pledged collateral shall have the same rank as on the property originally pledged, unless the property in question is pledged for other liens as well.

Section 5:120

[Changes in the pledged properties registered in the collateral register]

If a lien registered in the collateral register is secured by more than one asset identified by detailed description, changes in such things, rights and claims shall not affect the rank of the lien.

Section 5:121

[Lien established by the previous holder of the right of disposition]

A lien established by the previous holder of the right of disposition over the property pledged to secure a lien registered in the collateral register shall precede the lien that was established prior to the said lien, however, it came into existence subsequently due to the lack of right of disposition.

Section 5:122

[Priority of lien carrying entitlement to acquire the pledged property]

A lien established to guarantee the creditor's claim for the purchase price of a pledged movable property or for the repayment of a loan granted for the acquisition of the pledged movable property shall precede the liens established by the buyer or the debtor previously, if, before the pledged property is transferred:

- a)* the lien is registered in the collateral register; and
- b)* the lien holder notifies of the establishment of lien in writing those previous lien holders, whose lien covers the new pledged property, if acquired by the lienor.

Section 5:123

[Rank between collateral security and mortgage]

If the same property is pledged to guarantee a collateral security and a mortgage, the holder of the collateral security shall have priority for satisfaction over the mortgage holder.

Section 5:124

[Ranking agreement]

- (1) The ranking of liens may be modified with the consent of all parties concerned. Any change in ranking shall be considered effective upon registration or recording of the new ranking.
- (2) Disposition over the rankings of entries may not cause any injury to third party rights registered at the time of modification of the ranking.
- (3) A lien moved to a higher ranking shall retain its new ranking so acquired also if the lien moved backward is terminated.

Section 5:125

[Prior ranking arrangement for the lien]

- (1) The owner shall be entitled to have his intention to pledge any asset recorded or registered in the appropriate register to the benefit of a specific person or without indicating the beneficiary.
- (2) The amount limit of the lien the owner wishes to establish shall be specified in the application for recording or in the registration.

(3) A lien registered under prior ranking arrangement shall be ranked consistent with the ranking of the recording or registration.

Chapter XXVII

Enforcement of Liens

1. General provisions on exercising the right to satisfaction

Section 5:126

[Right to satisfaction]

(1) The lien holder's right to satisfaction shall open in the case of default, when the claim secured by a pledge falls due.

(2) In connection with seceded liens the maturity of a claim secured through the transfer of a lien and the failure of related performance shall not result in the opening of the right to satisfaction. If, however, the right to satisfaction stemming from a seceded lien has opened in respect of the secured claim, the lien may be enforced irrespective of the fact that the claim secured by the transfer of a lien is not yet due. If the right to satisfaction stemming from a seceded lien has opened, the seceded lien holder shall exercise his right to satisfaction, or he shall transfer the lien back to the original lien holder.

(3) The lien holder shall have the option to exercise his right to satisfaction either by way of judicial enforcement or by means other than by judicial enforcement.

(4) A lien on payment account balances may be enforced by way of judicial enforcement.

2. Common provisions on the enforcement of liens by ways other than by judicial enforcement

Section 5:127

[Modes of exercising the right to satisfaction other than by judicial enforcement]

(1) The right to satisfaction by means other than by judicial enforcement shall be exercised, at the lien holder's discretion:

- a)* through the sale of the pledged property by the lien holder;
- b)* through the acquisition of the pledged property by the lien holder; or
- c)* through the enforcement of a hypothecated right or claim.

(2) The lien holder shall be entitled to switch to a different mode of enforcement of the right to satisfaction.

Section 5:128

[Exercising the right to satisfaction in connection with consumer pledge agreements]

In connection with a consumer pledge agreement, the lien holder:

a) shall be allowed to sell the pledged property only publicly, unless the parties agreed on an alternative sales method after the effective date of the right to satisfaction; and

b) shall not acquire ownership of the pledged property as a mode of satisfaction, with the exception of collateral security.

Section 5:129

[Assignment of the right of enforcement of a lien]

(1) Following the opening of the enforcement of a pledge, the lien holder shall be allowed to assign the right to enforce the pledge to another lien holder of higher rank by way of a written statement, if compensation is provided for the related costs and expenses of the lien holder who has opened the enforcement of the pledge.

(2) The lien holder who has opened the enforcement of the pledge shall, upon receipt of a statement of acceptance, provide adequate information to the lien holder of higher rank concerning the actions taken and the costs incurred up to that point.

Section 5:130

[Suspension or limitation of the right to satisfaction]

If, when exercising his right to satisfaction, the lien holder infringes his obligations laid down in this Act, the lienor, the designated lienor or any other person who has a legal interest therein may bring action requesting the court to suspend the exercise of the right to satisfaction, or to order the lien holder to exercise his right to satisfaction in accordance with the conditions stipulated by the court.

3. Sale of pledged property by the lien holder

Section 5:131

[Prior notification]

(1) The lien holder shall send notice in writing concerning his intention to sell the pledged property:

a) to the lienor, the designated lienor and the persons having guaranteed the designated lienor's performance;

b) to the beneficiaries of other liens secured by the same property;

c) to all persons holding some right registered on the pledged property, if the pledged property has been registered; and

d) to the persons who sent notice in writing claiming to hold some right on the pledged property, with proof attached, more than ten days before the date of the lien holder's notice.

(2) The prior notification shall be sent at least ten days, in the case of consumer pledge agreement, at least thirty days before the sale.

(3) The prior notification shall specify:

a) the lien holder and the lienor;

b) the pledged property to be sold;

c) the amount of the claim enforced and the associated costs;

d) the reason for and the date of the opening of the right to satisfaction;

e) the planned mode of sale;

f) the place and date of the public sale, or if sold by other means, the date after which the sale will take place.

(4) The lien holder shall be entitled to sell the pledged property without prior notification if the pledged property:

a) is perishable, or if its value is likely to diminish considerably upon any delay; or

b) is a thing or a right traded on the stock exchange.

Section 5:132

[Right of possession of the pledged property]

(1) Following the effective date of the right to satisfaction, the lien holder shall have the right to take possession of the pledged property for the purpose of sale, and, to this end, to call the lienor to release the pledged property into his possession by the time limit specified.

(2) For compliance with the request of possession a time limit justified by the circumstances shall be given, of at least ten days in the case of movable properties and at least twenty days for real estate properties. A residential property shall be surrendered fully vacated within a time limit of at least three months.

(3) Following the effective date of the right to satisfaction, upon the lien holder's request the lienor shall release the pledged property in his possession to the lien holder within the prescribed time limit for the purpose of sale, to permit the lien holder to take possession of the pledged property, and shall refrain from any conduct aimed at preventing the lien holder from carrying out the sale.

(4) Failure to take possession shall have no bearing on carrying out the sale of the pledged property.

Section 5:133

[Principle of reasonable commercial practices]

(1) When selling the pledged property the lien holder shall act in accordance with the principle of reasonable commercial practices, and in due observation of the lienor's and/or the designated lienor's interest.

(2) Unless proven to the contrary, it shall be presumed that the sale of the pledged property is conducted under the principle of reasonable commercial practices if:

- a) the sale is completed in the stock exchange, at a price in effect at the time of sale; or
- b) the sale takes place under normal market terms usually employed in the commercial sale of pledged properties.

Section 5:134

[Sale]

(1) The lien holder shall be entitled to transfer the ownership of the pledged property instead and on behalf of the owner of such property.

(2) The pledged property may be sold:

- a) as is, or after commercially justified processing or conversion;
- b) privately or publicly.

(3) If a lien is established on more than one pledged property to secure the same claim, they may be sold together or separately.

(4) The lien holder may acquire ownership of the pledged property he is selling in the case of public sale, or if the pledged property is traded on the stock exchange.

Section 5:135

[Settlement, distribution of sales proceeds]

(1) After the pledged property is sold, the lien holder shall forthwith prepare a financial statement in writing, indicating:

- a) the pledged property sold;
- b) the purchase price received;
- c) the proceeds the lien holder has collected on pledged goods;
- d) the costs arising out of or in connection with the safeguarding, maintenance, processing, conversion and sale of the pledged property; and
- e) if available, the ranking of the liens on the pledged property and the amounts of the claims secured by such liens.

(2) The lien holder shall send the financial statement to the lienor and to all persons to whom prior notification is to be sent.

(3) The lien holder shall, without delay, distribute the purchase price received plus the proceeds collected, minus the costs arising out of or in connection with the safeguarding, maintenance, processing, conversion and sale of the pledged property, taking into consideration the ranking of the liens and the amounts of the claims secured by such liens, among the holders of the liens on the pledged property, and to pay the remaining amount to the lienor.

4. Acquisition of ownership of the pledged property by the lien holder

Section 5:136

[Prohibition of acquisition of the pledged property by the lien holder]

Any agreement concluded for transferring ownership of the pledged property to the lien holder at the time of opening of the right to satisfaction shall be null and void.

Section 5:137

[Acquisition of the pledged property by the lien holder following the effective date of the right to satisfaction]

(1) Following the effective date of his right to satisfaction, the lien holder may offer to the lienor to accept ownership of the pledged property in satisfaction of the secured claim in whole or in part.

(2) The offer shall specify:

- a) the lien holder and the lienor;
- b) the pledged property to which the offer pertains;
- c) the amount of the claim secured by the lien;
- d) the reason for and the date of the opening of the right to satisfaction; and
- e) the percentage of the claim the acquired ownership of the pledged property covers, or the amount that the lien holder is willing to pay - in exchange for acquiring ownership, in addition to the settlement of the secured claim - to the lienor.

(3) Apart from the lienor, the lien holder shall also send notice concerning the offer, with a copy attached:

- a) to the designated lienor and the persons having guaranteed the designated lienor's performance;
- b) to the beneficiaries of other liens secured by the same property;
- c) to all persons holding some right registered on the pledged property, if the pledged property has been registered; and

d) to the persons who sent notice in writing claiming to hold some right on the pledged property, with proof attached, more than ten days before the date of the lien holder's notice.

(4) The persons to be notified may object to the lien holder's offer if it is considered to jeopardize satisfaction of their secured claim.

(5) If the lienor accepts in writing the lien holder's offer within twenty days from the date of receipt thereof, and the persons referred to in Subsection (3) do not object in writing to the lien holder's offer within twenty days from the date of receipt thereof, the lien holder and the lienor shall enter into a sales contract, on the basis of which the lienor is required to transfer possession of the pledged property, or to make out an authorization for the registration of ownership. Upon the transfer of ownership, the claim secured by a pledge shall cease to exist in part or in whole, according to the contents of the offer.

Section 5:138

[Right to direct satisfaction]

(1)⁵⁸ In the case of collateral security, if provided in connection with money, payment account balances, or securities traded on the stock exchange or any other securities whose market price is listed publicly, or securities embodying pecuniary claims whose market price can be determined at that time independent from the parties under conditions fixed in the securities, the lien holder shall be entitled to acquire ownership - by way of unilateral statement addressed to the lienor - of the pledged property up to the amount of the secured claim at the effective date of his right to satisfaction, or, if it was acquired previously, may terminate his obligation to transfer assets of the same type and amount as the collateral security received to the lienor.

(2)⁵⁹ The lien holder shall settle accounts in writing with the lienor immediately after exercising direct right to satisfaction and to pay the amount remaining after the secured claim is satisfied to the lienor. To that end, money and payment account balances shall be taken into account at their nominal value, whereas securities shall be taken into account at market value or at a price that can be determined at that time independent from the parties provided for in Subsection (1).

(3) These rules shall also apply if the object of the lien are securities that represent property rights, and the object of ownership are things that are traded on the stock exchange or any other things whose market price is listed publicly.

5. Enforcement of a hypothecated right or claim

Section 5:139

[Enforcement of a hypothecated right or claim]

If the object of a mortgage is a claim, the mortgage holder may give performance instructions to the mortgagor, and shall be allowed, after the date of maturity of the claim, to enforce the claim in place of the original mortgage holder against the mortgagor. This provision shall apply even if the mortgage pertains to a right.

Section 5:140

⁵⁸ Enters into force as under Subsection (1) of Section 187 of Act CCLII of 2013.

⁵⁹ Enters into force as under Subsection (1) of Section 187 of Act CCLII of 2013.

[Subordinated lien]

If the claim subjected to a lien is secured by a lien or surety, the lien holder may also exercise the rights of the holder of the claim arising out of or in connection with the lien or surety. If the claim is secured by possessory lien, the holder of the claim shall transfer possession of the pledged property to the lien holder upon his request.

Section 5:141

[Debt instruments]

The provisions on subordinated mortgages shall also apply to the enforcement of a hypothecated right or claim, even if the object of the lien are debt instruments.

Chapter XXVIII

Termination of a Lien

Section 5:142

[Termination of a lien]

(1) The lien shall terminate if:

a) the lien holder waives his lien and returns the pledged property to the lienor or if the mortgage is cancelled from the relevant register;

b) the property pledged in security of the lien is destroyed, the right pledged in security of the lien ceases without any replacement in either case;

c) the holder of the possessory lien loses possession of the pledged property, except when the holder brings an action in rem or a possessory action without delay;

d) the secured claim no longer exists or any legal relationship which may result in a secured claim in the future is terminated;

e) the claim secured by a pledge lapses;

f) the lien holder sells the pledged property when exercising his right to satisfaction, or acquires ownership of the pledged property.

(2) If the claim secured by a pledge ceases to exist the lien shall remain in force nonetheless for guaranteeing the recovery claim accruing to the designated lienor who satisfied the claim, to the lienor or to a third party.

(3) The lien shall remain in force to guarantee the claim secured by a pledge, if the same person becomes the lienor and the lien holder.

(4) In the cases provided for in the previous Subsections the lien shall terminate also if it was transferred previously.

Section 5:143

[Unencumbered acquisition]

(1) Where ownership is acquired in good faith, in the course of trade for consideration, the transferee shall acquire unencumbered ownership, right or claim registered in the collateral register.

(2) If the pledged property is sold in order to protect the pledged collateral, the buyer shall acquire unencumbered ownership, right or claim.

Section 5:144

[Obligations of lien holders when the lien is terminated]

(1) If the secured claim no longer exists or if it has lapsed, and no other legal relationship exists which may result in a secured claim in the future, the lien holder shall forthwith:

- a)* return the pledged property to the lienor;
- b)* consent to having the lien cancelled; and
- c)* notify in writing the lienor's payment service provider or any third party who, as the pledge holder, has possession of the pledged property or on whose account the pledged property was credited to the benefit of the lien holder concerning the termination of the lien.

(2) The third party who, as the pledge holder, has possession of the pledged property or on whose account the pledged property was credited to the benefit of the lien holder shall return the pledged property to the lienor or shall transfer the pledged property that was credited on his account to the account of the lienor without delay upon receipt of written notice on the termination of the lien.

(3) The seceded lien holder shall settle accounts with the original lien holder when the lien is terminated and when it passes back to the original lien holder.

TITLE VIII

RIGHTS OF USE

Chapter XXIX

Land Use

Section 5:145

[Land use rights if ownership of a building and the land are separated]

(1) If the ownership of a building and the land on which it stands belongs to different persons, the owner of the building shall have right of use on the land to the extent required for normal use of the building.

(2) The owner of a building is entitled to use the land and to enjoy its benefits, and he shall be liable for the maintenance costs of the land as commensurate with the use of the building by virtue of his right of use of the land.

Chapter XXX

Beneficial Interest

Section 5:146

[Establishment of beneficial interest under contract]

(1) Beneficial ownership shall enter into effect when the relevant contract or other title is executed and possession of the thing is transferred; in the case of beneficial interest on real estate property or any right registered in the real estate register, beneficial interest shall be registered in the real estate register.

(2) Where beneficial interest is granted on real estate property or any right registered in the real estate register on the strength of law, it shall be registered in the real estate register; in the absence thereof, beneficial interest shall be enforceable only against a mala fide acquirer of the property or an acquirer who has not given any consideration for the property.

(3) Beneficial interest shall not cover the increment in the object of beneficial interest, which is gained after the commencement of beneficial use, unless the increment results from the use of the object of beneficial interest within the framework of prudential management.

Section 5:147

[Contents of beneficial ownership]

(1) A person may possess, use, exploit, and collect the proceeds of a property owned by another person by virtue of beneficial ownership.

(2) If beneficial interest is held by more than one beneficial user at the same time, the provisions pertaining to joint ownership shall apply to the right of possession, use, and collection of proceeds.

(3) Beneficial interest shall remain in force even if ownership of the property is transferred.

(4) Beneficial interest shall be granted to a natural person for a limited period of time, not to exceed the lifetime of the holder of beneficial interest.

(5) Beneficial interest shall be granted to a legal person for a limited period of time, not to exceed fifty years. Where beneficial interest is granted for an unspecified period, it shall remain in force for fifty years.

Section 5:148

[Assignment of the right to exercise beneficial interest]

(1) The beneficial user may not transfer his right to such interest; however, he may assign right of possession, use, and collection of proceeds.

(2) The beneficial user may assign the right to exercise beneficial interest for a consideration only if the owner surrenders the right of use, exploitation and collection of proceeds under the same conditions.

Section 5:149

[Rights and obligations of the beneficial user during the life of beneficial interest]

(1) The beneficial user shall act in accordance with the rules of normal management when exercising his right thereto.

(2) The beneficial user shall be entitled to change the economic function of the object of beneficial enjoyment without the owner's consent, or may convert or considerably alter the same insofar as maintaining the economic function or leaving the object of beneficial enjoyment unaltered is in contradiction to the requirements of prudent management.

(3) The beneficial user shall cover the costs of maintenance of the thing, with the exception of extraordinary repairs and renovations. The beneficial user shall be subject to the obligations stemming from the use of the thing.

(4) The beneficial user shall notify the owner of any imminent danger to the property and any damage incurred, including any attempt by a third party to obstruct him from exercising his

beneficial right; he shall, furthermore, tolerate the owner to take the necessary measures to prevent any potential danger or to eliminate the consequences of the damage.

Section 5:150

[Costs]

(1) The beneficial user shall be entitled to have extraordinary repairs or renovations made upon the owner's failure, despite the request of the beneficial user, to do so.

(2) When beneficial interest is terminated, the beneficial user shall be entitled to demand from the owner compensation under the principle of unjust enrichment for any increment in the value of the thing achieved by the extraordinary repairs or renovations carried out at his own expense.

Section 5:151

[Irregular beneficial interest]

(1) The beneficial user may dispose of the inherently expendable objects, business equipment, livestock, stocks of goods and money existing at the time the beneficial right is established to a degree justified by normal management; however, he shall replace these when the beneficial right is terminated or, if replacement is not possible, reimburse the value thereof.

(2) If the claim of the former owner of a thing that was sold or consumed in the course of beneficial use for replacement or reimbursement is considered to be at risk, he may demand adequate guarantees.

Section 5:152

[Owner's rights during the life of beneficial interest]

(1) Owners are entitled to regularly inspect the exercise of beneficial ownership.

(2) If the holder of beneficial interest uses the property improperly, damages it or alters its function by unauthorized means, or otherwise jeopardizes the return of the property after the termination of the beneficial interest, the owner shall have the right to demand adequate guarantees if he has protested to no avail.

(3) If the holder of beneficial interest fails to provide adequate guarantee, the court shall be entitled, upon the owner's request, to order the suspension of the exercise of beneficial rights until such guarantee is provided.

(4) An owner shall also have these rights against the person to whom the exercise of beneficial right has been surrendered by the holder of beneficial interest. In that case, and if no guarantee is provided, the court shall prohibit the third party from exercising the rights assigned to him by the beneficial user.

(5) For the duration of beneficial interest, the owner may exercise the right of possession, use, and collection of proceeds only if the holder of beneficial interest does not exercise his rights thereto.

Section 5:153

[Destruction of the object of beneficial interest]

(1) If a thing is destroyed entirely or to a significant extent, the owner shall not be obliged to restore it.

(2) If the owner restores the thing, the beneficial interest shall be consequently reestablished; however, the owner may request a limitation of beneficial rights in proportion to the costs of restoration.

(3) If the owner does not restore the thing, the beneficial interest shall be abrogated; however, if the object of beneficial interest is replaced by another thing, the beneficial right shall extend thereto. If the thing has been replaced by a sum of money or receivables, the owner and the beneficial user may demand that sum be spent on the restoration or replacement of the thing, if this is within the framework of the principle of prudent management.

(4) The owner may carry out the restoration or replacement himself, or may convey the sum of compensation to the beneficial user for that purpose.

Section 5:154

[Termination of beneficial interest]

(1) Beneficial interest shall terminate upon the expiry of the fixed term, upon the holder's death or dissolution without succession, and also if the beneficial user acquires ownership of the thing.

(2) Beneficial interest may be terminated by way of a legal act upon the beneficial user's waiver; in the case of beneficial interest on real estate property or any right registered in the real estate register or other public register the beneficial interest shall be removed from the register.

(3) In the case of beneficial interest on a thing, the waiver shall be sent to the owner, or if beneficial interest pertains to a right, it shall be sent to the proprietor of such right or the person who established the right.

(4) In the case of beneficial interest on real estate property or any right registered in the real estate register or other public register the waiver shall be made out in writing.

Section 5:155

[Beneficial user's obligations upon termination of beneficial interest]

(1) The holder of beneficial interest shall return the property upon the termination of his beneficial right. The beneficial user shall be held liable for damages to the thing according to the principles of non-contractual liability. The holder of beneficial interest shall not be liable for reimbursing any regular depreciation resulting from the use of the property.

(2) The provisions relating to the protection of ownership rights shall apply to claims arising out of any infringement of beneficial rights.

Chapter XXXI

Special Provisions Relating to Beneficial Interest in Rights and Receivables

Section 5:156

[Beneficial interest in rights]

(1) Concerning the beneficial ownership of profit-yielding rights and receivables, the provisions pertaining to the beneficial ownership of things shall apply.

(2) A right or receivable encumbered by beneficial interest may be canceled or amended to the disadvantage of the holder of beneficial interest through a contract with effect to the beneficial right, for which the consent of the holder of beneficial interest is required.

Section 5:157

[Legal status of the beneficial user of a right]

If beneficial interest is given in a right for demanding the performance of a service, the relationship between the holder of beneficial interest and the provider of the service shall be governed by the rules pertaining to the party acquiring the right, if transferred, and the provider of the service.

Section 5:158

[Beneficial interest in receivables]

(1) The holder of beneficial interest in receivables shall be entitled to enforce the receivables and, if the creditor's waiver is required for maturity, to exercise the creditor's right to terminate. If the receivables are collected by the beneficial user, he shall be held liable for the enforcement of the receivables in respect of the creditor according to the principles of non-contractual liability. Other acts of the holder of beneficial interest relating to the receivables shall be null and void.

(2) Upon the debtor's performance the holder of the receivables shall acquire the object of the service, with the proviso that the holder of beneficial interest is given beneficial rights at the time of performance.

Chapter XXXII

Use Rights

Section 5:159

[Use rights]

(1) Persons entitled to beneficial use may use a thing and collect its proceeds up to an extent not exceeding his own needs and those of his relatives living in the same household. Legal persons shall be entitled to use the thing arising from their right of use, and to enjoy its benefits in accordance with its purpose and activities set out in the instrument of constitution. The exercise of the right of beneficial use may not be assigned to others.

(2) In respect of other issues, the provisions on beneficial ownership shall be applied regarding the right of use.

TITLE IX

RIGHTS OF ACCESS AND USE FOR PUBLIC PURPOSES

Chapter XXXIII

Easement

Section 5:160

[Definition of easement]

(1) Easement may be granted to and held by the possessor of a real estate property on another person's real estate property to use such property to a specific extent for right-of-way, or for the installation of water lines or water conduits, basement, poles for aerial lines, building abutment, or for other similar purposes to the benefit of the dominant tenement, or to demand the holder of the servient tenement to refrain from otherwise rightful conduct proceeding from his entitlement.

(2) If a piece of land is not connected to a suitable public road, neighbors shall tolerate the holder of dominant tenement to pass through their land.

Section 5:161

[Express easement and easement by prescription]

(1) The provisions on the establishment of beneficial ownership of real estate property shall apply to an easement created by agreement.

(2) Easement may also be created by the owner of a real estate property to his own benefit by a unilateral statement.

(3) The holder of a real estate property shall obtain easement by prescription if the holder of the other real estate property has not protested against its use for fifteen years. The exercise of a right allowed as a favor or for a specific time period shall not lead to prescription.

(4) Easement per se shall not be subject to transfer.

Section 5:162

[Exercise of easement]

(1) Exercising easement shall not result in unnecessary harm to the rights of others, particularly the servient tenement.

(2) If the grant of easement also involves the use of any equipment or instruments, the costs of maintenance shall, unless otherwise agreed, be borne by the dominant and the servient tenement in the proportion to their respective use of the equipment or instruments.

Section 5:163

[Extinguishment of easement]

(1) The court shall be entitled to terminate, restrict or suspend easement if it is no longer required for the proper use of the real property of the holder of dominant tenement.

(2) Easement shall be terminated if the holder of dominant tenement, despite his ability to do so, has not exercised the easement for a period of fifteen years or if he has endured being prevented from exercising it for the same period of time.

(3) Easement may be terminated by way of a legal act upon the waiver of the holder of dominant tenement addressed to the holder of servient tenement in writing, when the easement is removed from the real estate register.

Chapter XXXIV

Use for Public Purposes

Section 5:164

[Right of use for public purposes]

(1) Public easement or other rights of access may be imposed upon a real estate property by decision of the relevant authority in the public interest, to the benefit of agencies authorized under specific other legislation. For said rights of use compensation shall be provided as commensurate with the degree of constraint.

(2) Damages resulting from public easement shall be compensated according to the provisions on indemnification for prescription.

PART FOUR

REAL ESTATE REGISTER

TITLE X

THE REAL ESTATE REGISTER AND THE PRINCIPLES OF REGISTRATION

Section 5:165

[Real estate register]

The real estate register is an authentic public register containing rights in real estate properties and facts of significance for legal purposes. The real estate register contains the particulars of real estate properties and the data provided for in specific other legislation of persons registered in the real estate register.

Section 5:166

[Public access to the real estate register]

(1) The real estate register is open to the public.

(2) The general public shall have unlimited access to title deeds and maps on file in the real estate register - with the exception of personal data under special protection -, they may be inspected, notes may be made and certified copies and certificates may be requested.

(3) The documents on file in proof of entries and records made in the real estate register, as well as applications pending registration may be accessed - within the limits of approval and sufficient proof of necessity - if the requesting person is able to verify the consent of the parties in respect of whom the document contains any rights or obligations, or that it is necessary for the purpose of enforcing his legitimate right or for discharging an obligation conferred by law or administrative decision.

(4) The section(s) of a document based on which rights, facts and updates are registered pertaining to a portion of the real estate property which is defined in kind may be reviewed without restriction, also if the entry on the title deed contains no reference to the document in question alleging to contain a definition of said part of real estate.

Section 5:167

[Principle of documentation]

Rights and legally significant facts may be registered and recorded, and data may be updated in the real estate register solely on the basis of documents prescribed by law or binding resolutions of authorities and court decisions.

Section 5:168

[Principle of registration]

(1) The creation, amendment and termination of rights and entitlements defined by law shall be considered effective when recorded on the title deed in the real estate register. Rights may be registered in the real estate register if their registration is permitted by the relevant legislation.

(2) If an entry is recorded on the basis of a deed of subrogation it shall signify ownership based on transfer, and if an entry is recorded on the basis of a deed on creating rights it shall signify asset management right, land use right, beneficial ownership and the right of use, easement and mortgage based on contract.

(3) Failure of registration of legally significant facts defined by law, and rights contrived by operation of law shall have no impact on the legal effect of such rights.

(4) In the event of failure to register rights and entitlements and legally significant facts defined by law, the right-holder of record may not enforce them against a bona fide third party.

(5) The registration of rights and entitlements and legally significant facts defined by law shall restrain or render conditional any future acquisition of rights.

Section 5:169

[Principle of ranking]

The sequence of rights registered in the real estate register for real estate properties (hereinafter referred to as „ranking”) shall be determined based on the effective dates of such entries.

Section 5:170

[Authenticity of the real estate register]

Real estate registration records shall be construed as authentic proof of registered rights and recorded facts.

TITLE XI

AUTHENTICITY OF THE REAL ESTATE REGISTER

Section 5:171

[Extent of authenticity of the real estate register]

(1) If a right or a fact has been registered or recorded in the real estate register, lack of knowledge of such shall not constitute an excuse under any circumstances.

(2) The provisions of Subsection (1) shall also apply in respect of applications provisionally registered in the real estate register to the fact and subject of such pending procedures.

Section 5:172

[Bona fide person acquiring a right relying on the real estate register]

(1) In determining the good faith of a bona fide person, the existence of good faith shall be examined at the time when the application for registration of the acquisition of a right in the real estate register is submitted. If an agreement of subrogation is concluded after the effective date of registration, good faith shall be determined relying on the date of conclusion of the agreement.

(2) Any person acquiring some right, or a person engaged in any conduct falling under the presumption of good faith shall not be considered to have acted in good faith, if at the time of acquisition or when the act was carried out he knew or should have known that the relevant data in the real estate register was incorrect, or that the rights of the person shown in the real estate register as the holder of some right were restricted.

(3) A person acquiring some right shall not be allowed to allege his good faith in respect of a person who claims to have acquired title based on a right or fact to be registered or recorded, where the registration or recording of such right or fact in the real estate register is pending and this is shown in the real estate register as provisionally registered at the time applicable for the purpose of determining good faith, if registration or recording is in fact carried out based on the application for registration or recording.

Section 5:173

[Completeness of the real estate register]

(1) On the basis of rights registered and facts recorded in the real estate register, it is to be presumed that such registered rights and recorded facts pertain, until proven otherwise, to the rightholder thereof.

(2) Unless proven to the contrary, rights or facts deleted from the real estate register shall be presumed not to exist.

Section 5:174

[Protection of ownership acquired in good faith and for consideration]

(1) Rights registered in the real estate register to the benefit of a party acting in good faith and for consideration shall be deemed as true even if it deviates from the actual substantive legal status. On that basis, the acquiring party shall enjoy protection afforded under this Act.

(2) A bona fide person may not rely on the protection referred to in Subsection (1) with regard to any person who has brought action against him for having an entry deleted from the real estate register or for the annulment of a transaction underlying an application shown in the real estate register as provisionally registered or for declaring the prescription of such request. The same applies if the action for cancellation or for correction had been recorded in the real estate register before the application was submitted.

Section 5:175

[Legal status of persons acquiring non-registered rights]

(1) A person acquiring some right that is not entered in the real estate register or the beneficiary of a fact that can be recorded in the real estate register may not enforce such right or fact against a party acting in good faith who is registered in the real estate register or who enjoys priority with respect to the application for registration before such person.

(2) A right that is not registered and a fact that is not recorded in the real estate register may not be enforced against a party who acquired such right in good faith and for consideration, or against

a bona fide person who enjoys priority with respect to the application for registration. Protection afforded to a bona fide person shall not cover the case where pending legal status is recorded in the real estate register.

Section 5:176

[Extension of the scope of entries made in the real estate register]

The provisions on the scope of entries made in the real estate register, and on the protection of persons acting in good faith and for consideration shall also apply where a service is provided under a right registered in the real estate register to the holder of such right.

Section 5:177

[Applicability of real estate register data]

(1) In regulatory proceedings related to real estate properties, the data shown in the real estate register and the boundaries indicated in the realty map shall be construed as authoritative.

(2) If a party claims that data in the real estate register are incorrect or untrue, the burden of proof lies with that party.

(3) If the size of a real estate property indicated in the real estate register differs from the size to be determined in accordance with the relevant legislation on the basis of the boundaries marked in the realty map, the latter shall be applied.

TITLE XII

REGISTRATION, RECORDING. HIERARCHY AND RANKING

Section 5:178

[Registration]

(1) Upon registration of the acquisition of a right or any change therein and the termination thereof, as well as the enforceability of the right shall take effect directly, if other conditions of subrogation are satisfied.

(2) Registration in the real estate register may be carried out if the grounds for subrogation are verified, and the registered holder of the right subrogated consented. A right may be deleted with the holder's consent. The provisions pertaining to the conclusion and validity of contracts shall also apply to the consented registration and deletion of rights.

(3) Registration may be made also on the basis of a court ruling or administrative decision.

(4) Registration shall take effect retroactively to the date of submission of the application for registration.

(5) If the acquisition of ownership of a real estate property, or the acquisition, transfer or encumbrance of a right to a real estate property is subject to registration in the real estate register, subrogation shall take effect upon registration in the real estate register, according to the contents of registration.

(6) If the termination of ownership of or a right to a real estate property is subject to registration in the real estate register, the right shall cease upon the registration of its deletion in the real estate register, according to the contents of registration.

(7) If, following registration, the rights to and ownership of a real estate property are held by the same person, the rights to the real estate property shall remain in effect with respect to other rightholders ranked lower.

Section 5:179

[Recording]

(1) Recording means the indication in the real estate register of facts pertaining to rights registered in the real estate register.

(2) Only facts defined by law may be recorded in the real estate register.

(3) Recording shall take effect retroactively to the date of submission of the application on the basis of which recording was ordered.

Section 5:180

[Hierarchy and ranking]

(1) A ranking may be established solely on the basis of an application for which a document serving as grounds for the registration has been attached.

(2) Rights registered and entering into effect at the same time shall have the same ranking.

(3) The sequence of ranking of applications received at the same time, and the order in which registered entries and records are scheduled to take effect shall be determined by the dates of the documents underlying registration, or on the date when the document was drawn up, or when countersigned if countersigning is required for registration relying on that document.

(4) The ranking of applications may be modified with the consent of all parties concerned. Any change in ranking shall be considered effective upon registration or recording of the new ranking in the real estate register.

(5) Disposition over the rankings of entries of record may not cause any injury to the rights of a third party which are registered at the time of modification of such ranking.

(6) A right moved to a higher ranking shall retain its ranking so acquired even if the right moved backward is terminated, or if the claim secured by mortgage expires.

Section 5:181

[Changes in the scope of a right]

The provisions on the acquisition and termination of rights in real estate properties shall also apply to changes made in the contents of rights in real estate properties.

TITLE XIII

CORRECTION OF ENTRIES IN THE REAL ESTATE REGISTER; ACTION FOR CANCELLATION AND FOR CORRECTION; LEGAL PROTECTION

Section 5:182

[Correction of entries in the real estate register]

(1) If an entry in the real estate register does not coincide with what is contained in the document on the basis of which it was registered or recorded, that entry shall be corrected.

(2) Correction shall be carried out either by deleting the incorrect entry or record, or by revising the incorrect entry or record in the real estate register.

Section 5:183

[Deletion of an entry]

An entry or record in the real estate register shall be deleted if the transaction on which the entry or record is based has been abolished or if the entry or record subsequently becomes inappropriate.

Section 5:184

[Cancellation and correction requests]

(1) The rightholder's entitlement to request cancellation and correction shall not lapse in respect of any person acquiring ownership of the real estate property or a right related to the real estate property.

(2) An action for the cancellation of an invalid entry may be brought against a person who has gained some right or was released from some liability in direct consequence of such entry within the period during which the invalidity of the legal statement substantiating said entry may be established.

Section 5:185

[Obligation of registration]

If an entry in the real estate register may be corrected on condition that the right of another person be registered previously, the rightholder may demand from that person to have his right registered in the real estate register.

Section 5:186

[Correction of an entry]

(1) The authority maintaining the real estate register shall make corrections within its own initiative concerning any errors in names, numbers or calculations, any other typing errors and erroneous descriptions in entries or records. The authority maintaining the real estate register shall supplement its resolution if it failed to provide for any part of the application for registration or recording or of the underlying document, and also if the entry or recording is incomplete as compared to the information furnished in the document or in the application.

(2) If there is information in the real estate register to conclude that a bona fide third party has obtained some right for consideration during the proceedings concerning the real estate property, and that a correction or revision would infringe the right of such third party, a correction or revision concerning a right or fact may only be executed with the consent of the third party concerned.

Section 5:187

[Protective effect of the real estate register]

A person holding some right under substantive law, or who is expected to obtain some right upon the cancellation of an entry may bring action for cancellation against a third party who acquired some right in good faith for consideration based on an unlawful entry or an entry that became incorrect subsequently, relying on the completeness and the probity of such entry, within six months from the date of delivery of the resolution on the originally invalid entry in the case of the person holding some right under substantive law, or, in the case of the person becoming entitled as a result of deletion, within six months from the date of delivery of the resolution on the registration of acquisition made on the basis of an entry that became incorrect subsequently, if the resolution was delivered to him. If delivery did not take place, the action for cancellation may be brought within a period of three years from the effective date of the entry. These time limits shall apply with prejudice.

BOOK SIX

LAW OF OBLIGATIONS

PART ONE

COMMON PROVISIONS RELATING TO OBLIGATIONS

TITLE I

GENERAL PROVISIONS

Chapter I

Obligation

Section 6:1

[Obligation]

(1) An obligation means a commitment to perform a service and an entitlement to demand performance of a service.

(2) An obligation may pertain to the provision of some thing, an activity, abstaining from an activity, or some other conduct.

(3) The parties may depart from the common provisions relating to the right and obligations of the parties upon mutual consent, provided it is not prohibited by this Act.

Section 6:2

[Facts establishing obligations]

(1) Obligations may originate from contracts, torts, any infringement of personality rights, rights in rem and other rights, from unilateral acts, securities, unjust enrichment, negotiorum gestio and from implicit conduct.

(2) Obligations shall be considered to arise from unilateral acts in cases provided for by law. The common provisions on obligations and the general provisions on contracts shall apply to such obligations.

(3) Obligations may be constituted by virtue of statutory provision, court ruling or administrative decision, if so ordered by such statutory provision, court ruling or administrative decision, and if the obligor, the obligee, and the service are accurately specified. The common provisions on obligations and the general provisions on contracts shall apply to such obligations.

Section 6:3

[Termination of obligations]

An obligation shall terminate:

- a) upon performance of the service;
- b) if the same person becomes the obligor and the obligee, unless this Act provides otherwise;
- c) upon death or dissolution of the obligor without succession, if it concerns a service that can be performed personally;
- d) upon death or dissolution of the obligee without succession, if the service is to be performed specifically for the obligee by virtue of its very nature;
- e) upon the parties' agreement for the termination of the obligation;
- f) on other grounds provided for by law, court ruling or administrative decision.

Chapter II

Legal Statements

Section 6:4

[Legal statements]

- (1) A legal statement is a unilateral act intended to have legal effect.
- (2) A legal statement can be made orally, in writing or by implicit conduct.
- (3) If a party makes a legal statement by way of implicit conduct, the legal statement shall be considered made when the implicit conduct is performed.
- (4) Silence or inactivity shall be construed as a legal statement where expressly provided for by the parties.

Section 6:5

[Effect of legal statements]

- (1) Any legal statement made between persons who are present shall come into existence immediately. A legal statement shall be considered made between persons who are present if the addressee becomes aware of the contents of the legal statement at the time when made.
- (2) A distance legal statement shall come into existence when delivered to the addressee.
- (3) A legal statement made by implicit conduct shall come into existence when communicated to the addressee.
- (4) A non-assigned legal statement shall come into existence when made.

Section 6:6

[Formality requirements for legal statements]

- (1) If a legal statement has to be made in a specific form determined by law or by agreement of the parties, the legal statement shall be considered valid only if made in that form.

(2) If a legal statement is considered valid only if made in a specific form, it shall be amended, confirmed, withdrawn and challenged, and the amendment and termination of any legal relationship entered into under such legal statement shall be made in that form as well.

Section 6:7

[Legal statements executed in writing]

(1) If a legal statement is to be made in writing, it shall be considered valid if at least the key points thereof are executed in writing.

(2) Unless otherwise provided for in this Act, a legal statement shall be construed to have been made in writing if the person making the statement has signed the legal statement.

(3) A legal statement shall be construed to have been made in writing if executed in a form with facilities for retrieving the information contained in the legal statement unaltered, and for identifying the person making the legal statement and the time when it was made.

(4) A written legal statement made by a person who is illiterate or incapable of writing shall be considered valid if executed in an authentic instrument or private deed representing conclusive evidence, where the signature or initial of that person is verified by a court or notary public, or countersigned by a lawyer or witnessed by two witnesses to verify that the person making the statement signed or initialed the document that was drafted by another person before them, or acknowledged the signature or initial on the documents as his own. If the issuer of a document containing his statement cannot read, or he does not understand the language in which the document is made out, the written legal statement shall be considered valid only if the document contains any evidence to suggest that the issuer was educated as to its contents by either of the witnesses or the counter-signatory.

Section 6:8

[Interpretation of legal statements]

(1) In the event of a dispute, the parties shall, in light of the presumed intent of the person issuing the legal statement and the circumstances of the case, construe statements in accordance with the generally accepted meaning of the words.

(2) In the event of a dispute, the parties shall, in light of the presumed intent of the person issuing the non-assigned legal statement and the circumstances of the case, construe statements in accordance with the generally accepted meaning of the words.

(3) Any waiver of a right in part or in full shall be considered valid if made by express legal statement. Should a person waive his rights in part or in full, such a legal statement shall not be broadly construed.

Section 6:9

[Application of the provisions pertaining to contracts]

Unless otherwise provided for in this Act, the general provisions on contracts shall also apply to the effect, nullity and invalidity of legal statements.

Section 6:10

[Application of the provisions pertaining to legal statements]

Unless otherwise provided for in this Act, the provisions on legal statements shall also apply to legal statements not pertaining to obligations.

Chapter III

Representation

1. General provisions on representation

Section 6:11

[Representation]

(1) Unless otherwise provided for in this Act, a legal statement can be made through another person as well. A legal statement made by a representative shall entitle and bind the person represented.

(2) Right of representation may be granted pursuant to a statutory provision, court ruling or administrative decision, or on the basis of an instrument of constitution or a power of attorney.

Section 6:12

[Limited power of representation]

Limiting the rights of an authorized representative shall be null and void in dealing with third parties, unless this Act contains provisions to the contrary.

Section 6:13

[Conflict of interest]

(1) If there exists any conflict of interest between the representative and his principal, the principal shall have the right to challenge a legal statement made by the representative.

(2) Conflict of interest shall be presumed if the representative is the opposing party, or represents the opposing party.

(3) The principal shall not be allowed to challenge the legal statement if he was aware of the conflict of interest when the right of representation was granted.

Section 6:14

[Misrepresentation]

(1) When a person makes a legal statement in the name of another without authorization or by overstepping his authorization, the statement shall invoke any legal effect upon the principal's consent.

(2) If the principal refuses to approve the legal statement made in his name, a bona fide false representative shall be liable for damages caused to third parties through making the statement, whereas a mala fide false representative shall be liable for the losses of third parties in full.

2. Ad hoc representation

Section 6:15

[Power of attorney]

(1) A power of attorney is a unilateral act granting the right of representation. The power of attorney shall be addressed to the agent, the competent authority or court, or any person to whom the agent is authorized to make a legal statement.

(2) A power of attorney shall be subject to formal requirements as prescribed by law for making legal statements on the basis of a power of attorney.

(3) The power of attorney shall remain valid until further notice.

(4) Any waiver of the right to limit or withdraw the power of attorney shall be null and void. Restriction or withdrawal of the power of attorney in terms of a third person shall be effective only if he was aware or should have been aware thereof.

(5) A power of attorney may be granted to a person of limited legal capacity or a person of partially limited legal capacity to represent a competent person.

Section 6:16

[General power of attorney]

A power of attorney granted for unspecified cases shall be considered valid if executed in a private deed representing conclusive evidence or in an authentic instrument. A general power of attorney granted for an indefinite period or for a period of more than five years shall be abolished after five years.

Section 6:17

[Scope of representation]

The power of representation shall extend to all acts and legal statements which are deemed required to achieve the goal for which the mandate was granted.

3. Specific cases of representation

Section 6:18

[Presumed and appearance-based representation]

(1) In commercial establishments and in publicly accessible places any person who is presumed under reasonable grounds to be authorized to make pertinent legal statements shall be construed as a representative. Restrictions on the scope of authority of a representative shall be inoperative towards third persons, unless the third person has been aware of such restrictions.

(2) Any person who - relying on his conduct and on the acts of the principal - is presumed under reasonable grounds to be authorized to make legal statements on behalf of the principal shall be construed as a representative.

Section 6:19

[Representation of persons who are unable to conduct their affairs]

(1) Upon request, the guardian authority shall appoint a conservator for a person who is unable to conduct his affairs. The appointment of a conservator may be requested by either of the parties affected or by any authority, and one may be appointed ex officio.

(2) The appointment of a conservator shall not affect the legal competency of the person in the custody of a conservator.

(3) The conservator shall manage the assets of the person in his custody. Furthermore, the conservator of an absentee may take any measure, with the prior consent of the guardian authority, in order to protect the person in his custody from losses. No approval by the guardian authority shall be required for imminently urgent measures, however, the guardian authority shall be notified thereof as soon as possible.

Section 6:20

[Ad hoc conservatorship and ad hoc guardianship]

(1) The guardian authority shall appoint an ad hoc conservator if, owing to a conflicting interest or physical obstacle, the conservator is not able to proceed pursuant to the relevant legislation or the guardian authority's orders.

(2) An ad hoc conservator shall also be appointed if:

a) measures are urgently required and the person who is incompetent or a person of legal age with partially limited legal capacity has no legal representative, or if the identity of the legal representative cannot be determined; and

b) it is necessary for the protection of the rights of a person who is unknown, absent, or otherwise unable to conduct his affairs.

(3) The ad hoc conservator shall act with the same authority as the conservator.

(4) The authority of a conservator shall not apply to the affairs for which an ad hoc conservator has been appointed.

(5) The guardian authority shall appoint a caretaker officer in the cases provided for in Subsections (1) and (2) when representation for minor has to be provided for. The provisions on ad hoc conservators shall also apply to caretaker officers.

Chapter IV

Statute of Limitations

Section 6:21

[Legal effects of the passage of time]

A statutory time limit for the exercise of a right or for the enforcement of a claim shall be considered forfeited upon the expire of said time limit if so ordered by the relevant legislation expressly. If the time limit is not preclusive, the provisions on statute of limitations shall apply.

Section 6:22

[Statute of limitations]

(1) Unless otherwise provided for in this Act, claims shall lapse after five years.

(2) The period of limitation commences upon the due date of the claim.

(3) An agreement for changing the limitation period shall be executed in writing.

(4) Any agreement excluding prescription shall be null and void.

Section 6:23

[Legal effects of prescription]

(1) Unless otherwise provided for in this Act, expired claims may not be enforced in court.

(2) Prescription shall be without prejudice to the obligor's obligation to perform the service; a service provided on the basis of an expired claim may not be recovered on the grounds that the claim had already expired.

(3) If the principal claim lapses, all of the collateral claims pending shall also lapse. The principal claim shall not be affected when collateral claims lapse.

(4) Prescription may not be taken into consideration ex officio in court or administrative proceedings.

Section 6:24

[Suspension of prescription]

(1) If the obligee is unable to enforce a claim for an excusable reason, prescription shall be suspended.

(2) If prescription is suspended, the claim shall remain enforceable within one year from the time when the said reason is eliminated or, in respect of a period of limitation of one year or less, within three months, even if the period of limitation has already lapsed or there is less than one year or less than three months, respectively, remaining therein.

(3) During the period mentioned in Subsection (2) prescription may not be suspended, and the provisions on the interruption of the prescription period may be applied with the proviso that the period of limitation of one year or less, or three months if the period of limitation is less than one year, shall restart after the interruption.

Section 6:25

[Interrupting the prescription period]

(1) The prescription period shall be interrupted:

- a)* if the debt is acknowledged by the obligor;
- b)* if the obligation is modified by agreement, and also upon composition;
- c)* if an action was brought against the obligor to enforce the claim, and the court has adopted a final and binding decision in conclusion of the proceedings; or
- d)* if the claim was notified in bankruptcy proceedings.

(2) The prescription period shall recommence after interruption or following the final conclusion of the proceedings on interruption.

(3) If a writ of enforcement is issued in the course of proceedings on the interruption of the prescription period, the prescription period shall be interrupted upon the modification of the obligation by agreement and by the acts of enforcement.

Chapter V

Acknowledgment of Debt. Composition

Section 6:26

[Acknowledgment of debt]

The obligor's acknowledgment of his debt shall not change the legal title of a debt, however, the burden of proof lies with the person making the acknowledgment to demonstrate that he had

no debt at the time of the statement of acknowledgment, or the debt was for a lower amount, or that it was based on a claim that cannot be judicially enforced, or on an invalid contract.

Section 6:27

[Composition]

(1) The parties may settle any disputed or indeterminate issues arising from an obligation by reaching an agreement for making mutual concessions, or if either party makes a concession.

(2) The composition shall not be affected by any misapprehension of the parties regarding a circumstance that was disputed or deemed indeterminate.

TITLE II

MULTI-PARTY OBLIGATIONS

Chapter VI

Multiple Liability in an Obligation

Section 6:28

[Shared liability]

(1) Unless otherwise provided for in this Act, if a divisible service is to be supplied by more than one obligor, the obligee may demand from each obligor to perform his share of the obligation. Where there is any doubt, the obligors are required to perform the service in equal proportions.

(2) A service shall be construed divisible, if it can be broken up into independent sections, unless such division is likely to harm the relevant lawful interests of the obligee.

Section 6:29

[Joint and several liability]

(1) If an indivisible service is to be supplied by more than one obligor, performance can be demanded from either of the obligors. Liability shall be joint and several also if a divisible service is to be supplied by more than one obligor, where the obligee is entitled to demand performance from either of the obligors.

(2) In the case of joint and several liability, each obligor owes the entire service; however, should any of them perform the obligation, the obligation of the other obligors towards the obligee shall also cease to exist up to the extent of performance. The obligors shall also be liable for each other's breach of contract.

(3) The obligor may challenge the obligee's claim, alleging the complaint of the other obligors relating to the satisfaction of the obligee; however, he shall not be entitled to offset the other obligor's claims.

(4) Default of an obligee towards one of the obligors shall stand in respect to all obligors.

(5) The prescription of the claim in respect of either obligor shall have no effect on the other obligors.

Section 6:30

[Relationship of persons under joint and several liability]

(1) Persons under joint and several liability shall bear obligations in equal shares, unless their relationship implies otherwise. If the obligor has performed a service for the obligee that exceeds his obligation, he shall have the right to demand compensation for the excess service he has provided from the other obligors up to the value of their share of the obligation.

(2) The obligor may not refer to an advantage against the other obligors that he has received from the obligee.

(3) The obligor against whom the claim of the obligee lapsed, may refer to such prescription with respect to the other obligors as well.

Chapter VII

Joint Obligees in an Obligation

Section 6:31

[Joint obligees of a divisible service]

If more than one person lays claim to a divisible service, each obligee shall be entitled to claim his share. Where there is any doubt, the obligees are entitled to demand the service in equal proportions.

Section 6:32

[Collectivity of obligees]

If several persons are entitled to demand an indivisible service, it shall be performed into the hands of all of them.

Section 6:33

[Joint and several obligees]

(1) If a claim is due to several obligees in such a manner that each is entitled to demand the entire service but the obligor is bound to a single service, the obligation to each obligee shall cease to exist if any of them is satisfied.

(2) Each obligee shall be affected by the default of either obligee, or by a legal statement that is a condition of enforcement of a claim or performance of a service.

(3) A claim shall not lapse in respect of any of the obligees insofar as the conditions for prescription have materialized in respect of all of them.

(4) If any of the obligees brings action regarding performance, the obligor may refuse performance to the other obligees, without being exempted thereby from the legal consequences of default, until the final conclusion of the action.

(5) Obligees shall be entitled to equal shares of a claim, unless their relationship suggests otherwise.

TITLE III

SETTLEMENT OF AN OBLIGATION

Chapter VIII

General Provisions

Section 6:34

[General rules of performance]

A service shall be performed according to the contents of the obligation.

Section 6:35

[Time of performance]

(1) The time of performance may be determined by setting a delivery date or delivery period. If the delivery date is set, the service shall be performed on that date. In the case of a delivery period, the service may be performed any time during that period, except if the circumstances of the case suggest that the obligee is allowed to choose the delivery date.

(2) If the delivery date can be determined based on the intended purpose of the service, the service shall be performed on that date.

(3) If the delivery date cannot be determined as under Subsections (1)-(2), the obligor shall effect performance after the preparation time necessary for performance.

Section 6:36

[Early settlement]

(1) The obligee shall accept performance offered before the delivery date, if that does not harm his relevant lawful interests, and if the obligor covers the extra costs which it entails.

(2) If performance is accepted before the delivery date, that shall not affect the other party's services in terms of delivery times.

Section 6:37

[Place of performance]

(1) Unless otherwise provided for in this Act, the place of performance of the service shall be the obligor's place of business at the time when the obligation was constituted, or, failing this the obligor's registered office or the home address or, failing this, habitual residence in the case of natural persons.

(2) If the obligor has more than one place of business, the one that has the closest relationship to the obligation shall be construed as the place of performance.

(3) If the place of performance changes after the constitution of the obligation, and the obligor notifies the obligee thereof, the place of performance shall be the new place of business or registered office, or the new home address or habitual residence in the case of natural persons. The extra expenses incurred in connection with changing the place of performance shall be advanced and borne by the obligor.

Section 6:38

[Acknowledgement of performance]

(1) The obligee shall be required to provide a written acknowledgement of performance at the obligor's request, or to return the promissory note.

(2) A person presenting the statement of acknowledgement of the obligee shall be construed as a person authorized to accept performance, unless the relevant circumstances suggest that such person has no entitlement to accept performance.

Section 6:39

[Costs of performance]

The costs arising out of or in connection with performance shall be borne by the obligor.

Section 6:40

[Distribution of specific services]

(1) If a person is to deliver a specific type and quantity of things to the same person but to different locations, and he is unable to deliver the entire quantity, he shall distribute the available quantity as instructed by the obligee.

(2) If the obligee fails to issue instructions in spite of being requested to do so, the obligor shall reduce the quantities allocated to any location proportionately.

Section 6:41

[Settlement in the case of several debts]

(1) If an obligor owes several analogous services to an obligee and the performance he has offered does not cover all of his debts, the obligor shall be entitled to designate, at the time of performance, the debt to which he wishes to apply such performance.

(2) If the obligor did not provide for the settlement of debts, and his intentions are not clearly discernible, the other party shall be entitled to decide which one of the overdue and uncontested debts the performance shall be applied to. The obligee shall inform the obligor of his choice in due time.

(3) If neither party has issued any instructions, or the obligee has not informed the obligor of his choice, the performance shall be applied to the debt that expired earlier, or in the case of debts of the same maturity, to the one that has less security attached, or if the debts are secured equally, to the one that is more burdensome for the obligor.

(4) If performance cannot be settled as under Subsection (3), it shall be applied to all debts as commensurate.

Chapter IX

Settlement of Monetary Debts

Section 6:42

[Payment]

(1) A monetary debt may be settled by way of transferring ownership of money to the creditor or by way of deposit or credit transfer to the creditor's payment account.

(2) A monetary debt shall be considered settled at the time of taking delivery if paid in cash, or at the time when the creditor's payment service provider credited, or should have credited, the funds to the creditor's payment account.

(3) These provisions shall also apply to the performance of any other obligation that involves the delivery of money.

Section 6:43

[Early settlement of a monetary debt]

The creditor shall accept early settlement of the debt before the due date.

Section 6:44

[Place of settlement of monetary debts]

(1) The place of settlement of a monetary debt shall be the creditor's place of business at the time when the obligation was constituted, or, failing this the creditor's registered office or the home address or, failing this, habitual residence in the case of natural persons. If the debtor settles the monetary debt by means other than cash payment, the place of settlement of the monetary debt shall be the place of business of the creditor's payment service provider at the time when the obligation was constituted, or, failing this, the bank's registered address. If at the time when the obligation was constituted the creditor had more than one payment account, the debtor shall have the right to choose the place of settlement.

(2) If the creditor has more than one place of business, the one that has the closest relationship to the obligation shall be construed as the place of settlement.

(3) If the place of settlement has changed after the constitution of the cash debt, and the creditor notifies the debtor thereof, the place of settlement shall be the new place of business or registered office, or the new home address or habitual residence in the case of natural persons.

(4) The extra expenses incurred in connection with changing the place of settlement shall be advanced and borne by the creditor.

Section 6:45

[Terms of payment of monetary debts]

(1) A monetary debt shall be settled in the legal tender at the place and time of settlement.

(2) If the monetary debt is recorded in another currency, it shall be converted at the exchange rate specified by the central bank of the place of settlement in effect at the time of settlement, or failing this, based on the money market rate. If a monetary debt is to be repaid in a foreign currency, and at the time of settlement the debt cannot be repaid in that foreign currency, the monetary debt shall be settled as under Subsection (1).

Section 6:46

[Settlement in the case of several debts]

If the sum paid in settlement for a monetary debt is insufficient to cover the entire debt, the sum shall be used for paying the costs first, then the interest, and, finally, the principal debt, if the creditor did not provide otherwise, and his intentions are not clearly discernible.

Section 6:47

[Interest]

- (1) Unless otherwise provided for in this Act, monetary debts shall draw interest.
- (2) The interest rate shall be the same as the central bank base rate.
- (3) If the monetary debt is to be repaid in a foreign currency, the interest rate shall be the same as the base rate of the issuing central bank, or failing this the money market rate.
- (4) For the purposes of calculating the interest, the interest rate in effect on the first day of the calendar half-year affected shall apply to the entire period of the given calendar half-year.

Section 6:48

[Interest on late payments]

- (1) In respect of a monetary debt, the debtor shall pay interest on late payment from the time of default calculated by the central bank base rate in effect on the first day of the calendar half-year to which it pertains, or - if the monetary debt is to be satisfied in a foreign currency, by the base rate of the issuing central bank, or failing this, by the money market rate -, even if the debt is otherwise free of interest.
- (2) If interest up to the date of default is due to the creditor, the debtor shall pay interest on late payment in addition to the interest due, as of the date of default at a rate of one-third of the central bank base rate in effect on the first day of the calendar half-year to which it pertains, or - if the monetary debt is to be satisfied in a foreign currency, by one-third of the base rate of the issuing central bank, or failing this, one-third of the money market rate -, but not less than the default interest specified in Subsection (1) on the aggregate.
- (3) For the purposes of calculating the interest, the central bank base rate in effect on the first day of the calendar half-year affected shall apply to the entire period of the given calendar half-year.
- (4) The obligation to pay interest shall be effective even if the obligor justifies his default.

Chapter X

Set-off

Section 6:49

[Setting off pecuniary claims]

- (1) The debtor shall be entitled to settle his debt also by way of setting off his overdue pecuniary claim against his monetary debt by means of a legal statement made out to the creditor.
- (2) Obligations shall cease to exist up to the value of set-offs.

Section 6:50

[Limitations on setting of pecuniary claims]

- (1) Time barred pecuniary claims may be also be offset if the pecuniary claim to be offset had not yet expired at the time when the monetary debt became due.
- (2) The same type of monetary debt may be offset against a pecuniary claim provided for by an enforcement order or composition, or if executed in an authentic instrument.
- (3) Only monetary debts originating from the same legal basis can be offset against pecuniary claims which are exempt from judicial enforcement.

Section 6:51

[Exclusion of set-offs]

(1) No set-off is permitted:

a) against claims for maintenance payments and benefits, with the exception of overpayments;
and

b) against pecuniary claim for compensation for willfully caused damages.

(2) Any pecuniary claim that cannot be enforced in court may not be offset.

Section 6:52

[Application of the provisions relating to set-offs in connection with non-pecuniary claims]

The provisions on set-offs shall apply also if the debtor intends to offset, by means of a legal statement made out to the creditor, his analogous and overdue pecuniary claim against his monetary debt owed to the creditor.

Chapter XI

Specific Cases of Performance

1. Court deposit and notary escrow

Section 6:53

[Settlement by way of court deposit]

(1) The debtor may settle his obligation to pay cash or deliver securities or other documents by way of court deposit if:

a) the identity of the creditor is uncertain, and the debtor is unable to ascertain the creditor's identity through no fault of his own;

b) the creditor cannot be found at the place of settlement;

c) the creditor refuses to accept performance offered by the debtor proper; or

d) in the case of collectivity of obligees, the creditors did not permit the debtor to provide settlement into the hands of all of them.

(2) The provisions on deposit contracts shall also apply to the obligations of the depositary.

Section 6:54

[Recovery and statute of limitations]

(1) The debtor shall be entitled to withdraw his deposit until the creditor is notified by the court thereof.

(2) The creditor may demand delivery of the deposit within a period of five years from the date of receipt of notice on the deposit.

(3) If the creditor's right to access the deposit expired, the debtor may demand to have the deposit returned.

Section 6:55

[Delivery of the deposit]

- (1) The court may release the deposit to the creditor only.
- (2) If the deposit was made claiming that the identity of the creditor was uncertain, the deposit may be released on the basis of a binding decision verifying the identity of the creditor.
- (3) In the case of collectivity of obligees, the court shall release the deposit at the request of all creditors, or on the basis of a binding decision verifying the identity of the creditor.
- (4) When making the deposit, the debtor shall be entitled to stipulate that the deposit can only be surrendered to the creditor upon the acknowledgement of his performance.

Section 6:56

[Notary escrow]

- (1) If the conditions for settlement by way of court deposit are satisfied, the debtor may settle his debt also through a notary escrow.
- (2) The provision on court deposit shall also apply to notary escrows.

2. Settlement by third parties

Section 6:57

[Settlement by third parties]

- (1) The creditor shall also accept settlement offered by a third party if the debtor has given consent thereto and the service is not bound to a specific person, and if that does not require any expertise or skill that is not possessed by the third party. The debtor's consent shall not be required if the third party has a relevant lawful interests in settlement and the debtor failed to effect settlement, or it is evident that the debtor is unable to effect settlement in due time.
- (2) Unless otherwise suggested by the nature of the relationship between the debtor and the third party, the third party shall have the right to demand compensation from the debtor.
- (3) If, as a result of the settlement of the debt, a third party claim is generated against the debtor, the guarantees of the terminated claim shall remain in effect, and shall be transferred to that new claim. This provision shall also apply if the claim is satisfied on the basis of a lien or based on the guarantor's liability.

PART TWO

GENERAL PROVISIONS ON CONTRACTS

TITLE IV

CONTRACTS. FUNDAMENTAL PRINCIPLES OF CONTRACTS

Section 6:58

[Contracts]

A contract is concluded upon the mutual and congruent expression of the parties' agreement intended to give rise to obligations to perform services and to entitlements to demand services.

Section 6:59

[Freedom of contract]

- (1) The parties are free to conclude a contract and to choose the other party.
- (2) The parties are free to determine the contents of the contract. The parties may depart from the provisions relating to their rights and obligations with mutual consent, unless prohibited by this Act.

Section 6:60

[Contents subject to mandatory rules of the relevant law]

- (1) If certain content items of the contract are prescribed mandatory by law, the contract shall enter into effect with such mandatory items included.
- (2) If the contents of an existing contract are to be amended pursuant to a newly adopted legislation, and the amended content of the contract is against the relevant lawful interests of any of the parties, the party so affected shall be entitled to request the court to amend the contract, or shall be entitled to withdraw from the contract.

Section 6:61

[Presumption of reciprocity]

Unless the contract or the applicable circumstances expressly indicate otherwise, a consideration is due for services set forth in the contract.

Section 6:62

[Duty to cooperate and communicate information]

- (1) The parties shall be required to cooperate during preliminary negotiations, at the time of the conclusion and termination, and during the life of the contract, and shall be duty bound to communicate information to each other on circumstances relevant to the contract.
- (2) The party may not allege the infringement of the duty to provide information with respect to rights, facts and circumstances of which he was aware, or should have known from a public register or any other source.
- (3) If the contract is concluded, the party who breaches the obligations referred to in Subsection (1) shall be subject to liability for damages for loss caused by non-performance of an obligation to the other party.
- (4) If conclusion of the contract fails, the parties shall not be liable for payment of compensation.
- (5) If the contract is not concluded, the party who breaches the obligation referred to in Subsection (1) during preliminary negotiations shall be subject to liability for damages in accordance with the general provisions of non-contractual liability.

TITLE V

CONCLUSION AND INTERPRETATION OF CONTRACTS

Chapter XII

Entering into a Contract

Section 6:63

[Conclusion and contents of contracts]

- (1) Contracts are concluded upon the mutual and congruent expression of the parties' intent.
- (2) It is fundamental to the validity of a contract that an agreement is reached by the parties concerning all essential issues as well as those deemed relevant by either of the parties. An agreement in the issues which are deemed relevant shall be required for the conclusion of the contract if either party expressly indicates that an agreement on such issues is a precondition for the conclusion of the contract.
- (3) If the contract is concluded, but the parties have not clearly defined the amount of consideration, or if the market price has been stipulated as the price, the average price prevailing on the date of performance in the market regarded as the place of performance shall be paid.
- (4) The parties need not agree on issues that are regulated by statutory provisions.
- (5) Under the contract the parties shall be bound by any usage which they have agreed on in prior business dealings and by any practice they have established between themselves. Furthermore, the parties shall be bound by a usage which would be considered generally applicable and widely known in the given sector by parties to similar contracts, unless such usages and practices are likely to conflict with contract terms which have been previously negotiated between the parties.

Section 6:64

[Binding period]

- (1) Any person who makes a legal statement clearly indicating his intention to enter into a contract, showing also the relevant issues, shall be bound by his statement. The offeror may specify the period for his offer to remain binding.
- (2) The binding period shall commence when the offer takes effect.

Section 6:65

[Termination of the binding period]

- (1) If the offeror fails to specify the period during which he is bound to keep open his offer, the binding period shall terminate:
 - a) when the offer is made between persons present, if the other party fails to accept the offer immediately;
 - b) in the case of distance contracts, upon the expiry of the period of time within which the person who made the offer can normally expect - in light of the nature of the services specified in the offer and the manner in which the offer was delivered - to receive a response;
 - c) if the offer is refused by the other party.
- (2) The binding period shall cease if the offeror revokes the offer by means of a legal statement addressed to the other party, and the revocation reaches the other party before the other party sends an acceptance.
- (3) An offer made in writing may be revoked in writing.
- (4) An offer may not be revoked after it has entered into effect, if the offer indicates that it is irrevocable or if the offer states a fixed time period for its acceptance.

Section 6:66

[Acceptance of an offer]

Any form of statement by the offeree is an acceptance if it indicates assent to the offer.

Section 6:67

[New offer, modified acceptance]

(1) The acceptance of a proposal with contents that deviate from the vital points of the offer shall be deemed a new offer.

(2) The legal statement expressing assent shall be considered acceptance even if it contains additional or differing conditions which do not afflict any material issues. Said additional or different terms shall become part of the contract, unless:

- a) the offer expressly limits acceptance to the terms of the offer; or
- b) the offeror objects to the additional or different terms without undue delay.

(3) If the contract is concluded by means other than in writing, and either party executes the contract, without delay, in writing after the conclusion of the contract, with additional or different contract terms which do not materially alter the terms of the offer, and sends this contract to the other party, these terms shall become part of the contract if the other party fails to object without undue delay.

Section 6:68

[Late acceptance]

(1) If the statement of acceptance is made with a delay, the contract shall not enter into effect.

(2) Where a statement of acceptance is made with a delay the contract is considered concluded nonetheless if the offeror forthwith notifies the offeree thereof.

(3) Where a statement of acceptance is sent in due time, but it reaches the offeror late, the contract shall be considered concluded if it shows that the statement of acceptance has been sent in such circumstances that if its transmission had been normal it would have reached the offeror in due time, unless, without undue delay, the offeror informs the offeree that the statement of acceptance arrived late, and as such it is not considered valid. In that case, the contract is considered concluded when the statement of acceptance would have reached the offeror had it been sent under normal circumstances.

Section 6:69

[Time and place of conclusion of the contract]

(1) The contract is concluded when the statement of acceptance becomes effective.

(2) Where an offer is accepted at the place where it was made, the place of conclusion of the contract is the place where the legal statements are made. In other cases, the place of conclusion of the contract is the offeror's registered office, or home address or, failing this, habitual residence in the case of natural persons.

Section 6:70

[Contracts executed in writing]

(1) If a contract is to be executed in writing, the offer and the statement of acceptance shall be made in writing as well.

(2) A contract shall be construed to have been made in writing even if not executed in a single document that contains the legal statements of all parties, but the contracting parties' mutual and congruent expression of their intention is contained in separate documents.

(3) A contract shall be construed to have been made in writing also if it is made out in several counterparts and each party signs the one to be given to the other party.

Chapter XIII

Obligation to Contract

Section 6:71

[Statutory obligation to contract]

(1) Where an obligation to contract is prescribed by law, and the parties do not conclude the contract, the court shall have powers to establish the contract and to define its terms.

(2) By disclosing the necessary details and sending the necessary documents, the obligee may request the person who is subject to contracting obligation to make an offer. The obligor shall present his offer within thirty days following the effective date of the request.

(3) If the request for an offer does not contain the necessary details or documents, the obligor shall request these details and/or documents within fifteen days following the effective date of the request. In that case, the deadline for presenting the offer shall commence upon the provision of the missing details and/or documents.

(4) Conclusion of the contract may be refused if the obligor provides proof that he is incapable of performing the contract or there exists the right to withdraw from or to terminate the contract.

Section 6:72

[Breach of obligation to contract by abusing a dominant position]

Where a party unjustifiably refuses to conclude or maintain a contract by abusing his dominant position, the other party shall have the right to bring action and request the court to establish the contract between them under the principle of statutory obligation to contract.

Section 6:73

[Preliminary contract]

(1) If the parties agree to enter into a contract at a later date, and they define the material terms of that contract, the court shall have powers to establish the contract under such terms and conditions at the request of either party.

(2) The preliminary contract shall be concluded in the form stipulated for the contract. The provisions pertaining to a contract to be concluded on the basis of an agreement in principle shall apply to the preliminary contract.

(3) Either party shall be entitled to refuse to conclude a contract if able to evidence:

a) that performing the contract under the same terms is likely to harm his relevant lawful interests in consequence of a circumstance that has occurred since the conclusion of the preliminary contract;

b) that the possibility of change in circumstances could not have been foreseen at the time of conclusion of the preliminary contract;

- c) that he did not cause the change of circumstances; and
- d) the change in circumstances cannot be regarded as normal business risks.

Chapter XIV

Conclusion of Contract in a Competitive Selection Process

Section 6:74

[Invitation to tender in competitive selection process]

(1) Where a party publishes a contract notice inviting several persons to submit a proposal, where the contract is awarded following a selection process conducted under the criteria set out in the notice to the offeror who made the best offer, the party having published the notice shall be subject to contracting obligation.

(2) The party having published the notice may refuse to conclude the contract with the person making the best offer under the conditions set out in the notice if this right was expressly stipulated in the notice.

(3) The party having published the notice shall have the right to revoke the notice before the deadline indicated therein.

Section 6:75

[Binding period in competitive selection process]

(1) The binding period shall commence when the deadline indicated in the notice expires. Offerors may revise or withdraw their offers prior to the expiration of that time limit.

(2) The offeror shall remain bound by his offer for a period of thirty days following the time indicated in the notice for the contract award procedure.

(3) If the offeror provided any guarantee with his offer, such guarantee shall be considered forfeited in the event that the offeror withdraws his offer within the binding period; otherwise the guarantee shall be refunded following conclusion of the selection process.

Section 6:76

[Competitive selection process based on price]

(1) If the competitive selection process concerns the price only, and the offerors make their proposals in full knowledge of the price offered by others, the contract shall be awarded to the successful offeror and concluded at that price.

(2) The offer shall be considered ineffective if another offeror offers a better price, or if the competitive selection process is concluded without award.

Chapter XV

Conclusion of Contracts with Standard Terms and Conditions

Section 6:77

[Standard contract terms]

(1) Standard contract terms means contract terms which have been unilaterally drafted in advance by one of the parties for several transactions involving different parties, and which have not been individually negotiated by the parties.

(2) Where either party claims that a standard contract term has been individually negotiated, the burden of proof in this respect shall be incumbent on the party applying the standard contract term.

Section 6:78

[Standard contract terms becoming part of the contract]

(1) Contract terms which have not been individually negotiated shall become part of a contract only if they have previously been made available to the other party for perusal before the conclusion of the contract, and if the other party has accepted those terms.

(2) The other party shall be explicitly informed of any standard contract terms that differs substantially from the relevant legislation and from usual contractual practice, except if they are in line with any practice the parties have established between themselves. The other party shall be explicitly informed of any standard contract terms that differs substantially from any stipulations previously applied by the same parties.

(3) The terms defined in Subsection (2) shall form part of the contract only if the other party has expressly accepted them after being informed about them.

Section 6:79

[Terms allowing extra claims from consumers to become part of the contract]

Any term granting the right to the business party to demand extra payments in addition to the consideration due for the fulfillment of the primary commitment shall form part of the contract only if the consumer has expressly accepted it after having been informed thereof.

Section 6:80

[Conflicting contract terms and conditions]

If a standard contract term and another condition of the contract differ from one another, the latter shall be integrated into the contract.

Section 6:81

[Conflicting standard contract terms]

(1) Where an offer made by reference to standard contract terms is accepted by the other party under his own standard contract terms, and the standard contract terms in question are not conflicting, the standard contract terms of both parties shall become part of the contract.

(2) If the standard contract terms differ from one another in issues of minor importance, the contract is nonetheless concluded, and the non-conflicting standard contract terms shall become part of the contract.

(3) If there is any difference among the standard contract terms in the vital points of the contract, the contract shall not be concluded.

Chapter XVI

Special Provisions Relating to Contracts Concluded by Electronic Means

Section 6:82

[Information relating to contracts concluded by electronic means]

(1) In connection with contracts concluded by electronic means, the party providing the electronic means for concluding the contract shall, before making a legal statement pertaining to the contract, inform the other party of the following matters:

- a) technical steps to be taken in order to conclude the contract;
- b) whether or not the concluded contract is considered made in writing, whether or not it will be filed by the party providing the electronic means and whether it will be accessible;
- c) the technical means for identifying and correcting input errors made in the course of electronic processing before the other party makes the legal contract statement;
- d) the language offered for the conclusion of the contract; and
- e) if available, a code of conduct relating to the service activity by which the party providing the electronic means has undertaken to be bound, and the electronic address where it is accessible.

(2) The party providing the electronic means shall make available his standard contract terms in a way that allows the other party to store and reproduce them.

Section 6:83

[Correcting input errors]

The party providing the electronic means shall provide sufficient technical means allowing the other party to identify and correct input errors made in the course of electronic processing before making his contract statement. In the event of failure by the party providing the electronic means to fulfill that obligation, the other party shall have the right to challenge the said contract statement.

Section 6:84

[Electronic contract statements and confirmation of such statements]

(1) A contract statement made by way of electronic means shall be effective when made accessible for the other party.

(2) The party providing the electronic means shall send confirmation of receipt of the other party's contract statement by way of electronic means without delay. The party shall be relieved from any contractual commitment and may not be required to perform the contract if confirmation is not delivered to the other party immediately.

Section 6:85

[Scope and cogency of provisions on the conclusion of electronic contracts]

(1) The provisions of this Chapter shall not apply to contracts concluded by exchange of electronic mail or by equivalent individual communications, with the exception of the provisions on the effect of contract statements made by way of electronic means.

(2) In connection with a contract that involves a consumer and a business party any agreement derogating from the provisions of this Chapter shall be null and void.

Chapter XVII

Interpretation of Contracts

Section 6:86

[Interpretation of contracts]

(1) Contract terms and statements are to be interpreted in accordance with the contract as a whole.

(2) If the meaning of a standard contract term or the contents of the contract term which has not been individually negotiated cannot be clearly established by the application of the provisions set out in Subsection (1) for the interpretation of the legal statement, the interpretation that is more favorable to the party entering into a contract with the person imposing such contract term shall prevail. In connection with a contract that involves a consumer and a business party, this provision shall also apply to the interpretation of any contract term.

(3) Subsection (2) shall not apply to actions brought in the public interest.

Section 6:87

[Merger clauses]

(1) Where a contract in writing includes a term stating that the document contains all contract terms agreed upon by the parties, any prior agreements which are not contained in the document do not form part of the contract.

(2) Prior statements of the parties may be used for the interpretation of the contract.

TITLE VI

INVALIDITY

Chapter XVIII

Nullity and Avoidance

Section 6:88

[Nullity]

(1) Annulled contracts shall be considered null and void as from their conclusion. No special procedure is required for the establishment of invalidity; the court observes the nullity of the contract of its own motion.

(2) If an annulled contract is in conformity with the validity requirements of another contract, this latter contract shall be valid, unless that is in contradiction with the presumed intention of the parties.

(3) Unless otherwise provided for in this Act, only a person who has a legal interest therein or who is so authorized by law may rely on the nullity of the contract and may bring action in connection with the nullity of the contract.

(4) In the interest of having a violation of public interest eliminated and with regard to usurious contracts, the public prosecutor may bring action for the annulment of the contract or for invoking the legal effects of nullity.

Section 6:89

[Avoidance]

(1) A contract which may be avoided shall, in consequence of being avoided, become invalid as of the date on which it was concluded.

(2) The aggrieved party and persons with a lawful interest in the avoidance of a contract shall be entitled to do so.

(3) Avoidance may be effected by notice to the other party given within a period of one year from the date on which it was concluded, or by legal action brought in court. Avoidance may be effected in court within a period of one year by the party who sent notice to the other party for the purpose of avoidance, and if said avoidance has been declined.

(4) The party entitled to avoid a contract shall be entitled to enforce this right by challenging a claim originating from the contract, even if the time limit for avoidance has already expired.

(5) The right of avoidance shall be suppressed if the party entitled to avoid the contract confirms the contract or otherwise waives his right to do so in full knowledge of the grounds for avoidance, after the expiration of the time limit for avoidance.

1. Defects in consent

Section 6:90

[Mistake]

(1) A person acting under a misapprehension regarding any material circumstance at the time a contract is concluded shall be entitled to contest his contract statement if his mistake had been caused or could have been recognized by the other party. The mistake shall be considered to impact a material circumstance if the party, but for the mistake, would not have concluded the contract or would have done so only on fundamentally different contract terms.

(2) If the parties had the same mistaken assumption regarding any material circumstance at the time the contract was concluded, either of them may avoid the contract.

(3) The contract may not be avoided by a party who knew or could be expected to have known the mistake, or if he assumed the risk of the mistake.

Section 6:91

[Misrepresentation and threat]

(1) A person who has been persuaded to conclude a contract by misrepresentation or fraud by the other party shall be entitled to contest the contract statement made as a consequence of such misrepresentation.

(2) A person who has been persuaded to conclude a contract by the other party's use of threat shall be entitled to contest the contract statement.

(3) The provisions under Subsections (1) and (2) shall also apply if misrepresentation or threat was committed by a third person and the other party had or should have had knowledge of such conduct.

Section 6:92

[Disguised stipulations, sham contracts]

(1) Disguised stipulations and concealed motives shall be immaterial with regard to the validity of the contract.

(2) A sham contract shall be null and void, and if such contract is intended to disguise another contract, the rights and obligations of the parties are to be adjudged on the basis of the disguised contract.

Section 6:93

[Defect in consent in connection with gratuitous contracts]

A gratuitous contract may be contested on the grounds of mistake, mistaken assumption, or threat or misrepresentation by a third person even if these circumstances could not have been recognized by the other party.

2. Errors in contract statements

Section 6:94

[Remedying formal discrepancies]

(1) If a contract is annulled for any breach of formal requirements, it shall become valid by acceptance of performance, up to the extent performed. If the contract is to be executed by law in an authentic instrument or private deed representing conclusive evidence, or if the contract pertains to the transfer of a real estate property, performance shall have no bearing on the annulment invoked on the grounds of infringement of statutory formalities.

(2) Any amendment to and termination or cancellation of a contract made in the absence of statutory formalities shall be deemed valid, if the actual state conforming thereto has been established with the parties' mutual consent. If the contract is to be executed by law in an authentic instrument or private deed representing conclusive evidence, or if the contract pertains to the transfer of a real estate property, any amendment to and termination or cancellation of a contract made in the absence of statutory formalities shall be null and void, even if the actual state conforming thereto has been established with the parties' mutual consent.

3. Defect in the intended legal effects

Section 6:95

[Illegal contracts]

Any contract which is incompatible with the law or that was concluded by circumventing the law shall be null and void, unless the relevant legislation stipulates another legal consequence. If the relevant legislation stipulates another legal consequence in connection with a contract, it shall be null and void nonetheless where this is specifically declared by law, or if the purpose of the law is to prohibit the legal effect pursued by the contract.

Section 6:96

[Immoral contracts]

A contract shall be null and void if it is manifestly in contradiction to good morals.

Section 6:97

[Usurious contracts]

If, by exploiting the other party's situation, a contracting party gains excessive benefit or unfair advantage when the contract is concluded, the contract shall be considered null and void.

Section 6:98

[Gross disparity in value]

(1) If, at the time of the conclusion of the contract, the difference between the value of a service and the consideration due - without either party having the intention of making a gratuitous grant - is grossly unfair, the injured party shall be allowed to avoid the contract. The contract shall not be avoided by the party who knew or could be expected to have known the gross disparity in value, or if he assumed the risk thereof.

(2) The parties may exclude the right of avoidance provided for in Subsection (1), with the exception of contracts that involve a consumer and a business party.

Section 6:99

[Nullity of fiduciary collateral arrangements]

Any clause on the transfer of ownership, other right or claim for the purpose of security of a pecuniary claim, or on the right to purchase, with the exception of the collateral arrangements provided for in the directive on financial collateral arrangements, shall be null and void.

Section 6:100

[Unfair clause in consumer contracts]

Any clause of a contract that involves a consumer and a business party that derogates from the provisions of this Act on consumer rights to the detriment of the consumer shall be null and void.

Section 6:101

[Consumer disclaimers]

In a contract that involves a consumer and a business party, any disclaimer by a consumer of a statutory right shall be considered null and void.

Section 6:102

[Unfair standard contract terms]

(1) A standard contract term shall be considered unfair if, contrary to the requirement of good faith and fair dealing, it causes a significant and unjustified imbalance in contractual rights and obligations, to the detriment of the party entering into a contract with the person imposing such contract term.

(2) The unfair nature of a standard contract term shall be assessed, taking into account the nature of the services for which the contract was concluded and by referring, at the time of

conclusion of the contract, to all the circumstances leading to the conclusion of the contract and to all the other terms of the contract or of another contract on which it is dependent.

(3) The provisions relating to unfair standard contract terms shall not apply to the definition of the main subject matter specified in the contract or to the ratio between the price determined, on the one hand, and the services provided in exchange, on the other, in so far as these terms are in plain intelligible language.

(4) The standard contract terms defined by legislation, or established in accordance with the provisions of the relevant legislation shall not be deemed unfair.

(5) Any unfair contract term that has been incorporated into the contract as a standard contract term may be contested by the injured party.

Section 6:103

[Unfair contract terms in consumer contracts]

(1) As regards contracts which involve a consumer and a business party, the provisions relating to standard contract terms shall also apply - subject to the exceptions set out in this Section - to the contract terms which have been drafted in advance by the business party and which have not been individually negotiated. The burden of proof to verify that a contract term has been individually negotiated lies with the business party.

(2) As regards contracts which involve a consumer and a business party, where a standard contract term or any contract term which has been drafted in advance by the business party and which has not been individually negotiated shall be regarded as unfair if they are not drafted in plain and clearly understandable language, solely on that basis.

(3) Any unfair contract term that has been incorporated into a contract that involves a consumer and a business party shall be null and void. Nullity may be invoked in favor of the consumer.

Section 6:104

[Other unfair terms in consumer contracts]

(1) In contracts which involve a consumer and a business party a contract term shall, in particular, be considered unfair if its object or effect is to:

- a)* give the business party the exclusive right to interpret any contract term;
- b)* give the business party the exclusive right to determine whether performance is in conformity with the contract;
- c)* provide that the consumer is bound by the contract when the business party is not;
- d)* entitle the business party to withdraw from or terminate the contract on a discretionary basis without giving the same right to the consumer;
- e)* exclude the consumer's right to recover at the time the contract is terminated the services already performed without compensation, except where the contract is terminated on the grounds of non-performance;
- f)* exclude or limit the right to offset claims that the consumer may have against the business party against what the consumer may owe to the business party;
- g)* allow the business party to transfer its debts to a third party without the consumer's consent;
- h)* limit the business party's obligation to be bound by commitments undertaken by its authorized agents;
- i)* exclude or hinder the consumer's right to take legal action or exercise any other legal remedy, particularly by requiring the consumer to take disputes exclusively to an arbitration

system not foreseen generally in legal provisions, restrict the evidence available to the consumer or impose on the consumer a burden of proof which should legally lie with the other party;

j) alter the burden of proof to the detriment of the consumer.

(2) In contracts which involve a consumer and a business party the contract term shall, in particular, be considered unfair, until proven otherwise, if its object or effect is to:

a) declare a specific conduct of the consumer as making a contract statement, or the failure to make one, if the time limit available for performing that conduct is unreasonably short;

b) subject the consumer in making statements to particular formalities that are unreasonable;

c) extend a contract of fixed duration unless the consumer indicates otherwise, in cases where contract terms provide for an unreasonably early deadline for making such statement;

d) enable a business party to alter contract terms unilaterally without a valid reason which is specified in the contract, in particular to increase the monetary consideration fixed in the contract, or to allow the business party to alter unilaterally the terms of a contract where there are serious grounds laid down in the contract for doing so, provided that in such cases the consumer is not free to withdraw from or to terminate the contract;

e) enable a trader to alter unilaterally without a valid reason any characteristics of the services to be provided as contracted;

f) allow a business party to be bound by commitments subject to compliance with a particular condition the fulfillment of which depends exclusively on the business party, except if the consumer is free to withdraw from or to terminate the contract;

g) allow a period of over forty-five days for the business party to satisfy its debt or to provide an inappropriately determined deadline for the performance of its service, and for the acceptance of the consumer's contract statement;

h) exclude or limit the remedies available to the consumer against the business party in the case of non-performance;

i) exclude the consumer's right to recover any payment made under contract in case of the consumer's non-performance or if his performance is not in conformity with the contract, if the business party is not bound by similar obligations;

j) order the consumer to pay a disproportionately high amount if he fails to perform obligations or fails to perform as stipulated by the contract.

Section 6:105

[Public-interest proceedings in connection with unfair standard contract terms]

(1) As regards contracts which involve a consumer and a business party, an action may be brought for the annulment of an unfair contract term that has been incorporated into a contract by:

a) the public prosecutor;

b) the minister, autonomous administrative agencies, government agencies, the director of the head office;

c) the heads of the Budapest and county government agencies;

d) economic and trade organizations or interest-representation bodies; and

e) associations for the protection of consumers' interests within the scope of consumer interests they protect, and organizations set up for the protection of consumers' interests under the laws of any Member State of the European Economic Area.

(2) In public-interest proceedings, the court shall establish the annulment of an unfair contract term in favor of all of the parties with which the party imposing the condition has a contractual

relationship, and shall order the party who applied the contract term in question to take measures for having a public notice on declaring the contract term unfair published at his own cost. The wording of such public notice and the mode of publication shall be decided by the court. The public notice shall contain the precise description of the contract term in question, an indication that it was found unfair, including the reasons and the arguments in support of such finding. Having the term declared null and void by the court shall not affect the contracts that had already been performed prior to the date on which the action was filed.

(3) Moreover, an action may be brought in the public interest to request to have a standard contract term or condition declared unfair, that has been defined for consumer contracts and made available to the general public, regardless of whether the term or condition in question had in fact been applied or not. If the court finds the contested standard contract term unfair, the court ruling may also contain a clause banning the party who made it available to the public from the further use of such.

(4) Furthermore, the lawsuit referred to in Subsection (3) may be brought against any party who publicly recommends the use of any unfair standard contract term or condition that has been defined for consumer contracts and made available to the general public. The court, if it finds the contested standard contract term unfair, shall declare it null and void for future purposes and shall ban any further recommendation for use.

(5) The provisions contained in Subsection (2) shall also apply to any unfair standard contract term that has not been used in a contract previously. Publication shall be provided for by the party who made the standard contract term in question available to the general public or who recommended the use of such term.

Section 6:106⁶⁰

[Public-interest proceedings in connection with contracts between business parties and with contracts between a contracting authority and a party other than a contracting authority]

(1) Where a contract term relating to the time of settlement of monetary debts, the amount or due date of interest for late payment is deemed contrary to good faith and fair dealing and as such regarded as unilaterally and unjustifiably unfair to the creditor business association has been incorporated into the contract between business parties as a standard contract term, it may be contested also by an organization representing the interests of business entities alleging to find such clause as unfair.

(2) As regards the payment due date fixed for a monetary claim, that has been incorporated into the contract between a contracting authority and a party other than a contracting authority as a standard contract term:

a) action may be brought for annulment of the contract term fixing the payment due date for the monetary claim in over sixty days, or

b) by way of derogation from the provisions of this Act relating to contracting authorities, where a deadline does not exceed sixty days and it is deemed contrary to good faith and fair dealing and as such regarded as unilaterally and unjustifiably unfair to the party other than a contracting authority, action may be brought for having the term declared null and void alleging to find such clause as unfair, by an organization representing the interests of business entities as well.

⁶⁰ Enters into force as under Subsection (1) of Section 188 of Act CCLII of 2013.

(3) If the petition referred to in Subsections (1) and (2) is found substantiated, the court may declare the contract term in question annulled or null and void in favor of all of the parties with which the party applying the term has a contractual relationship. Having the term declared annulled or null and void by the court shall not affect the contracts that have already been performed.

(4) The organization representing the interests of business entities may request to have a standard contract term referred to in Subsections (1) and (2) declared unfair, and/or annulled, that has been defined for contracts and made available to the general public, regardless of whether or not the term in question had in fact been applied. If the contested standard contract term is declared unfair, and/or if the term is annulled, the court ruling may also contain a clause banning the party who made it available to the public from the further use of such.

(5) In the proceedings referred to in Subsections (1)-(2) and (4), the court, upon the claimant's request, may order the party who applied or published the contract term in question, or who suggested the use of such, to take measures for having a public notice on declaring the contract term unfair and/or annulled published at its own cost. The wording of such public notice and the mode of publication shall be decided by the court. The public notice shall contain the precise description of the contract term in question, an indication that it was found unfair, or that it was annulled, including the reasons and the arguments in support of such finding.

(6) The organization representing the interests of business entities may request to have a standard contract term declared annulled, that:

a) in contracts between business parties excludes interest for late payment, as well as any contractual term which excludes or restricts compensation for recovery costs,

b) in contracts between a contracting authority and a party other than a contracting authority, provides for the due date of any interest for late payment by way of derogation from the first day following the deadline defined in this Act having regard to the time of settlement of the monetary debt, or that excludes or restricts the obligation to provide compensation for recovery costs relating to interests on late payment and/or other claims.

Section 6:107

[Impossible performance. Incomprehensible and inconsistent terms]

(1) Contracts aimed at impossible services shall be null and void. A service shall not be deemed impossible solely on the grounds that the obligor does not have the object of the service in his possession at the time the contract is concluded.

(2) Incomprehensible and irreconcilable terms shall be null and void.

Chapter XIX

Legal Consequences of Invalidity

Section 6:108

[Applying the legal consequences of invalidity]

(1) No right may be established and performance may not be demanded on the basis of an invalid contract. Other legal effects of invalidity shall be invoked by the court at the party's request to that effect, within the framework of prescription and adverse possession.

(2) The party may bring action asking the court to declare a contract invalid without requesting the application of the legal consequences of invalidity.

(3) The court decision may resolve the consequences of invalidity in a manner that differs from the party's request; however, such a decision may not prescribe a solution that is protested by all parties.

Section 6:109

[Passing of risk]

Upon the provision of a service under an invalid contract the risk shall pass to the other party.

Section 6:110

[Declaring a contract valid by court ruling with retroactive effect]

(1) The court may declare an invalid contract valid with retroactive effect to the date of conclusion of the contract if:

a) the harm resulting from invalidity can be eliminated by the amendment of the contract to that effect; or

b) the reason for invalidity no longer applies.

(2) If an invalid contract is declared valid, the contracting parties shall be liable to mutually effect performance as contracted, and shall be liable for any subsequent breach of contract as if the contract had been valid from the very beginning.

Section 6:111

[Validity of a contract by actions of the parties]

(1) A contract shall become valid with retroactive effect to the date of conclusion if the parties subsequently eliminate the grounds for invalidity, or if such grounds cease for other reasons and they reconfirm their contractual intent.

(2) If an invalid contract becomes valid, the contracting parties shall be liable to mutually effect performance as contracted, and shall be liable for any subsequent breach of contract as if the contract had been valid from the very beginning.

(3) If the parties subsequently eliminate the grounds for invalidity, and agree to validate the contract for future considerations, the performance that has been provided up to that point shall be resolved subject to the legal effects of invalidity.

Section 6:112

[Restitution]

(1) In connection with an invalid contract each party has the right to reclaim the service he has provided from the other party in kind, if that party also returns the service he has received in kind. The obligation to return what was received applies to the party requesting restitution irrespective of whether the time of prescription or the duration of adverse possession has lapsed.

(2) In the process of restitution the original value-service ratio must be maintained.

Section 6:113

[Payment for monetary value for unjust enrichment]

(1) If a contract cannot be declared valid, and if the state of affairs having existed prior to the conclusion of the contract cannot be restored, the court shall order payment for monetary value of the services yet uncompensated. The court may invoke that sanction also in the case if restitution is likely to harm the relevant lawful interests of either of the parties.

(2) The party shall not be required to provide payment for monetary value of the services yet uncompensated if able to prove that the reason for his inability to return the service he has received is attributable to the other party. If the party paid compensation for the service, he may request to have it returned even if he is unable to return the service he has received, and provides proof that the reason for his inability to return the service he has received is attributable to the other party.

(3) With regard to usurious contracts, the court may cancel reimbursement in full or in part if, even in those cases in which installation payments are permitted, the aggrieved party would find himself in dire straits. Nevertheless, the party who caused the injury shall be obliged to reimburse the aggrieved party for that part of the received services that is equivalent to the excessive advantage.

Section 6:114

[Partial invalidity]

(1) If the grounds for invalidity concerns specific parts of the contract, the legal effects of invalidity shall apply to those parts of the contract. In the event of limited invalidity of a contract, the entire contract shall fail if there is reason to believe that the parties would not have concluded it without the invalid part.

(2) In the event of limited invalidity of a consumer contract, the entire contract shall fail only if the contract cannot be performed without the invalid part.

Section 6:115

[Claims arising in connection with an invalid contract]

(1) The parties shall provide compensation for proceeds and interests not restituted according to the principle of wrongful possession. The party who did not perform his service, or received the service without compensation, shall provide compensation for proceeds and interests according to the principle of unjust enrichment.

(2) For any loss caused to the other party by way of the conclusion of an invalid contract compensation shall be provided in accordance with the general provisions of non-contractual liability. If the party responsible for the invalidity of the contract is able to justify his conduct, he shall be liable for any loss caused to the other party by way of the conclusion of the contract.

(3) A person who has, in good faith, believed in the existence of an invalid contract may demand compensation for damages resulting from the contract from the party responsible for the invalidity of the contract. The parties shall be equally liable to provide compensation if they are equally responsible for the invalidity of the contract.

(4) The contracting party whose conduct was actionable in dealings with a bona fide third party shall be liable for full compensation for damages regardless of who is responsible for the invalidity of the contract.

TITLE VII

SCOPE OF CONTRACTS. INEFFECTIVENESS

Section 6:116

[Conditions and terms]

- (1) If the parties have made the effective date of a contract contingent upon an unpredictable future event, the contract shall become effective when such condition is met.
- (2) If the parties have made the termination of a contract contingent upon an unpredictable future event, the contract shall expire when such condition is met.
- (3) The provisions pertaining to conditions shall also apply in the event the parties have attached the validity or termination of a contract to a certain date.

Section 6:117

[Conditions pending]

- (1) As long as a condition is pending, neither party shall be entitled to do anything that would infringe upon or violate the other party's rights upon the satisfaction or failure of the condition. This provision shall not affect the rights acquired in return for consideration by third persons acting in good faith.
- (2) Persons who have actionably caused the satisfaction or failure of a condition shall not be entitled to establish any right thereupon.

Section 6:118

[Contracts subject to consent or approval]

- (1) If the consent of a third party or official approval is required by law for the validity of a contract, the contract shall become effective upon such consents or approval with retroactive effect to the date of conclusion of the contract.
- (2) Until the statement of consent or approval is granted, and within the deadline for making statements, the rights and obligations of the parties shall be adjudged according to the condition pending.
- (3) The contract shall not come into existence if the third party fails to give consent or the authority fails to grant approval, or if they fail to make a statement thereof within the deadline communicated by one party to the other.

Section 6:119

[Legal effects of an inoperative contract]

- (1) If the contract did not come into existence, or if the contract became inoperative, including if a third party's consent or the authority's approval is lacking or it was refused, performance of the contract may not be demanded.
- (2) With respect to any performance made under an inoperative contract, the legal effects on invalid contracts shall apply mutatis mutandis.

Section 6:120

[Fraudulent contracts]

(1) A contract by which the basis for satisfying a third person's claim has been deprived entirely or in part shall have no legal force in respect of such third person if the acquiring party acted in bad faith or had a gratuitous advantage originating from the contract.

(2) If a person concludes such a fraudulent contract with a relative or with a legal person with whom this person is associated by way of majority control, or concludes such a contract with a member or executive employee of the legal person or one of their relatives, bad faith and gratuitous promise shall be presumed. Bad faith and gratuitous promise shall also be presumed when a contract is concluded between legal persons that are controlled by the same natural or legal person, regardless of whether or not majority control is exercised directly or indirectly.

(3) At the third party's request, the acquiring party is obliged to tolerate satisfaction from the acquired property and enforcement against such property.

(4) If the acquiring party alienated the property acquired through a fraudulent contract in bad faith, or lost the property in bad faith, he shall be held liable for up to the value of the acquired property in respect of the third party.

(5) The provisions on fraudulent contracts shall apply also if the advantage is accrued by a person other than the person who made the contract statement.

TITLE VIII

CLAIMS THAT CANNOT BE ENFORCED BY JUDICIAL PROCESS

Section 6:121

[Claims that cannot be enforced by judicial process]

(1) The following claims may not be enforced before court:

a) claims originating from gambling or betting, except if the gambling or betting operation has been authorized by the relevant authority;

b) claims originating from a loan promised or granted explicitly for the purposes of gambling or betting;

c) claims that may not be enforced by judicial process, as expressly excluded by law;

d) claims arising from contracts or terms guaranteeing or confirming the claims referred to in Paragraphs *a)*-*c)*.

(2) Where a claim cannot be enforced by judicial process for the reasons listed in Subsection (1), it must be recognized ex officio.

(3) If a claim that cannot be enforced by judicial process is satisfied voluntarily, it may not be reclaimed.

TITLE IX

CONTRACT PERFORMANCE

Chapter XX

General Provisions

Section 6:122

[Passing of risk]

Unless otherwise provided for in this Act, risk shall pass on the other party upon performance.

Section 6:123

[Quality of service]

(1) Performance shall be in conformity with the contract, that is to say, services, at the time when supplied:

a) shall be suitable for any particular purpose for which the obligee requires them and which the obligee made known to the obligor at the time the contract was concluded;

b) shall be suitable for their intended purpose and in conformity with other services of the like;

c) shall be of a quality and performance that are normal in services of the same type and that the obligee can reasonably expect, given the nature of the services and taking into account any public statements on the specific characteristics of the services made about them by the obligor or - if produced by a person other than the obligor - the producer and their representative;

d) shall comply with the description given by the obligor and possess the qualities of the services the obligor presented to the obligee as a sample or model; and

e) shall be in conformity with the quality requirements defined by law.

(2) The obligor shall not be bound by the public statements referred to in Paragraph *c)* of Subsection (2) if he demonstrates that:

a) he was not and could not reasonably have been aware of the statement in question;

b) the statement had been adequately corrected by the time the contract was concluded; or

c) the obligee's decision to enter into the contract could not have been influenced by the statement.

(3) Within the meaning of Paragraph *c)* of Subsection (1), the manufacturer, the importer and distributor of the service, and any person who places his name, trademark or other distinctive sign on the thing shall be regarded as the producer of the service.

(4) For the purposes of compliance of the service with the intended purpose quality requirements shall be taken into account as well.

(5) If the parties have not stipulated the quality of the object defined by type and quantity, performance shall be made in conformity with commercially available goods of standard good quality.

Section 6:124

[Delivery of documentation]

The obligor shall deliver to the obligee all information material and other documents pertaining to the service provided.

Section 6:125

[Additional services]

If the obligor offers to supply services additional to those contracted, the obligee shall be entitled to refuse such additional services. If the obligee accepts the additional services, additional compensation shall also be provided in proportion to the additional services received according to the provisions on the payment of the contract price in terms of due dates and payment methods.

Section 6:126

[Communication of impediments]

(1) Where any impediments are likely to occur in the performance of any contractual obligation, the parties shall notify one another thereof, unless the other party should have been aware of the impediment even without notification.

(2) In the event of failure to communicate an impediment, the negligent party shall be held liable for damages in accordance with the provisions on liability for non-performance of an obligation.

Section 6:127

[Obligation to verify performance]

(1) The obligee shall, within the shortest possible time, verify whether performance is as contracted in terms of quality and quantity.

(2) When taking delivery of a thing, it is not necessary to inspect those characteristics whose quality has been certified or those that are covered by commercial guarantee.

(3) The costs of verifying performance in terms of quality and quantity shall be borne by the obligee.

Section 6:128

[Simultaneous performance]

On the delivery date either party may demand from the other party the performance of services which are due if he offers to perform his own service simultaneously.

Section 6:129

[Subcontractors and agents]

(1) The parties may employ others for fulfilling their obligations or exercising their rights.

(2) If the obligor is required to effect performance in person due to the nature of the service, or pursuant to statutory provision or the parties' agreement, he may delegate certain functions upon others where this is necessary in order to protect the obligee from suffering any losses.

Section 6:130⁶¹

[Time of settlement of monetary debts]

(1) If the parties did not fix in the contract the time of payment of a monetary claim, it shall be satisfied within thirty days of receipt of the creditor's request for payment or that of the invoice. If a contracting authority is liable for the payment of a monetary claim, in the case of a contract concluded with a party other than a contracting authority, it shall be satisfied within thirty days following the date of receipt of the creditor's request for payment or invoice, in which case the date of receipt of the invoice may not be the object of an agreement between the parties.

(2) A monetary claim shall be satisfied within thirty days after the creditor's contractual performance:

⁶¹ Enters into force as under Subsection (2) of Section 188 of Act CCLII of 2013.

a) if the creditor's request for payment or invoice was received before the creditor's contractual performance (or the procedure of acceptance or verification in the case of works contracts);

b) where the date of receipt of the creditor's invoice or request for payment cannot be clearly determined; or

c) where the debtor is required to make payment before the time of receipt of the creditor's invoice or request for payment.

(3) In contracts between business parties, any contract term that is deemed contrary to good faith and fair dealing and as such regarded as unilaterally and unjustifiably unfair to the creditor in derogation from this Section may be contested by the creditor alleging to find such clause as unfair. In the case of a contract concluded by a contracting authority that is liable for the payment of a monetary claim with a party other than a contracting authority, the payment due date fixed in the contract for the monetary claim may exceed the time limits referred to in Subsections (1)-(2) only if the parties agreed to allow deferred payment of the monetary claim, provided that this is in fact justified on account of the nature of the contract, however, in these cases too, the payment due date for the monetary claim must not exceed sixty days. In the case of a contract concluded by a contracting authority that is liable for the payment of a monetary claim with a party other than a contracting authority, the payment due date fixed in the contract shall be null and void in respect of the part exceeding the sixty day time limit.

(4) In contracts between business parties, where the period fixed in the contract for payment of a monetary claim exceeds sixty days by way of derogation from Subsections (1) and (2), unless proved otherwise it shall be deemed contrary to good faith and fair dealing and shall be regarded as unilaterally and unjustifiably unfair to the creditor. In the case of a contract concluded by a contracting authority that is liable for the payment of a monetary claim with a party other than a contracting authority, by way of derogation from Subsections (1)-(2), where a deadline does not exceed sixty days and it is deemed contrary to good faith and fair dealing and as such regarded as unilaterally and unjustifiably unfair to the creditor, it may be contested by the creditor alleging to find such clause as unfair.

Section 6:131

[Early settlement of a monetary debt in the case of consumer contracts]

In contracts that involve a consumer and a business party any term excluding the early settlement of a monetary debt, and any term imposing extra charges on the consumer apart from the costs directly related to early settlement shall be null and void.

Section 6:132

[Reduction of interest]

An excessive interest may be reduced by the court at the obligor's request.

Section 6:133

[Costs]

Consideration shall cover the costs which are generally incurred in connection with the performance of the contract.

Chapter XXI

Specific Cases of Performance

Section 6:134

[Performance of alternative services]

(1) If the obligation can be fulfilled through any obligation from among several ones, the obligor will be entitled to select the one for performance.

(2) If the obligee has the right to choose, but he is late in making it, this right shall pass to the obligor.

Section 6:135

[Performance of divisible services]

If a service is divisible, the obligee shall accept partial performance.

Section 6:136

[Performance of contracts concluded in favor of a third party]

(1) If the parties have concluded a contract for services to be performed for a third party, the third party shall have the right to require directly performance of the service if:

a) this right has been expressly provided for by the parties; or

b) it follows unambiguously from the purpose of the contract or from the circumstances of the case.

(2) The third party shall be entitled to require performance of the service stipulated in his favor as of the date on which he receives notice of the contract from either party. If the right to require performance of the service is declined by the third party, the service may be claimed by the party who concluded the contract in his favor.

(3) The obligor shall be entitled to enforce his objections to the contract in respect of the third person as well.

TITLE X

NON-PERFORMANCE

Chapter XXII

General Provisions Relating to Non-performance

Section 6:137

[Non-performance]

Non-performance of an obligation is any failure to perform that obligation.

Section 6:138

[Right of requiring performance]

In the event of non-performance, the aggrieved party shall be entitled to require performance of the obligation.

Section 6:139

[Right to withhold performance]

(1) In the event of non-performance, the obligee shall be entitled to withhold his own performance as commensurate until the obligor has tendered performance or has provided adequate guarantees.

(2) The party having the right to withhold performance may withdraw from the contract, or if restitution cannot be provided he shall be entitled to terminate the contract if the other failed to remedy his non-performance within the reasonable time limit provided, or failed to provide adequate guarantee for performance.

(3) As to other issues pertaining to the rights and obligations of the party that is entitled to withhold performance, the principles of negotiorum gestio shall apply.

Section 6:140

[Withdrawal, termination]

(1) If in consequence of non-performance the obligee's interest in contractual performance has ceased, he may withdraw from the contract, or if restitution cannot be provided in kind, he may terminate the contract, unless this Act contains provisions to the contrary.

(2) The obligee's statement shall be considered valid if the reason for withdrawal or termination is properly indicated, if that right exists for a number of reasons. The obligee shall be entitled to switch from the reason indicated for withdrawal or termination to another.

(3) The obligor shall not be entitled to demand payment for monetary value of the services yet uncompensated if the obligee is able to prove that the reason for his inability to return the service he has received is attributable to the obligor. If the obligee paid compensation for the service, he may request to have it returned even if he is unable to return the service he has received, and provides proof that the reason for his inability to return the service he has received is attributable to the obligor.

Section 6:141

[Contingency contract]

The obligee - if he withdrew from or terminated the contract - shall be entitled to conclude a contingency contract to achieve the objective of the original contract, and may demand from the obligor to cover the difference between the contract price and the price quoted in the contingency contract, and the costs arising in connection with the conclusion of the contingency contract, under the principle of compensation of damages.

Section 6:142

[Liability for any loss caused by non-performance]

The person who causes damage to the other party by breaching the contract shall be liable for such damage. The said party shall be relieved of liability if able to prove that the damage occurred in consequence of unforeseen circumstances beyond his control, and there had been no reasonable cause to take action for preventing or mitigating the damage.

Section 6:143

[Extent of compensation for loss]

(1) Compensation shall be provided in the form of damages for the loss caused to the subject matter of the service.

(2) The amount of damages for the loss caused by non-performance in the obligee's property, including lost income, is such sum as the obligee is able to verify that the loss, as the potential consequence of non-performance, was foreseeable at the time of the conclusion of the contract.

(3) If non-performance was intentional, the obligee shall be compensated for all losses and damages.

Section 6:144

[Complementary application of the principle of non-contractual liability]

(1) The aggrieved party's obligation relating to damage control and to the prevention and mitigation of damages, and the division of liability among parties bearing joint liability for damages shall be governed by the principle of non-contractual liability.

(2) As regards the definition of damage and the mode of compensation, in matters not regulated in this Chapter the principle of non-contractual liability shall apply, with the exception that compensation may not be reduced for reasons of equitable considerations.

Section 6:145

[Exclusion of parallel compensation claims]

The obligee shall enforce his claim for compensation against the obligor in accordance with the provisions on liability for damages for loss caused by non-performance of an obligation even if the obligor's non-contractual liability also exists.

Section 6:146

[Liability for damages caused during performance]

The obligee may demand compensation for damages caused to his assets in the course of performance of the contract in accordance with the provisions on liability for damages for loss caused by non-performance of an obligation.

Section 6:147

[Liability for damages in connection with gratuitous contracts]

(1) In the case of gratuitous performance of a contract, liability for damages in the subject matter of the service shall apply if the obligee is able to prove the obligor's actionable conduct in non-performance, or that the obligor failed to provide information concerning any material characteristics of the service, of which the obligee was unaware.

(2) In the case of gratuitous performance of a contract, the obligor shall be liable to provide compensation for any damage caused to the obligee's property by performance. The obligor shall be relieved of liability if able to prove that his conduct was not actionable.

Section 6:148

[Liability for subcontractors and agents]

(1) Any person who employs another person to perform his obligations or exercise his rights shall be liable for the conduct of that person as if he himself had carried out the obligation or exercised the right.

(2) If the obligor has not been authorized to employ other persons, he shall be liable even for damages that would not have occurred without the employment of such person.

(3) The obligor shall be entitled to enforce his rights against subcontractors and agents - for reasons of non-performance - as long as his liability toward the obligee exists.

Section 6:149

[Limited non-performance]

In the case of non-performance of an obligation concerning a part of a divisible service, the consequences of non-performance shall stand only in respect of that part, unless limited use of legal effects is likely to harm the relevant lawful interests of the obligee.

Section 6:150

[Interim non-performance]

(1) Non-performance shall also apply if the party fails to take measures or make the required statements for enabling the other party to perform his obligations stemming from the contract.

(2) If either party fails to take measures or make the statements as required, this shall preclude any breach of obligations on the part of the other party resulting from the other party's failure to take measures or make the statements as required.

Section 6:151

[Premature non-performance]

(1) If it becomes obvious before the contracted date of delivery that the obligor will not be able to effect performance as due, on account of which performance is no longer in the obligee's interest, the obligee shall be entitled to enforce his rights stemming from late performance.

(2) If it becomes obvious before the contracted date of delivery that performance cannot be effected as contracted, the obligee shall be entitled to enforce his rights stemming from lack of conformity following non-compliance with the deadline for repair or replacement.

Section 6:152

[Limitation or exclusion of the consequences of non-performance]

Any contract term limiting or excluding liability for premeditated non-performance of an obligation resulting in loss of life, or harm to physical integrity or health shall be null and void.

Chapter XXIII

Delay in Performance

1. Obligor's delay

Section 6:153

[Obligor's delay]

An obligor shall be in delay if he does not perform his obligation when due.

Section 6:154

[Legal consequences of delay by obligors]

(1) In the event of the obligor's delay, the obligee shall be entitled to require performance or, if performance no longer serves his interest, he shall be entitled to withdraw from the contract.

(2) It shall not be necessary to prove the cessation of an interest in performance for the obligee's withdrawal if:

a) according to the agreement of the parties or due to the imminent purpose of the service, the contract had to be performed at a definite time and none other; or

b) the obligee has stipulated a reasonable deadline for subsequent performance and this period too elapsed without result.

(3) The obligor shall reimburse the obligee for damages caused by his delay, if it is in excess of the interest on late payment in the case of a monetary claim, unless the delay is excused.

Section 6:155⁶²

[Delay in payments in contracts between business parties, and contracts where an authority is liable for the payment of a monetary claim]

(1) In contracts between business parties, and in any contract concluded by a contracting authority that is liable for the payment of a monetary claim with a party other than a contracting authority, interest on late payment shall be calculated as the sum of the central bank base rate in effect on the first day of the calendar half-year affected by the default - if the monetary claim is to be satisfied in a foreign currency, the base rate of the issuing central bank, or failing this the money market rate - plus eight percentage points. For the purposes of calculating the interest, the central bank base rate in effect on the first day of the calendar half-year affected shall apply for the entire period of the given calendar half-year.

(2) In the event of late payment in contracts between business parties or in a contract concluded by a contracting authority with a party other than a contracting authority, the debtor or the contracting authority, respectively, shall be required to provide compensation to the creditor for recovery costs in forints in an amount equivalent to at least forty euros translated by the medium foreign exchange rate of the Magyar Nemzeti Bank in effect on the first day of the period for which interest for late payment is charged. Fulfilling the above-specified obligation shall not bring immunity from other legal consequences of late payment; however, compensation shall include recovery costs provided in the form of a fixed sum. Any contract term excluding liability for the fixed-rate recovery cost, or setting the amount thereof in less than forty euros shall be null and void.

(3) In contracts between business parties, where a contractual term relating to the amount of interest for late payment is established by way of derogation from Subsection (1), or the due date of interest for late payment established in derogation from the first day following the deadline defined in this Act for the payment of a monetary claims is deemed contrary to good faith and fair dealing and as such regarded as unilaterally and unjustifiably unfair to the creditor, it may be

⁶² Enters into force as under Subsection (3) of Section 188 of Act CCLII of 2013.

contested by the creditor alleging to find such clause as unfair. In contracts between a contracting authority and a party other than a contracting authority, any contract term that provides for the due date of any interest for late payment by way of derogation from the first day following the deadline defined in this Act for the payment of monetary debts shall be null and void.

(4) In contracts between business parties, any contract term which excludes interest on late payment, and in a contract concluded by a contracting authority with a party other than a contracting authority any contract term which excludes interest on late payment or sets the amount thereof in less than the amount provided for in Subsection (1) shall be null and void, except if the debtor is liable to pay contractual penalty when in delay.

2. Late acceptance by the obligee

Section 6:156

[Late acceptance]

(1) The obligee is in delay when refusing to accept the performance offered.

(2) Delay by the obligee excludes any simultaneous delay of the obligor.

(3) In the event of late acceptance the obligor shall, under the principles of negotiorum gestio, be required to safeguard the thing, whereas risk shall pass on the obligee.

(4) If a service has been specified by type and quantity, the provisions of Subsection (3) shall apply if the parties have marked the things designated for performance or have separated them from similar things for the obligee.

Chapter XXIV

Lack of Conformity

1. General provisions on lack of conformity

Section 6:157

[Lack of conformity]

(1) Lack of conformity means when the obligor's performance at the delivery date is not in compliance with the quality requirements laid down in the contract or stipulated by law. The obligor is not liable for any lack of conformity if, at the time of the conclusion of the contract, the obligee knew or should have known the lack of conformity.

(2) Any clause of a contract that involves a consumer and a business party that derogates from the provisions of this Chapter on warranties and commercial guarantees to the detriment of the consumer shall be null and void.

Section 6:158

[Presumption of lack of conformity]

In connection with contracts that involve a consumer and a business party, in the absence of proof to the contrary, any lack of conformity detected by the consumer within six months of the date of performance shall be presumed to have existed at the time of delivery, unless this presumption is incompatible with the nature of the thing or the nature of the lack of conformity.

2. Warranty

Section 6:159

[Warranty rights]

(1) On the basis of a contract in which the parties owe mutual services to one another, the obligor shall be liable to provide warranty for lack of conformity.

(2) On the basis of warranty rights, the obligee shall have the option:

a) to choose either repair or replacement, unless compliance with the chosen warranty right is impossible or it results in disproportionate expenses on the part of the obligor as compared to the alternative remedy, taking into account the value the service would have had there been no lack of conformity, the significance of the non-performance, and the harm caused to the obligee upon compliance with the warranty right; or

b) to ask for a commensurate reduction in the consideration, repair the defect himself or have it repaired at the obligor's expense, or to withdraw from the contract if the obligor refuses to provide repair or replacement or is unable to fulfill that obligation under the conditions described in Subsection (4), or if repair or replacement no longer serves the obligee's interest.

(3) The obligee is not entitled to withdraw from the contract if the lack of conformity is minor.

(4) Any repair or replacement shall be completed within a reasonable time and without any significant inconvenience to the obligee, taking account of the nature of the goods and the purpose for which the obligee required the thing.

Section 6:160

[Switching to other warranty rights]

The obligee shall be entitled to switch from the warranty right he has selected to another. The cost of switch-over shall be covered by the obligee, unless it was made necessary by the obligor's conduct or for other reasons.

Section 6:161

[Derogation from the warranty right indicated by the obligee]

The court is not bound by the obligee's request, however, the court shall not order such warranty right that is protested by all parties.

Section 6:162

[Notification of lack of conformity]

(1) The obligee shall be required to inform the obligor of any lack of conformity without delay.

(2) In the case of contracts that involve a consumer and a business party, if notification of the lack of conformity is made within two months of the time it is detected, it shall be deemed to have been made in good time.

(3) The obligee shall be liable for any damage that results from late notification.

Section 6:163

[Expiry of a right to warranty]

(1) The obligee's right to warranty shall lapse after one year from the delivery date.

(2) In connection with contracts that involve a consumer and a business party, the obligee's right to warranty shall lapse after two years from the delivery date. If the things supplied under a contract that involve a consumer and a business party are second-hand, the parties may agree on a shorter limitation period, however, the limitation period may not be less than one year in this case either.

(3) If the thing provided under contract is a real estate property, the right to warranty shall lapse after five years from the delivery date.

(4) The limitation period shall be suspended for the time during which the thing is being repaired and the consumer cannot use it.

(5) As regards any part of the thing that has been repaired or replaced, the limitation period for the right to warranty shall recommence. This provision shall apply also when another defect emerges in consequence of the repair.

Section 6:164

[Enforcement of warranty rights as an excuse]

The obligee entitled to warranty rights shall be entitled to enforce this right by challenging a claim originating from the same contract, even if the right to warranty has already expired.

Section 6:165

[Scope of enforced guarantee claims]

(1) Any guarantee claim that is made for a specific defect shall be deemed satisfied in due time for all other associated defects.

(2) If the obligee files a guarantee claim only for a specific (in terms of the given defect) part of the thing, the guarantee claim shall not be deemed as having been made for the thing's other parts.

Section 6:166

[Costs]

(1) The costs incurred in connection with the fulfillment of guarantee obligations shall be borne by the obligor.

(2) If defect is attributable in part to the obligee's failure to fulfill maintenance obligations, the costs incurred in connection with the fulfillment of guarantee obligations shall be covered by the obligee to the extent commensurate to his involvement, if he had sufficient information relating to maintenance, or if the obligor has provided the information required to that effect.

Section 6:167

[Obligor's claim of enrichment]

(1) Where the replacement of a thing is effected after the majority of the warranty period is consumed on account of suspension of the period of limitation, and this results in considerable increase in value for the benefit of the obligee, the obligor shall have the right to demand compensation for such enrichment. This provision shall not apply in contracts that involve a consumer and a business party.

(2) In the event of replacement or withdrawal, the obligee shall not be liable to compensate for the loss in value if it has occurred in consequence of proper use.

3. Product guarantee

Section 6:168

[Warranty claims]

(1) In case of lack of conformity of any movable property sold by a business party to a consumer (hereinafter referred to as „product”) the consumer shall have the right to demand from the manufacturer to have the product repaired or - if repair is not possible within a reasonable period of time and without harming the consumer’s interest - to provide a replacement. A product shall be deemed defective if it does not meet the requirements related to conformity in effect at the time of placing on the market, or it does not meet the specifications provided by the manufacturer.

(2) For the purposes of this subtitle, manufacturer shall mean anyone who manufactures and places the product on the market.

(3) The manufacturer shall be relieved of warranty obligation if able to prove that:

a) he manufactured or placed the product on the market in the course of operations other than in the course of its business activity or for purposes relating to his profession;

b) the state of scientific and technical knowledge at the time when he put the product into circulation was not such as to enable the existence of a defect to be discovered; or

c) the defect in the product was caused by the application of a regulation or a regulatory provision prescribed by the authorities.

(4) The warranty obligation relating to a replacement product in the case of replacement, or to the part repaired shall be assumed by the manufacturer.

Section 6:169

[Notification and claim deadlines]

(1) The consumer shall be required to inform the manufacturer of any lack of conformity without delay. If notification of the lack of conformity is made within two months of the time it is detected, it shall be deemed that notification was made in due time. The consumer shall be liable for any damage that results from late notification.

(2) The manufacturer shall remain subject to warranty obligation for a period of two years effective from the date of placing the given product on the market. This deadline shall apply with prejudice.

Section 6:170

[Warranty in the case of change of ownership]

If the product’s ownership is transferred, warranty may be enforced by the new owner against the manufacturer.

4. Commercial guarantee

Section 6:171

[Commercial guarantee]

(1) Any person who guarantees performance of a contract or is required by law to provide guarantee shall assume liability for lack of conformity during the guarantee period under the conditions set out in the guarantee statement or in the relevant legislation. The guarantor shall be released from liability if he is able to prove that the cause of the defect occurred after performance.

(2) This guarantee shall not affect the obligee's legal rights.

Section 6:172

[Guarantee rights in the case of change of ownership]

If the thing's ownership is transferred, commercial guarantee may be enforced by the new owner against the guarantor.

Section 6:173

[Enforcement of guarantee rights]

(1) A commercial guarantee may be enforced during the guarantee period. If the guarantor fails to fulfill his obligations in good time when so requested by the obligee, the guarantee claim may be enforced before the court within three months after the deadline set out in the request even if the guarantee period has already expired. This deadline shall apply with prejudice.

(2) The legal provisions on exercising warranty rights shall be duly applied concerning the enforcement of commercial guarantee rights.

5. Damages

Section 6:174

[Right to damages]

(1) The obligee is entitled to damages for loss caused by lack of conformity for which the obligor is liable, unless the lack of conformity is excused.

(2) The obligee shall be entitled to ask for compensation for damages in the subject matter of the service if repair or replacement is not possible, or the obligor refuses to provide repair or replacement or is unable to fulfill that obligation, or if repair or replacement no longer serves the obligee's interest. Such claim for compensation shall lapse within the deadline prescribed for the enforcement of warranty rights. The obligee shall be entitled to enforce his right to claim compensation by challenging a claim originating from the same contract, even if the right to claim compensation has already expired.

6. Warranty of title

Section 6:175

[Warranty of title due to any impediment of a right]

(1) In connection with an obligation for the transfer of ownership, a right or claim for valuable consideration, if the acquisition of ownership, other right or claim is hindered by a right of a third party, the obligee shall request the obligor to eliminate such hindrance within the prescribed time limit, or to provide adequate guarantees. In the event of non-compliance within said time limit the obligee shall be entitled to withdraw from the contract and to claim damages.

(2) If the obligor has acted in good faith, he shall cover only the damages incurred by the conclusion of the contract.

Section 6:176

[Warranty of title due to any limitation of a right]

(1) In connection with an obligation for the transfer of ownership, a right or claim for valuable consideration, if the acquisition of ownership, the exercise of the right or acquisition of the claim is hindered by a right of a third party, or the value thereof is reduced by such hindrance, the obligee may request disencumbrance within the prescribed time limit.

(2) In the event of non-compliance within the deadline prescribed, the obligee may carry out the disencumbrance at the obligor's expense.

(3) If disencumbrance is not possible or if it would require unreasonable expenses, the obligee shall be entitled to withdraw from the contract and require compensation or to have the consideration reduced as commensurate in exchange for assumption of the encumbrance. The obligee shall be entitled to these rights even if the deadline set for disencumbrance has elapsed without any result and the obligee does not wish the disencumbrance of the thing.

(4) If the obligor has acted in good faith, he shall cover only the damages incurred by the conclusion of the contract.

(5) The obligee shall not be entitled to these rights if he knew or should have known at the time the contract was concluded that unrestricted ownership, right or claim could not be acquired, unless the obligor had guaranteed the acquisition of unrestricted ownership, right or claim.

7. Special provisions on lack of conformity

Section 6:177

[Lack of conformity in result-oriented contracts]

(1) If the contract pertains to the obligor's commitment to create a thing or to achieve another result by work, the provisions pertaining to lack of conformity shall apply, with the proviso that:

a) replacement shall be understood as the result by work recreated in part or in full; and
b) repeated performance of repair or service in part or in full may be implemented by ways other than the originally undertaken result by work, taking into consideration the obligee's interest in contractual performance, where the extra costs ensuing shall be borne by the obligor.

(2) The obligor shall be excused of liability if lack of conformity has its origin:

a) in any defect in the materials supplied by the obligee;
b) in any discrepancy or error in the data supplied by the obligee; or
c) in any impracticable or unreasonable instruction given by the obligee;
provided that the obligee has been informed of these circumstances.

Section 6:178

[Lack of conformity in use and exploitation contracts]

(1) If the obligee is entitled to use or exploit temporarily the thing of another person or an article protected under the property right of another person, the obligor shall guarantee in due compliance with the principle of warranty rights for the full term of the contract, that the thing or the protected article is fit for use or exploitation as contracted.

(2) If the obligee is entitled to use or exploit temporarily the thing of another person or an article protected under the property right of another person, the obligor shall guarantee in due compliance with the principle of warranty of title for the full term of the contract, that the use or exploitation of the thing or the protected article is not hindered or limited by the right of a third party.

Chapter XXV

Other Cases of Non-performance

1. Impossibility of performance

Section 6:179

[Impossibility of performance]

- (1) If performance has become impossible, the contract shall be terminated.
- (2) The party gaining knowledge of the impossibility of performance shall immediately notify the other party thereof. The party failing to give notification shall be liable for damages originating therefrom.

Section 6:180

[Responsibility for impossibility]

- (1) If performance has become impossible for a reason that cannot be attributed to either of the parties, the monetary value of the services provided before the time when the contract was terminated shall be compensated. If the other party did not compensate the monetary consideration provided for services already performed, the money shall be refunded.
- (2) If performance has become impossible for a reason attributable to one of the parties, the other party shall be relieved from the obligation of contractual performance, and may demand damages for loss caused by non-performance of an obligation.
- (3) If performance has become impossible for a reason attributable to both parties, the contract shall be terminated and the parties may demand damages from one another in the proportion to their responsibility.

Section 6:181

[Impossibility of alternative services]

- (1) If performance of any of the alternative services becomes impossible, the contract shall be limited to the other services.
- (2) If performance of the service has become impossible for a reason attributable to the party who has no right to choose, the other party may choose either the possible service or the consequences of subsequent impossibility.

Section 6:182

[Remnants of the object of a service that has become impossible]

If the remnants of the object of a service that has become impossible have remains in the possession of the obligor in full or in part, or if the obligor has received or has the right to

demand compensation instead of the object of the service from another person, the obligee shall be entitled to demand surrender of the remainder or compensation against a commensurate part of the consideration.

2. Withholding performance

Section 6:183

[Withholding performance]

If either party withholds performance without legitimate reason, the other party shall be entitled to apply the consequences of either delay, or subsequent impossibility.

3. Failure to make legal statement

Section 6:184

[Legal statement drafted by court verdict]

If the party is required under the contract to make a legal statement, and fails to do so, the statement shall be drafted by court verdict.

TITLE XI

CONFIRMATION AND AMENDMENT OF CONTRACTS

Chapter XXVI

Confirmation of Contract

1. Earnest money

Section 6:185

[Earnest money]

(1) A sum of cash deposited with the other party shall be construed as earnest money if provided to evidence commitment and if this intention is expressly indicated in the contract.

(2) If the contract is performed the earnest money shall be credited to the amount payable. If the contract falls through for reasons attributable to neither or both of the parties, the earnest money shall be returned.

(3) The person responsible for the failure of performance shall forfeit the earnest money that he has given, or he shall refund twice the amount of the earnest money he has received.

(4) Forfeiture of the earnest money or the double repayment shall not constitute an exemption from the consequences of non-performance. The amount of the earnest money shall be credited to the contractual penalty and compensation.

(5) An excessive deposit of earnest money may be reduced by court at the obligor's request.

2. Contractual penalty

Section 6:186

[Contractual penalty]

(1) The obligor may pledge to pay a certain sum of money in case he fails to perform the contract for reasons attributable to him. The obligor shall be relieved from the obligation of payment of contractual penalty, if his non-performance is excused.

(2) The contractual penalty shall be fixed in writing.

(3) The obligee shall be entitled to lay claim for contractual penalty irrespective of any loss from the obligor's non-performance.

(4) The provisions relating to interest on late payment shall apply to contractual penalties for late payment of monetary debts.

Section 6:187

[Contractual penalty and other claims in cases of non-performance]

(1) Enforcement of contractual penalties stipulated for non-performance precludes any demand for performance. Payment of contractual penalty stipulated for late performance shall not constitute an exemption from performance.

(2) In addition to contractual penalty for lack of conformity, the obligee shall not be entitled to make any guarantee claim.

(3) In addition to contractual penalty, the obligee shall be entitled to demand payment for damages not covered by the contractual penalty.

(4) The obligee shall be entitled to demand compensation for damages caused through non-performance even if he has not enforced his claim for contractual penalty.

Section 6:188

[Reduction of contractual penalty]

Excessive contractual penalty can be reduced by the court at the obligor's request.

Section 6:189

[Interest on contractual penalty]

Any interest attached to contractual penalty shall be null and void. The obligor shall be charged interest on late payment of contractual penalty.

3. Forfeiture clause

Section 6:190

[Forfeiture clause]

(1) Parties shall be entitled to agree in writing that the party responsible for any non-performance shall forfeit a right to which he would be entitled on the basis of the contract.

(2) If the forfeiture of a right afflicts the obligor excessively, such adverse disposition may be mitigated by the court at the obligor's request.

Chapter XXVII

Contract Amendment

Section 6:191

[Amendment of contract by the parties]

(1) The parties shall be entitled to amend the content of a contract by mutual consent or change the legal title of their commitment.

(2) The parts of a contract not affected by the amendment shall remain unchanged. Any lien or suretyship pledged as security for the obligation shall prevail; however, this cannot result in regress of the position of the lien holder or the obligor without his consent.

(3) The provisions pertaining to the conclusion of contracts shall also apply to the amendment of contracts.

(4) The contents of a contract may be amended unilaterally by either of the parties if the parties so stipulated in the contract or if the party is so authorized by statutory provision.

Section 6:192

[Amendment of contract by the court]

(1) Either of the parties shall be entitled to request to have the contract amended by court order if in the long-term contractual relationship of the parties performing the contract under the same terms is likely to harm his relevant lawful interests in consequence of a circumstance that has occurred after the conclusion of the contract, and:

a) the possibility of that change of circumstances could not have been foreseen at the time of conclusion of the contract;

b) he did not cause that change of circumstances; and

c) such change in circumstances cannot be regarded as normal business risks.

(2) The court shall have powers to amend the contract as of the date it has determined, at the earliest from the date of enforcement of the right to amend the contract before the court, in a manner to ensure that neither of the parties should suffer any harm in their relevant lawful interests in consequence of any change in the circumstances.

TITLE XII

ASSIGNMENT, SUBROGATION, ASSUMPTION OF DEBT, TRANSFER OF CONTRACT

Chapter XXVIII

Assignment

Section 6:193

[Assignment]

(1) The obligee shall be allowed to transfer his claim from the obligor to a third party.

(2) For the acquisition of a claim by way of assignment a contract for transfer or other legal title is required and, in that context, the claim shall be assigned. Assignment is an agreement between the assignor and the assignee, upon which the assignee takes the place of the assignor.

(3) Through the assignment the rights proceeding from the lien and suretyship are conveyed to the assignee, including interest claims.

Section 6:194

[Assignable claims]

(1) A claim can be assigned if the relationship from which the claim originates already exists at the time of assignment.

(2)⁶³ The assigned claim shall be identified by indicating the obligor, the legal title, the sum and maturity, or by other means facilitating identification of the assigned claim at the time of assignment, or at the latest at the time when the claim is created in the case of future claims.

(3) The assignment of any claim that is bound to the person of the obligor shall be null and void.

Section 6:195

[Disallowing assignment]

(1) Any term excluding the assignment of a claim shall be null and void in respect of third parties.

(2) The provision contained in Subsection (1) shall not affect the assignor's liability for any breach of the term excluding assignment. Any contract term that allows the right to terminate or stipulates the payment of a contractual penalty for non-performance shall be null and void.

Section 6:196

[Information and communication of documents]

The assignor shall make available to the assignee all information that may be deemed necessary to enforce the claim, and shall hand over to the assignee documents in his possession evidencing existence of the claim.

Section 6:197

[Notification of assignment]

(1) The assignor shall - if so requested by the assignee - notify the obligor in writing concerning the assignment, indicating the fact of assignment and identifying the claim, or to deliver the deed of assignment to the assignee, showing the name of the assignee.

(2) After the obligor is notified, any amendment of the contract between the obligor and the assignor shall be inoperative towards the assignee. The obligor shall be entitled to enforce the objections and offset the counterclaims against the assignee that arise with regard to the assignor on the legal grounds prevailing at the time of notification.

(3) The notice of assignment shall invoke the legal effect referred to in Subsection (2), if it originates from the assignor, or if the assignee is able to verify that the assignment has in fact been effected by way of the deed of assignment or other reliable means.

Section 6:198

[Performance instruction]

⁶³ Enters into force as under Paragraph a) of Subsection (10) of Section 188 of Act CCLII of 2013.

(1) The obligor shall be liable to perform to the assignor insofar as a performance instruction is conveyed indicating the name of the assignee and the place of business or, failing this, the registered office of the assignee, home address or, failing this, habitual residence or account number if a natural person. After that the obligor may effect performance as instructed.

(2) The performance instruction shall invoke the legal effect referred to in Subsection (1), if it originates from the assignor, or if the assignee is able to verify that the claim has in fact been assigned to him by way of the deed of assignment or other reliable means. If the notice indicated the assignee but it did not contain the performance instruction, a performance instruction may be given only by the assignee.

(3)⁶⁴ If the obligor effects performance to the assignor, the assignor shall keep the assets received in performance of the service separate from his own assets, and shall deliver them to the assignee without delay. The assignor's creditors shall not be entitled to lay claim to such assets.

Section 6:199

[Multiple and subsequent assignment]

(1) If the assignor assigns the same claim more than once, the obligor shall be released upon effecting performance as provided for in the performance instruction first received.

(2) If the assignor reassigns a claim, the obligor shall be released upon effecting performance as provided for in the performance instruction last received.

Section 6:200

[Covering the expenses of the obligor]

The expenses of the obligor arising from the assignment shall be covered by the assignor and the assignee collectively.

Section 6:201

[Statutory remise of a claim]

If a claim is transferred to another person on the basis of a statutory provisions, the provisions on assignment shall be duly applied. In that case, the liability of the assignor shall be maintained only if so prescribed by a specific provision.

Chapter XXIX

Subrogation

Section 6:202

[Subrogation]

(1) The subrogor may transfer his right to another person, provided that the right is declared non-transferable by law, or unless non-transferability follows unambiguously from the nature of the right.

⁶⁴ Enters into force as under Subsection (4) of Section 188 of Act CCLII of 2013.

(2) Unless otherwise provided for in this Act, for the acquisition of a right by way of subrogation a contract for transfer or other legal title is required and, in that context, the right shall be subrogated. Subrogation is an agreement between the subrogor and the subrogee, upon which the subrogee takes the place of the subrogor.

(3) The provisions on assignment shall apply to subrogation *mutatis mutandis*.

(4) If the right is verified by a public register, subrogation shall be considered effective - in addition to assignment - if the subrogee is registered in that register.

Chapter XXX

Assumption of Debt

Section 6:203

[Assumption of debt]

(1) If the obligor and the obligee reach an agreement with a third party (for the purposes of this Chapter hereinafter referred to as „transferee”) to assume the obligor’s debt owed to the obligee, the obligee shall be able to demand satisfaction from the transferee only.

(2) The transferee shall be entitled to all rights to which the obligor was entitled in respect of the obligee under contract.

(3) The guarantees of the claim shall cease to exist upon the assumption of debt. The guarantees shall remain in place if the obligor thereof consents to the assumption of debt.

Section 6:204

[Prior consent to the assumption of debt]

(1) If the obligee makes a statement required for the assumption of debt in advance, the assumption of debt shall enter into effect after the notification of the obligee.

(2) The obligee may install a clause in the statement reserving the right to withdraw the statement.

Section 6:205

[Assumption of performance]

If a third party agrees with the obligor to assume the obligor’s debt, that third party shall be liable to satisfy the obligor’s debt or to enable the obligor to satisfy his debt when it falls due. The obligee may not demand satisfaction of the debt from the third party.

Section 6:206

[Undertaking a debt]

If the parties send notice to the obligee concerning the assumption of performance, joint and several liability shall evolve. Following the undertaking of a debt, the joint and several obligors shall be entitled to all rights to which the obligor was entitled in respect of the obligee under contract. The person undertaking the debt shall not be entitled to offset the obligor’s other existing claims against the obligee.

Section 6:207

[Statutory remise of a debt]

If a debt passes to another person on the basis of statutory provisions, the provisions on the assumption of a debt shall apply mutatis mutandis.

Chapter XXXI

Transfer of Contract

Section 6:208

[Legal effects of transfers of contracts]

(1) The party withdrawing from, the party remaining in and the party entering into the contract may reach an agreement for transferring the rights and obligations of the withdrawing party to the party entering into the contract.

(2) All rights and obligations of the party withdrawing from the contract conferred under the contract in respect of the party remaining in the contract shall accrue to the party entering into the contract. The party entering into the contract shall not be entitled to offset other existing claims of the party withdrawing from the contract from the party remaining in the contract. The party remaining in the contract shall not be entitled to offset his other existing claims due from the party withdrawing from the contract.

(3) The guarantees of the contract shall cease to exist upon the transfer of the contract. With the lienor's consent the new lien shall be established at the place of ranking of the original lien.

Section 6:209

[Prior consent to the transfer of a contract]

(1) If the party remaining in the contract makes a statement required for the transfer of contract in advance, the transfer of contract shall enter into effect after the notification of the party remaining in the contract.

(2) The party remaining in the contract may install a clause in the statement reserving the right to withdraw the statement.

Section 6:210

[Application of the provisions relating to assignment and assumption of debt]

Otherwise, the provisions on assignments shall apply to transfers of contracts in terms of claims and rights, and the provisions on the assumption of debt shall apply mutatis mutandis in terms of obligations.

Section 6:211

[Transfer of contract on the basis of statutory provisions]

If all rights of a person arising from a contract passes to another person on the basis of statutory provisions, the provisions on the transfer of contract shall apply mutatis mutandis.

TITLE XIII

TERMINATION OF A CONTRACT BY MUTUAL CONSENT OR UNILATERALLY

Section 6:212

[Termination of a contract by agreement of the parties]

(1) The parties may terminate a contract by mutual consent for future purposes, or may cancel the contract with retroactive effect to the date when it was concluded.

(2) In the case of termination of a contract, the parties shall not owe further services and they shall settle accounts with respect to services performed before the time of termination.

(3) In the case of cancellation of a contract, the services already performed shall be returned. If no restitution in kind is possible, the contract may not be cancelled.

Section 6:213

[Termination of a contract by unilateral act]

(1) Any person who has the right of withdrawal or avoidance on the strength of law or on the basis of a contract may terminate the contract by making a statement to the other party. If the contract is cancelled the provisions relating to termination, whereas in the case of avoidance the provisions relating to dissolution shall apply, with the exception that the party may avoid the contract if he offers to return the services received.

(2) If the parties stipulated the right of avoidance for payment of a specific sum (retention money), the court - at the obligor's request - shall be entitled to reduce the sum of the retention, if it is considered unreasonably high.

(3) Unless otherwise provided for in this Act, a contract entered into for an unfixed duration, setting up a long-term relationship may be terminated by either party giving a reasonable period of notice. Any exclusion of the right to terminate shall be null and void.

Section 6:214

[Termination by court order]

These provisions shall apply mutatis mutandis if the contract is terminated by court order.

PART THREE

EXPRESS CONTRACTS

TITLE XIV

TITLE-TRANSFER CONTRACTS

Chapter XXXII

General Provisions Relating to Sales Contracts

Section 6:215

[Sales contracts]

(1) Sales contract means any contract under which the seller undertakes to transfer the ownership of a thing to the buyer, and the buyer undertakes to pay the price thereof, and to take possession of the thing.

(2) If the object of the sales contract is a real estate property, in addition to transferring ownership the seller shall also transfer possession of the thing. If the object of the sales contract is a real estate property, it shall be executed in writing.

(3) The provisions relating to the sale of things shall also apply to contracts for commitments for the transfer for valuable consideration of a right or claim.

Section 6:216

[Retention of title]

(1) The seller shall be entitled to retain title of ownership until the purchase price is paid in full.

(2) The agreement on the retention of title shall be executed in writing.

(3) In the case of retention of title relating to real estate property, the seller shall have it recorded in the real estate register in the form of an entry showing the fact of retention of title and the name of the buyer.

(4) In the case of retention of title relating to movable property, the seller shall have it registered in the collateral register showing the fact of retention of title and the name of the buyer, or in the relevant registry if ownership of the movable property is recorded in a public register and if hypothecation of the thing is to be registered in the proper registry by law. In the absence of registration:

a) where ownership of a movable property is acquired from the buyer for consideration in good faith, the transferee shall acquire ownership by way of transfer; and

b) the lien established by the buyer on the movable property for a third party shall come into existence even if the buyer has no right of disposition.

Section 6:217

[Beneficial title, bearing of costs and liability for damages in connection with the sale of real estate property]

If the seller transfers possession of the real estate property which is the subject of the sale to the buyer before the registration of ownership in the real estate register, the buyer shall, as of the date of taking possession, collect the proceeds of the thing, and shall, furthermore, be liable for its encumbrances and for the damages for which no indemnification can be demanded from anyone.

Section 6:218

[Costs]

(1) The seller shall bear all of the costs related to the transfer of possession and the correction of the status recorded in the real estate register.

(2) The costs of taking possession of the thing and the costs of registering the change in ownership in the real estate register shall be covered by the buyer.

Section 6:219

[Passing of risk in consumer sales contracts]

If the seller is a business party and the buyer is a consumer, and the seller undertakes to dispatch the thing to the buyer, risks shall pass to the buyer when he or a third party named by the buyer has acquired the physical possession of the thing. At the time of handing over the thing to the carrier, risks shall pass to the buyer if the carrier was hired by the buyer, provided that the carrier was not recommended by the seller.

Section 6:220

[Legal consequences upon the seller's late performance in consumer sales contracts]

(1) If the seller is a business party and the buyer is a consumer, unless otherwise agreed by the parties the seller shall place the thing at the buyer's disposal without delay upon the conclusion of the contract, at the latest within thirty days.

(2) In the event of late performance by the seller, the buyer shall have the right to set an additional time for performance. If the seller fails to perform within such additional period, the buyer shall be entitled to withdraw from the contract.

(3) The buyer shall be entitled to withdraw from the contract without setting an additional time for performance if:

- a) the seller refused to perform the contract; or
- b) according to the agreement of the parties or due to the imminent purpose of the service, the contract had to be performed at a definite time and none other.

Chapter XXXIII

Special Modes of Sale

Section 6:221

[Right of preemption]

(1) If an owner grants a right of preemption to a specific thing in an agreement and wishes to sell the thing by accepting the offer of a third party, the person who has the right of preemption shall be entitled to buy the thing under the conditions fixed in the offer, preceding the third party.

(2) If the owner grants consecutive rights of preemption to more than one person for the same thing, these persons shall be able to exercise their rights in the sequence in which their rights of preemption were established.

Section 6:222

[Notification of purchase offer to the holder of preemption right]

(1) If the owner receives a purchase offer from a third party, and he wishes to accept the offer, before accepting the offer he shall communicate the offer in full to the holder of preemption right. The owner shall not be subject to this obligation if compliance would imply extraordinary difficulties or a substantial delay on account of the location of the beneficiary's domicile or other circumstances.

(2) Notification of the offer shall be construed as a sales offer made by the owner. As regards the binding period, the provisions on distance contracts shall apply, with the proviso that the owner may not stipulate a binding period shorter than the period defined in the general provisions on contracts.

(3) If the holder of preemption right fails to issue a statement of acceptance during the binding period, the owner shall be entitled to sell the thing according to the offer received from the third party or under terms which are more favorable for the seller.

(4) If the holder of preemption right issues a statement of acceptance to the owner regarding the offer, the contract shall be deemed concluded between them.

(5) If more than one person has the right of preemption regarding the same thing in the same ranking, and if a statement of acceptance is made by several of them, the owner shall so inform the persons holding such rights without undue delay, upon which the persons holding such rights shall be entitled to withdraw their statement of acceptance within eight days from the effective date of the notice. When this deadline expires, the sales contract shall be concluded with the right-holders who made the statement of acceptance. The holders of preemption right who made a statement of acceptance shall acquire ownership in proportion to their interest among each other. If the share of the interest of the holders of preemption right who made a statement of acceptance cannot be determined, they shall acquire ownership in the thing equally.

Section 6:223

[Nullity of a contract concluded by the infringement of preemption right]

(1) If the owner enters into a contract in breach of his obligations stemming from a right of preemption, such contract shall be inoperative in respect of the holder of the right of preemption.

(2) The holder of the right of preemption shall be able to enforce his claims arising from such nullity within thirty days after gaining knowledge thereof, on condition that he makes a statement of acceptance at the same time, and verifies his ability to perform. The holder of the right of preemption shall not be able to enforce his claims arising from nullity after three years following the date of conclusion of the contract.

Section 6:224

[Repurchase right]

(1) If at the time of conclusion of the sales contract the buyer grants the option for the seller to repurchase the thing sold by agreement of the parties, the seller may purchase the thing by way of a statement made to the buyer.

(2) The parties shall fix the repurchase price in the agreement on granting the repurchase option. Failing this, the holder of the option shall be able to repurchase the thing at the market value prevailing at the time of exercising the option to repurchase.

Section 6:225

[Purchase option and right to sell]

(1) If the owner establishes the right to purchase a specific thing under contract, the holder of such option shall be entitled to buy the thing with a unilateral statement, at the price fixed in the contract.

(2) If the owner acquires the right to sell a specific thing under contract, he shall be entitled to sell the thing with a unilateral statement to the obligor of the option to sell, at the price fixed in the contract.

Section 6:226

[Common provisions relating to preemption rights, repurchase rights, purchase options and rights to sell]

(1) Contracts relating to preemption rights, repurchase rights, purchase options and sell options shall be executed in writing.

(2) If a right of preemption, repurchase right, purchase option or sell option established on a real estate property under contract is recorded in the real estate register, and a right of preemption, repurchase right, purchase option or sell option established on a movable property shown in a public register is registered in the public register, it shall affect everybody who acquires any right on such a thing following such registration.

(3) The provisions on the right of preemption, repurchase right, purchase option or sell option shall also apply to statutory rights of preemption, repurchase rights, purchase options or sell options. Statutory rights of preemption, repurchase rights, purchase options or sell options shall precede contractual rights of preemption, repurchase rights, purchase options or sell options.

(4) The obligor of repurchase right, right to purchase or right to sell shall refrain from all such conducts as to hinder or prevent the exercise of the repurchase right, right to purchase or right to sell.

(5) The repurchase right, right to purchase or right to sell shall cease if the thing is destroyed due to reasons beyond the obligor's control.

Section 6:227

[Hire purchase]

(1) Based on the parties' agreement, the buyer shall be entitled to pay the purchase price in several installments at specific dates, where possession of the thing is transferred to the buyer before the purchase price is paid in full, the seller shall have the option to either withdraw from the contract or to terminate the payment facilities granted in the event of the buyer's failure to make the installment payments when due. The seller shall be entitled to exercise this right the first time an installment payment is defaulted only if the buyer has been informed thereof in advance and sufficient time has been allowed for performance.

(2) If the seller withdraws from the contract, the buyer shall pay a charge for use of the thing transferred to his possession under the contract, and shall be liable to pay compensation for any loss in value that exceeds depreciation implied by the proper use of the thing.

Section 6:228

[Purchase upon delivery subject to inspection]

(1) If the consumer is not able to inspect the subject matter of the contract before concluding the contract, and the buyer has the right by agreement of the parties to declare his intention whether or not to conclude the contract after visual inspection of the thing, the seller shall provide for the inspection of the thing. In that case, the effect of the contract shall be conditional upon the buyer's statement. No explanation shall be required from the buyer regarding such statements.

(2) If the seller allowed the inspection of the thing, he may set an appropriate deadline for the buyer to declare his intention. If the buyer fails to meet the deadline fixed in the contract or stipulated by the seller for making the statement, the contract shall not enter into effect.

(3) The seller is not liable for any lack of conformity if able to verify that the buyer has detected, or should have detected, the defect upon the inspection.

Section 6:229

[Purchase upon delivery subject to testing]

(1) If the sales contract contains a clause allowing the buyer to test the subject matter of the contract before concluding the contract, and to declare his intention whether or not to conclude the contract after testing, the effect of the contract shall be conditional upon the buyer's statement. No explanation shall be required from the buyer regarding such statements.

(2) If the buyer fails to make the statement within the time limit usually deemed necessary for testing the thing or within the deadline set by the seller, the contract shall remain in effect.

(3) The seller is not liable for any lack of conformity if able to verify that the buyer has detected, or should have detected, the defect during testing.

Section 6:230

[Purchase by sample]

(1) If the parties decide to define a certain characteristic of the subject matter of the contract by reference to a sample, the seller shall supply a thing corresponding to the cited properties of the sample.

(2) The seller shall be liable for any latent defect in a thing if the defect also existed in the sample.

(3) If the buyer fails to present the sample, the burden of proof to verify the characteristic the sample has had shall lie with the buyer.

Chapter XXXIV

Types of Sales Contracts

Section 6:231

[Forward transactions for the sale of things defined by type and quantity]

(1) If the seller undertakes an obligation for the supply in the future of things defined by type and quantity, and the parties stipulate the range of discrepancy as to quantity by which the seller may deviate from the quantity fixed in the contract to either direction, the buyer shall pay the purchase price for the quantity actually supplied.

(2) If the seller supplies below the minimum prescribed quantity, the consequences for such non-performance shall be determined in due account of the contracted quantity.

(3) If the seller undertakes an obligation for the supply of things defined by type and quantity in the future, the buyer shall have the right to withdraw from the contract until such time as the seller's offer for the delivery of supplies; if the seller is to perform the contract in segments, and already offered to deliver a part of the services contracted, the buyer shall have the right to withdraw from the contract with respect to the part not yet offered. The buyer shall be held liable for damages caused to the seller through exercising the right of withdrawal or the right to terminate.

Section 6:232

[Sales contracts for the supply of own produced agricultural goods]

(1) If the seller undertakes an obligation for the supply of agricultural goods and/or produce of his own production or livestock that he himself has raised at a future date, he shall be entitled to perform ten per cent below the quantity stipulated in the contract.

(2) The seller shall also be entitled to effect performance of the contract referred to in Subsection (1) before the stipulated delivery date, provided that the buyer is notified in advance of commencement of performance while ample time is provided to him to make the necessary preparations.

Section 6:233

[Sales contracts for the supply of agricultural goods produced with the buyer's involvement]

If the seller undertakes an obligation for the supply of agricultural goods and/or produce of his own production or livestock that he himself has raised at a future date, and based on the parties' agreement the buyer is required to provide assistance to facilitate performance, and to provide information to the seller in that context, the seller shall cooperate in the provision of such service by following the instructions communicated. The seller shall pay the contracted price for the buyer's service provided to facilitate performance, and shall repay the part of any production advance received from the buyer that is not covered by the purchase price even if the production result is insufficient to cover such payments.

Chapter XXXV

Exchange Contracts

Section 6:234

[Exchange contracts]

If the contracting parties undertake reciprocal transfer of the ownership of things, other rights and receivables, the provisions pertaining to sales shall be duly applied. In such cases each party shall be deemed as the seller in respect of his own service and the buyer in respect of the other party's service.

Chapter XXXVI

Contracts of Gift

Section 6:235

[Contracts of gift]

(1) A contract of gift means any contract under which the donor undertakes to transfer the ownership of a thing without any consideration, and the donee undertakes to take possession of the thing.

(2) If the object of the contract of gift is a real estate property, in addition to transferring ownership the donor shall also transfer possession of the thing. If the object of the contract of gift is a real estate property, it shall be executed in writing.

(3) The provisions relating to gifts shall also apply to contracts for commitments for the gratuitous transfer of rights and receivables.

Section 6:236

[Withholding performance]

The donor shall be entitled to refuse performance of the contract if he is able to prove that his performance of the contract can no longer be expected due to a significant change in his circumstances or in his relationship to the donee after the contract has been concluded.

Section 6:237

[Recovery of gifts]

(1) The donor shall be entitled to recover a still existing gift insofar as the gift is considered essential for his livelihood on account of changes in his circumstances after the conclusion of the contract and returning the gift does not jeopardize the livelihood of the donee. The donee shall not be obligated to return the gift if subsistence of the donor is appropriately provided for in the form of alimony or other similar maintenance provided in kind.

(2) If the donee or his resident relative commits a serious infringement to the detriment of the donor or one of his close relatives, the donor shall be entitled to reclaim the gift or demand the replacement value of the gift.

(3) The donor shall also be entitled to recover a gift or demand its replacement value if the assumption known to the parties at the time of conclusion of the contract, that provided the sole basis for giving the gift subsequently and permanently, disappears and if the gift would never have been given without this assumption.

(4) A gift cannot be recovered if the gift itself or its replacement value no longer exists at the time of the infringement or if the donor has condoned the injury. The donor's failure to reclaim the gift for an extended period of time without an appropriate reason shall be construed as forgiveness and/or waiver of the right of recovery.

(5) Gifts of ordinary value shall not be reclaimed.

TITLE XV

CONTRACTS FOR PROFESSIONAL SERVICES

Chapter XXXVII

Works Contracts

1. General provisions on works contracts

Section 6:238

[Works contracts]

Under a works contract the contractor undertakes to perform activities to achieve the result agreed upon (hereinafter referred to as „works”) and the customer undertakes to accept delivery of and pay the contracted fees for such works.

Section 6:239

[Organization of activities]

(1) The contractor shall arrange the conditions for carrying out the activity so as to ensure that the works will be completed safely and professionally in due time, in a manner that is economically viable.

(2) Any material that is required for completion of the works shall be obtained by the contractor.

Section 6:240

[Customer's right to give instructions]

(1) The contractor shall act in accordance with the customers' instructions. No instructions shall be given for the organization of work and they shall not render performance more burdensome.

(2) If a customer gives unreasonable or unprofessional instructions, the contractor shall be obliged to warn him thereof. If the customer insists on his instructions in spite of the warning, the contractor shall be entitled to withdraw from the contract or may carry out the works according to the customer's instructions, at the customer's risk. The contractor shall refuse to comply with such instructions if compliance would constitute an infringement of the law or any administrative decision, or it would jeopardize the safety or property of others.

Section 6:241

[Place of works]

(1) If the work is to be performed at a work site designated by the customer, the customer shall make the site available to the contractor in a condition as appropriate for carrying out the activity.

(2) The contractor shall be entitled to refuse to commence work until the work site is rendered suitable for carrying out the activity. If the customer fails to make available the work site in spite of being asked to do so by the contractor, the contractor shall be entitled to withdraw from the contract and demand compensation for damages.

(3) If by agreement of the parties the responsibility for rendering the site suitable for carrying out the activity lies with the contractor, the customer shall be liable to cover the costs thereof.

Section 6:242

[Customer's right of inspection]

(1) The customer may at any time inspect the work and check the materials used.

(2) The contractor shall not be relieved of the consequences of non-performance if the customer failed to inspect the contractor's activity or did so inadequately.

Section 6:243

[Coordination of works]

If two or more contractors are working at the same work site simultaneously or successively, the customer shall provide for the necessary conditions for carrying out the work efficiently and in concert.

Section 6:244

[Additional work. Extra work]

(1) The contractor shall perform the work covered by the works contract but not taken into consideration for the calculation of the contract price, as well as the work that is considered essential for the completion of the works in a condition proper for use or the intended purpose (additional work).

(2) The contractor shall perform works ordered subsequently, prompted, in particular, by changes in the plans or designs, if carrying out such works is unlikely to impose unreasonable burden upon the contractor (extra work).

Section 6:245

[Contract price]

(1) If the parties agreed on a fixed sum, the contractor shall have the right to charge for extra works only in addition to the fee agreed upon, and shall not be entitled to charge for additional works. However, the customer shall reimburse the contractor's expenses incurred in connection with carrying out additional works, which could not have been foreseen at the time of conclusion of the contract.

(2) If the contract price is to be paid according to progress, the contractor shall be entitled to invoice for the work phases completed.

(3) The contract price shall be payable upon contractual performance.

Section 6:246

[Statutory lien]

The contractor shall be entitled to statutory lien up to the contract price and expenses on the property of which the customer gains possession in consequence of the works contract.

Section 6:247

[Acceptance or verification of services]

(1) The contractor shall deliver the works within the framework of a procedure of acceptance or verification. During the procedure the parties shall perform the checks and tests commonplace in the given sector, which are deemed necessary to verify whether performance is in conformity with the contract.

(2)⁶⁵ The contractor shall be deemed to have performed in due time if the procedure of acceptance or verification begins within the contracted delivery period. The duration of the procedure of acceptance or verification shall be thirty days. In contracts between business parties or in a contract concluded by a contracting authority with a party other than a contracting authority, where a contractual term relating to the period of acceptance or verification is deemed contrary to good faith and fair dealing and as such regarded as unilaterally and unjustifiably unfair to the contractor, it may be contested by the contractor alleging to find such clause as unfair.

(3) Acceptance shall not be refused on the grounds of any defect in the works that, in the event of repair or replacement, does not prevent proper use.

⁶⁵ Enters into force as under Subsection (5) of Section 188 of Act CCLII of 2013.

(4) If the customer fails to carry out the procedure of acceptance or verification, the legal effects of performance shall take effect upon the actual transfer of possession.

(5) If performance of the contract requires the contractor to transfer ownership of a thing, ownership shall pass to the customer when the thing is delivered and when the price is paid in full.

Section 6:248

[Nullification of contracts]

(1) If performance becomes impossible for a reason that cannot be attributed to either party and:

a) the cause of impossibility has occurred within the control of the contractor, he shall not be entitled to demand remuneration;

b) the cause of impossibility has occurred within the control of the customer, the contractor shall be entitled to remuneration, but the customer shall be entitled to deduct the amount that the contractor had saved in expenses because of impossibility and the amount that the contractor had earned or could, without great difficulty, have earned elsewhere in the time gained;

c) the cause of impossibility has occurred within or beyond the control of both parties, the contractor shall be entitled to a proportionate amount of the remuneration for the work done and for his expenses.

(2) In the event of nullification, the customer shall be entitled to demand the contractor to deliver any works in progress, which are not yet finished, in which case the provisions on unjust enrichment shall apply.

Section 6:249

[Withdrawal, termination]

(1) The customer shall be entitled to withdraw from the contract at any time before the beginning of performance, and shall then be able to terminate the contract before performance.

(2) In the event of withdrawal or termination by the customer, the customer shall pay the commensurate part of the contract price and shall pay compensation to the contractor for damages, with the proviso that the amount of compensation may not exceed the contract price.

Section 6:250

[Gratuitous works contracts]

(1) The provisions of this Chapter shall apply to works contracts where the customer is not required to provide any compensation.

(2) If the contractor agrees to provide services without any compensation, the customer shall be required to cover the contractor's related expenses.

2. Design contract

Section 6:251

[Design contracts]

(1) Under a design contract the contractor undertakes to provide design services and to deliver the resulting plans and designs, and the customer undertakes to accept delivery of and pay the contracted fees for such.

(2) The design documentation shall feature technically and economically feasible and otherwise efficient solutions, and shall be appropriate for satisfying the customer's needs which can be identified and which are considered to serve the intended purpose.

(3) On the grounds of design defects the rights stemming from non-performance may be enforced insofar as any right exists on account of lack of conformity attributable to defects in performance arising from discrepancies in the design.

(4) The designer shall guarantee that no third person has any right that can prevent or restrict the use of the design.

3. Construction contracts

Section 6:252

[Construction contracts]

(1) Under a construction contract the building contractor undertakes to carry out building and installation works and to deliver the works, and the customer undertakes to accept delivery of and pay the contracted fees for such works.

(2) The customer shall be responsible for making arrangements for obtaining the necessary design documentation and the official permits that are required for carrying out the works.

(3) The building contractor is required to inspect the design documentation supplied by the customer before the conclusion of the contract, and shall bring any notable defects and discrepancies in the design to the customer's attention. If any defect or discrepancy in the design surfaces in the process of construction, the building contractor shall notify the customer thereof without undue delay.

4. Research contract

Section 6:253

[Research contracts]

(1) Under a research contract the researcher undertakes to perform research activities, and the customer undertakes to accept the results achieved and pay the contracted fees.

(2) The researcher shall not be entitled to procure the services of others without the customer's consent. No consent is necessary if outside assistance is required due to the nature of the research.

(3) If the result is protected by copyright or may be protected by industrial property rights, the researcher shall transfer the rights stemming from such protection to the customer. If the transfer of such right is precluded by law, the researcher shall grant exploitation rights to the broadest permissible extent.

(4) In research contracts any exclusion or restriction of warranty of title shall be null and void.

(5) The proprietor of the trade secrets associated with the contract shall be the customer. The customer's prior consent is required for the publication of intellectual works resulting from the research activities.

(6) If, by agreement of the parties, remuneration is provided even if the research activities fail to produce any results, the provisions relating to engagements shall apply to carrying out the research and to the researcher's claims for remuneration.

5. Contract for travel services

Section 6:254

[Contracts for travel services]

(1) Under a contract for travel services the contractor undertakes to make arrangements for travel and for accommodations at points of excursion and to provide the related services, and the customer undertakes to accept the services and to pay the contracted fees.

(2) The contract shall be executed in writing. Any contract clause that has not been executed in writing shall be null and void.

(3) The customer shall be entitled to transfer before the start of the journey his rights and obligations stemming from the contract for travel services to a third party who meets the conditions set out in the contract for travel services.

(4) The customer and the third party shall be jointly and severally liable for the obligations arising before the transfer of rights and obligations, and for any additional costs arising out of or in connection with the transfer.

(5) Any contract clause that derogates from the provisions of this Section to the detriment of the consumer shall be null and void.

6. Agricultural services contract

Section 6:255

[Agricultural services contracts]

(1) Under an agricultural services contract the contractor undertakes to keep the customer's animals and to grow crops on the customer's land, and the customer undertakes to pay the contracted fees for such services.

(2) In the event of nullification of the contract due to any disease of the animals or plants, the contractor shall not be held liable if such disease has occurred in consequence of unavoidable circumstances beyond his control. In that case the contractor shall be entitled to commensurate remuneration.

(3) The producer shall not be entitled to refuse the repayment of services performed by the customer on account or as prepayment on the grounds that such repayments cannot be covered by the results of production.

7. Public service contract

Section 6:256

[Public service contracts]

(1) Under a public service contract the service provider undertakes to provide services of general economic interest, and the user undertakes to pay a fee.

(2) The service provider shall be subject to the obligation to contract.

(3) The user shall pay the fee once a month, subsequently.

Chapter XXXVIII

Contracts of Carriage

Section 6:257

[Contracts of carriage]

Under a carriage contract the carrier undertakes to transport the consignment to its destination and deliver it to the consignee, and the consignor undertakes to pay the fee agreed upon.

Section 6:258

[Consignment note]

(1) When so instructed by the consignor, the carrier shall:

- a)* make out the consignment note and provide a copy to the consignor; or
- b)* give an acknowledgement of receipt of the consignment.

(2) The consignment note made out by the carrier shall, in the absence of proof to the contrary, verify the existence of the contracts of carriage, the receipt of the consignment, and - in the absence of any reservation made by the carrier in the consignment note - that the consignment and its packaging at the time of delivery was apparently in a good condition, and that the amount of the consignments coincides with the one shown in the consignment note, if the consignment note was signed by the consignor and the carrier both, and the consignment note contains:

- a)* the date and place of receipt of the consignment;
- b)* the name and address of the consignor, the consignee and the carrier;
- c)* the place where delivery is effected;
- d)* a description of the consignment, the type of packaging used, danger classification for the given transport sector, number of the goods, label, number, volume or quantity expressed in any other way.

(3) The concept of reservation made by the carrier shall also cover the entry made on the consignment note, showing also the reason, indicating that the carrier was unable to verify the data referred to in Paragraph *d)* of Subsection (2) through no fault of his own.

Section 6:259

[Packaging; documents]

(1) The consignor shall:

- a)* package the consignment in a way to provide sufficient protection for the goods and prevent it from jeopardizing the physical safety or property of others;
- b)* give information necessary for handling the consignment on the packaging, or failing this on the consignment itself; and
- c)* hand over to the carrier the documents necessary for transporting and handling the consignment.

(2) When it is manifest that the packaging or the information required for handling the consignment is insufficient, or if the consignor failed to supply the documents necessary for transporting and handling the consignment, the carrier may refuse to accept the consignment. If

the consignor fails to remedy such discrepancies without delay, the carrier shall be entitled to withdraw from the contract.

(3) If discrepancies in the packaging or in the information required for handling the consignment becomes clear after the consignment is accepted, the carrier shall inform the consignor thereof without delay. In the absence of the consignor's specific instructions as to carriage, the carrier shall not be liable to forward the consignment. If the consignor has given instructions as to carriage, the carrier shall be entitled to request adequate safeguards if there is an imminent risk of loss arising from the discrepancies in the packaging or in the information required for handling the consignment, or if he may be subject to liability in respect of others. If the consignor fails to give instructions or to provide adequate safeguards the carrier shall be entitled to terminate the contract.

(4) The carrier shall be required to use the documents received in accordance with the instructions of the consignor.

Section 6:260

[Carriage of dangerous goods]

If the consignment contains dangerous goods, the consignor shall inform the carrier of the danger classification for the given transport sector of the goods, along with information for avoiding risks. In the absence thereof, the carrier shall be entitled to refuse to accept the goods for carriage.

Section 6:261

[Presenting means of transport, loading]

(1) The carrier shall be required to present means of transport at the place and time stipulated in the contract, in a condition suitable for carriage and to commence carriage without delay.

(2) Loading the consignment shall be the responsibility of the consignor. If the consignee does not unload the consignment, the carrier may do so at the consignor's expense.

(3) As regards loading and unloading, the carrier shall have the right to give instructions as to the placement of the consignment.

Section 6:262

[Consignor's right to withdraw before the beginning of transport]

The consignor shall be entitled to withdraw from the contract prior to the commencement of carriage.

Section 6:263

[Transport impediments]

(1) If carriage is in any way obstructed, the carrier shall immediately notify the consignor and ask for instructions where deemed necessary.

(2) The consignor shall pay freight charges up to the amount commensurate until the impediment has occurred, if non-payment of such would result in his enrichment, or if the carrier is able to prove that the impediment occurred in consequence of circumstances beyond his control, that could not have been foreseen at the time of conclusion of the contract, and there had been no reasonable cause to take action for preventing or mitigating the damage.

Section 6:264

[Right of disposition]

(1) The consignor shall be entitled to reserve all rights to the consignment until it is delivered or the consignee receives it.

(2) The carrier may demand adequate safeguards in connection with any instruction the consignor has given after the commencement of carriage, if compliance with such instruction is likely to render performance of the carriage more burdensome. If the consignor fails to provide adequate safeguards, the carrier shall act in accordance with the principle of reasonable commercial practices, taking also into account the consignor's and the consignee's interests. To that end, the carrier has the option to sell the consignment.

(3) Unless proven to the contrary, it shall be presumed that the sale of the consignment is conducted under the principle of reasonable commercial practices if:

- a)* the sale is completed in the stock exchange, at a price in effect at the time of sale; or
- b)* the sale takes place under normal market terms usually employed in the commercial sale of the consignment.

(4) If the carrier sells or uses the consignment, the consignor shall be notified thereof.

(5) Subsections (2)-(4) shall apply if the carrier asks for instructions for performance after the commencement of carriage, and the consignor fails to give instructions in due time, or the carrier requests adequate safeguards for carrying out the instructions and the consignor fails to comply.

Section 6:265

[Notice of arrival of the consignment]

(1) The carrier shall be required to notify the consignee immediately of the arrival of the consignment. After notification has been received, the right of disposition over the consignment shall pass to the consignee.

(2) An instruction given by the consignee before the receipt of notice as per Subsection (1) may be taken into consideration by the carrier inasmuch as it does not contradict with the consignor's instructions. The carrier may demand adequate safeguards in connection with any instruction the consignee has given, if compliance with such instruction is likely to make the carrier's obligation more burdensome. The carrier may refuse to carry out the consignee's instruction if the consignee does not provide adequate safeguards.

Section 6:266

[Freight charges]

(1) If freight charges are to be determined on the basis of information contained in the consignment note, the data in the consignment note shall be considered accurate and appropriate, unless proven to the contrary, even if the carrier has made a reservation on the consignment note showing that he was unable to verify the data.

(2) In the event of loss or destruction of the consignment in part or in full, the carrier shall be entitled to collect the freight charges or a commensurate part thereof, if able to prove that the loss or destruction of the consignment occurred in consequence of circumstances beyond his control, that could not have been foreseen at the time of conclusion of the contract, and there had been no reasonable cause to take action for preventing or mitigating the damage.

Section 6:267

[Statutory lien]

The carrier shall be entitled to statutory lien up to the amount of freight charges and expenses on the things he gained possession of in connection with carriage, or which are at his disposal on the basis of documentary evidence. The lien shall also cover other overdue and uncontested claims of the carrier from the consignor arising from the contracts of carriage.

Section 6:268

[Liability of the carrier]

(1) Any contract term limiting or excluding the carrier's liability shall be null and void, also if it pertains to damages caused deliberately or as a result of gross negligence.

(2) If the carrier makes shipping arrangements for the consignment using different modes of transport, each mode of transport shall be implemented in accordance with the rules of the given transport sector. If the place where the damages have occurred cannot be identified, the provisions of this Chapter shall apply to the carrier's liability.

(3) If the consignor is a foreigner, the amount of compensation for which the carrier is liable may not exceed the highest amount of compensation that may be awarded under the law of the consignor's home State.

(4) The consignment may be considered lost when it has not been delivered within thirty days after the prescribed period of carriage. If the consignment is recovered following the payment of damages, the carrier shall notify the consignor within the shortest possible time, upon which the consignor shall have the right of disposition over the consignment.

Section 6:269

[Liability of the consignor]

The consignor shall be liable toward the carrier for the loss or damage resulting from discrepancies in packaging, or from the lack or inaccuracy of, or any flaws in the data, information and/or documents relating to the consignment.

Section 6:270

[Statute of limitations]

The period of limitation for claims arising out of or in connection with contracts of carriage shall be one year, except for damages caused deliberately or as a result of gross negligence. The initial date of this period shall be the date on which the consignment is delivered to the consignee or the date on which the consignment should have been delivered to the consignee. These provisions shall also apply if the carrier makes shipping arrangements for the consignment using different modes of transport.

Section 6:271

[Application of the provisions relating to works contracts]

Unless otherwise provided for by this Chapter, the regulations governing works contracts shall apply to contracts of carriage *mutatis mutandis*.

TITLE XVI

ENGAGEMENT-TYPE CONTRACTS

Chapter XXXIX

Personal Service Contracts

Section 6:272

[Personal service contract]

Under a personal service contract the agent undertakes to carry out the assignment the principal has entrusted to him, and the principal undertakes to pay the remuneration contracted.

Section 6:273

[Instructions]

- (1) The agent shall follow the instructions of the principal.
- (2) The agent may disobey the principal's instruction if it is essential for the principal's interest, and the principal cannot be notified in advance. In such a case the principal shall be notified without delay.
- (3) If the principal gives unreasonable or impracticable instructions, the agent shall be obliged to warn him thereof. If the principal insists on his instruction in spite of the warning, the agent shall be entitled to withdraw from or to terminate the contract, or may carry out the assignment according to the principal's instructions, at the principal's risk. The agent shall refuse to comply with such instruction if compliance would constitute an infringement of the law or any administrative decision, or it would jeopardize the safety or property of others.
- (4) All costs of the agent incurred in connection with the fulfillment of the instructions shall be reimbursed by the principal. The agent may demand adequate safeguards for carrying out the assignment. If the principal fails to provide adequate safeguards, the agent may refuse to carry out the assignment.

Section 6:274

[Right of representation]

If a contract or another legal statement is required for carrying out the assignment, the contract shall function as a power of attorney as well.

Section 6:275

[Obligation to provide information]

- (1) The agent shall inform his principal of his activities and the status of the assignment upon request, or without a request when deemed necessary. The agent shall inform his principal if employment of another person has become necessary or if the instructions need to be changed due to the emergence of new circumstances.
- (2) The agent shall notify the principal as soon as he fulfills the assignment.

Section 6:276

[Remuneration]

(1) The agent shall be entitled to demand remuneration even if his actions brought no results, except if the assignment failed in part or in whole due to the agent's actionable conduct.

(2) Remuneration shall be payable at the time the contract is performed. If the contract is terminated before the assignment has been fulfilled, the agent shall be entitled to demand an appropriate fraction of the remuneration agreed upon for his activities.

(3) The agent shall be required to advance any costs ordinarily required for carrying out the assignment.

(4) Upon termination of contract the principal shall exonerate the agent from obligations assumed in dealings with third persons on the basis of the assignment, and shall reimburse his necessary and justified expenses.

Section 6:277

[Statutory lien]

In order to secure his claims for expenses and remuneration, the agent shall be entitled to statutory lien on the property of the principal that comes into his possession in consequence of the assignment.

Section 6:278

[Termination]

(1) Either party shall be entitled to terminate the contract.

(2) In the event of termination by the principal, the principal shall pay compensation to the agent for damages resulting from the termination, unless the notice is given on account of the agent's non-performance.

(3) If the agent terminates the contract at an unsuitable time, he shall pay compensation to the principal for damages resulting from the termination, unless the notice is given on account of the principal's non-performance.

(4) Any limitation or exclusion of the right of termination shall be null and void. In the case of a long-term engagement, the parties may agree on limiting the right of termination and may stipulate that the right of termination by notice cannot be exercised within a specific time frame.

Section 6:279

[Settlement]

At the time the contract is terminated, the agent shall be required to give the principal everything that has been acquired by him for the purpose of fulfilling the assignment or as a result of doing so, except for what he has lawfully used in the course of his assignment.

Section 6:280

[Gratuitous service contracts]

(1) The provisions of this Chapter shall apply to personal service contracts where the principal is not required to provide any compensation.

(2) If the agent agrees to provide services without any compensation, the principal shall be required to cover the agent's related expenses.

Chapter XL

Consignment Contracts

Section 6:281

[Consignment contracts]

(1) Under a consignment contract the consignment agent undertakes to conclude a sales contract for a movable property in his own name, on the principal's behalf, and the principal undertakes to pay the commission agreed upon.

(2) The provisions of this Chapter shall apply to the consignment contract where the consignment agent undertakes the obligation to conclude another contract.

(3) A consignment contract that requires the consignment agent to acquire ownership of a real estate property shall be null and void.

Section 6:282

[Legal status of the consignment agent]

(1) The sales contract concluded under a consignment contract shall entitle and bind the consignment agent in terms of the party contracting with the consignment agent.

(2) The consignment agent shall be responsible to the principal for the performance of all of the obligations that are undertaken by his contracting partner in the contract, if he has specifically agreed to do so.

(3) Creditors of the consignment agent shall not lay claims in respect of:

a) receivables from the party contracting with the consignment agent and claims due to the principal;

b) things bought by the consignment agent in the case of consignment purchases;

c) sums of money received by the consignment agent and kept or handled separately, which are apparently due to the principal.

Section 6:283

[Acquisition of property]

(1) In respect of consignment purchases the consignment agent shall transfer to the principal the ownership of movable property acquired in the course of performing the contract as part of the settlement process.

(2) In respect of consignment sales the consignment agent shall be authorized to transfer the ownership of the principal's movable property.

Section 6:284

[Commission]

The consignment agent shall be entitled to commission if the sales contract has been concluded, or if the contract has not been concluded due to reasons within the principal's control.

Section 6:285

[Right to accession]

(1) The commission agent may himself conclude a sales contract with the principal, if the market value of the thing can be clearly determined relying on publicly accessible information.

(2) In the case of accession, the consignment agent shall be obligated to conclude the contract under the terms considered best for the principal.

(3) During the process of settlement, the consignment agent shall notify the principal if he himself has concluded the sales contract with the principal.

(4) The consignment agent's claim for commission shall not be affected if the sales contract with the principal is concluded by the consignment agent himself. Otherwise, in respect of the consignment agent's accession the provisions on sales contracts shall apply to the relationship between the principal and the consignment agent.

Section 6:286

[Derogation from the terms of the consignment contract]

(1) If the commission agent concludes the sales contract under conditions more favorable for the principal than the ones set out in the consignment contract, the benefit originating therefrom shall accrue to the principal.

(2) If the consignment agent makes a sale at a price below the one specified in the consignment contract, he shall reimburse the principal for the difference, unless he is able to prove that the sales contract could not have been concluded at the stipulated price, and that by making the sale he saved the principal from losses, and that he was not able to notify the principal in time.

(3) If the commission agent substantially departs from the conditions stipulated in the consignment contract, he shall notify the principal thereof. Upon receipt of such notice, the principal shall be entitled to reject the sales contract without delay, unless the consignment agent has effected purchase at a price higher than stipulated, but agreed to reimburse the difference.

Section 6:287

[Application of the provisions relating to engagements]

Unless otherwise provided for by this Chapter, the regulations governing personal service contract shall apply to consignment contracts *mutatis mutandis*.

Chapter XLI

Agency Contracts

1. General provisions on agency contracts

Section 6:288

[Agency contracts]

Under an agency contract the agent undertakes to provide services with a view to facilitating the conclusion of a contract between his principal and a third party, and the principal undertakes to pay the fee agreed upon.

Section 6:289

[Agent's scope of representation]

Unless otherwise provided for in this Act, the agent shall not be entitled to conclude the contract he helped negotiating in his principal's name, nor to accept performance under that contract.

Section 6:290

[Obligation to provide information]

The agent shall notify the principal if he is engaged in providing agency services to a third person.

Section 6:291

[Agents' fees]

- (1) The fee shall be payable at the time the mediated contract is concluded.
- (2) The fee shall be payable to the agent also if the parties conclude the contract after the termination of the agency contract.

Section 6:292

[Application of the provisions relating to engagements]

Unless otherwise provided for by this Chapter, the regulations governing personal service contracts shall apply to agency contracts mutatis mutandis.

2. Long-term agency contracts

Section 6:293

[Special rules relating to independent agents]

(1) Under an agency contract the agent undertakes to enter into a long-term relationship and to negotiate - acting independently - contracts for the principal to be concluded with third parties, and to conclude such contract in the principal's name, and the principal undertakes to pay the fee agreed upon.

(2) The agent shall be considered as acting independently if carrying out the activity referred to in Subsection (1) by means other than a contract of employment, executive officer relationship or any other relationship invoked by law, court order or administrative decision, granting the right of representation of a legal person.

(3) For the purposes of this Chapter, long-term relationship means when the agent:

- a)* is required to negotiate more than one contract; or
- b)* is required to negotiate one contract, and to maintain and renew that contract.

(4) If the parties concluded the contract in writing, one of the parties shall make available to the other party, upon request, a copy of the contract and any amendment thereto; any derogation from this provision and any waiver of this right shall be null and void.

Section 6:294

[Agent's scope of representation]

If the agent is entitled to conclude the contract he has negotiated, his right of representation shall cover all legal statements which are usually required in connection with negotiated

contracts. This, however, shall not include the right to amend an existing contract, or to accept money or to determine a payment date.

Section 6:295

[Principal's obligations]

(1) The principal shall, at his own expense, provide assistance and supply information to the agent to the extent necessary to carry out his assignment. To this end, the principal shall make available to the agent documents pertaining to the object of the contract.

(2) The principal shall notify the agent without delay if the quantity for which the contract can be or intended to be concluded is significantly less than what the agent has expected.

(3) The principal shall notify the agent without delay on his decision to accept or reject the contract the agent has negotiated, or if the contract concluded has not been performed.

(4) Any provision of the parties in derogation from Subsections (1)-(3) shall be null and void.

Section 6:296

[Duration of the contract]

A contract concluded for a specific term shall be converted into a contract of indefinite duration if the parties continue to perform the services contracted beyond the term specified.

Section 6:297

[Termination of contracts]

(1) Either party shall be entitled to terminate a contract for an indefinite period by notice with effect to the last day of the calendar month. The notice period shall be one month during the first year of the contract, two months during the second year and three months during the third and subsequent years of the contract. Any clause for a shorter period shall be null and void.

(2) If the parties stipulated a notice period longer than what is contained in Subsection (1), the notice period applicable to the principal may not be less than the notice period applicable to the agent. Any agreement of the parties to the contrary shall be null and void.

(3) If the contract concluded for a specific term is converted into a contract of indefinite duration, the entire length of the contract shall be taken into account for determining the length of the notice period.

Section 6:298

[Indemnification of the agent]

(1) If the agency contract is terminated the agent shall be entitled to indemnification if deemed justified having regard to all circumstances of significance to the contract, in light of the fact that the termination of the contract deprives the agent of his right to a commission to which he would be entitled in connection with the transactions concluded, or planned to be concluded if the contract remained in force, provided that:

a) the agent solicited new clients for the principal through forming new business relations, or expanded existing business relations resulting in at least one new client, if such business dealings produce substantial benefits for the principal even after the termination of the contract; or

b) the agent completed the assignment for setting up a long-term relationship, but he is prone to lose regular income due to the termination of the agency contract.

(2) The amount of indemnification may not exceed one year's average commission the agent had received during the last five years before the contract was terminated, or if the agency contract had existed for less than five years, the average calculated for one year from the sum received during the life of the contract.

(3) Claims for indemnification may be enforced within a preclusive period of one year.

(4) Indemnification shall not affect the agent's claim for compensation and the fee due on the basis of an agreement containing a restriction imposed upon the agent in exercising economic activities after the time of termination of the contract.

Section 6:299

[Exclusion of indemnification]

No indemnification shall be paid to the agent if:

a) the contract was terminated by the agent, unless termination was based on any circumstance within the principal's control, or for reasons justified by the agent's age or health on account of which the agent's performance could no longer be expected; or

b) if, based on an agreement concluded with the principal, the agent transfers his rights and obligations specified in the contract to a third party.

Section 6:300

[Exclusion of derogation from the rules of indemnification in favor of the agent]

Any agreement that had been reached between the parties before the contract was terminated and which contains a clause that derogates from the provisions relating to indemnification to the detriment of the agent shall be null and void.

Section 6:301

[Restrictions of competition after the termination of the contract]

(1) An agreement containing a restriction imposed upon the agent in exercising economic activities after the time of termination of the contract shall be executed in writing.

(2) The agreement containing a restriction imposed upon the agent in exercising economic activities shall be effective for a term of up to two years after the termination of the contract; any clause for a term of over two years shall be null and void.

(3) The agreement containing a restriction imposed upon the agent in exercising economic activities shall be null and void inasmuch as it derogates from the geographical area, client base and type of goods fixed in the agency contract.

Chapter XLII

Shipping Contracts

Section 6:302

[Shipping contracts]

Under a shipping contract the forwarding agent undertakes to conclude contracts and to make legal statements relating to shipments in his own name and on the principal's behalf, and the principal undertakes to pay the fee agreed upon.

Section 6:303

[Enforcement of claims]

The forwarding agent shall enforce the principal's claims against the carrier and other contractors hired by the forwarding agent, if so instructed by the principal, at the expense and risk of the principal. Furthermore, the forwarding agent shall make statements even in the absence of the principal's instructions, where this is deemed necessary for the protection of the rights of the principal.

Section 6:304

[Self-contract]

The forwarding agent shall be entitled to perform carriage himself.

Section 6:305

[Commission]

The forwarding agent shall be entitled to any freightage discount granted subsequently and to the referral fees paid by carriers for the consignments delivered.

Section 6:306

[Statute of limitations]

The period of limitation for claims arising out of or in connection with shipping contracts shall be one year, except for damages caused deliberately or as a result of gross negligence.

Section 6:307

[Liability of forwarding agents]

(1) The provisions relating to carrier's liability shall also apply to the liability of a forwarding agent if:

a) he had the consignment forwarded together with the goods of others, on the same means of transport, and the damage was caused for that reason;

b) the consignment in his possession is lost or damaged.

(2) If the principal is a foreigner, the amount of compensation for which the forwarding agent is liable may not exceed the highest amount of compensation that may be awarded under the law of the principal's home State.

Section 6:308

[Liability of the principal]

(1) The principal shall be liable for any damage resulting from the instruction, insufficient packaging and/or labeling of the consignment, or from any discrepancies in the data, documents and information supplied by the principal.

(2) If there is a risk of any third party claim, the forwarding agent may require adequate safeguards from the principal. If the principal fails to provide adequate safeguards, the forwarding agent may terminate the contract.

Section 6:309

[Application of the provisions relating to consignment and carriage contracts]

Unless otherwise provided for by this Chapter, the regulations on consignment contracts shall apply to the relationship of the forwarding agent and the principal, and provisions governing contracts of carriage shall also apply to the obligation to provide information relating to the consignment, to the handling, protection and transport of consignments, to the forwarding agent's lien rights, and also to the period of limitation on claims arising out of or in connection with contracts of carriage.

Chapter XLIII

Fiduciary Asset Management Contracts

Section 6:310

[Fiduciary asset management contracts]

(1) Under a fiduciary asset management contract the fiduciary undertakes to manage the assets, rights and receivables entrusted to him by the principal (hereinafter referred to as „assets managed”) in his own name and on the beneficiary's behalf, and the principal undertakes to pay the fee agreed upon.

(2) The contract shall be executed in writing.

Section 6:311

[Definition of beneficiaries]

(1) The right to determine the beneficiary and the conditions for the commencement and termination of beneficiary entitlements lies with the principal. The beneficiary may be identified also by reference to the range of beneficiaries.

(2) The principal may provide that after a certain period of time or under certain conditions the assets managed shall - in part or in whole - pass to himself, to his successors or to a specific third party.

(3) If the contract contains an entitlement for the fiduciary to designate the person of the beneficiary, the fiduciary shall also be entitled to specify the share to be allotted to that beneficiary.

(4) Designating the fiduciary as the sole beneficiary shall be null and void.

Section 6:312

[Separation of property]

(1) The assets managed shall not be mixed in any way with the fiduciary's own assets or with other assets he manages, and the fiduciary shall keep separate records of such assets. Any provision to the contrary shall be null and void.

(2) Components of the assets managed and kept separately from the fiduciary's own assets and from other assets he manages, shown as managed assets shall be deemed to comprise a part of the managed assets until proven to the contrary.

(3) Individual assets replacing certain assets, security deposit, reimbursement, or any other value of the like, and the proceeds of such shall comprise a part of the managed assets, even if they are not shown in the records.

(4) Individual assets which the fiduciary did not show in the records as part of the assets managed shall be considered to comprise a part of the fiduciary's own personal assets, unless proven to the contrary.

Section 6:313

[Protection of assets managed]

(1) The fiduciary's spouse and domestic partner, and personal creditors and creditors of other assets managed by the fiduciary shall not lay claim to any part of the assets managed. The managed assets shall not be included in the fiduciary's estate.

(2) The beneficiary and the principal both shall have the right to bring action against the fiduciary's spouse and domestic partner, and personal creditors and creditors of other assets managed by the fiduciary, requesting the separation of the managed assets.

Section 6:314

[Claims of the beneficiary and his creditors]

(1) The beneficiary shall have the right under contract to request the fiduciary to release the managed assets and its proceeds.

(2) Creditors of the beneficiary shall be entitled to lay claim to the assets of the beneficiary from the point in time when said assets and their proceeds are to be released to the beneficiary.

Section 6:315

[Right to check]

The principal and the beneficiary shall have the right to check the fiduciary's activities relating to asset management. The costs of such checks shall be borne by the principal or the beneficiary.

Section 6:316

[Lack of right to give instructions]

The principal and the beneficiary may not give instructions to the fiduciary; any clause to the contrary shall be null and void.

Section 6:317

[Enhanced requirements for the fiduciary]

(1) Based on the enhanced requirement stemming from the relationship that of which is based upon trust or confidence, the fiduciary's primary objective is to serve the beneficiary's best interest.

(2) Under the principle of reasonable commercial practices, the fiduciary shall have the obligation to protect the managed assets from foreseeable risks.

Section 6:318

[Fiduciary's right of disposition]

(1) Management of the assets shall cover the exercise of entitlements stemming from the ownership and other rights and receivables entrusted to the fiduciary, and the performance of obligations arising therefrom.

(2) The fiduciary shall have the right of disposition over the managed assets according to the conditions and within the limits set out in the contract.

(3) If the fiduciary breaches the obligation referred to in Subsection (2) and unlawfully transfers any part of the assets he manages to a third party, the principal and the beneficiary shall have the right to recover such asset and to have it reinstated among the managed assets, if the third party did not act in good faith or there was no pecuniary interest. This provision shall also apply when the managed assets are wrongfully encumbered.

Section 6:319

[Confidentiality]

(1) The fiduciary shall keep confidential all facts, data and information about which he gained knowledge in the course of or in connection with carrying out his fiduciary responsibilities. This obligation applies notwithstanding the asset management relationship and shall remain effective following the termination of the fiduciary asset management contract.

(2) The principal and his successor may grant an exemption from the obligation of confidentiality.

Section 6:320

[Obligation to provide information and to give account]

(1) At the request of the principal or the beneficiary the fiduciary shall be required to provide information on the managed assets. The information given shall, in particular, cover the actual and foreseeable growth in the managed assets, the individual assets managed and their value, as well as the liabilities undertaken to the burden of the managed assets.

(2) Upon request, the fiduciary shall give account of the management of assets, and shall give account to the principal and/or the beneficiary relating to the managed assets.

(3) The costs of providing the information and of giving account shall be borne by the principal and/or the beneficiary.

Section 6:321

[Fiduciary's liability towards the principal and the beneficiary]

(1) The fiduciary shall be held liable for any breach of his obligations towards the principal and/or the beneficiary in accordance with the general provisions on liability for non-performance of an obligation.

(2) If the fiduciary is not remunerated for his services, the provisions on liability for damages relating to any breach of gratuitous contracts shall apply to his liability.

(3) The principal and the beneficiary shall have the right to lay claim to any financial advantage the fiduciary has acquired through the infringement of his fiduciary liability, and to add such financial advantage to the managed assets.

Section 6:322

[Fiduciary's expenses and remuneration]

(1) If the fiduciary is not remunerated for his services, he may request compensation for his justified expenses arising out of or in connection with asset management.

(2) The fiduciary shall be entitled to charge his remuneration and justified expenses, along with other claims arising out of or in connection with asset management directly from the managed assets.

Section 6:323

[Fiduciary's liability in respect of third parties for commitments]

(1) The fiduciary shall bear responsibility for performance of the obligations undertaken with the assets entrusted to him.

(2) The fiduciary shall bear unlimited liability with his personal assets for claims arising from obligations undertaken to the burden of the managed assets, if such claims cannot be satisfied from the managed assets, and the other party did not know or should not have known that the commitment by the fiduciary reached beyond the limits of the managed assets.

Section 6:324

[Multiple fiduciaries]

(1) If the principal appoints more than one fiduciary, the fiduciaries shall manage the assets jointly and shall bring decisions collectively.

(2) If the fiduciaries are subject to liability with their personal assets, their responsibility for decisions made collectively shall be joint and several in dealings with third parties.

(3) The responsibility of the fiduciaries for any infringement of their fiduciary liability shall be joint and several with respect to the principal and the beneficiary.

Section 6:325

[Change in the person of the parties]

(1) The principal shall have the right to recall the fiduciary at any time, and may appoint a replacement fiduciary at the same time.

(2) In the event of the principal's death or dissolution without succession, if there is no other principal for the managed assets, the court shall have powers to recall the fiduciary at the beneficiary's request, and shall appoint a replacement fiduciary at the same time, if the fiduciary has seriously breached the contract.

(3) Several beneficiaries may exercise that right collectively, with the proviso that the court shall rule at the request of either of them concerning the termination of the fiduciary's office and on the appointment of a new fiduciary. The court shall not appoint a person to the office of fiduciary who is objected to by all of the beneficiaries.

Section 6:326

[Termination of fiduciary asset management]

(1) Fiduciary asset management shall terminate if:

a) there are no assets left to manage;

b) the fiduciary resigns, after three months following the resignation;

c) there is no fiduciary managing the assets for a period of over three months, at the time of termination of the fiduciary mandate;

d) the principal was the sole beneficiary, at the time of his death.

(2) In the case of resignation, the fiduciary's primary objective remains to serve the beneficiary's best interest.

(3) If the fiduciary asset management contract is signed for an indefinite duration, or for a period of more than fifty years, it shall terminate after fifty years. Any clause to the contrary shall be null and void.

(4) Fiduciary asset management shall not be terminated on account of the principal becoming the successor of the fiduciary.

(5) Fiduciary asset management shall not be terminated upon the death or dissolution of the principal, the fiduciary or the beneficiary.

Section 6:327

[Settlement obligation]

(1) If fiduciary asset management is terminated, the fiduciary shall remain subject to the obligation of settlement and to provide information relating to the managed assets as if fiduciary asset management still existed.

(2) If the termination of fiduciary asset management puts the managed assets at risk, the fiduciary shall take measures as necessary according to the contents of fiduciary asset management until the time of settlement.

Section 6:328

[Allotment of assets managed]

(1) The fiduciary, if his mandate is terminated, shall release the managed assets to an additional or a replacement fiduciary appointed by the principal or, failing this, to the principal.

(2) If the fiduciary is dissolved without succession, the managed assets shall devolve upon the dissolution of the fiduciary to an additional or a replacement fiduciary appointed by the principal, or, failing this, it shall be returned to the principal.

(3) The obligations undertaken to the burden of the managed assets shall accrue to an additional or a replacement fiduciary appointed by the principal, or failing this, to the principal.

(4) If there is more than one principal, they shall become entitled to a share of the returned assets in proportion to their original contribution to the managed assets, and they shall be subject to the reversionary obligations comprising a part of the managed assets in the same ratio; their liability to the creditors of the managed assets shall be joint and several.

(5) If the contract provides for the allocation of the assets in the form of succession of the fiduciary, the rights and obligations shall accrue to the successor fiduciary in accordance with the provisions of Subsections (1)-(4).

Section 6:329

[Fiduciary asset management established by unilateral act]

(1) If the principal and the beneficiary is the same person, fiduciary asset management shall be established by means of an irrevocable unilateral statement made by the principal executed in an authentic instrument.

(2) Where fiduciary asset management is created under a will, it shall take effect upon the fiduciary's acceptance of the appointment under the conditions set out in the will.

(3) The regulations governing fiduciary asset management contracts shall also apply where fiduciary asset management is established by means of a unilateral statement.

Section 6:330

[Application of the provisions relating to engagements]

Unless otherwise provided for by this Chapter, the regulations governing personal service contracts shall apply to fiduciary asset management mutatis mutandis.

TITLE XVII

LICENSING CONTRACTS

Chapter XLIV

Lease Agreements

1. General provisions on lease agreements

Section 6:331

[Lease agreements]

(1) Under a lease agreement the lessor undertakes to convey temporary use of a thing, and the lessee undertakes to accept the thing and pay the lease charge.

(2) The regulations on the lease of things shall apply mutatis mutandis to the conveyance of the exercise of rights temporarily to another person for consideration.

Section 6:332

[Lessor's guarantee]

(1) The lessor shall guarantee that the thing leased is and will be suitable for use as contracted for the entire duration of the lease period and that it is otherwise in conformity with the provisions of the contract. Concerning this guarantee, the regulations governing guarantees for lack of conformity shall apply with the exception that the lessee is entitled to terminate the contract instead of withdrawal and he shall not be entitled to demand replacement.

(2) The lessor shall guarantee that no third person has any right to the leased thing that can prevent or restrain the lessee's use of the thing. Concerning this guarantee, the principle of warranty of title shall apply with the exception that the lessee is entitled to terminate the contract instead of withdrawal.

(3) If the leased thing is a dwelling or other premises designed for human habitation, and it is in a condition representing a potential risks to health, the lessee may terminate the agreement even if he was aware, or should have been aware, thereof at the time of conclusion of the agreement or at the time of taking possession. No waiver of this right of the lessee shall be considered valid.

Section 6:333

[Use of the thing]

(1) The lessee shall be entitled to use the thing for its intended purpose and in accordance with the contract.

(2) The lessor shall have the right to inspect use without causing any unnecessary disturbance to the lessee.

(3) If the lessee fails to terminate inappropriate or non-contractual use of the thing despite being asked to do so by the lessor, the lessor shall be entitled to terminate the agreement.

(4) If the lessee transforms the thing without permission, the lessee shall be obliged to restore the original state at the lessor's request.

Section 6:334

[Assignment of use to third parties]

(1) The lessee shall be entitled to sub-lease or assign the use of the leased thing to a third party subject to the lessor's permission.

(2) If the lessee has sub-leased or assigned use of the thing to another person with the lessor's permission, the lessee shall be liable for the conduct of the sub-lessee and the user as for his own use.

(3) If the lessee sub-leases or assigns use of the thing to another person without the lessor's permission, the lessee shall be liable for damages that would not otherwise have occurred.

Section 6:335

[Costs]

(1) Minor expenses required for the maintenance of the thing shall be borne by the lessee; other expenses as well as public duties in connection with the thing shall be borne by the lessor.

(2) The lessee shall notify the lessor in the event of imminent danger to which the thing is exposed or if any work for which the lessor is responsible is required.

(3) The lessor shall be permitted to carry out the work for which he is responsible and take appropriate measures for the prevention of losses.

(4) The lessee shall have the right to carry out the work for which the lessor is responsible in the lessor's stead and at his expense, if the lessor did not perform such work.

Section 6:336

[Lease payments]

(1) The lessee shall be obliged to make lease payments in advance on a monthly basis. If the lease agreement is concluded for a period of less than a month, the lease payment shall be due at the time of conclusion of the contract.

(2) No lease payments shall be made for the period when the thing cannot be used for reasons beyond the lessee's control.

(3) In the event of failure to make lease payments or other costs charged to the lessee, the lessor shall be entitled to terminate the lease, provided that the lessor has issued a written demand for remittance of overdue payments within a reasonable period of time and notified the lessee of the consequences, and the lessee fails to remit payment within this period.

Section 6:337

[Statutory lien]

(1) The lessor of a real estate property shall be entitled to statutory lien on the lessee's property found within the rental property for the value of unpaid rent and any additional costs.

(2) The lessor shall be entitled to block the removal of hypothecated property as long as his lien remains in effect.

(3) If the lessee files a protest against a lien, the extent of it, or the lessor's action to block the removal of assets other than those already providing full cover for his claim, the lessor shall enforce his lien by court action within eight days. Failure to do so shall be construed as forfeiture of the lien.

(4) If the lessee removes the hypothecated thing without the lessor's permission and does not provide adequate safeguards instead, the lessor shall be entitled to demand the return of the thing at the lessee's expense. The lien shall be re-established upon the return of the thing.

Section 6:338

[Termination of fixed-term lease, destruction of the thing]

(1) If the lessee continues to use the thing following the expiry of the lease term specified in the lease agreement and the lessor does not file a protest thereto within fifteen days following the expiry of the term stipulated in the agreement, the lease agreement concluded for a specific term shall be transformed into a lease for an indefinite period of time.

(2) A lease agreement shall be terminated if the thing is destroyed.

Section 6:339

[Termination of lease by notice]

(1) Either party shall be entitled to cancel an open-term agreement:

- a)* any time in the case daily lease, at the end of the day to take effect on the next day;
- b)* in the case of weekly lease, on the first day of the week to take effect at the end of that week;
- c)* in the case of monthly lease, at the latest by the fifteenth day of the month to take effect at the end of that month;
- d)* in the case of longer lease terms, at the latest by the thirtieth day preceding the end of the lease term.

(2) A fixed-term lease may be terminated by either party by giving notice at the latest by the fifteenth day of the month, to take effect at the end of the month if termination can be exercised within the statutory period of notice.

(3) If lease is terminated without the notice period defined in Subsection (1), the lease shall be considered terminated effective at the end of the lease period following the time when the notice was communicated.

(4) The lessee's heirs shall be entitled to terminate by notice a fixed-term lease by giving notice within thirty days. The notice period shall be calculated:

- a)* from the date of death of the testator, if no probate proceeding is held;
- b)* from the operative date of the grant of probate adopted in probate proceedings with full effect;
- c)* from the date when the judgment of the court becomes final, in the event of inheritance proceedings.

Section 6:340

[Transfer of leased things]

(1) The lessee shall be obliged to permit any potential buyers of a thing to inspect it without causing any unnecessary disturbance to the lessee.

(2) If the lessor transfers ownership of the leased thing following the conclusion of the lease agreement, the rights and obligations of the owner arising out of or in connection with the lease agreement shall accrue to the new owner. The lessor and the new owner shall be jointly and severally liable toward the lessee for the lessor's obligations arising out of or in connection with the lease agreement.

(3) The new owner of the leased thing shall be entitled to terminate the fixed-term lease if he was misled by the lessee regarding the existence of a lease or material lease conditions.

Section 6:341

[Rights and obligations of the parties when lease is terminated]

(1) Prior to the termination of the lease, the lessee shall permit any potential lessees of the thing to inspect it at an appropriate time and in an appropriate manner.

(2) Upon termination of the lease, the lessee shall return the thing to the lessor; however, the lessee shall be entitled to withhold the thing without using it until his claims against the lessor arising from the lease are settled.

(3) If the lessee wrongly withholds the thing, he shall be liable to pay the lease charges stipulated in the agreement for the period of retention, and beyond that for all damages that otherwise would not have been incurred.

(4) The lessee shall be entitled to remove any and all items that he has added to the thing at his own expense without causing any damage to the thing.

2. Residential lease agreements

Section 6:342

[Residential lease agreements]

Where the object of the agreement is a residential property, the provisions on lease agreements shall apply with the following exceptions.

Section 6:343

[Security deposit]

If, by agreement of the parties, the tenant is required to put down a security deposit for the landlord to assure performance of his obligations arising from the lease agreement, and this sum exceeds the monthly rent three times over, such excessive security deposit may be reduced by the court at the lessee's request.

Section 6:344

[Landlord's maintenance obligation]

The landlord shall fulfill his maintenance obligation:

a) without delay where emergency repair is required for fixing problems and defects which represent a risk to life or otherwise detrimental to the building's condition which significantly impairs the use of the rental premises or the neighboring property;

b) in other cases, at the time of general maintenance or renovation of the building.

Section 6:345

[Tenant's right of removal]

(1) The tenant may not exercise his right of removal if the landlord offers appropriate compensation for the redemption of his right of removal, and this does not harm the tenant's relevant lawful interests.

(2) The tenant's right of removal may be excluded or limited by the parties to the agreement upon providing appropriate compensation for the related disadvantages. This provision shall also apply to the exclusion or limitation of the right to compensation.

Section 6:346

[Tenant's obligation of sufferance]

(1) The tenant is obliged to permit the landlord to carry out work which are deemed necessary to keep the rental premises in good repair.

(2) The tenant shall not be obliged to tolerate works for the renewal or upgrading of the rental premises, except when it does not significantly impair the use of the rental premises taking into account the work to be performed, architectural consequences and the foreseeable expenses on the tenant's part.

(3) The landlord shall notify the tenant in writing of the planned works and of the time they are expected to take in due time before the commencement of works under Subsection (2). The tenant shall have the right to terminate the lease agreement on or before the last day of the month following the time of receipt of the notice.

Section 6:347

[Termination by notice]

(1) Either party shall be entitled to cancel an open-term agreement at the latest by the fifteenth day of the month, to take effect at the end of the next month.

(2) If the agreement is terminated without the notice period defined in Subsection (1), the lease shall be considered terminated effective at the end of the second month following the date when the notice was given.

Section 6:348

[Termination for breach of contract]

(1) The landlord shall have the right to terminate the residential lease agreement, upon prior warning sent to the tenant, by giving at least fifteen days' notice with effect to the last day of the following month, if the tenant or any other occupant of the premises is engaged in any flagrant misconduct against the neighbors, that of which is contrary to the requirement of coexistence; or if using the rental premises or the connected common-use areas contrary to the purpose for which they were intended, or in breach of the contract.

(2) Prior warning is not required if the impugned conduct is grave enough, upon which the landlord cannot be expected to maintain the lease agreement. The notice shall be delivered within eight days after gaining knowledge thereof.

Chapter XLV

Leasehold Contracts

Section 6:349

[Leasehold contracts]

(1) Under a leasehold contract the lessee shall be entitled to use temporarily an economically viable thing or to exercise an economically viable right, and to collect the proceeds thereof, and he shall be obliged to pay appropriate rent therefor.

(2) Leasehold contracts shall be executed in writing.

Section 6:350

[Enforcement of the requirements of prudent management]

(1) The lessee shall be entitled to collect the proceeds of the thing only in accordance with the requirements of prudent management.

(2) The lessee of arable land shall cultivate the land according to its designated purpose and shall preserve the fertility of the land in the course of doing so.

Section 6:351

[Costs]

(1) The lessee shall bear responsibility for the renovation and repairs that are necessary for the maintenance of the leased thing as well as all applicable public dues on the thing.

(2) Extraordinary renovations and repairs shall be the responsibility of the lessor.

Section 6:352

[Leasehold payment]

(1) Leasehold payments shall be made subsequent to the period to which it pertains.

(2) For years in which the crop yield remains below two-thirds of the average due to natural disaster or some other extraordinary event, the lessee shall be entitled to request a reduction or consolidation of lease payments. The lessee must notify the lessor of such request prior to having the crop in question harvested.

(3) Reduced or cancelled lease payments may not be demanded subsequently.

Section 6:353

[Statutory lien]

(1) The lessor shall be entitled to statutory lien on the proceeds of the thing and/or on the lessee's property found in the leasehold area up to the extent of lease payments.

(2) The provisions on the lien of the landlords of real estate properties shall also apply to the lien of lessors afforded under Subsection (1).

Section 6:354

[Termination of leasehold contracts]

(1) Agricultural leasehold contracts concluded for an indefinite period of time can be terminated by the end of the fiscal year by giving six months' notice. The provisions on the termination of lease agreements shall apply to the notice period of leasehold contracts for other things or rights.

(2) The lessor shall have the right to terminate the leasehold contract also if the lessee fails to cultivate the leased land despite of being asked to do so, or is engaged in conduct that seriously jeopardizes the overall success of production, the fertility of the land, the livestock, or equipment.

(3) The lessee's heirs shall be entitled to terminate his agricultural leasehold within thirty days by the end of the fiscal year, even if the testator died within the last six months of the fiscal year. The notice period shall be calculated:

- a) from the date of death of the testator, if no probate proceeding is held;
- b) from the operative date of the grant of probate adopted in probate proceedings with full effect;
- c) from the date when the judgment of the court becomes final, in the event of inheritance proceedings.

Section 6:355

[Returning the leased assets in agricultural leasehold agreements]

Upon the termination of an agricultural leasehold agreement, the arable land and other leased things shall be returned in a condition that allows immediate and proper continuance of production.

Section 6:356

[Application of the rules of lease agreements]

Unless otherwise provided for by this Chapter, the regulations governing lease agreements shall apply to leasehold contracts mutatis mutandis.

Chapter XLVI

Lending Arrangements

Section 6:357

[Lending arrangements]

(1) Under a lending arrangement the lender undertakes to make available for use, for a limited period of time and not for direct or indirect economic or commercial advantage, a specific thing, and the borrower shall accept the thing.

(2) The lender shall be entitled to refuse performance of the contract if he is able to prove that his performance of the contract can no longer be expected due to a significant change in his or in the borrower's circumstances or in his relationship to the borrower after the contract has been concluded. Furthermore, the lender shall be entitled to refuse performance of the contract if termination can be applied on the grounds of factors emerging after the conclusion of the contract.

(3) The regulations on lending arrangements shall apply mutatis mutandis to the conveyance of the exercise of rights temporarily to another person not for economic or commercial advantage.

Section 6:358

[Use of a thing made available under lending arrangements, enjoying the benefits thereof]

(1) The borrower shall be entitled to use the thing properly and in accordance with the contract.

(2) The borrower shall be entitled to make available the thing for use to a third person with the consent of the lender.

(3) If the borrower has made available the thing for use to another person with the lender's permission, the borrower shall be liable for the conduct of the user as if it were his own.

(4) If the borrower makes available the thing for use to another person without the lender's permission, the borrower shall be liable for damages that otherwise would not have occurred.

(5) Any proceeds from the thing shall belong to the lender.

(6) The borrower shall be liable to cover the costs of maintenance of the thing, and shall be entitled to compensation for other related expenses in accordance with the regulations on negotiorum gestio.

Section 6:359

[Termination of lending arrangements]

(1) A lending agreement shall be terminated:

a) when the thing is returned;

b) upon the death of the borrower.

(2) Either party shall be entitled to cancel an open-term lending arrangement by giving fifteen days' notice. Should the lender die, his heir shall be entitled to exercise the right of termination, even if termination were not otherwise possible.

(3) The borrower shall be entitled to offer to return the thing at any time, and the lender shall not be entitled to refuse to take the thing back without good cause.

(4) The lender may terminate the contract if:

a) the specified object of the lending arrangement has become impossible;

b) the borrower damages the thing, uses it in a way contrary to the purpose for which it was intended or in breach of the contract, make it available to a third person for use without permission, or if there is a risk that the borrower will not return the thing intact;

c) the relationship between the parties has deteriorated due to the conduct of the borrower;

d) the lender must have the thing for reasons unknown at the time the contract was concluded.

TITLE XVIII

DEPOSIT ARRANGEMENTS

Chapter XLVII

General Provisions Relating to Deposit Contracts

Section 6:360

[Deposit contracts]

Under a deposit contract the depositary undertakes to safeguard the movable property to which the contract pertains, and to return it when the contract is terminated, and the depositor undertakes to pay the fee agreed upon.

Section 6:361

[Use of deposited things, entrusting them to others, collecting the proceeds, and handling]

(1) The depositary shall safeguard the deposited thing separate from his own assets and from other deposited things, and shall keep records of them accordingly.

(2) The depositary shall be required to manage the deposited thing if it is necessitated by the nature of the deposited thing. The regulations relating to engagements shall also apply to the management of deposited things.

(3) The depositary shall not use or exploit the deposited thing, or give it to another person's possession or for safekeeping, unless this is necessary in order to protect the depositor from suffering any losses. In the event of any infringement of this provision the depositary shall be liable for all damages that otherwise would not have happened.

(4) The depositary shall collect the proceeds of the deposited thing if, by its nature, it is economically viable. The depositary shall give account to the depositor in relation to the proceeds collected. The depositary shall be entitled to use the proceeds collected to cover his expenses, and shall give the rest to the depositor.

Section 6:362

[Refusal to accept the thing]

The depositary shall be entitled to refuse to accept a thing upon the occurrence of conditions under which the contract should be terminated in the case of fixed-term contracts.

Section 6:363

[Statutory lien]

In order to secure his due claims for fees and expenses, the depositary shall be entitled to statutory lien on the depositor's property that is in his possession as a consequence of the deposit.

Section 6:364

[Termination of deposit contracts]

(1) The depositor shall be entitled to terminate the contract at any time.

(2) If, by agreement of the parties, the depositary is required to release the thing to a third party specified in the contract upon the occurrence of conditions stipulated in the contract or upon the termination of the contract, the depositor may terminate the contract subject to the consent of the third party specified in the contract.

(3) The depositary shall be entitled to terminate a deposit contract of indeterminate duration by giving fifteen days' notice.

(4) The depositary shall be entitled to terminate a deposit contract of fixed duration if the thing is considered to be at risk, or if safeguarding the thing is not part of his profession and circumstances of which he was unaware at the time the contract was concluded have emerged to render further custody of the thing considerably difficult for him.

(5) If the deposit is terminated before expiry of the time that can be inferred from the contract, the depositor shall pay a commensurate proportion of the fee.

(6) The depositary shall return the thing at the place where it was to be held. If the depositor refuses to receive the thing, the regulations on negotiorum gestio shall be applied.

Section 6:365

[Gratuitous deposit]

(1) The provisions of this Chapter shall apply mutatis mutandis to deposit contracts where the depositor is not required to provide any compensation.

(2) The depositary shall be entitled to demand reimbursement for necessary expenses, even if the deposit is otherwise gratuitous.

(3) In connection with gratuitous deposit the depositary shall be held liable for loss incurred by the depositor resulting from the loss, destruction or damage to the thing according to the principles of non-contractual liability.

Chapter XLVIII

Collective and Exceptional Deposit Contracts

Section 6:366

[Collective deposit contracts]

(1) If the object of deposit is a fungible property and if according to the agreement the depositary is entitled to safeguard in the same place the fungible property of several different depositors together, without having to separate them according to depositors or to identify them individually, the depositors shall become the co-owners of such fungible properties of the same type and quality and, when the deposit is terminated, the depositary shall be required to return property of the same type and quality as the property deposited in the proportion due to the depositor according to his share of ownership.

(2) The consent of other co-owners is not required for releasing a quantity in proportion to the share of ownership.

(3) The depositary shall be entitled to place, even without the depositor's consent, the securities held in collective deposit under the care of secondary depositaries such as investment service providers or clearing houses authorized to provide safe custody services.

Section 6:367

[Exceptional deposit contracts]

If the item deposited is a fungible property and, according to the contract, the depositary is entitled to use and dispose over the deposited property, the depositary shall acquire ownership and shall be liable to return to the depositor property of the same type and quality, in the same quantity when the deposit contract is terminated.

Section 6:368

[Account-keeping obligation in connection with collective and exceptional deposit contracts]

If the depositary is required to open a safe custody account on the depositor's behalf for securities held under collective and exceptional deposit contracts, the provisions on the transfer or encumbrance of dematerialized securities shall apply mutatis mutandis to the transfer of such securities.

Chapter XLIX

Hotel Deposit Contracts

Section 6:369

[Hotel deposit contracts]

(1) The liability of hotels shall cover personal property put by guests in places in the hotel that are designated or usually used for this purpose, or in their rooms, and to property of guests handed over to an employee of the hotel whom he could believe to be authorized to receive his property. The liability of hotels shall be limited at fifty times the daily price of the hotel room. Any limitation to or exclusion of liability in excess thereof shall be null and void.

(2) The hotel's liability for securities, cash and other valuables shall exist if the hotel has taken possession of the property for safekeeping or if the hotel has refused to take possession of the thing for safekeeping. The hotel's liability for property placed in such manner shall be unlimited.

Section 6:370

[Hotel's lien]

The regulations governing lessors' liens shall apply mutatis mutandis to the lien rights of hotels when acting in the capacity of depositary.

Section 6:371

[Liability of institutions which are open to the public]

The regulations governing hotel liability shall apply to the liability of baths, cafés, restaurants, theaters, and other similar establishments which are open to the public, as well as cloakroom operators, with the following exceptions:

a) their liability shall apply only to the things that are usually taken to such establishments by their patrons or visitors;

b) if there is an appropriate place provided for patrons and visitors for the safekeeping of their property, the institution shall be liable only for damages to things deposited in such a place.

TITLE XIX

DISTRIBUTION CONTRACT AND LICENSE (FRANCHISE) AGREEMENT

Chapter L

Distribution Contracts

Section 6:372

[Distribution contract]

Under a distribution contract the supplier undertakes to sell specific movable property (hereinafter referred to as „product”) to the distributor, and the distributor undertakes to purchase the product from the supplier and to sell it in his own name and on his own behalf.

Section 6:373

[Protection of reputation]

- (1) The parties shall protect the reputation of the product.
- (2) The supplier shall inform the distributor of advertisements on the product, and shall - for a fee - make available to the distributor promotional material for marketing the product.

Section 6:374

[Instructions and checking]

- (1) The supplier shall have the right to give instructions as to the proper distribution of the product.
- (2) If the supplier gives unreasonable or unsuitable instructions, the distributor shall be obliged to warn him thereof. If the supplier insists on his instruction in spite of the warning, the distributor shall carry out the instruction; any damage resulting therefrom shall be the liability of the supplier. The distributor shall refuse to comply with such instructions if compliance would constitute an infringement of the law or any administrative decision, or it would jeopardize the safety or property of others.
- (3) The supplier shall be entitled to check fulfillment of the contract and his instructions.

Section 6:375

[Application mutatis mutandis in respect of services]

The provisions of this Chapter shall apply mutatis mutandis to the supply of services.

Chapter LI

License (Franchise) Agreements

Section 6:376

[License (franchise) agreements]

- (1) Under a license agreement the franchisor undertakes to grant rights of use, utilization and exploitation rights relating to assets protected by copyright or industrial property rights, including know-how, and the franchisee undertakes to produce and supply goods and/or services through the use, utilization or exploitation of such assets protected by copyright or industrial property rights, including know-how, and to pay the fee agreed upon.
- (2) In the process of supply the franchisee shall act in his own name and on his own behalf.

Section 6:377

[Copyright and industrial property rights, protection of know-how]

(1) The franchisor shall ensure that the franchisee has ongoing and uninterrupted access to the use, utilization and exploitation rights, as are required for running the franchise, during the full term of the contract.

(2) The franchisee shall take measures to protect the know-how placed at his disposal.

Section 6:378

[Supply obligation]

If the franchisee is obligated to obtain the goods to be sold or supplies of basic materials for the production of goods from the franchisor or from a person designated by the franchisor, and the franchisor fails to fulfill the order of the franchisee, the franchisee shall be entitled to obtain the goods or the basic materials from other sources.

Section 6:379

[Protection of reputation]

The parties shall undertake the obligation to protect the network established through the rights of use, utilization and exploitation rights granted under the contract relating to assets protected by copyright or industrial property rights, including know-how, as well as the reputation of the goods and services produced and/or sold.

Section 6:380

[Instructions and checking]

(1) The franchisor shall have the right to give instructions as regards the production and sale of goods and services, and the protection of the reputation of the network and the goods and services produced and/or sold.

(2) If the franchisor gives unreasonable or unsuitable instructions, the franchisee shall be obliged to warn him thereof. If the franchisor insists on his instruction in spite of the warning, the franchisee shall carry out the instruction; any damage resulting therefrom shall be the liability of the franchisor. The franchisee shall refuse to comply with such instructions if compliance would constitute an infringement of the law or any administrative decision, or it would jeopardize the safety or property of others.

(3) The franchisor shall be entitled to check fulfillment of the contract and his instructions.

Section 6:381

[Termination of the contract]

(1) Either party shall be entitled to terminate a contract concluded for an indefinite period by notice with effect to the last day of the calendar month. The notice period shall be one month during the first year of the contract, two months during the second year and three months during the third and subsequent years of the contract.

(2) Upon termination of the contract, the rights of use, utilization and exploitation granted to the franchisee relating to assets protected by copyright or industrial property rights, including know-how, shall cease.

TITLE XX

CREDIT AND ACCOUNT AGREEMENTS

Chapter LII

Credit Agreements

Section 6:382

[Credit agreements]

(1) Under a credit agreement the creditor undertakes to ensure the availability of a specific credit limit, and to conclude a loan agreement, contract of suretyship, guarantee contract or conduct other loan operations up to the said credit limit, and the debtor undertakes to pay the fee agreed upon.

(2) The creditor shall enter into a contract for loan operations when so requested by the debtor, if the conditions set out in the credit agreement are met. The debtor shall be entitled to call upon the creditor to conclude a contract during the period of availability fixed in the credit agreement.

(3) The debtor shall be entitled to terminate the credit agreement at any time.

(4) The creditor shall have the right to terminate the agreement if:

a) any material changes took place in the debtor's circumstances, and the debtor fails to provide adequate guarantees in spite of being requested to do so;

b) the debtor misled the creditor, and this had an impact on the conclusion of the contract and its contents; or

c) the debtor's conduct, if aimed at depleting funds, jeopardizes performance of the contract concluded on the basis of the credit agreement.

(5) The creditor shall be entitled to terminate the credit agreement without requesting the debtor to provide adequate guarantees, if it is evident that the debtor is unable to provide adequate guarantees.

(6) Termination of the credit agreement shall not entail the termination of contract concluded on the basis of the credit agreement.

Chapter LIII

Loan Agreements

Section 6:383

[Loan agreements]

Under a loan agreement the creditor undertakes to make available a specific sum of money, and the debtor undertakes to repay that sum to the creditor at a later date with interest.

Section 6:384

[Refusal to disburse a loan amount]

The creditor shall be entitled to refuse disbursement of the loan if, due to any material changes in the debtor's circumstances or in the value or enforceability of the collateral, performance of the contract can no longer be expected, and the debtor fails to provide adequate guarantees in spite of being requested to do so.

Section 6:385

[Failure to draw funds from the loan]

- (1) The debtor shall not be obligated to draw funds from the loan.
- (2) If the debtor does not draw funds from the loan, he shall reimburse the creditor for expenses incurred in connection with the conclusion of the agreement.

Section 6:386

[Credit availability]

- (1) If according to the contract funds from the loan may be drawn within a predetermined period of time following the time of conclusion of the agreement or if certain specific conditions are met, the creditor shall keep the loan amount available until said time period or until the conditions mentioned are met.
- (2) The debtor shall be liable to pay a fee to the creditor on the loan amount kept available, for the duration of keeping it available.

Section 6:387

[Termination of the loan agreement]

- (1) The creditor shall be entitled to terminate the loan agreement if:
 - a) any material changes took place in the debtor's circumstances, and the debtor fails to provide adequate guarantees in spite of being requested to do so;
 - b) it is impossible to use the loan for the purpose specified in the agreement, or the debtor uses the loan for a purpose other than the one stipulated in the agreement;
 - c) the debtor misled the creditor, and this had an impact on the conclusion of the agreement and its contents;
 - d) the debtor impedes any investigation relating to his solvency, and concerning collateral, security, or the realization of the purpose of the loan;
 - e) the debtor's conduct, if aimed at depleting funds, jeopardizes repayment of the loan;
 - f) the collateral provided for the loan has significantly depreciated in value or in enforceability, and the debtor has not supplemented it at the request of the creditor; or
 - g) the debtor delays the payment obligation arising out of the loan agreement, and fails to remedy such omission when so requested.
- (2) The creditor shall be entitled to terminate the loan agreement without requesting the debtor to provide adequate guarantees, if it is evident that the debtor is unable to provide adequate guarantees.

Section 6:388

[Complementary loan]

- The debtor shall not be required to pay interest and other charges if the parties have expressly provided so or if it follows from the purpose of the agreement or from the circumstances of the case. In this case the provisions on loan agreements shall apply subject to the exception that:
- a) the creditor shall be entitled to refuse disbursement of the loan due to any material changes in his own circumstances and may move to recover the loan amount already paid out;
 - b) the debtor shall not be liable to pay a fee for keeping the loan amount available.

Section 6:389

[Application of the provisions pertaining to loan agreements]

(1) The regulations governing loan agreements shall apply *mutatis mutandis* if the subject of the loan is not money but some other fungible property given to the debtor, upon which the debtor shall be liable to return to the creditor property of the same type and quality, in the same quantity at a later date defined in the agreement. In that case interest shall be construed as a fee calculated by the formula for calculating the interest based on the market value of the property at the time when transferred.

(2) The provisions on loan agreements shall apply *mutatis mutandis* in those cases where the service provided by one of the parties precedes the money to be provided by the other party, or if payment of the consideration precedes performance of the main subject matter.

Chapter LIV

Deposit Account Contracts

Section 6:390

[Deposit account contracts]

(1) Under a deposit account contract the deposit holder is entitled to deposit a specific amount of money to the bank, and the bank undertakes to accept the sum of money offered by the deposit holder and to repay the same amount at a later date with interest.

(2) In the case of fixed-term deposits the bank is required to repay the funds held on the account upon maturity or as instructed by the deposit holder.

(3) The deposit holder shall be entitled to request repayment of the funds held on the account before the expiry of the term specified in the contract. In the absence of the deposit holder's request, the bank shall not be entitled to repay the funds held on the account before the expiry of the term specified in the contract.

(4) The funds not collected upon maturity shall be converted into a deposit of indeterminate duration.

(5) In the case of deposits for an unfixed term the bank is required to promptly repay the funds held on the account as instructed by the deposit holder.

Chapter LV

Current Account Contracts

Section 6:391

[Current account contracts]

Under a current account contract the parties shall assume an obligation to record and settle their enforceable monetary claims arising from a specific relationship in a consolidated account.

Section 6:392

[Establishing the balance of current accounts]

- (1) The balance of a current account shall be established once a year.
- (2) The party managing the current account shall communicate the balance to the other party in writing, with an itemized list of transactions. The other party shall be entitled to contest the balance or the receivables and payables that serve as the basis for computing the balance, in writing, within a preclusive period of thirty days of receipt of the written communication.
- (3) The individual claims on the current account shall cease to exist and shall be substituted by the current account balance:
 - a) in the absence of an objection;
 - b) upon the parties' agreement regarding the items contested; or
 - c) if the court has ruled on the contest.

Section 6:393

[Legal effects related to current account balance]

- (1) After the balance of the current account has been established, the parties shall not be entitled to dispose over any of their claims on the current account, as their right of disposal applies to the current account balance only.
- (2) The period of limitation on claims held on current accounts shall be suspended until the balance is established. The balance shall lapse according to the general provisions.
- (3) Only the current account balance at the time of attachment may be subject to judicial enforcement. After the beginning of enforcement, orders for withdrawal from the current account shall be accepted only if the legal basis thereof originates from before the enforcement procedure.
- (4) The guarantee falling within the scope of the current account contract shall cover the balance of the account.

Chapter LVI

Payment Account Contracts

Section 6:394

[Payment account contracts]

Under a payment account contract the account keeper undertakes to open a current account for the account holder for handling his financial transactions (hereinafter referred to as „payment account”), and the account holder undertakes to pay the fee agreed upon.

Section 6:395

[Account keeper's obligations]

- (1) The account keeper shall accept the account holder's payment orders and direct debit orders if they clearly indicate the amount of the transaction and the name of the payee. The payment order may be refused if the account holder fails to make available sufficient funds for the execution of the transaction.

(2)⁶⁶ The account keeper shall be obligated to receive payment transactions to the account holder's credit or debit in the name of the account holder, and to handle them as deposits payable on demand or as deposits.

(3) The transactions carried out by the account keeper to the debit of the account holder's account shall reduce the payment account balance; payment collected on the account holder's behalf and payments otherwise credited to the account holder's account shall increase the payment account balance.

(4) The account keeper shall provide monthly statements to the account holder regarding any sums debited or credited to his account as well as the account balance. The legal effects related to the current account balance shall not apply to account statements.

Section 6:396

[Right of disposition over the payment account]

(1) The account holder and the persons the account holder has authorized and registered with the account keeper shall be authorized to dispose over the balance of the payment account. If the payment account is held by more than one person, the account holders shall be authorized to dispose over the payment account jointly.

(2) The account keeper shall be entitled to debit the payment account for the purpose of correction of errors in crediting and for the enforcement of any claim the account keeper may have from the account holder in connection with its services.

Section 6:397

[Statutory lien]

The account keeper shall be entitled to statutory lien on the account holder's funds held on the account in security of its claims arising from account management services. To this end, the account keeper shall be entitled to deduct from the balance available on the payment account its claims arising from account management services. The lien shall be considered established at the time the payment account contract is concluded, without the lien being registered in the collateral register.

Section 6:398

[Extended application of provisions on payment account contracts]

The provisions relating to payment account contracts shall apply to securities accounts and safe custody accounts for securities subject to the exception that in these cases ownership claims relating to securities shall be shown on the account.

Section 6:399

[Application of the provisions relating to current accounts]

Unless otherwise provided for by this Chapter, the regulations governing current account contracts shall apply to payment account contracts *mutatis mutandis*.

⁶⁶ Enters into force as under Paragraph b) of Subsection (10) of Section 188 of Act CCLII of 2013.

Chapter LVII

Payment Service Contracts

Section 6:400

[Payment service contracts]

Under a payment service contract the agent undertakes to pay a certain amount of money to the payee according to the payer's instructions, and the payer undertakes to pay the fee agreed upon.

Section 6:401

[Refusal of the execution of payment orders]

The agent shall be entitled to refuse to carry out the payment order until such time as the payer provides sufficient funds for carrying out the payment order.

Section 6:402

[Commission]

The agent shall be entitled to a commission when the funds are:

- a) delivered to the payee;
- b) credited to the payee's account; or
- c) made available to the payee's bank.

Section 6:403

[Termination]

The payer shall be entitled to terminate the contract until such time as the agent having commenced the execution of the payment transaction.

Section 6:404

[Application of the provisions relating to personal service contracts]

Unless otherwise provided for by this Chapter, the regulations governing personal service contracts shall apply to payment orders mutatis mutandis.

Chapter LVIII

Factoring contracts

Section 6:405

[Factoring contracts]

Under a factoring contract the factor undertakes to pay a certain amount of money, and the debtor undertakes to assign his claim from a third party to the factor; if the obligor fails to satisfy the assigned claim at the time when due, the debtor shall be liable to repay the funds received with interest, and the factor shall be liable to re-assign the claim.

Section 6:406

[Obligation of registration]

The factor shall be required to register the factoring assignment and the debtor's name in the collateral register. In the absence of registration the claim shall not pass to the factor in spite being assigned, and the factor shall have the same entitlements on the claim as the lien holder whose lien on the claim has not been registered in the collateral register.

Section 6:407

[Termination of contracts]

(1) The factor shall be entitled to terminate the contract if:

a) the debtor impedes any investigation relating to his solvency and to the legal status of the transferred claim;

b) the deterioration of the debtor's financial standing or his conduct, if aimed at depleting funds, jeopardizes fulfillment of his obligation of reimbursement;

c) the financial standing of the payer of the transferred claim has deteriorated to an extent where it jeopardizes satisfaction of the claim.

(2) If the contract is terminated the debtor shall reimburse the sum paid by the factor with interest, and the factor shall be liable to re-assign the claim to the debtor.

(3) Where more than one claim is transferred, the factor shall be entitled to terminate the contract with respect to such claims individually.

Section 6:408

[Application of the provisions pertaining to loan agreements]

Otherwise, the provisions pertaining to the refusal to disburse a loan, to failure to draw funds from the loan and to credit availability shall apply mutatis mutandis.

Chapter LIX

Financial Leasing Agreements

Section 6:409

[Financial leasing agreements]

Under a financial leasing agreement the lessor undertakes to make available for use, for a limited period of time a thing or a right he owns (hereinafter referred to as „leased asset”), and the lessee undertakes to accept the leased asset and to make lease payments if the lessee is given the right under the agreement to use the leased asset up to or surpassing its economic lifetime, or - if use is stipulated for a shorter period - to acquire the leased asset at the end of the term of the contract without any consideration or at a price considerably lower than the market value prevailing at the time of conclusion of the contract, or the total sum of lease payments reaches or exceeds the leased asset's market value prevailing at the time of conclusion of the contract.

Section 6:410

[Obligation of registration]

(1) If the leased asset is a real estate property, the lessor shall provide for having the lease and the name of the lessee registered in the real estate register at the time of registration of ownership. If at the time the lease agreement is concluded the thing is owned by the lessor, the registration must take place before the time of transfer of possession.

(2) If the leased asset is a movable property or a right, the lessor shall provide for having the lease and the name of the lessee registered in the collateral register. If ownership of the movable property or the right is recorded in a public register and if hypothecation of the thing is to be registered in the proper registry by law, the lessor shall provide for having the lease and the name of the lessee registered in the proper registry. In the absence of registration, where ownership is acquired from the lessee by a third party in good faith and for consideration:

a) the transferee shall acquire ownership of the movable property, or the right, by way of transfer; and

b) the lessee shall acquire the lien established by the lessee on the movable property or right, even if the lessee has no right of disposition.

Section 6:411

[Guarantee claims]

(1) The lessor shall guarantee that no third person has any right to the leased asset that can prevent or restrain the lessee's use of it. Concerning this guarantee, the principle of warranty of title shall apply with the exception that the lessee is entitled to terminate the contract instead of withdrawal.

(2) In connection with any defect in the leased asset the lessor shall be required to provide warranty if he took part in the selection of the leased asset or if waived his warranty rights arising from the contract for the acquisition of the leased asset without the lessee's consent. In that case, the regulations governing warranty shall apply with the exception that the lessee is entitled to terminate the contract instead of withdrawal and he shall not be entitled to demand replacement.

(3) Save where Subsection (2) applies, in respect of any defect in the leased asset:

a) any request for repair and replacement shall be demanded by the lessee from the party subject to warranty obligation acting as the agent of the lessor;

b) any claim for price reduction or for withdrawal shall be enforced by the lessor against the party subject to warranty obligation.

(4) The lessee shall inform the lessor if the party subject to warranty obligation refuses to provide repair or replacement, or if price reduction or withdrawal is allowed on account of the defect.

Section 6:412

[Proceeds, burdens, costs, risks. Use]

(1) The lessee shall, from the date of conclusion of the contract or - in respect of a thing - from the date of taking possession, collect the proceeds of the leased asset, and shall be liable for its encumbrances, costs and for the damages for which no indemnification can be demanded from anyone.

(2) The provisions on lease agreements shall apply to the use and transfer of leased assets *mutatis mutandis*.

Section 6:413

[Assignment of use and rights to third parties]

(1) The lessee shall be entitled to make available the leased asset for use to a third party subject to the lessor's consent.

(2) If the lessee has made available the leased asset for use to another person with the lessor's permission, the lessee shall be liable for the conduct of the user as if it were his own.

(3) If the lessee made available the leased asset for use to another person without the lessor's permission, the lessee shall be liable for damages that otherwise would not have occurred.

(4) If the lessee has the right to acquire ownership of or a right to the leased asset, he shall be entitled to transfer this right to a third party without the lessor's consent.

Section 6:414

[Lease payment]

(1) The lessee shall be required to make lease payments for predetermined periods in advance.

(2) No lease payments shall be made for the period when the leased asset cannot be used for reasons beyond the lessee's control.

Section 6:415

[Termination of contract]

(1) The lessor shall be entitled to terminate the contract:

a) if the lessee impedes any investigation relating to his solvency;

b) if the deterioration of the lessee's financial standing or his conduct, if aimed at depleting funds, jeopardizes fulfillment of his obligation;

c) if the lessee fails to terminate inappropriate or non-contractual use of the thing despite being asked to do so by the lessor;

d) in the event of the lessee's failure to enforce his warranty rights despite being asked to do so;

e) in the event of the lessee's failure to make lease payments, costs or related charges, provided that the lessor has issued a written demand for payment within a reasonable period of time and notified the lessee of the consequences, and the lessee has failed to remit payment within this period.

(2) If the lease agreement is terminated by the lessor, the lessor shall settle accounts with the lessee in accordance with the provisions on the enforcement of a pledge.

(3) The lessee shall be entitled to terminate the contract if the lessor fails to discharge his obligation to enforce the right of withdrawal under warranty despite being asked to do so.

TITLE XXI

GUARANTEE AGREEMENTS

Chapter LX

Contracts of Suretyship

Section 6:416

[Contracts of suretyship]

(1) Under a contract of suretyship the surety undertakes the obligation of performance to the creditor in the event of nonperformance by the principal debtor.

(2) Suretyship may be provided to guarantee one or more existing or future, conditional or unconditional pecuniary claims of a specific amount or the amount of which can be determined, or any other claims of monetary value.

(3) The contract shall be executed in writing.

Section 6:417

[Suretyship relations]

(1) The obligation of a surety shall be adjusted to the obligation for which he has promised to answer. The obligation of a surety shall not and cannot subsequently exceed the original obligation; however, it shall cover the consequences of the debtor's non-performance and shall include the collateral claims that fall due after the suretyship is undertaken.

(2) The surety shall be entitled to include his own and the debtor's counterclaims in the creditor's claims, and may effect - in addition to his own objections - the same objections that can be enforced by the debtor against the creditor. After the suretyship is undertaken, the debtor's waiver of the right of objection shall not apply to the surety.

(3) No claim can be enforced in court against the surety of a claim that cannot be enforced by judicial process.

(4)⁶⁷ Any respite of payment afforded in bankruptcy proceedings opened against the debtor shall not affect the surety's obligation. Any composition agreement reached in liquidation or bankruptcy proceedings opened against the debtor shall not affect the surety's obligation if the creditor informed the surety of the terms of the composition before it was concluded. After the information the surety shall be entitled to satisfy the debtor's liability; following satisfaction the surety shall replace the creditor in the liquidation or bankruptcy proceedings. In the event of failure to provide the said information the obligation of the surety shall be reduced to the level set out in the composition.

(5) The surety shall be liable for court costs and for the costs of enforcement only if he has been invited by the creditor to perform prior to taking legal action without result.

Section 6:418

[Creditor's obligation to provide information]

(1) The creditor shall inform the surety without delay in the event of the debtor's default of performance, of any changes in the date set for performance of the guaranteed liability and of any changes in the debtor's circumstances which may negatively affect the surety's claim for compensation against the debtor. The information shall include the extent of the guaranteed liability existing at the time the information is provided.

(2) If suretyship covers all obligations of the debtor arising from one or more specific relationships or all liabilities of the debtor toward the creditor, the creditor shall - furthermore - inform the surety without delay if the extent of the guaranteed liability has increased by twenty per cent since the time the suretyship was undertaken or since the last time when information was provided.

⁶⁷ Enters into force as under Subsection (6) of Section 188 of Act CCLII of 2013.

Section 6:419

[Fallback option]

The surety shall be entitled to refuse performance as long as the creditor is able to verify that he had attempted to recover the debt from the principle debtor but that did not lead to a result within a reasonable timeframe. This provision shall not prevent the bringing of joint action against the debtor and the sureties.

Section 6:420

[First-loss guarantee]

The surety shall not have fallback option if:

- a) recovering the debt from the debtor is considerably impeded due to changes in the debtor's address, habitual residence, place of business or registered office;
- b) the creditor filed for enforcement on the debtor's assets in an attempt to recover his other claims, and the enforcement procedure has been unsuccessful; or
- c) the debtor was granted a respite of payment in bankruptcy proceedings, or if undergoing liquidation.

Section 6:421

[Deficiency liability]

If suretyship expressly covers that part of the debt that cannot be recovered from the debtor, the creditor shall be entitled to demand from the surety payment for the guaranteed claim, if filed for enforcement on the debtor's assets and the enforcement procedure has been unsuccessful.

Section 6:422

[Surety's performance]

- (1) The surety shall be required to perform upon being requested to do so by the creditor.
- (2) The surety shall inform the debtor without delay of receipt of the request for payment, and shall ask for information as to the extent of the guaranteed debt, and also on the objections and claims the debtor may have in respect of the creditor.
- (3) The surety shall without delay:
 - a) perform to the creditor, and shall forthwith notify the debtor of performance without delay;or
 - b) refuse performance, and shall forthwith notify the debtor and the creditor of its refusal to perform, indicating the reasons.
- (4) After the surety's performance, the creditor shall forthwith deliver to the surety all documents and shall provide all information that may be necessary for the surety to recover his claim for the debtor.

Section 6:423

[Secondary surety's performance]

If the creditor's claim is satisfied by a person who guaranteed performance of the surety's obligations, that person shall also be entitled to enforce, up to the amount of the claim, all those rights the surety would have had in the event of satisfying the creditor's claim.

Section 6:424

[Suretyship for a fixed duration]

If first-loss guarantee is granted for a specific period, following expiry of the fixed term the surety shall be relieved of all obligations.

Section 6:425

[Termination of open-term suretyship]

If an open-term suretyship covers all existing and future obligations of the debtor toward the creditor, the surety shall be entitled to terminate the contract of suretyship by giving at least three months' notice.

Section 6:426⁶⁸

[Surety's right of exoneration]

If the creditor waives any right securing the claim, or if the claim has become otherwise irrecoverable for reasons attributable to the creditor or if recovery becomes increasingly burdensome, the surety shall be exonerated inasmuch as he could have received satisfaction based on his claim for compensation against the debtor.

Section 6:427

[Multiple sureties]

(1) If suretyship is promised by more than one person for the same liability, the sureties shall be subject to joint and several liability toward the creditor.

(2) If suretyship is concurrently promised by more than one person independently, in their relationship the sureties shall be subject to liability in the sequence they have undertaken to provide suretyship. The surety who had the fallback option against the creditor, shall also have the same option in respect of the surety who satisfied the creditor's claim.

(3) If suretyship is jointly promised by more than one person, in their relationship the sureties shall be subject to liability in proportion to their exposure.

Section 6:428

[Lien or suretyship pledged for the same obligation]

If the same liability is guaranteed by suretyship and also by lien established by a person other than the debtor, the liability of the surety and the lienor, and their relationship shall be governed by the provisions on multiple sureties.

Section 6:429

[Statutory suretyship]

The provisions on contracts of suretyship shall apply to statutory suretyship mutatis mutandis.

⁶⁸ Enters into force as under Subsection (7) of Section 188 of Act CCLII of 2013.

Section 6:430

[Consumer suretyship]

(1) In the case of consumer suretyship, the creditor shall inform the consumer before the contract of suretyship is concluded:

- a)* of the rights and obligations of the surety; and
- b)* about specific risks inherent to the debtor's circumstances or to the nature of the liability, of which the creditor is aware.

(2) In the event if the creditor fails to comply with the requirements set out in Subsection (1), the surety shall be entitled to withdraw from the contract without a time limit.

(3) If the consumer guarantee covers all liabilities of the debtor toward the creditor, or all obligations of the debtor arising from specific relationship, the guarantee shall be considered valid if the highest amount of debt the consumer guarantees is specified in the contract.

(4)⁶⁹

(5) The provisions on consumer guarantees shall not apply if the surety is an executive officer or a member with majority control of the debtor legal person.

Chapter LXI

Guarantee Contracts

Section 6:431

[Guarantee contracts]

(1) The guarantee contract, and the statement of guarantee means a guarantor's commitment under which payment is to be made to the creditor subject to the conditions laid down in the statement.

(2) The contract and the statement of guarantee shall be executed in writing.

Section 6:432

[Absence of relationship]

(1) The obligation of the guarantor set out in the statement of guarantee is independent of the obligation for which he has promised to answer; the guarantor may not enforce the same objections that can be made by the debtor against the creditor.

(2) Any reference of a general character made in the statement of guarantee to the guaranteed obligation shall not affect the independence of the guarantor's obligation of the guaranteed obligation.

Section 6:433

[Personality of drawing rights]

The creditor may not transfer the right of enforcement of the guarantee without the guarantor's consent, however, he shall be entitled to designate a person to whom payment is to be made by the guarantor.

⁶⁹ Shall not enter into force as under Subsection (11) of Section 188 of Act CCLII of 2013.

Section 6:434

[Change in the person of the creditor]

The right to execute the guarantee shall pass to the creditor's successor.

Section 6:435

[Performance of the guarantor]

(1) The guarantor shall be liable to make payment under the guarantee if the creditor requested payment in writing, strictly abiding by the requirements specified in the statement of guarantee.

(2) The guarantor shall inform the debtor without delay of receipt of the request for payment.

(3) The guarantor shall have the right to effect all objections to which he is entitled in his own right against the creditor.

(4) The guarantor shall without delay:

a) perform to the creditor, and shall notify the debtor of performance; or

b) refuse performance, and shall notify the debtor and the creditor of its refusal to perform, indicating the reasons.

Section 6:436

[Manifestly fraudulent or bona fide request for payment]

(1) If, based on the information at the guarantor's disposal, the creditor exercises his drawing right in a manner which manifestly fraudulent or in bad faith, the guarantor shall not be obligated to make payment, and shall have the right to recover payments already made.

(2) Manifestly fraudulent or bona fide request shall, in particular, mean when:

a) any of the documents submitted to the guarantor is forged;

b) the debtor has already performed the obligation for which the guarantor promised to answer, or the creditor is not entitled to the sum requested for other reasons;

c) the creditor's intentional behavior prevented performance of the obligation for which the guarantor has promised to answer; or

d) the obligation for which the guarantor promised to answer has been declared annulled by court decision, unless the guarantee covers such instance as well.

Section 6:437

[Termination of open-term guarantee]

The guarantor shall be entitled to terminate an open-term guarantee contract after three years by giving at least three months' notice.

Section 6:438

[Consumer guarantee]

If the guarantor is a consumer, the statement of guarantee shall function as a first-loss guarantee.

TITLE XXII

INSURANCE CONTRACTS

Chapter LXII

General Provisions on Insurance Contracts

Section 6:439

[Insurance contract]

(1) Under an insurance contract the insurer undertakes to provide coverage for the risk specified in the contract, and to provide settlement or benefits for loss arising upon the occurrence of a specific future event after the starting date of risk coverage, and the insured person undertakes to pay an insurance premium agreed upon.

(2) The insurance company's service covers the payment for the insured person's loss in the amount and in the manner defined in the contract and other policy benefits (hereinafter referred to as „indemnity insurance”) or the payment of a sum specified in the contract (hereinafter referred to as „fixed-sum policies”).

Section 6:440

[Insurable interest]

An insurance contract may be concluded by any person who has a vested interest in avoiding the occurrence of an insured event under some form of property or personal relationship; or who has a vested interest in the occurrence of an insured event in respect of life insurance policies which comprises assurance on survival to a stipulated age only, birth assurance or marriage assurance, or those who concludes the contract on behalf of an interested person. Any indemnity insurance and group fixed-sum policy concluded in contradiction to this provision shall be null and void.

Section 6:441

[Co-insurance]

(1) In the event where the insurance risk is covered - in a predetermined percentage - jointly by more than one insurance company, and the insurance services are performed collectively, the contract to that effect shall indicate the name of all insurance companies participating in the co-insurance, including their share in risk coverage. In connection with co-insurance, the service obligations of insurance companies shall be limited by their commitment in the sharing of risks.

(2) A co-insurance contract that fails to specify the share of participating insurance companies in risk coverage shall be null and void.

(3) The insurance companies shall be represented in respect of the contracting party by the leading insurer. If the leading insurer has not been named in the contract, the contracting party shall have the option to lawfully perform and to make legal statements - at his discretion - to either of the insurance companies.

Section 6:442

[Group insurance]

(1) Group insurance means where insured persons are identified according to their affiliation to a natural group, or under the relationship between the insured persons and the contracting party,

and the insurance company's risk coverage and the related terms are custom-tailored to the group policyholder. If the insured persons are defined in the contract solely on the basis of their belonging to a specific group, the persons of verified membership in that group at the time of occurrence of the insured event shall be considered insured. Family members of any member of such group may also be covered by the policy.

(2) The insurance company shall inform the contracting party; the contracting party shall be required to notify the insured persons of the statements he has received and of any changes in the policy.

(3) The contract may contain a clause to limit or exclude the insured person from entering the contract.

(4) If the contract so provides, termination of the relationship between the insured person and the contracting party shall not affect the insurance cover.

Section 6:443

[Contracting]

(1) If the contract is not executed in writing, the insurance company shall make out a document so as to verify insurance cover.

(2) If the document verifying insurance cover differs from the contracting party's offer and if this difference is not contested by the contracting party without delay upon receipt of the document, the contract shall take effect in accordance with the contents of that document. This provision applies to significant discrepancies if the insurance company expressly points out such discrepancies to the contracting party in writing at the time the document verifying insurance cover is delivered. In the absence of a warning notice, the contract shall be executed in accordance with the contents of the offer.

(3) The offeror shall be bound by the offer for a period of fifteen days from the time when it was made, or for sixty days if a health risks assessment is required for the evaluation of the offer.

Section 6:444

[Insurance company's implicit conduct in a consumer contract]

(1) If the contracting party is a consumer, the contract shall be executed also if the insurance company does not respond to the offer within fifteen days of the time of receipt thereof, or sixty days if a health risk assessment is required for the evaluation of the offer, provided that the offer was made on the insurance company's own standard offer sheet for the type of policy in question, upon receipt of the relevant statutory information, containing the tariffs applicable.

(2) In the case provided for in Subsection (1), the contract shall be executed - under the conditions contained in the offer - with retroactive effect to the date on which the offer is conveyed to the insurance company on the day following the expiry of the risk assessment period.

(3) If an insured event occurs during the risk assessment period, the insurance company shall be entitled to refuse the offer only if the offer sheet contains an express warning to that effect, and it is instantly clear from the nature of the insurance cover requested or from other circumstances of risk coverage that the individual risk assessment is necessary for accepting the offer.

(4) If a contract that is concluded without the explicit statement of the insurer deviates in material circumstances from the insurance company's standard contract terms, the insurance company shall be entitled to make a proposal within fifteen days from the date of conclusion of

the contract to have the contract amended in accordance with the standard contract terms. If the contracting party does not accept the proposal or does not respond to it within fifteen days, the insurance company shall be entitled to terminate the contract in writing with thirty days' notice within fifteen days of receiving the refusal or the proposal for amendment.

Section 6:445

[Starting date of risk coverage]

(1) The coverage of risk by the insurance company shall commence at the time fixed by the parties in the contract or, failing this, at the time the contract is concluded.

(2) The parties may agree in writing in that the insurance company is to cover the insurance risk from such point in time preceding the date of conclusion of the contract (hereinafter referred to as „preliminary coverage”).

(3) Preliminary coverage shall remain in effect until such time as the conclusion of the contract or refusal of the offer, not exceeding ninety days.

(4) If the contract is concluded, the premium defined therein shall also apply to the period of preliminary coverage. If the contract is not concluded, the contracting party shall be liable to pay premium for the period of preliminary coverage calculated by the predetermined methods prescribed by the insurance company intended to cover underwriting liabilities.

Section 6:446

[Significant increase in the level of insurance risk]

(1) If the insurance company becomes aware of any material circumstance regarding a contract, or any changes thereof, only after the contract has been concluded, and these circumstances bring about a considerable increase in the insurance risk, the insurance company shall be entitled to make a written proposal within fifteen days after gaining knowledge thereof to amend the contract or may terminate the contract in writing with thirty days' notice.

(2) If the contracting party does not accept the proposal for amendment or fails to respond to it within fifteen days from the time of receipt thereof, the contract shall be terminated on the thirtieth day following the day of communicating the proposal for the amendment, if the insurance company warned the contracting party of this consequence when the proposal for amendment was made.

(3) If the contract covers more than one asset or person concurrently, and the considerable increase in insurance risk applies to some of them only, the insurance company shall not be able to exercise its rights under Subsections (1) and (2) with respect to the remaining assets or persons.

Section 6:447

[Premium payment obligation]

(1) The first insurance premium payment shall be due at a time agreed upon by the parties or, failing this, at the time the contract is concluded, and all subsequent premium payments shall be due on the first day of the period to which they pertain. A single premium shall be paid at the time the contract is concluded.

(2) The period of insurance cover shall be one year.

Section 6:448

[Premium payment obligation when the contract is terminated]

(1) If an insurance event occurs, and the contract is terminated, the insurance company shall be entitled to demand payment of the premium for the entire period of insurance cover.

(2) In other cases of contract termination, insurance companies shall be entitled to claim payment of the premium until such day when risk coverage ends. If there is an overpayment in periodic premium, the insurance company shall refund the surplus.

Section 6:449

[Consequences of non-payment of premium]

(1) In the event of non-payment of the premium as due, the insurance company shall dispatch within thirty days from the due date a written request for payment to the party in default - indicating the potential legal consequences - with an additional thirty-day deadline from the date when the warning was dispatched. In the event of non-compliance within the additional period, the contract shall be terminated with retroactive effect to the original due date, except if the insurance company forthwith moves to enforce its claim by judicial process.

(2) If the contract is terminated as under Subsection (1) for non-payment of regular premiums, the contracting party may request the insurance company within one hundred and twenty days from the time of termination to reinstate the risk coverage. The insurance company may reinstate the insurance cover under the terms and conditions of the terminated contract, if the overdue premium is paid.

Section 6:450

[Contracting party's obligation to provide information]

If a contract is not concluded by the insured person, the contracting party shall be required to notify the insured persons of the statements he has received and of any changes in the policy until such time as the occurrence of an insurance event or the entry of the insured person.

Section 6:451

[Entering the contract]

(1) If a contract was not concluded by the insured person, the insured person shall be entitled to enter into the contract with a written statement addressed to the insurance company. The insurance company's consent is not required for entering into the contract. Upon entering into the contract the rights and obligations conferred upon the contracting party shall pass to the insured person.

(2) If the insured person enters into the contract, the insured person and the contracting party shall be subject to joint and several liability for premium payments due for the current insurance period. The insured person entering into the contract shall be liable to cover the contracting party's expenses arising from the contract, including premium payments.

Section 6:452

[Obligation of disclosure and notification of changes]

(1) At the time of conclusion of the contract, the contracting party shall disclose to the insurance company all circumstances of which he is or should be aware and which are important in terms of providing the insurance coverage. The contracting party shall satisfy his disclosure

obligation by truthfully filling out the questionnaire furnished by the insurance company. Leaving the questions unanswered shall not in itself constitute a violation of the disclosure obligation.

(2) The contracting party shall be liable to notify the insurance company in writing of any changes in the material conditions.

(3) In the event of any breach of the obligation of disclosure and notification of changes, the obligation of the insurance company shall not take effect, unless the contracting party is able to prove that the insurance company was aware of the concealed or undisclosed circumstance when the contract was concluded or that such circumstance had no influence on the occurrence of the insurance event.

(4) If the contract covers more than one asset or more than one person concurrently, and the breach of the obligation of disclosure and notification of changes pertains to some of them, the insurance company shall not be able to allege the breach of the obligation of disclosure and notification of changes with respect to the remaining assets or persons.

(5) The obligation of disclosure and notification of changes applies to the contracting party and the insured person both. Neither of them shall be entitled to refer to any circumstance that either one had neglected to disclose or report to the insurance company though he must have known about it and should have disclosed or reported it.

Section 6:453

[Obligation of reporting the occurrence of an insured event]

The insurance company's obligation shall not take effect if the contracting party or the insured person fails to report to the insurance company the occurrence of an insured event within the time limit specified in the contract, fails to provide the information necessary, or fails to facilitate verification of the information provided, and, as a consequence, circumstances which are considered material from the point of view of the obligation of the insurance company become undetectable.

Section 6:454

[Nullification of contracts; lapse of interest]

(1) If the insurance event occurs, its occurrence becomes impossible, or the insurable interest ceases before the insurance coverage becomes effective, the contract or the relevant part of it shall be terminated.

(2) If occurrence of an insurance event becomes impossible or the insurable interest ceases during the period of risk coverage, the contract or the relevant part of it shall be terminated.

(3) The legal effects attached to cases of lapse of interest in the insurance shall not apply, if the lapse of interest results solely from the transfer of ownership of the insured property, and the property in question was held by the new owner previously under a different title. In that case, insurance cover shall pass together with ownership, and the former and the new owner shall be jointly and severally liable for premium payments due at the time of transfer of ownership. The contract may be terminated by either of the parties within thirty days after gaining knowledge of the transfer of ownership, by giving thirty days' notice.

Section 6:455

[Unilaterally cogent rules of retail insurance contracts]

If the contracting party is a consumer, the contract shall be allowed to derogate from the provisions of this Title only to the benefit of the contracting party, the insured person and the beneficiary, where such provision pertains:

- a) to the insurance company's implicit conduct in a consumer contract;
- b) to any considerable increase in insurance risk;
- c) to the consequences for non-payment of premiums;
- d) maintaining the amount of insurance cover;
- e) to the obligation to prevent and mitigate damages;
- f) to the obligation of disclosure and notification of changes and the obligation of reporting the occurrence of an insured event;
- g) to any composition between the insured person and the injured party;
- h) to premium payment obligation when the contract is terminated;
- i) to the insurance company's exemption from settlement obligation;
- j) to claims for compensation.

Section 6:456

[Unilaterally cogent rules of retail fixed-sum insurance policies and health insurance policies]

If the contracting party is a consumer, the contract shall be allowed to derogate from the exclusion of derogation only to the benefit of the contracting party, the insured person and the beneficiary with respect to fixed-sum and health insurance policies.

Section 6:457

[Extended application of provisions on insurance contracts]

The provisions of this Title shall also apply to insurance relationships on the basis of association membership.

Chapter LXIII

Indemnity Insurance Contracts

1. General provisions on indemnity insurance contracts

Section 6:458

[Prohibition of overinsurance]

(1) The coverage shall not exceed the value of the insured property. Any agreement for coverage higher than the value of the insured interest shall be null and void, and the premium shall be reduced accordingly. This provision notwithstanding, an insurance policy can include provisions for the estimated future value of a property, and/or for the value of restoration or replacement.

(2) Upon the occurrence of an insured event, the highest amount of settlement the insurance company is liable to pay represents the sum insured.

Section 6:459

[Concurrent insurance]

(1) If the same interest is insured by more than one insurance company independently, the insured person shall have the right to submit his claim to one or more of such insurance companies.

(2) The insurance company to which a claim is submitted shall be liable to make a settlement payment under the terms and conditions fixed in the document verifying insurance cover and up to the sum insured as specified therein, while reserving the right to lodge a claim for compensation relating to the other insurance companies.

(3) Under the claim referred to in Subsection (2) for compensation, the insurance companies shall cover the claims paid jointly subject to the terms and conditions and in proportion to the amounts of coverage according to which the individual insurance companies would be liable to the insured person.

Section 6:460

[Underinsurance]

If the amount of coverage is lower than the value of the insured interest, the insurance company shall be liable to cover the loss in such a manner that the amount of insurance is proportionate to the value of the property.

Section 6:461

[Maintaining the amount of insurance cover]

(1) The amount of coverage for a given period of insurance cover shall be reduced by the amount paid for claims for insured events occurred during that same period, unless the contracting party supplements the premium accordingly.

(2) The insurance company shall be entitled to apply the sanction referred to in Subsection (1) if the contracting party has been advised thereof in writing not later than at the time of settlement, and notified the fee for maintaining the amount of insurance cover.

(3) If the contracting party did not exercise the right of maintaining the amount of insurance cover, the contract shall remain in effect with the amount of coverage reduced by the amount paid for claims for the ongoing period of insurance.

Section 6:462

[Insurance settlement]

If an insurance event occurs, the insurance company shall be liable to settle within a time limit defined in due consideration of the preparation time necessary for claim settlement.

Section 6:463

[Obligation to prevent and mitigate damages]

(1) The contracting party and the insured person shall take reasonable precautions in order to prevent any loss or damage. The said requirement of taking reasonable precautions shall apply also if the obligation of the contracting party and the insured person to prevent damage is provided for in the contract, including the means and processes and the qualification requirements.

(2) The contracting party and the insured person shall mitigate the damage based on the insurance company's specifications and according to its instructions given at the time when the

damage or loss occurred, or failing this, they shall proceed under the principle of reasonable conduct.

(3) The justified cost of mitigating damages shall be borne by the insurance company within the limits of the sum insured even if mitigation of damages has been unsuccessful.

(4) In respect of underinsurance the insurance company shall reimburse the cost of mitigating damages in such a manner that the amount of coverage is proportionate to the value of the property.

Section 6:464

[Exemption from settlement obligation]

(1) The insurance company shall be exempt from its payment obligation if it is able to prove that damages have been caused unlawfully, either willfully or by gross negligence, by:

- a) the insured person or the contracting party;
- b) any family member living in their household, any managing partner or any employee, member or agent working in a position specified in the standard contract terms; or
- c) any executive officer of the insured legal person specified in the standard contract terms, or any member, employee or agent of such insured legal person authorized to manage the insured property.

(2) The provision referred to in Subsection (1) shall also apply to any breach of the obligation to prevent and mitigate damages.

Section 6:465

[Obligation of preservation]

(1) Following the occurrence of an insurance event, the insured person shall be entitled to implement any changes regarding the condition of the insured property within a time limit stipulated in the contract only to the extent that is necessary for mitigating damages.

(2) The insurance company's settlement obligation shall not take effect if, as a consequence of any change greater than that which is permitted, it becomes impossible to clarify the basic circumstances from the point of view of assessing the payment obligation of the insurance company.

Section 6:466

[Termination by notice]

(1) The parties shall be entitled to terminate a contract of indeterminate duration in writing, to take effect at the end of the period of insurance cover by giving thirty days' notice.

(2) The right to terminate may be excluded for a maximum period of three years. Any exclusion of the right to terminate for a period in excess of three years shall be null and void in respect of the part exceeding the three year period.

(3) If a contract covers a period of over three years and the parties do not stipulate that the contract could be terminated before the specified period lapses, either of the parties shall be entitled to terminate the contract as of the fourth year.

(4) If the contract is terminated by the contracting party, the insurance company shall be entitled to demand repayment of any premium discounts granted based on a commitment for an extended contract term (term discount).

Section 6:467

[Partial payment of premium]

(1) If only a part of the due premium is paid, and the insurance company's request - made in accordance with the provisions on non-payment of premium - to the contracting party for payment of the sum owed proved unsuccessful, the contract shall remain in force with the same amount of coverage for a term to which the premium paid corresponds.

(2) If a contract is terminated for non-payment of the premium, the insurance company shall be entitled to demand repayment of the time-proportionate part of the term discount.

Section 6:468

[Claim for compensation]

(1) The insurance company shall be entitled to lay claim for compensation against the person responsible for the damage up to the amount of settlement it has paid, unless this person is a family member of the insured person living in the same household. The guarantees of the terminated claim shall remain in effect, and shall be transferred to the claim.

(2) If the insurance company did not provide settlement for the entire claim and brought action against the person responsible for the damage, the insurance company shall inform the insured person and shall also move to enforce the claims of the insured at his request. The insurance company shall be entitled to enforce the claims of the insured person contingent upon an advance on expenses. From the sum recovered the insured person's claim shall be satisfied first.

Section 6:469

[Recovery of insured property]

If the insured property is recovered, the insured person shall be entitled to lay claim to it; in that case, however, the amount received in settlement shall be repaid.

2. Liability insurance policies

Section 6:470

[Liability insurance policy]

(1)⁷⁰ The insured party shall be entitled, under a liability insurance policy, to request the insurance company to exempt him, in the manner and up to the limit specified in the policy, from paying for damages, or paying restitution, for which he is legally liable.

(2) The policy covers procedural costs, if incurred under the insurance company's guidance or upon its prior consent. The insurance company shall be liable to advance the expenses when so requested by the insured person.

(3) The insurance company shall be liable to cover the legal expenses, including interests, of the insured person if he is responsible for the damage, even if they exceed the amount of coverage together with the settlement payment.

Section 6:471

⁷⁰ Enters into force as under Subsection (8) of Section 188 of Act CCLII of 2013.

[Notification of loss]

The insured person shall - within a time limit stipulated in the contract - notify the insurance company in writing, under liability for any breach of the obligation of reporting, if a claim has been filed with respect to his activity specified in the contract, or if he becomes aware of any circumstance that is likely to give rise to such a claim. A time limit of at least thirty days shall be provided for the notification of an insured event.

Section 6:472

[Insurance settlement]

(1) The insurance company shall pay the amount of settlement to the injured party. The insured person shall only be entitled to request the insurance company to pay him if he settled the injured party's claim.

(2) If the insured person disputes his liability for claims lodged against him, or the amount of his payment obligation on grounds which are manifestly unfounded, the insurance company shall pay the amount of settlement to the injured party. The additional costs arising out of said objection on unfounded grounds shall be borne by the insured person; if they were covered by the insurance company, the insured person shall be liable to repay such costs to the insurance company.

Section 6:473

[Enforcement of the injured party's claim]

(1) Unless otherwise provided for by law, the injured party shall not be entitled to lodge his claim directly to the insurance company.

(2) This rule shall not preclude the injured party's right to bring action against the insurance company asking the court to determine whether the insured person's liability insurance coverage applied to the injured party at the time of the occurrence of the damage.

Section 6:474

[Acknowledgment by the insured person, effect of performance and composition in respect of the insurance company]

(1) The insured person's acknowledgement and settlement of the injured party's claim, and any related composition shall be considered effective with respect to the insurance company only if the insurance company has granted prior consent or acknowledged it after the fact.

(2) The insurance company may not allege that the insured person's acknowledgement and settlement of the injured party's claim, and any related composition has no legal force in respect of the insurance company, if the claim is manifestly well founded.

(3) If the court has ruled against the insured person, it shall apply with respect to the insurance company if it has participated in the lawsuit, provided for the insured person's legal representation, or he has waived the above.

Chapter LXIV

Fixed-sum Policies

1. General provisions on fixed-sum policies

Section 6:475

[Insurable interest in connection with fixed-sum policies]

In connection with fixed-sum policies, the written consent of the insured person shall be required for concluding or amending the contract if he himself does not conclude it. If an insurance contract is concluded without the approval of the insured person, the section in which the beneficiary is named shall be null and void. In such a case, the insured person or his heir shall be construed as the beneficiary; he shall, however, reimburse the expenses of the contracting party, including premium payments and the costs of contracting, with the exception of group insurance.

Section 6:476

[Concurrent insurance]

The parties may obtain several policies for the same insurable interest and for the same peril, and may accumulate insurance services.

2. Life assurance policies

Section 6:477

[Life insurance]

Life insurance means a type of policy where the insurance company promises to pay a specific sum of money fixed in the contract, or annuity for life or for a specific period of time, upon the insured natural person's death or attainment of a certain age, or at another predetermined time or occurrence of a specific event. Life insurance are, in particular:

- a)* term life insurance, that provides no benefits upon expiry and that has no cash surrender value; or
- b)* ordinary life insurance other than term life insurance, including unit-linked life assurance policies where investment risk is to be borne according to the contract by the contracting party himself.

Section 6:478

[Beneficiaries]

(1) Beneficiary means:

- a)* a person named in the contract;
- b)* a holder of a bearer policy;
- c)* in the absence of such persons or if designation of the beneficiary had not been valid at the time the insured event occurred, the insured person or his heir.

(2) A contracting party shall be entitled to designate the beneficiary in a written statement addressed and delivered to the insurance company, and shall be entitled to withdraw such designation the same way any time before the time of occurrence of the insured event, or may supplant the designated beneficiary with another person. If the contracting party is not the insured person, the written consent of the insured person shall be required for all those actions. In respect

of a bearer policy, the subsequent designation of a beneficiary shall enter into effect if the policy is destroyed and a new policy is issued in its stead.

(3) If the contracting party undertakes in a written statement addressed to the insured person or the beneficiary to keep the designation of the beneficiary in effect without any interruption, the designation of the beneficiary may not be withdrawn or altered without the consent of the person to whom the commitment was made. The insurance company shall be informed of the contracting party's statement.

(4) Designation of a beneficiary shall become inoperative if the beneficiary dies or dissolves without succession before the occurrence of the insurance event.

Section 6:479

[Special provisions relating to the conclusion of contracts]

(1) If the insured person is a minor and the contract is not concluded by a parent having legal custody, the guardian authority's approval shall be required for the validity of the contract. The consent of the guardian authority is required for the contract if the insured person legal capacity has been partially limited in respect of making legal statements relating to property, or if the insured person is an incompetent adult.

(2) The insured person shall be entitled to revoke his consent for conclusion of a contract at any time in writing. Group life assurance policies may provide otherwise. If consent is revoked, the contract shall be terminated at the end of the insurance period, unless the insured person enters into the contract.

Section 6:480

[Waiting period]

The parties may install a clause in the contract stipulating that the insurance company shall begin to cover the risks of certain perils from a certain point in time following the time of conclusion of the contract, or shall be entitled to reduce the amount of coverage if the insured event occurs within the stipulated waiting period. The waiting period shall not exceed six months; any time in excess of the stipulated waiting period shall be null and void.

Section 6:481

[Consequences of non-payment of premium]

(1) The insurance company shall be entitled to bring action to enforce its claim for premium payments for the entire insurance period in the first year. The insurance company shall only be entitled to exercise this right after the first year if the contracting party makes any payment in that year, or if they agreed on deferred payments.

(2) In the event of non-payment of premium, an ordinary life insurance policy other than term life insurance shall remain in effect with the premium reduced accordingly (hereinafter referred to as „premium-free reduction”). The contracting party shall have the option to terminate the contract by notice instead.

(3) The contract may not be rendered premium-free if the surrender value has not been calculated at the time of premium-free reduction. In this case the contract shall be terminated in the absence of a settlement value.

Section 6:482

[Consequences of any breach of the obligation of disclosure and notification of changes]

(1) The insurance company, if it gains knowledge after the time of conclusion of the contract of any material circumstance that existed at the time the contract was concluded, shall be entitled to exercise the rights arising therefrom only during the first five years of the life of the contract.

(2) The insurance company's obligation shall take effect notwithstanding an infringement of the disclosure obligation, if the insurance event occurs more than five years after the conclusion of the contract.

(3) The provisions set out in Subsections (1) and (2) shall apply mutatis mutandis to the legal consequences on the infringement of the disclosure obligation relating to changes in the material circumstances provided for in the contract. The five-year period available for the insurance company to exercise its related rights shall commence on the day following the disclosure deadline.

Section 6:483

[Termination by notice]

(1) The contracting party shall have the right to terminate the life assurance policy in writing - if the premium for the first year is paid up to take effect at the end of the period of insurance cover by giving thirty days' notice.

(2) The insurance company shall not be allowed to terminate a life assurance policy, with the exception if the insurance risk is increased substantially.

Section 6:484

[Residual rights]

(1) If a life assurance policy is terminated for any reason without payment of the sum insured, the insurance company shall be liable to pay the cash surrender value defined in the policy.

(2) The insurance company shall be exempt from payment of the sum insured, if the insured person dies in consequence of the willful conduct of the beneficiary; in this case the cash surrender value can be claimed by the heirs, and the beneficiary shall not have a share therefrom.

(3) The policy shall be terminated without payment of the sum insured and the insurance company shall refund the cash surrender value if the insured person dies in consequence of or in connection with a serious criminal offense he has committed, or if the insured person has committed suicide within two years following the time of conclusion of the contract.

3. Accident insurance policies

Section 6:485

[Accident insurance]

Accident insurance means a type of insurance where the insurance company promises to pay a specific sum of money or annuity fixed in the contract, or other benefits as contracted upon the insured person's accidental death, health impairment or disability resulting from an accident.

Section 6:486

[Rules to be applied]

(1) The regulations governing life insurance shall apply to accident insurance policies with respect to:

- a)* the revocation of the insured person's statement of consent;
- b)* the designation of beneficiary and his rights;
- c)* the exemption of the insurance company if the death of the insured person has been caused by the beneficiary of the insurance money.

(2) The parties shall not be entitled to agree on limiting the right of termination.

(3) Otherwise, the provisions on indemnity insurance shall apply to accident insurance policies subject to the following exceptions:

- a)* the insurance company shall not have the right to enforce any claim for compensation against the person who caused the accident;
- b)* the insured person shall not have the obligation of preserving the scene upon the occurrence of the insurance event.

Chapter LXV

Health Insurance Contracts

Section 6:487

[Health insurance contract]

Health insurance is a type of insurance where the insurance company promises to pay benefits as provided for in the contract in the event of the insured person's sickness. The insurance benefits may also cover the costs of healthcare services specified in the contract provided to a person in good health.

Section 6:488

[Rules to be applied]

(1) The regulations governing life insurance shall apply to health insurance policies:

- a)* with respect to group insurance;
- b)* with respect to the consent of the insured person if he is not the contracting party;
- c)* with respect to the revocation of the insured person's statement of consent; and
- d)* when the insurance company's obligations take effect upon the infringement of the disclosure obligation.

(2) If health insurance was obtained as an indemnity insurance, the provisions on indemnity insurance shall apply with the following exceptions:

- a)* in the obligation to mitigate damages, the insured person's refusal - in exercising the right of disposition to which he is entitled by virtue of law - to a medical procedure shall not constitute a reason for the insurance company's exemption; and
- b)* the insured person shall not have the obligation of preserving the scene upon the occurrence of the insurance event.

Section 6:489

[Waiting period]

(1) Where the policy pertains to nursing care services, or if the insurable person suffers in a permanent illness and it was known to both parties at the time the contract was concluded, the waiting period stipulated in the health insurance contract by the parties with respect to such illness may not exceed three years.

(2) The waiting period shall cover that time period when the insured person was eligible - not more than sixty days before the conclusion of the health insurance policy - to receive health insurance benefits under a previous health insurance contract without interruption.

Section 6:490

[Termination of health insurance contracts]

(1) The possibility that the insured person's health deteriorates with age due to natural causes shall not constitute a considerable increase in insurance risk.

(2) The insurance company may not terminate a health insurance policy by notice in the ordinary way.

TITLE XXIII

MAINTENANCE AGREEMENTS AND LIFE-ANNUITY CONTRACTS

Chapter LXVI

Maintenance Agreements

Section 6:491

[Maintenance agreement]

(1) Under a maintenance agreement the person owing maintenance undertakes to provide care to the person to whom maintenance is owed and to ensure his sufficient living conditions, and the maintenance creditor undertakes to provide compensation.

(2) The maintenance agreement shall be executed in writing.

Section 6:492

[Obligations of persons owing maintenance]

The obligation of the person owing maintenance includes to provide a home for the maintenance creditor, as well as sufficient nutrition and clothing, to provide care and - in the case of illness - nursing and health care, and a proper burial in case of death.

Section 6:493

[Termination of the contract]

(1) The agreement terminates upon the maintenance creditor's death.

(2) If the agreement promises care to more than one person, in the event of death of one of the maintenance creditors the surviving maintenance creditor shall have the right to demand - unless otherwise suggested by the circumstances - the continuation of indivisible services, including those required to maintain prevailing living conditions, and shall be entitled to a commensurate part of divisible services.

(3) In the event of death of the person owing maintenance, the obligation to provide maintenance shall devolve, according to the regulations governing liability for the debts of a decedent, to the heir of the person owing maintenance if the support provided up to the death of the obligor does not cover the consideration.

Section 6:494

[Transfer of real estate property in exchange for maintenance]

(1) If the person owing maintenance receives ownership to a real estate property in exchange for maintenance, and the person owing maintenance fails to provide adequate safeguards in security for his obligations when so requested by the maintenance creditor, at the maintenance creditor's request a right to maintenance shall be registered in the real estate register on the transferred property.

(2) If the person owing maintenance breaches the contract, the maintenance creditor may seek satisfaction from the guarantee provided by the person owing maintenance, or from the real estate property if a right to maintenance has been registered.

Section 6:495

[Amendment to and termination of maintenance agreements]

(1) The court shall be entitled to alter a maintenance agreement at the request of either of the parties, in consideration of the interests of both parties, if keeping the agreement in force as it appears unreasonable, especially if the parties' relationship has deteriorated.

(2) If support in kind has become impossible as a consequence of the conduct or circumstances of one of the parties, either party shall be entitled to request the court to transform the contract into a life-annuity contract either permanently or until the aforementioned circumstances are eliminated. If the agreement is modified, the court shall specify in its ruling the service the person owing maintenance is liable to provide.

(3) If modification of the agreement fails to facilitate the object of the contract, either party shall be entitled to request the court to terminate the contract.

(4) The court is not bound by the parties' request, however, the court shall not order such consequence that is protested by both parties.

Section 6:496

[Gratuitous maintenance agreement]

(1) The provisions of this Chapter shall apply mutatis mutandis to maintenance agreements where the maintenance creditor is not required to provide any compensation.

(2) Unless otherwise suggested by the circumstances, no consideration is due for discharging the obligations that proceed from a maintenance agreement concluded by close relatives.

(3) A gratuitous maintenance agreement shall be terminated upon the death of the person owing maintenance.

(4) The person owing maintenance shall be entitled to demand termination of a gratuitous maintenance agreement if performing it or transforming it into a life-annuity contract would impose extreme burdens on him due to changes in his financial situation after the contract was concluded.

(5) In the case of gratuitous maintenance, the provisions on contracts of gift shall apply mutatis mutandis to the refusal of maintenance obligation, and the provisions on liability for gratuitous contracts shall apply to the provider's responsibilities.

Chapter LXVII

Life-annuity Contracts

Section 6:497

[Life-annuity contracts]

(1) Under a life-annuity contract the annuity provider undertakes to provide a specific sum of money or other fungible property to the annuitant periodically, and the annuitant undertakes to provide compensation.

(2) Annuity shall be paid monthly, in advance. The annuitant shall not be entitled to bring action to demand any payments that are six months overdue and have not been enforced without substantial reason.

(3) Otherwise, the provisions on maintenance agreements shall apply to life-annuity contracts.

TITLE XXIV

CIVIL LAW PARTNERSHIP AGREEMENT

Section 6:498

[Civil law partnership agreement]

Under a civil law partnership agreement the parties (hereinafter referred to as „members”) undertake to cooperate in order to achieve their common goals and to make capital contributions necessary for achieving said common goals, and to bear the risks of their activities collectively.

Section 6:499

[Capital contribution]

(1) Each member shall provide capital contribution in equal proportions.

(2) Capital contribution may be provided in the form of money, a marketable thing of value or intangible property, or any other form of service, such as - in particular - work performed in person.

(3) Contributions provided in a form other than money shall be evaluated by the members themselves, and - on that basis - they shall collectively determine the share each contribution represents in the whole.

Section 6:500

[Means of contribution]

(1) As regards the assets contributed, the ones that can not be consumed will be used collectively, and the ones that can be consumed will be owned jointly.

(2) The ownership share of assets given into common ownership may not be disposed of by a member individually.

Section 6:501

[Claims against members]

(1) Should a member fail to provide the contribution agreed upon in the contract, either of the other members shall have the right to demand performance as contracted. That right of members may not be validly excluded.

(2) If any member is engaged in any conduct which seriously endangers the success of collective activities or the achievement of the purpose of the partnership, either of the other members shall have the right to demand the member to cease such conduct.

Section 6:502

[Gains and losses, liabilities]

(1) The profits and losses from common activities shall be distributed among the members in proportion to their capital contributions.

(2) Any agreement excluding any member from receiving a share of the profits or from covering the losses shall be null and void.

(3) If the members responsibility for covering losses derogates from the ratio previously agreed upon based on a contract concluded with a third party, they shall settle accounts with each other as laid down in the contract.

Section 6:503

[Administration]

(1) Members shall be entitled to manage the partnership's affairs collectively.

(2) Members may also provide that authorization for management is granted to a certain member or members, in which case those members not expressly authorized shall not be entitled to exercise management rights.

(3) If several members are granted joint management rights, they shall bring management decisions unanimously.

(4) Non-members shall not be granted management rights. Management shall be carried out personally. Any stipulation that is contrary to these provisions shall be null and void.

Section 6:504

[Opposition]

The management decisions of a member with sole management rights may be contested by either member, and management decisions adopted under joint management rights may be contested by any non-management member. Members shall decide on the opposition collectively. The proposed measure may not be carried out pending decision of the members. The right of opposition may not be validly excluded.

Section 6:505

[Cessation of administration rights]

(1) If management is not exercised by all members collectively, the right of management may be revoked from the member so authorized by the other members acting unanimously, in which

case continued management will be decided by the members. Any exclusion or restriction of this right shall be null and void.

(2) The member granted management rights under the partnership agreement shall be entitled to waive this right. Such waiver, however, shall not be made at an unsuitable time.

(3) If there is no member with the right of management, all members shall be entitled to exercise management rights.

Section 6:506

[Representation]

Members may grant authorization in the partnership agreement to either of the members to represent the other members in dealings with third parties.

Section 6:507

[Relationship of members]

Each member shall have access to management processes, that is to say they shall have the right to inspect the related documents and books. Any agreement of the parties to the contrary shall be null and void.

Section 6:508

[Creditors of members]

(1) If the partnership agreement is terminated, the creditor of any member shall be entitled to lay claim to the partner's share of the settlement of final accounts.

(2) If a creditor files to have this share attached, he shall be entitled to exercise the right of termination that is customarily due to the member, but he shall not be entitled to demand that the member's share be delivered in kind.

(3) If the partnership agreement was concluded for a specific term, the member's creditor shall have the right to terminate the agreement by giving a three months' notice, provided that more than one year remains from the fixed term.

Section 6:509

[Termination by notice]

(1) The partnership agreement concluded for an indefinite period may be terminated by either of the members with a three months' notice. The right to terminate may not be validly excluded.

(2) If a member terminates the agreement at an unsuitable time, he shall be liable to pay compensation for damages resulting from the termination, if the other members indicated that the time was unsuitable and the member maintained his intention to terminate nonetheless.

Section 6:510

[Termination without notice]

(1) The partnership agreement may be terminated without notice where justified by substantial reasons. Any exclusion of that right shall be null and void.

(2) Substantial reason shall, in particular, include any actionable conduct of a member resulting in the infringement of a major contractual obligation.

Section 6:511

[Death or dissolution of a member]

- (1) The partnership agreement shall be terminated upon the death or dissolution of a member.
- (2) The surviving members may decide to carry on the agreement without the deceased or dissolved member.
- (3) If so requested by the successor of the deceased or dissolved member, and if the surviving members consent, the successor shall replace the predecessor in the partnership agreement.

Section 6:512

[Exclusion]

- (1) The partnership agreement may provide that a member may be excluded from the partnership by unanimous decision of the other members in the event where either member has the right to terminate with immediate effect for a reason attributable to the member to be excluded.
- (2) Accounts shall be settled with the excluded member.
- (3) The excluded member may not demand any asset comprising part of the common property to be provided in kind. However, the other members shall have the option to release the asset demanded in kind, or to provide adequate compensation in value.

Section 6:513

[Settlement]

- (1) If the partnership agreement is terminated accounts shall be settled among the members. Any prior agreement for the exclusion of settlement shall be null and void.
- (2) In the process of settlement, common assets shall be distributed among the members in proportion to their capital contribution.
- (3) The assets made available for collective use shall be returned to their owners.

TITLE XXV

CIVIL PARTNERSHIP

Section 6:514

[Establishment and termination of civil partnership]

- (1) Civil partnership means when two persons are living together outside of wedlock in an emotional and financial community in the same household (hereinafter referred to as „cohabitation”), provided that neither of them is engaged in wedlock or partnership with another person, registered or otherwise, and that they are not related in direct line, and they are not siblings.
- (2) Civil partnership shall come to existence upon the couple’s cohabitation established under the conditions referred to in Subsection (1), and shall terminate upon the couple’s marriage or their entry into registered partnership, or when their relationship is terminated.

Section 6:515

[Partnership contracts]

(1) Domestic partners may arrange their relationship in terms of property by means of a contract for the duration of their partnership. The contract shall be considered valid if executed in an authentic instrument or in a private document countersigned by an attorney.

(2) The partnership contract may contain any provision relating to property rights, which could apply to married couples under contract or in accordance with this Act.

(3) A partnership contract shall be considered effective in dealing with third parties if the contract is recorded in the national register of partnership contracts, or if the partners are able to prove that the third party was aware, or should have been aware that such contract existed, including its contents.

(4) The provisions pertaining to the register of marriage contracts shall apply *mutatis mutandis* to the register of partnership contracts.

Section 6:516

[Property regime of couples in civil partnership]

(1) Unless otherwise provided for by the partnership contract, the partners shall be considered independent in their property acquisitions during their cohabitation. If cohabitation is terminated, either partner may request the division of property jointly acquired during the period of cohabitation. Any property that is considered separate property in the case of spouses shall not be treated as jointly acquired property.

(2) Partners shall be entitled to a share of jointly acquired property primarily in kind, in proportion to their contribution. Work done in the household and in child raising, and also in the other partner's enterprise shall be construed as contributing to acquisition.

(3) If the ratio of contribution cannot be determined, it shall be considered equal, unless this would constitute inequitable financial loss in respect of either of the partners.

(4) Unless otherwise provided for in this Act, the provisions on the marital property acquisition regime of spouses shall apply *mutatis mutandis* to the protection of a partner's share from jointly acquired property and for the division of jointly acquired property among the partners.

Section 6:517

[Contractual arrangement of the right of tenancy]

(1) The partners may enter into an agreement before entering into and under the duration of civil partnership regarding further use of their common home following the termination of their partnership. The agreement shall be considered valid if executed in an authentic instrument or in a private document countersigned by an attorney.

(2) Where the right of tenancy is provided for in advance by means of an agreement, the provisions on the use of the common home of spouses shall apply *mutatis mutandis* to the right of tenancy of a child.

(3) Following the termination of their relationship the partners may agree regarding further use of their common home. There are no formal requirements for such an agreement.

PART FOUR

NON-CONTRACTUAL LIABILITY FOR DAMAGES

TITLE XXVI

GENERAL PROVISIONS AND COMMON RULES ON LIABILITY FOR DAMAGES

Section 6:518

[General prohibition of torts]

All torts are prohibited by law.

Section 6:519

[General provisions on liability]

Any person who causes damage to another person wrongfully shall be liable for such damage. The tortfeasor shall be relieved of liability if able to prove that his conduct was not actionable.

Section 6:520

[Unlawfulness]

All torts shall be considered unlawful, unless the tortfeasor has committed the tort:

- a)* with the consent of the aggrieved party;
- b)* against the assailant in order to prevent an unlawful assault or a threat suggesting an unlawful direct assault, if the tortfeasor did not use excessive measures to avert the assault;
- c)* in an emergency, to the extent deemed proportionate; or
- d)* by way of a lawful conduct, and such conduct does not violate the legally protected interests of others, or if the tortfeasor is required by law to provide compensation.

Section 6:521

[Foreseeability]

No causal relationship shall be deemed to exist in respect of any damage that the tortfeasor could not and should not have foreseen.

Section 6:522

[Extent of liability]

- (1) The tortfeasor shall compensate the aggrieved party for all his losses in full.
- (2) Under the principle of the right to full compensation the tortfeasor shall cover:
 - a)* any depreciation in value of the property of the aggrieved party;
 - b)* any pecuniary advantage lost; and
 - c)* the costs necessary for the mitigation or elimination of the financial losses sustained by the aggrieved party.
- (3) The amount of compensation shall be reduced by any financial advantage of the aggrieved party resulting from the tort, unless this is deemed redundant having regard to the circumstances of the case.
- (4) In cases of exceptional circumstances, the court may award compensation in an amount lower than the amount of the total loss.

Section 6:523

[Exposure to tort acts]

In the event of the presence of imminent danger, the endangered person shall be entitled to request the court, as it follows from the circumstances of the case:

- a) to restrain the person imposing such danger from continuing such conduct;
- b) to order the person imposing such danger to take sufficient preventive measures;
- c) to order the person imposing such danger to provide sufficient guarantee.

Section 6:524

[Joint tortfeasors]

(1) If the damage is caused jointly by two or more persons, their liability shall be joint and several towards the aggrieved person.

(2) The court shall be entitled not to establish joint and several liability if the aggrieved person has himself contributed to the occurrence of the damage or if appears unjustified in cases of exceptional circumstances. In the event of non-application of joint and several liability the court shall condemn the tortfeasors consistent with the degree of their culpability, or - if this cannot be determined - in proportion to their respective involvement. If the degree of involvement cannot be verified either, the court shall condemn the tortfeasors equally.

(3) Liability for damages shall be borne by the tortfeasors involved consistent with the degree of their culpability, or - if this cannot be determined - in proportion to their respective involvement. If the degree of involvement cannot be verified, the tortfeasors shall cover the damages equally.

(4) The provision applicable to joint tortfeasors shall apply mutatis mutandis also if any one of the activities carried out concurrently would in itself be sufficient to cause the damage, or if the particular activity that in fact caused the damage cannot be identified.

Section 6:525

[Contributory negligence]

(1) The aggrieved party shall be subject to the obligation of damage control and the obligation of prevention and mitigation of damages. In the event of any actionable breach of those obligations, the tortfeasor shall not be obliged to provide compensation.

(2) Liability for damages shall be borne by the tortfeasor and the aggrieved party consistent with the degree of their culpability, or - if this cannot be determined - in proportion to their respective involvement. If the degree of involvement cannot be verified either, the tortfeasors and the aggrieved party shall cover the damages equally.

(3) The aggrieved party shall be liable for any omission by the persons for whose conduct he is responsible.

Section 6:526

[Limitation or exclusion of liability]

Any contract term limiting or excluding liability for intentional tort resulting in loss of life, or harm to physical integrity or health shall be null and void.

Section 6:527

[Mode of compensation]

(1) The tortfeasor shall provide compensation in cash, unless compensation in kind is justified by the circumstances.

(2) In the case of compensation for recurrent future loss, the court may award periodic payments to be made in advance in a specific amount.

(3) In determining the mode of compensation the court shall not be bound by the aggrieved party's request, however, court shall not order any mode of compensation such that is objected to by all of the parties.

Section 6:528

[Payments for loss of income]

(1) Any person whose capacity to work has been reduced as a result of a tort shall be entitled to demand payments for loss of income if - for reasons beyond his control - his earnings after the tort are less than his earnings before.

(2) Payments for loss of income shall be determined based on the degree of incapacity and on the extent of loss of income combined.

(3) The loss of income of the aggrieved party shall be generally determined on the basis of the regular monthly average income acquired during the previous year. If the amount of income changed significantly during the previous year, the average income after the change shall be taken into account.

(4) If the loss of income cannot be assessed under Subsection (3), the average monthly salary of persons performing the same or similar work shall apply to determining the loss.

(5) When determining the loss of income, any future change the occurrence of which is anticipated shall also be taken into account.

(6) When determining the loss of income, the income acquired by the aggrieved party through extraordinary performance of work in spite of his incapacity shall not be taken into account.

Section 6:529

[Payments for loss of maintenance]

(1) If the tort results in death, payments for loss of maintenance shall be provided to any person who was supported by the person who died in consequence of the tort. Furthermore, the tortfeasor shall be liable to provide payments for loss of maintenance also if such outcome could not have been anticipated.

(2) The tortfeasor shall be liable to provide payments for loss of maintenance also if the person who has died had in fact failed to discharge his maintenance obligation or if the person to whom maintenance is provided has not enforced his claim for maintenance or annuity for an excusable reason.

(3) In determining the amount of payments for loss of maintenance, the lost maintenance and the income of the person claiming payments shall be taken into account.

(4) When establishing the amount of payments for loss of maintenance, it shall be considered if the person claiming payments is without sufficient income for reasons within his control, and whether the person claiming such payments has enforced or is eligible to enforce a claim against the persons whose obligation to support him is equal to that of the deceased person.

(5) Otherwise, the rules relating to the calculation of payments for loss of income shall apply mutatis mutandis to the calculation of annuities.

Section 6:530

[Amendment or termination of annuity payments]

In the event of considerable changes in the circumstances, either party shall be entitled to demand a reduction in the amount of the annuity or a change in the annuity payment period, or the termination of annuity payment obligations.

Section 6:531

[General measure of damages]

If the extent of damage cannot be precisely calculated, the person responsible for causing the damage shall be compelled to pay a general indemnification that would be sufficient to compensate the aggrieved party.

Section 6:532

[Due date of compensation]

Compensation shall be due immediately upon the occurrence of the damage.

Section 6:533

[Statute of limitations]

(1) The provisions on statute of limitations shall apply to compensation with the proviso that in respect of damages caused by the commission of a crime, the period of limitation for a claim shall not expire even after five years as long as the criminal offense remains punishable under the statute of limitations.

(2) The period of limitation on annuity claims shall commence uniformly for the whole claim when the damage underlying the annuity claim emerges for the first time.

Section 6:534⁷¹

[Consideration of changes in the relevant values in determining the measure of damages]

(1) In the event of any substantial changes in the value conditions between the time when the tort was committed and the time when the court verdict was passed due to the passage of time or other circumstances, the court shall award damages based on the conditions prevailing at the time of the verdict. In that case, the tortfeasor shall be liable to pay interest on late payment from the time when the value was established.

(2) If the aggrieved party fails to enforce his claim for compensation in due time for reasons within his control, he shall bear the risk of changes in prices and values himself.

TITLE XXVII

SPECIFIC CASES OF LIABILITY

Chapter LXVIII

⁷¹ Enters into force as under Paragraph c) of Subsection (10) of Section 188 of Act CCLII of 2013.

Liability for Highly Dangerous Activities

Section 6:535

[Liability for hazardous operations]

(1) A person who pursues an activity that is considered highly dangerous shall be liable for any damage caused thereby. Where such person is able to prove that the damage occurred due to an unavoidable cause that falls beyond the realm of highly dangerous activities, he shall be relieved from liability.

(2) These provisions on liability for hazardous operations shall also apply to persons who cause damage to other persons through activities that endanger the human environment.

(3) Any exclusion or limitation of liability shall be null and void; this prohibition shall not apply to damage caused to a tangible thing.

Section 6:536

[Operators]

(1) The person on whose behalf the hazardous operation is carried out shall be recognized as the pursuer of a highly dangerous activity.

(2) Where hazardous operations are carried out on behalf of more than one person, they shall be treated as joint tortfeasors.

Section 6:537

[Contributory negligence]

(1) No compensation shall be provided for any damage insofar as it originates from an activity attributable to the aggrieved party. In the spreading of losses, the highly dangerous nature of the activity shall be taken into consideration to the burden of the operator.

(2) If a nonpunishable person has contributed to the occurrence of the damage through his avoidable conduct, the operator shall be subject to full liability toward the nonpunishable aggrieved party. The operator shall be entitled to lodge a claim for compensation under Subsection (1) against the guardian of the nonpunishable person.

Section 6:538

[Statute of limitations]

The period of limitation for claiming damages in connection with liability for hazardous operations shall be three years.

Section 6:539

[Interaction of hazardous operation and relationship of operators in liability for torts committed jointly]

(1) Where damage is caused by one hazardous operation to another, the operators shall be liable to provide compensation as commensurate according to attributability. If the damage is caused by a person other than the operator, the operator shall be liable to provide compensation as commensurate according to the attributability of the de facto tortfeasor.

(2) If the cause of damage is not attributable to either party, compensation shall be provided by the party whose highly dangerous activity is responsible for the malfunction that contributed to causing the damage.

(3) If the cause of mutual damage is a malfunction that occurred in the scope of both parties' highly dangerous activity, or if such malfunction cannot be attributed to one of the parties, each party shall, where individual responsibility cannot be established, bear liability for his own loss.

(4) The provisions of this Section shall apply to the relationship of operators also if the damage is caused by several hazardous operations jointly, with the proviso that in the absence of attributability and irregularity each party shall bear liability equally.

Chapter LXIX

Liability for the Acts of Another Person

Section 6:540

[Liability for the acts of employees and members of legal persons]

(1) If an employee causes damage to a third party in connection with his employment, liability in relation to the injured person lies with the employer.

(2) If a member of a legal person causes damage to a third party in connection with his membership, liability in relation to the injured person lies with the legal person.

(3) Liability of the employee or the member and the employer or the legal person shall be joint and several if the damage was caused intentionally.

Section 6:541

[Liability for the actions of executive officers]

If an executive officer of a legal person causes damage to a third party in connection with his office, liability in relation to the injured person lies with the executive officer and the legal person jointly and severally.

Section 6:542

[Liability for the actions of agents]

(1) If an agent causes damage to a third party in connection with his assignment, liability in relation to the injured person lies with the principal and the agent jointly and severally. The principal shall be relieved of liability if he is able to prove that he has not acted wrongfully in terms of choosing, instructing, and supervising his agent.

(2) In respect of permanent agency, the injured party shall be inter alia entitled to enforce his claim according to the regulations governing the liability for damages caused by employees.

Section 6:543

[Liability for the actions of the obligors of other contracts]

The obligee of other contracts shall be liable for damages caused by the obligor of the contract to a third party in the course of performance of the contract, insofar as he reveals the identity of the tortfeasor, if unknown to the injured party.

Chapter LXX

Liability for the Actions of Nonpunishable Persons

Section 6:544

[Liability for the actions of nonpunishable persons]

(1) Any person whose discretionary ability is limited to an extent whereby such person is unable to comprehend the consequences of his actions leading to the damage shall not be held liable for the damage he has caused.

(2) The person known as the legal custodian of the nonpunishable person shall held liable in place of the nonpunishable person. The person having custody of the nonpunishable person at the time the damage was caused shall also be regarded as a custodian.

(3) The custodian shall be relieved of liability if able to prove that he has not acted wrongfully in providing care and in exercising custody.

(4) The provisions applicable to joint tortfeasors shall apply to liability where more than one custodian is involved.

Section 6:545

[Compensation on grounds of fairness]

If a tortfeasor has no custodian or the liability of the custodian cannot be established, under special circumstances the nonpunishable tortfeasor can be ordered to provide total or partial compensation if it is clearly warranted by the circumstances of the case and the financial conditions of the parties.

Section 6:546

[Actionable conduct]

A nonpunishable tortfeasor may not allege his mental incapacity or impairment if such condition was inflicted by the person himself.

Section 6:547

[Liability for the actionable conduct of minors]

If damage has been caused by a minor who is punishable, and who has an appointed custodian, and the injured party is able to prove that the custodian has knowingly breached his obligations, the custodian as well as the tortfeasor shall be subject to joint and several liability.

Chapter LXXI

Liability for the Actions of Public Authorities

Section 6:548

[Liability for the actions of administrative authorities]

(1) Liability for damages caused within the scope of administrative jurisdiction shall be established only if the damage results from actions or omissions in the exercise of public

authority, and if the damage cannot be abated by common remedies or in proceedings for the judicial review of an administrative decision.

(2) Liability for damages caused within the scope of administrative jurisdiction lies with the legal person exercising public authority. If the person exercising public authority is not a legal entity, liability for damages shall lie with the administrative body having legal personality, on whose behalf the relevant administrative body operates.

Section 6:549

[Liability for the actions of courts, public prosecutors, notaries public and court bailiffs]

(1)⁷² The provisions on liability for damages caused within the scope of administrative jurisdiction shall apply mutatis mutandis to liability for the actions of courts and public prosecutors, with the proviso that claims shall be enforced against the court or the Prosecutor General in connection with liability for the actions of courts and public prosecutors, respectively. If the acting court is not a legal entity, the claim shall be enforced against the court whose president exercises overall employer's rights over the judges of the court having no legal personality. A claim may be lodged only if common remedies have been exhausted.

(2) The provisions on liability for damages caused within the scope of administrative jurisdiction shall apply mutatis mutandis to liability for the actions of notaries public and court bailiffs. A claim may be lodged only if common remedies have been exhausted.

Chapter LXXII

Product Liability

Section 6:550

[Liability for damage caused by defective products]

Liability for damage caused by defective products lies with the manufacturer of such products.

Section 6:551

[Definition of products]

Product means any movable property, even if it subsequently becomes a component or part of another thing.

Section 6:552

[Damage caused by defective products]

Damage caused by defective products means:

- a) any damage incurred by the death, bodily injury or any impairment in the health of a person caused by a defective product; and
- b) any damage caused by a defective product to other objects valued in excess of five hundred euros as converted to forints by the official exchange rate of the Magyar Nemzeti Bank (*National Bank of Hungary*) for the day on which the damage occurs if such object is for private use or

⁷² Enters into force as under Subsection (9) of Section 188 of Act CCLII of 2013.

private consumption according to its intended purpose and if generally used for such purpose by the injured party as well.

Section 6:553

[Manufacturer]

(1) For the purposes of this Chapter, manufacturer means a producer of a finished or semi-finished product, or raw material, furthermore the person who depicts himself as the manufacturer of the product by the indication of his name, trademark or some other distinguishing mark on the product.

(2) As regards imported goods, a person whose regular occupation or business is the importation of products into the territory of the European Economic Area shall also be construed a manufacturer. This provision shall not affect the counterclaims of an importer filed against a manufacturer.

(3) If the manufacturer of a product cannot be identified, all distributors of such product shall be regarded as manufacturers until such distributors reveal to the injured party the identity of the manufacturer or the distributor from whom the product was obtained. This provision shall also apply to imported products mutatis mutandis where the manufacturer is indicated but the importer cannot be identified.

(4) Distributors shall make the aforementioned statement within thirty days from the date of the written request of the injured party.

Section 6:554

[Defective product]

(1) A product shall be considered defective if it fails to provide a level of safety generally expected, with special regard to the purpose of the product and the way in which it can be reasonably expected to be used, the information provided in connection with the product, the date of the sale of the product, and the current state of scientific and technological achievements.

(2) A product shall not be considered defective solely on the basis that subsequently a product providing a higher level of safety will be placed on the market.

(3) The burden of proof of defect lies with the injured party.

Section 6:555

[Exemption from liability]

(1) The manufacturer shall be relieved of liability if able to prove that:

- a)* he did not place the product on the market;
- b)* the product was not produced for retail purposes, or it was not produced or distributed within the framework of regular business activities;
- c)* the product was in perfect condition at the time when it was placed on the market, and the cause of the defect developed subsequently;
- d)* at the time the product was placed on the market the defect could not have been discovered according to the current state of scientific and technological achievements; or
- e)* the defect in the product was caused by the application of a statutory or regulatory provision.

(2) The producer of raw material or a component shall be exempt from liability upon providing proof that:

a) the defect was caused by the structure or composition of the final product; or
b) the defect was the consequence of instructions given by the manufacturer of the final product.

(3) With regard to damages resulting from the proper application of a medicinal product, the manufacturer shall not be exempted from product liability relying on Paragraph d) of Subsection (1).

Section 6:556

[Third party influence]

The manufacturer shall not be exempt from liability alleging that a third party contributed to the occurrence of the damage. This provision shall not affect the legitimate claims of the manufacturer against a third party.

Section 6:557

[Limitation or exclusion of liability]

Any limitation or exclusion of the manufacturer's liability towards the injured party shall be null and void.

Section 6:558

[Claim deadlines]

- (1) The injured party may claim his right to compensation within a three-year limitation period.
(2) The term of limitation shall commence when the injured party became, or could be expected to have become, aware of the damage, the defect in the product as well as of the identity of the manufacturer.
(3) The manufacturer shall remain subject to liability for a period of ten years effective from the date of placing the given product on the market. This deadline shall apply with prejudice.

Section 6:559

[Miscellaneous provisions]

- (1) In the application of this Chapter, even in cases of exceptional circumstances the amount of compensation awarded may not be lower than the amount of the total loss.
(2) The provisions of this Chapter shall not apply to the damages defined in the Act on Atomic Energy, and to damages caused by the type of nuclear accidents which are addressed by international treaties ratified by the Republic of Hungary.

Chapter LXXIII

Liability for Building Damages

Section 6:560

[Building owner's liability]

- (1) The owner of a building shall be liable for damage caused to other persons by parts of the building that have fallen off or by any other deficiency in the building, unless the owner is able to

prove that the regulations pertaining to construction and maintenance have not been violated and that he has not acted wrongfully in the course of construction and maintenance with regard to the prevention of damage.

(2) The provision set out in Subsection (1) shall apply to liability for damages caused by any object falling off a building, with the exception that the person in whose interest the object has been installed on the exterior of a building shall be jointly and severally liable with the owner of the building.

(3) These provisions shall not affect the right of the responsible party to demand compensation from the persons who have caused the damage.

Section 6:561

[Liability for damage caused by fallen, thrown or dumped objects]

(1) Liability for damages caused by objects that are thrown out, dropped, or poured out from a dwelling or other rental premises lies with the tenant or other user of the dwelling or premises.

(2) If the tenant or user identifies the person who caused the damage, he shall bear liability as a surety. The tenant or user shall be relieved of liability if he proves that the person who caused the damage was on the premises unlawfully.

(3) The owner of a building shall be liable for damage caused by an object being thrown out, dropped, or poured out from any room of the building that is used for common purposes. The owner, if he identifies the person who caused the damage, shall be liable as a surety.

(4) These provisions shall not affect the right of the responsible party to demand compensation from the person otherwise responsible for the damage.

Chapter LXXIV

Liability for Damage Caused by Animals

Section 6:562

[Damage cause by farming operations]

(1) Any person who keeps animals shall be liable for damages caused by the animals to other persons, unless he is able to prove that he has not acted wrongfully in the keeping of animals.

(2) The keeper of a dangerous animal shall be held liable in accordance with the provisions on liability for hazardous operations.

Section 6:563

[Liability for damage caused by wild game]

(1) Liability for damages caused by huntable animals lies with the authorized hunter on whose hunting ground the damage took place. If the damage was caused in a place other than a hunting ground, liability lies with the authorized hunter from whose hunting ground the animal arrived.

(2) The authorized hunter shall be relieved from liability if he can prove that the damage is the result of an unavoidable cause beyond his control.

(3) The period of limitation for claiming damages shall be three years.

TITLE XXVIII

LIABILITY FOR EXCUSABLE DAMAGES

Section 6:564

[Indemnification]

Where indemnification obligation is prescribed by law for excusable damages, the provisions on liability for damages shall apply *mutatis mutandis* to the mode and measure of indemnification.

PART FIVE

SECURITIES

TITLE XXIX

GENERAL RULES

Section 6:565

[Definition of securities]

(1) Where a person undertakes a unilateral commitment in writing, made out in a format other than electronic, or in a (dematerialized) document electronically recorded in a securities account to provide either by himself or by another person indicated in the relevant statement the exercise of rights set out in the statement to a person shown as the beneficiary in the document or in the securities account under the conditions laid down in the statement, or to provide the service specified in the document or in the statement recorded electronically to the person shown as the beneficiary in the document or in the securities account, such document or electronically recorded instrument shall be recognized as a security.

(2) Any person who transfers a security that contains his commitment into the possession of another person for the purpose of undertaking a commitment, or who takes action for having the dematerialized securities credited to the beneficiary's securities account, shall become the debtor in accordance with the contents of the securities in respect of the person shown as the beneficiary on the securities in question.

(3) Enforcement of a right or claim to which the security pertains, and the verification or transfer of such right or claim may be done by way of the security only.

(4) Where mandatory terms and conditions are prescribed by law for certain types of securities, only the document or computer-generated instrument corresponding to such terms and conditions may be recognized as securities that have been constituted as the given type of securities.

(5) In the case of specific types of securities which are not regulated by law, the document or computer-generated instrument shall be recognized as a security if the issuer included at least the following information in the security:

- a) the name and address of the issuer;
- b) an indication that the statement is recognized as a security;
- c) the rights attaching to the security;
- d) an indication of the securities series, where applicable, the securities code of the series and the quantity of securities included in the series;
- e) the place and date of issue;

f) the issuer's signature in the case of paper-based securities.

(6) Securities are transferable. The issuer may prohibit the transfer of his securities, with such prohibition shown on the securities.

Section 6:566

[Limitation of objection]

Apart from the objections evident from the contents of the security or the securities account, in dealings with a bona fide beneficiary, the obligor of the security may not cite any other objections which are based on his personal relationship with a previous holder of the security.

Section 6:567

[Permissible derogations]

Statutory provisions may be laid down elsewhere in derogation from the provisions of this Chapter relating to securities on the basis of an international convention.

TITLE XXX

SECURITIES MADE OUT IN THE FORM OF PRINTED CERTIFICATES

Section 6:568

[Issue error relating to securities made out in the form of printed certificates]

The issuer of securities made out in the form of printed certificates shall be held liable for the obligations fixed in the securities in dealings with the bona fide holder of such securities if the securities were released for circulation without issue or through an invalid transaction.

Section 6:569

[Transfer of securities made out in the form of printed certificates]

(1) Securities made out in the form of printed certificates which do not indicate the holder's name, or which indicates the holder's name, however, the securities are of a type that contain instructions to render it payable on demand to the bearer, whether or not such person is the registered holder (hereinafter referred to as „bearer security") may be transferred by way of transfer of possession under a contract for transfer.

(2) Securities made out in the form of printed certificates which does indicate the holder's name, and it does not contain instructions for the obligor to render it payable on demand to the bearer (hereinafter referred to as „registered security") may be transferred by way of transfer of possession under a contract for transfer with express or blank endorsement.

(3) Express endorsement is a written statement which bears the holder's signature and is made on the negotiable instrument itself or on an attached sheet (hereinafter referred to as „attachment") declaring the holder's intention to transfer the security and specifying the name of the transferee.

(4) Blank endorsement is a written statement which bears the holder's signature and is made on the back of the security or on an attachment, declaring the holder's intention to transfer the security, however it does not specify the name of the transferee. The holder's signature on the back of the security or on the attachment shall also be construed a blank endorsement.

(5) When a security made out in the form of a printed certificate is transferred by blank endorsement, the holder of such security may:

- a) make the endorsement out in his or somebody else's name;
- b) transfer the security with blank or express endorsement;
- c) transfer possession of the security to a third person without filling out the blank endorsement or affixing a new endorsement.

(6) Legislation may authorize the issuer to install a restrictive clause by means of a written statement executed in the registered security, hence making it non-negotiable by endorsement (hereinafter referred to as „negative endorsement”), such security may be transferred within the facilities of assignment.

Section 6:570

[Legal effects of transfer of securities made out in the form of printed certificates]

All rights and obligations arising out of a bearer security or from a registered security that do not contain a negative endorsement shall pass to the new holder upon the transfer of the security irrespective of the transferor's previous rights.

Section 6:571

[Legal effects of formalities relating to securities made out in the form of printed certificates]

(1) In the case of bearer securities the person having possession of the securities shall be construed to be entitled to exercise the rights and carry out the obligations arising out of the security.

(2) In the case of registered securities the holder of the securities whose name is indicated on the securities as beneficiary, or who is named in the constant chain of endorsements as the transferee shall be construed to be entitled to exercise the rights and carry out the obligations arising out of the security. If the last endorsement is blank, the holder of the security shall be recognized as the beneficiary, provided that the chain of endorsements is constant. If a blank endorsement is followed by another endorsement in succession, the signatory of the latter shall be considered to have obtained the instrument by way of blank endorsement.

(3) The rights arising out of securities of a bona fide person who qualifies as beneficiary shall be in force irrespective of whether a previous transfer or other form of acquisition was illegitimate, or it took place under invalidated or void title.

(4) If the person of beneficiary of a registered security changes by means other than transfer, the new beneficiary shall be required to verify his acquisition. If acquisition is made by means other than transfer, the constant chain of endorsements shall verify the holder's beneficiary right any proof of acquisition by means other transfer notwithstanding. Where a specific person is authorized by law to indicate his acquisition by means other than transfer in the chain of endorsements, such entry shall serve to ensure the constancy of the chain of endorsements, and any lack of acquisition, or its invalidity or annulment shall have no bearing on the rights arising from the security of a bona fide third party who is to be recognized as the beneficiary of the security.

Section 6:572

[Destruction of securities made out in the form of printed certificates]

(1) If any security made out in the form of a printed certificate is lost or physically destroyed, or damaged to an extent where its contents can no longer be recognized, such securities may be discarded following the appropriate procedure.

(2) If securities are discarded, all legal effects arising from such securities shall cease to exist, and the rights attaching to such securities may be enforced according to the general provisions pertaining to such rights.

TITLE XXXI

DEMATERIALIZED SECURITIES

Section 6:573

[Issue of dematerialized securities]

(1) Dematerialized securities shall be issued as part of a series.

(2) The central depository shall open central securities accounts when so requested by the issuers of dematerialized securities.

(3) The central depository shall maintain central securities accounts separately for each securities series in the name of securities account managers who maintain securities accounts for the given securities series. The central securities account shall indicate the updated quantity of dematerialized securities of the same series, which are recorded by the securities account manager.

(4) For the opening of a central securities account, the issuer shall communicate to the central depository, in a document that does not qualify as a security, the following:

- a)* the contents of the decision on the issue, and the date when it was adopted;
- b)* the information prescribed by law for the dematerialized securities of the series to be issued, or if statutory information is not prescribed by law, the information to be included in such dematerialized securities;
- c)* the quantity of dematerialized securities of the series to be issued, and their nominal value where appropriate;
- d)* an indication of the securities account managers who will maintain securities accounts for the holders of securities of the securities series to be issued;
- e)* the quantity of securities held on account by the securities account managers separately.

(5) If additional dematerialized securities are issued within the same series of dematerialized securities, or any other change takes place in the document deposited with the central depository, the issuer shall submit to the central depository a new document containing the information defined in Subsection (3). When the new document is submitted, the previous document underlying the issue of dematerialized securities shall cease to have effect.

Section 6:574

[Conversion of securities into dematerialized securities]

(1) If the issuer adopts a decision for the conversion of printed securities into dematerialized securities, he shall notify the holders of such securities by way of public notice to surrender the securities made out in the form of printed certificates to the issuer, and to disclose the name of the securities account manager and the number of the securities account where they wish to have the dematerialized securities credited. The above-specified public notice shall contain information as

to the procedure or the sale or withdrawal of securities representing membership rights which have not been surrendered.

(2) The public notice shall also indicate the deadline of not less than sixty days within which the holders of securities are required to surrender their securities.

(3) The issuer shall prepare the document necessary for the issue of dematerialized securities and shall submit it to the central depository on the first working day following the expiry of the deadline for the submission of securities, or after all securities to be converted are surrendered. On that basis, the central depository shall open the central securities account and shall credit the account with dematerialized securities of the same quantity and contents as the printed securities. At the same time the securities made out in the form of printed certificates shall become invalid.

Section 6:575

[Rules relating to securities not presented for conversion]

(1) The central depository shall credit the dematerialized securities issued to replace printed securities which the holders failed to surrender in accordance with the previous Section to the central securities account opened for the issuer. The issuer shall have the right of disposition over the securities held on such central securities accounts as provided for in this Section.

(2) If the dematerialized securities issued in place of securities not surrendered as instructed expire, the issuer shall deposit the monetary equivalent of such dematerialized securities on the holder's behalf.

(3) The issuer shall be entitled to sell or withdraw from circulation securities representing membership rights, which have not been surrendered as instructed, under the conditions set out in the public notice. The issuer shall deposit the sum received from the sale, or the sum payable to the holder for securities withdrawn from circulation, with a credit institution on the holder's behalf.

(4) The holder of securities made out in the form of printed certificates, who failed to surrender his securities as instructed, may request to have the dematerialized securities credited to his securities account, or to have the sum deposited on his behalf released, following payment of the issuer's expenses arising from his delay.

Section 6:576

[Securities account]

(1) The securities account is an electronic account intended to keep records of dematerialized securities and the holders of such securities, that is opened by an organization authorized to operate securities accounts under an agreement concluded with the holder of dematerialized securities.

(2) At the time of conclusion of the agreement for the opening of a securities account, the securities account manager shall record the data necessary for the identification of the holder of the account.

(3) When the central securities account is opened, the central depository shall notify the securities account managers under whose name the dematerialized securities are recorded on the central securities account. Upon receipt of such notice, the securities account managers shall be entitled to credit dematerialized securities on the securities account of the holder of such dematerialized securities as of the time indicated in the notice.

Section 6:577

[Transfer of dematerialized securities]

(1) For the transfer of dematerialized securities a contract for transfer or other legal title is required and, in that context, the transferor's securities account shall be debited and the new holder's securities account shall be credited with the dematerialized securities transferred.

(2) If the securities account of the new holder of dematerialized securities is not maintained by the transferor's securities account manager, the transferor's securities account manager shall disclose to the central depository at the time of debiting the securities account the name of the securities account manager and the number of the securities account to which the dematerialized securities are to be credited. The central depository shall debit the central securities account of the transferor's securities account manager with the quantity to be transferred and shall credit it to the central securities account of the securities account manager keeping the new holder's securities account. The central depository shall notify the new holder's securities account manager when the account is credited, upon which the account manager shall credit the dematerialized securities transferred to the new holder's securities account.

(3) All rights arising out of dematerialized securities shall pass to the new holder upon the transfer of such securities irrespective of the transferor's previous rights.

Section 6:578

[Legal effects of formalities relating to dematerialized securities]

(1) The holder of dematerialized securities shall mean the holder of the securities account on which the dematerialized securities are recorded.

(2) The holder of dematerialized securities shall be able to verify his entitlement by the account statement issued by the keeper of the securities account or with a certificate of entitlement when the account statement or the certificate of entitlement is made out. The account statement and the certificate of entitlement shall not be recognized as securities. In the event of any divergence between the data shown on the account and what is contained in the account statement, the data shown on the account shall be considered authentic.

(3) The rights arising out of dematerialized securities of a bona fide person who qualifies as holder shall be in force irrespective of whether a previous transfer or other form of acquisition was illegitimate, or it took place under an invalidated or void title.

(4) If the person of the holder of a dematerialized security changes by means other than transfer, the new holder shall be required to verify his acquisition and may request to have the dematerialized security credited to his securities account. The previous holder's account shall be debited and the dematerialized securities shall be credited to the new holder's account in accordance with the provisions relating to the transfer of dematerialized securities.

PART SIX

OTHER FACTS ESTABLISHING OBLIGATIONS

TITLE XXXII

UNJUST ENRICHMENT

Section 6:579

[Unjust enrichment]

(1) Any person who unlawfully acquires any financial advantage at the expense of another shall be obliged to return the advantage.

(2) Any person who has been deprived of gains before they are reclaimed shall not be obliged to return them, unless:

- a) the gains had been acquired in bad faith; or
- b) he has acted wrongfully as regards the loss of the gains.

Section 6:580

[Compensation of value]

If a financial advantage cannot be returned in kind, its value shall be compensated.

Section 6:581

[Recovering grants provided for subsistence]

Grants that are provided and used for subsistence cannot be reclaimed on the grounds of unjust enrichment, unless the grant has been criminally obtained.

Section 6:582

[Joint enrichment]

The persons who has been unjustly enriched jointly shall be jointly and severally obligated to return the unjustly received property.

TITLE XXXIII

NEGOTIORUM GESTIO

Section 6:583

[Negotiorum gestio]

Any person acting in a matter on behalf of another person without being authorized thereto by agency or otherwise shall be obliged to handle the matter as required by the interest and probable intent of the person in whose favor he has intervened.

Section 6:584

[Appropriate intervention]

(1) Intervention in the affair of another person without authority shall be considered appropriate if it is in conformity with the interest and presumed intent of the other person, especially if the intervention saves him from loss or injury.

(2) Intervention is considered appropriate in order to avert life threatening situations even against the will of the person whose life is endangered, to prevent or avert extensive potential hazards even against the will of the owner or another duly authorized person, or to fulfill the obligation to provide support even against the will of a person who is obliged to provide support.

Section 6:585

[Unauthorized agent]

(1) An unauthorized agent shall immediately inform the person in whose favor he has intervened; otherwise, he shall be subject to the same obligations as an agent.

(2) If intervention by an unauthorized agent has been appropriate, he shall be entitled to the rights of an agent, irrespective of whether his intervention was successful or not.

(3) If intervention has not been appropriate, the unauthorized agent shall not be entitled to demand remuneration; he shall be entitled to demand reimbursement for his expenses only in accordance with the regulations governing unjust enrichment, and he shall be liable for all damages that would not have occurred without his intervention.

(4) As regards the obligations of separation, safeguarding, settlement and allocation of the unauthorized agent relating to any foreign property in his possession, the provisions relating to fiduciary asset management contracts shall apply *mutatis mutandis*.

Section 6:586

[Handling the affairs of another person without due authority]

If a person, knowing he has no right to do so, involves himself in the affairs of another person, it shall be possible to enforce the rights proceeding from *negotiorum gestio*. If these rights are enforced, the acting person shall be entitled to include his expenses according to the regulations governing unjust enrichment.

TITLE XXXIV

IMPLICIT CONDUCT

Section 6:587

[Implicit conduct]

The court may award damages payable in full or in part by a party whose willful conduct has explicitly induced another bona fide person to act in a manner that has brought harm to this person through no fault of his own.

TITLE XXXV

OFFERING REWARDS

Section 6:588

[Offering rewards]

(1) If a person publicly offers a reward to anyone who achieves a certain performance or accomplishment, he shall be obligated to give the reward to the person who first achieved the performance or accomplishment. This person shall be bound by this obligation even if the performance or accomplishment is achieved irrespective of the reward offer.

(2) If the performance or accomplishment was achieved by two or more persons jointly, the reward shall be divided among these persons in proportion to their participation. If the proportion

of participation cannot be determined or if the performance or accomplishment was achieved by two or more persons independently, the reward shall be divided in equal shares.

(3) Withdrawal of a reward offer shall be considered valid only if the person making the offer has expressly reserved the right to do so and withdrawal is effected by at least the same degree of publicity that accompanied the reward offer. Withdrawal of a reward offer shall be inoperative in respect of the person who achieved the performance or accomplishment, if it takes place after the time the performance or accomplishment had in fact been implemented.

TITLE XXXVI

PUBLIC COMMITMENTS

Section 6:589

[Public commitments]

Where a person undertakes an obligation to offer financial benefits without compensation for a public-policy objective of his choice, he shall be allowed to stipulate the conditions under which the contribution is to be used for the purpose specified, and to designate a person for whose benefit the contribution should be appropriated.

Section 6:590

[Designated bodies]

(1) If the obligor has not appointed a body to appropriate the contribution for the specified purpose, the court shall appoint one on the basis of the public prosecutor's petition.

(2) If the appointed body fails to appropriate the contribution for the specified purpose, the public prosecutor shall also be entitled to enforce the claims arising therefrom.

Section 6:591

[Withdrawal]

(1) A commitment to perform a one-time contribution can be validly withdrawn prior to performance if performance of the contract can no longer be expected due to significant changes that have occurred in the obligor's circumstances since he undertook the obligation.

(2) The obligor shall, at any time, be entitled to withdraw a commitment to make regular contributions for an indefinite period of time.

(3) If the commitment is withdrawn, a contribution that has already been made cannot be reclaimed.

Section 6:592

[Cessation of commitments]

(1) The commitment shall cease:

a) upon the obligor's death;

b) when the purpose of the commitment has been achieved; or

c) if achievement of the purpose of the commitment is no longer possible.

(2) If a commitment has been extinguished because the purpose has been accomplished or has become impossible, any unused contributions shall be returned to the obligor.

BOOK SEVEN
LAW OF SUCCESSION

PART ONE

GENERAL RULES

TITLE I

SUCCESSION

Section 7:1

[Inheritance]

The estate of a person shall devolve upon an heir in its entirety after the testator's death.

Section 7:2

[Right of inheritance]

The right to inheritance shall not lapse.

Section 7:3

[Wills and intestate succession]

(1) The disposition of one's property after death may take place by will or intestate succession.

(2) If the testator died leaving a valid testamentary disposition, it shall determine the order of succession.

TITLE II

DEBARMENT FROM SUCCESSION

Section 7:4

[Debarment from succession]

(1) Any person who did not survive the testator shall be debarred from succession. Persons who died in the same accident or in any similar incident shall be considered debarred in terms of consecutive succession irrespective of the time of their death.

(2) Furthermore, a person shall be debarred from succession under the following circumstances:

- a) if undeserving of the inheritance;
- b) if he has been excluded from the inheritance or disinherited by the decedent;
- c) if he has waived his right to the inheritance;
- d) if he has disclaimed the inheritance.

Section 7:5

[Debarment from beneficial rights, compulsory share, legacy or devise]

The provisions on debarment from succession shall also apply to the inheritance of beneficial rights, to compulsory share, legacy and devise, with the exception that the debarment of the legatee or devisee shall, if there has been no substitution in this regard, mean the exemption of the person compelled by the legacy or devise.

Section 7:6

[Unworthiness]

(1) A person is unworthy of inheritance if he has:

- a) attempted to take the decedent's life;
- b) willfully obstructed the decedent in freely manifesting his last will, frustrated the enforcement of the will, or attempted either of these;
- c) attempted to take the life of the legal heir or the life of a person named to receive property in the decedent's will with the intention of receiving a part of the inheritance.

(2) Unworthiness shall not be taken into consideration if the conduct leading to unworthiness, regardless of the person against whom it was directed, has been pardoned by the decedent or the person against whom it was directed.

(3) Unworthiness can only be alleged by a person who, as the result of the unworthy person's debarment, would himself inherit or would be exempted from an obligation or other burden to which he is bound by virtue of the testamentary disposition.

(4) Any person who is debarred from succession for reason of unworthiness shall not be entitled to administer the inheritance of the person replacing him. The provisions pertaining to the termination of the parents' asset management right shall apply *mutatis mutandis* to the administration of such assets.

Section 7:7

[Waiver of succession]

(1) Any legal heir shall be entitled to renounce his right to succession - in whole or in part - in a written agreement concluded with the testator.

(2) Renouncement may be contested, in the same manner as a will, for lack or deficiency of contractual intent.

Section 7:8

[Personal effects of waiver]

(1) The waiver shall not affect the descendants of the person making the waiver, except if it is so stated in the agreement or if it occurs in return for satisfaction reaching the compulsory share.

(2) If the waiver is made in favor of a specific person it shall only apply - unless the parties have agreed otherwise - if that specific person stands to inherit from the decedent. Any waiver made by a descendant of the testator shall apply - unless the parties have agreed otherwise - in favor of the other descendants.

Section 7:9

[Scope of waiver]

(1) Renouncement of the inheritance shall - unless the parties have agreed otherwise - also constitute a waiver of the compulsory share. However, waiver of the compulsory share shall not imply disclaiming that which comes down to the person making the waiver under other titles of inheritance.

(2) In the absence of any agreement to the contrary, a waiver shall also cover that part of the estate by which the share of the person making the waiver later increases as a consequence of the debarment of another person.

(3) Likewise, unless the parties have agreed otherwise, the waiver shall also apply to property acquired by the decedent after the waiver has been made, unless the acquisition results in such an extraordinary increase in the testator's estate that the person making the waiver, had he been aware of the increase, would not have issued a waiver.

PART TWO

SUCCESSION BY WILL

TITLE III

TYPES OF WILLS, VALIDITY OF WILLS, INTERPRETATION OF WILLS

Section 7:10

[Freedom of testamentary disposition]

Testators shall be entitled to freely dispose of their property, or a part thereof, at time of death by a will.

Section 7:11

[Personal nature of testamentary disposition]

Wills shall be drafted in person.

Section 7:12

[Wills]

An instrument shall be recognized as a will if it contains the testator's disposition of his property to take effect after his death, and if it manifestly appears to have been made out by the testator.

Section 7:13

[Types of wills]

Disposition of property may be accomplished by means of a notarial will or holographic will; noncupative wills are permissible in the cases specified in this Act.

Section 7:14

[Notarial will]

(1) A notarial will shall be drafted before a notary public. The provisions pertaining to the validity of notarial deeds shall apply to the formal requirements of notarial wills.

(2) Notarial wills may not be validly drafted before a person who is a relative, guardian, or conservator of the testator or the testator's spouse or domestic partner.

(3) Any bequest in favor of a person participating in the drafting of a notarial will or in favor of the relative of such person or a person under his guardianship or conservatorship shall be invalid.

(4) The testamentary disposition of a minor of limited legal capacity or a person whose legal capacity has been partially limited in respect of making legal statements relating to property shall be considered valid only if made in the form of a notarial will. The consent of their legal representatives, or the approval of the guardian authority shall not be required for the wills of such persons to be valid.

(5) The testamentary disposition of blind or illiterate persons, or persons who are incapable of reading or subscribing their names shall be considered valid only if made in writing in the form of a notarial will.

Section 7:15

[Holographic will]

A holographic will can be validly made only in a language that the testator understands, and that he is able to write if written by the testator in his own handwriting, or that he is able to read if written by others.

Section 7:16

[Wills written by the testator in his own handwriting and wills written by others]

(1) A holographic will may be written by the testator in his own handwriting or by another person on his behalf.

(2) Type-writing shall not be recognized as one's own handwriting even if typed by the testator himself.

(3) Personal wills drafted in shorthand writing or another symbol or code writing, other than normal writing, shall be invalid.

Section 7:17

[Formal validity requirements for holographic wills]

(1) A holographic will shall be considered valid from a formal point of view if the date when it was drafted is clearly indicated, and:

a) if it is entirely written and signed by the testator in his own handwriting;

b) if written by other persons, it is signed by the testator in the contemporaneous presence of two witnesses or, if it was signed previously, the testator declares the signature to be his own before two witnesses in their contemporaneous presence, and if the will is also signed in both cases by the witnesses, indicating their capacity as such; or

c) if written by the testator himself or by other persons, it is signed by the testator, and deposited personally with a notary public either as an open document or a sealed document, specifically marked as a will.

(2) A holographic will written by the testator in his own handwriting, consisting of several separate pages shall be deemed valid if each page is numbered in sequence.

(3) A holographic will consisting of several separate pages, if written by a person other than the testator, shall be deemed valid if each page is numbered in sequence and signed by the testator and by both witnesses.

Section 7:18

[Attesting a holographic will]

(1) A holographic will may not be witnessed by:

- a) any person who is unable to verify the testator's identity;
- b) a minor or incompetent adult, or by any person whose legal capacity has been partially limited in respect of serving as a witness;
- c) any person who is illiterate.

(2) The witness' knowledge of the contents of a will and his awareness that he has participated in the drafting of a will are not conditions of the validity of a holographic will.

Section 7:19

[Devise made to a subscribing witness or another participating person]

(1) Any devise made in favor of a subscribing witness of a holographic will or another participating person or one of their relatives shall be invalid, unless this section of the will is handwritten and signed by the testator himself.

(2) A devise made in favor of a subscribing witness or one of his relatives shall not be null and void if two witnesses other than the subscribing witness himself have participated in drafting the will.

(3) The person who drafted, edited or wrote the will, and any person whose activity carries the potential to influence the contents of the will shall be recognized as a participating person.

(4) Where a devise made in favor of a legal person, or any member, executive officer, representative or supervisory board member, or any employee of such legal person may not participate as a witness. Participation by such person in drafting the will shall render the devise made in favor of that legal person invalid.

Section 7:20

[Exceptional nature of nuncupative wills]

Nuncupative wills can be made by persons who are in an extraordinary life threatening situation where making a written will is not within their reach.

Section 7:21

[Validity requirements for nuncupative wills]

A nuncupative will shall be considered valid if a testator orally exhibits his will in its entirety in the contemporaneous presence of two witnesses, in a language understood by the witnesses - or in sign language if the testator uses sign language - and concurrently announces that his oral statement constitutes his will.

Section 7:22

[Witness to a nuncupative will]

The restrictions concerning the person of the witnesses of holographic wills and their interests and those of their relatives shall also apply to nuncupative wills, with the proviso that the witness' literacy is not a prerequisite for a nuncupative will to be valid.

Section 7:23

[Joint will]

(1) The wills of two or more persons executed in the same document in any form shall be invalid.

(2) The written will of spouses made during their marriage and executed in the same document shall be considered valid if:

a) it is entirely written and signed by one of the testators in his own handwriting, and the other testator declares in the same document in a signed statement executed in his own handwriting that the document also contains his last will and testament;

b) if written by other persons, it is signed by the testators in the contemporaneous presence of the other testator and the witnesses, or both testators declare separately in the contemporaneous presence of the other testator and the witnesses that the signature on the document is their own; or

c) the spouses made a notarial will.

(3) A joint will consisting of several separate pages, if written by a person other than the testators, shall be deemed valid if each page is numbered in sequence and signed by the testators and by both witnesses. A joint will written by the testator in his own handwriting shall be deemed valid if each page is numbered in sequence and signed by the other testator.

Section 7:24

[Interpretation of wills]

Where there is any doubt, the will shall be interpreted in accordance with the testator's presumed intent, finding the true meaning of words aiming to execute the decedent's last will, if possible. This provision may not be relied on for remedying any formal discrepancies of the will.

TITLE IV

CONTENTS OF WILLS

Section 7:25

[Naming heirs]

(1) A testator shall be entitled to name one or more heirs in his will.

(2) Heir means a person to whom a testator leaves his estate, or a specific portion or part thereof.

(3) In case of doubt, an heir could be any person to whom a testator leaves one or more designated properties that constitute a significant part of the value of the entire estate, if the recipient also shares in the debts and liabilities of the estate in accordance with the presumed intent of the testator.

(4) A foundation to be established upon the founder's death shall - after it is registered - be able to acquire the property the founder has provided as if it has existed at the time of the opening of the succession.

Section 7:26

[Share in the succession]

If the testator has named two or more heirs either for the entire estate, a part thereof, or for a specific property item and has not defined the size of their shares, the recipients shall succeed in equal shares.

Section 7:27

[Alternate heir]

(1) The testator shall be entitled to name another person as heir in the event the heir is debarred from succession.

(2) If the designated heir is also the testator's legal heir, his descendant shall be considered his alternate heir in the case of his debarment, unless otherwise provided for in the will, if the descendant would - under intestate succession - replace the designated heir if debarred.

Section 7:28

[Substitute heir]

(1) The testator's testamentary disposition according to which another heir shall, as of some event or a date, replace the previous heir in respect of the inheritance or a part thereof, shall be invalid.

(2) In the event of the death of the heir named as the primary heir, an heir shall enter as an alternate heir if the conditions thereof have been satisfied.

(3) The testator shall be entitled to validly designate a substitute heir in the event of death of his/her spouse named as the primary heir for the estate devolving upon the spouse. The designation of a substitute heir shall not affect the spouse's quid pro quo right of disposition and his/her right to give advancements not exceeding gifts of ordinary value.

(4) The testator shall be entitled to validly designate a substitute heir for his/her estate devolving upon a descendant named as a primary heir for the eventuality if the descendant is lacking testamentary capacity at the time the succession has been opened, and he/she dies without acquiring such capacity. Naming a substitute heir shall not affect the right of disposition of the descendant named as a primary heir applicable within the limits of the provisions on legal capacity.

Section 7:29

[Disinheritance]

(1) The testator shall be entitled to disinherit his/her legal heir or persons who could become his/her legal heirs from intestate succession, either by naming other persons as an heir or by making an explicit statement in the will. Disinheritance need not be justified.

(2) Persons eligible for a compulsory share of inheritance may also be denied a share in the succession exceeding the compulsory share.

Section 7:30

[Residuary estate]

If the shares of the heirs do not exhaust the entire estate, intestate succession shall be effected with respect to the remaining assets, unless otherwise provided for by this Act or otherwise inferred from the will.

Section 7:31

[Legacy]

(1) A legacy is any property in an estate that is bequeathed directly to a specific person if such share is not regarded as inheritance (specific legacy).

(2) It shall also be a legacy if a testator compels an heir to perform a material service for a legatee (obligatory legacy).

(3) A legacy can also be left to an heir. A person who is himself a legatee can also be burdened by a legacy. In case of doubt, a legacy shall burden the heir.

Section 7:32

[Substitute legatee]

(1) A testator's testamentary disposition according to which another person shall, as of some event or a date, replace the previous legatee in the bequest, shall be valid.

(2) Unless otherwise provided for by the testator, the designation of a substitute legatee shall not affect the primary legatee's quid pro quo right of disposition and his/her right to give advancements not exceeding gifts of ordinary value.

Section 7:33

[Devise]

(1) If the testator has burdened a person who receives a part of the estate with an obligation to be performed for the benefit of a third person, the person named in the will shall become entitled to the claim. Performance of a devise for which the will contains no instructions whatsoever may be demanded by the executor of the will and by any other person who receives a part of the estate. Performance of a public interest devise may be demanded by the competent authority as well.

(2) In case of doubt, a devise shall burden the heir.

(3) Where there is reason to believe that the testator wished to make a bequest pending discharge of a devise, the person burdened with the devise shall be required to forfeit the bequest according to the provisions on unjust enrichment if he fails to discharge the devise or if discharging the devise becomes impossible for reasons within his control. Forfeiture of the bequest may be demanded by the executor of the will and by any other person who receives a part of the estate. The value of the forfeited property shall be allocated to discharging the devise.

(4) In case of doubt, legacy shall also include the testator's instruction to grant property to a specific person.

Section 7:34

[Application of the rules of testate succession to legacy and devise]

The provisions of testate succession shall apply mutatis mutandis to legacies and devices, unless otherwise provided for in this Act.

Section 7:35

[Right of accretion]

(1) If a testator has named two or more heirs for the whole estate or a part thereof, thereby excluding intestate succession, and if an heir is debarred without having an alternate heir, the shares of the other heir named for the same part of the estate shall be increased proportionately.

(2) If the designated heir is debarred, and he/she is also the legal heir of the testator, the share of the other heirs in the succession who are also legal heirs of the testator shall be increased proportionately on the basis of the right of accretion on condition that there is no alternate heir for the debarred person and none can be otherwise inferred from the will.

(3) An heir named for a specific property item shall have a right of accretion only as a result of the debarment of another heir named for the same property and only with respect to that property.

Section 7:36

[Right of accretion on legacy and devise]

Legatees named jointly for the same property item or for the same service and the beneficiaries of the devise made in favor of more than one person shall be entitled to the right of accretion in an orderly fashion under the same conditions as the heirs named in respect of specific property items.

TITLE V

INVALIDITY AND ANNULMENT OF WILLS

Section 7:37

[Contest of will]

(1) A will may be declared invalid and annulled on the basis of a statement of contest. The statement of contest shall indicate the reasons for invalidity or annulment.

(2) A contest may be filed by a person who, as the result of invalidity or annulment, would himself inherit or would be exempted from an obligation or other burden to which he is bound by virtue of the testamentary disposition.

(3) Invalidity or annulment of the will may be established on the grounds on which the contest is based, for the person who filed to contest.

(4) The right of contest shall lapse after five years from the time of the opening of the succession.

(5) The right of contest shall be suppressed if the party entitled to contest waives his right to do so after the time of the opening of the succession. The legal statement in which the party entitled to contest acknowledges the will as valid and/or effective shall be construed a waiver.

Section 7:38

[Revocation of the probate of a will]

(1) Any condition that is manifestly in contradiction to good morals, unintelligible, impossible, or contradictory shall be invalid. The invalidity of a condition shall not affect the validity of a

testamentary disposition, unless it can be established that the testator would not have made the disposition without the condition.

(2) A testamentary bequest rendered contingent on an unlawful condition precedent shall be invalid, and an unlawful condition subsequent shall be disregarded.

Section 7:39

[Validity of the will of a person placed under a conservatorship]

The will of a person placed under a conservatorship shall be valid if the reason for being placed under conservatorship ceases to exist by the time the will is drafted.

Section 7:40

[Defects in the intention of the person making the disposition]

(1) A testamentary disposition shall be invalid if:

a) the testator was mistaken concerning the contents of his statements or did not want to make a statement of such content at all;

b) the testator had been persuaded to make the statement by a mistaken assumption or some subsequently abandoned expectation;

c) the testator had been coerced into making the disposition by the use of threat or unfair influence;

provided that the testator would not otherwise have made the disposition.

(2) An invalid provision shall become valid if the testator subsequently approves it in the form prescribed for a will.

Section 7:41

[Revocation of will]

(1) A will shall become inoperative if revoked. Unless otherwise provided for in this Act, the provisions governing the making of wills shall also apply to revocation.

(2) If the testator drafts a new holographic will, the previous will shall be deemed revoked. The dispositions of the previous will that are not in contradiction to the dispositions of the new will shall remain in force if the contrary intention of the testator cannot be established.

Section 7:42

[Destruction of holographic wills intentionally and otherwise]

(1) A holographic will shall become inoperative if it is destroyed either by the testator, having testamentary capacity, or by another person with his consent. If a holographic will has remained in the testator's possession but has not been found, it shall, until proven to the contrary, be presumed that the testator has destroyed it.

(2) Neither a public nor a holographic will shall cease to have effect if the document containing the will is destroyed for reasons beyond the control of the testator or if it cannot be found, except if the testator acquiesces to destruction.

Section 7:43

[Annulment and revocation of joint wills]

(1) The joint will of spouses shall become inoperative if their matrimonial relationship ceases after making the will, and it is not reconciled before the time of the opening of the succession.

(2) The joint will shall become inoperative if one or both of the testators have a child born after the will is made, except if the will provides otherwise. Adoption shall have the same effect.

(3)⁷³ The arbitrary revocation of a testamentary disposition made in a joint will shall have no effect if it was precluded in the will, or if carried out without notifying the other testator.

(4) If either spouse revokes his/her disposition contained in the joint will unilaterally, the disposition of the other spouse shall remain in effect, unless it can be established from the will that neither of the parties would have made his/her disposition without the other's disposition.

Section 7:44

[Withdrawal of a will deposited with a notary public]

A personal will deposited with a notary public shall become inoperative if it is withdrawn by the testator.

Section 7:45

[Annulment of nuncupative wills]

A nuncupative will shall become inoperative if the testator had the opportunity to draft a written will without any difficulty during a period of thirty consecutive days following the cessation of the situation underlying the making of the nuncupative will.

Section 7:46

[Annulment of a will made for the benefit of a spouse or domestic partner]

A will made for the benefit of the spouse or domestic partner during the period of matrimonial relationship or cohabitation shall be inoperative if the marriage or partnership no longer exists at the time of the opening of the succession, and it is manifestly evident from the circumstances that there was no reasonable expectation of reconciliation and that the testator did not wish to leave any property to his/her spouse or domestic partner.

Section 7:47

[Partial invalidity and partial annulment of wills]

If any disposition from among the several dispositions of a will is invalid or inoperative, the other dispositions shall remain valid or effective, unless otherwise provided for by the testator and provided that continuance of certain parts of the will is not in contradiction to the presumed intent of the testator.

TITLE VI

AGREEMENTS AS TO SUCCESSION

Section 7:48

⁷³ Enters into force as under Section 189 of Act CCLII of 2013.

[Agreements as to succession]

(1) An agreement as to succession means an agreement where the testator names the other party to the agreement his/her heir in exchange for maintenance, annuity or care to be provided to the testator him/herself or to a third person specified in the agreement for his entire estate or a specific part thereof, or in respect of certain property, and the other party undertakes the commitment to provide said maintenance, annuity or care.

(2) If the commitment of the party to the agreement with the testator covers the period after the testator's death in respect of the third person, in the probate proceedings the devise provided in the form of real estate property shall be transferred to the third person encumbered with the right to maintenance, and the right to maintenance shall be recorded in the real estate register at the request of the notary conducting the probate proceedings.

(3) The testator shall be entitled to make any testamentary disposition in the agreement as to succession. Any testamentary disposition made in the agreement as to succession by the other party to the agreement with the testator shall be invalid.

Section 7:49

[Validity of a contract of inheritance]

(1) The provisions on holographic wills shall apply to the validity of agreements as to succession with the exception that the formal requirements of wills written by other persons shall apply to such agreements even if they are drafted in the handwriting of one of the parties.

(2) If the testator is a minor of limited legal capacity or a person whose legal capacity has been partially limited in respect of making legal statements relating to property, the consent of their legal representatives or the approval of the guardian authority shall be required for their agreement as to succession to be valid.

Section 7:50

[Transfer of estate]

(1) In the absence of an agreement of the parties to the contrary, any disposition of the testator inter vivos or causa mortis for the alienation or encumbrance of the property to which the agreement as to succession pertains shall be null and void. This provision shall not affect the rights of a third person, acquired in good faith and for a consideration.

(2) In the absence of an agreement of the parties to the contrary, a prohibition of alienation and encumbrance of the real estate property bound by the agreement as to succession may be recorded in the real estate register without the testator's consent.

Section 7:51

[Joint agreement of spouses as to succession]

(1) Spouses shall be entitled to validly conclude an agreement as to succession during their marriage executed in the same document.

(2) In the absence of an agreement of the parties to the contrary, the surviving spouse shall have life estate on the dwelling inherited by the party to the agreement with the testators, including furnishings and appliances, if he/she used them together with the testator.

Section 7:52

[Amendment and termination of contracts of inheritance]

(1) In respect of the amendment and termination of an agreement as to succession, the provisions on maintenance and life-annuity contracts shall apply.

(2) The regulations governing the creation of agreements as to succession shall apply to termination and amendment in terms of formal requirements. Termination of the agreement made in the absence of statutory formalities shall be deemed valid, if the actual state conforming thereto has been established upon the parties' mutual consent.

TITLE VII

TESTAMENTARY GIFTS. DISPOSITION OF EXPECTED INHERITANCE

Section 7:53

[Testamentary gift]

(1) If a gift has been given under the condition that the donee outlives the donor, the regulations governing gifts shall apply to the contract with the exception that the formal requirements to be applied shall be the same as those for agreements as to succession.

(2) A testamentary gift shall be deemed valid only for a bequest that would qualify as a specific legacy in a will.

Section 7:54

[Agreement on expected inheritance]

(1) Descendants of a testator shall be entitled to conclude an agreement among themselves regarding their expected inheritance even during the lifetime of the testator.

(2) Such agreements shall be executed in writing.

PART THREE

INTESTATE SUCCESSION

TITLE VIII

INTESTATE SUCCESSION GENERALLY

Section 7:55

[Inheritance by descendants]

(1) The child of a decedent shall be the primary legal heir.

(2) Two or more children shall succeed in equal shares.

(3) In the place of a child or a more distant descendant debarred from succession, the children of a debarred person shall succeed in equal shares.

Section 7:56

[Obligation to restore gifts]

(1) If several descendants succeed together, each heir shall add to the value of the estate the value of advancements they received from the decedent during his lifetime if the decedent expressly stipulated such advancements to be included in the heir's share of the estate or the circumstances suggest that the bequest was made under the obligation of inclusion.

(2) Where several descendants succeed together, they shall be subject to the obligation to restore gifts also if they receive their legal share in the succession based on the testator's testamentary disposition.

(3) Advancements of common value and the maintenance provided to descendants who are in need of support shall not be treated as advancements even if the decedent expressly stipulates it.

Section 7:57

[Implementation of the obligation to restore gifts]

(1) The intestate share of each heir in the succession shall be determined by dividing the consolidated total net value of the estate and all of the restored advancements into appropriate shares, and the value of such advancements restored by each heir shall be deducted from this.

(2) The value restored shall be determined on the basis of the value of the advancement at the time it was given. If applying the value of the advancement at the time when it was given is considered grossly unfair for either party, such party may bring action asking the court to revise such value relying on the prevailing circumstances.

(3) If a person debarred from succession has a descendant, such descendant shall be obliged to restore the advancements received by the debarred person. Any advancement received by an ancestor shall be deducted from the share of two or more descendants calculated on the basis of the restored values in proportion to their shares of the estate.

(4) If the value restored by a co-heir reaches or exceeds the value of his share of the estate as calculated on the basis of restored values, he shall be considered satisfied from the inheritance to be divided, but he shall not be compelled to refund any excess. In such a case, the advancement of the co-heir who does not receive a share from the estate and that of the aforementioned co-heir shall not be included when dividing the estate among the other co-heirs.

Section 7:58

[Spouse's share from the estate contemporaneously with a descendant]

(1) The testator's spouse shall be entitled contemporaneously with the legal heir to:

a) life estate on the family dwelling used together with the testator, including furnishings and appliances; and

b) one share of a child from the remainder of the estate.

(2) Life estate may not be limited, and no redemption value may be demanded from the spouse.

(3) Under an allocation agreement, instead of a child share, the spouse may be granted estate for life in respect of the entire estate.

Section 7:59

[Spouse's right to redemption]

(1) The spouse may at any time request redemption of his/her life estate for future considerations. Redemption of life estate shall be carried out in due consideration of the spouse's and the descendant's reasonable interests.

(2) The spouse shall be entitled to one child share - in kind or in money - from the estate to be redeemed.

Section 7:60

[Spouse's share from the estate over parent]

(1) If there is no descendant, or if the descendant is excluded from succession, the testator's spouse shall inherit the family dwelling used together with the testator, including furnishings and appliances.

(2) Half of the estate to which Subsection (1) does not apply shall be inherited by the testator's spouse, and the other half shall be inherited by the testator's parents in equal shares. If a parent is debarred from succession, the other parent and the testator's spouse shall succeed in equal shares.

Section 7:61

[Spouse as the sole heir]

If there is no descendant or parent, or if they are excluded from succession, the surviving spouse shall receive the entire estate.

Section 7:62

[Spouse's debarment from intestate succession]

(1) The testator's spouse shall be debarred from succession if they were separated at the time of the opening of the succession and it is manifestly evident from the circumstances that there was no reasonable expectation of reconciliation.

(2) Debarment of the testator's spouse can only be alleged by a person who, as the result of debarment, would himself inherit or would be exempted from an obligation or other burden to which he is bound by virtue of the testamentary disposition.

Section 7:63

[Inheritance by parent and parent's descendant]

(1) If there is no descendant or spouse, or if they are excluded from succession, the parents of the decedent shall succeed in equal shares.

(2) In the place of a parent debarred from succession, the descendants of such parent shall succeed in the same manner in which the descendants of a child succeed in the stead of the child.

(3) If a parent debarred from succession has no descendant, or if the descendant is excluded from succession, the other parent alone or his descendants shall succeed.

Section 7:64

[Inheritance by grandparent and grandparent's descendant]

(1) If there are no descendants, spouse, parents, or descendants of parents, or if they are excluded from succession, the grandparents of the decedent shall become legal heirs in equal shares.

(2) In the place of a grandparent debarred from succession, the descendants of such grandparent shall succeed in the same manner in which the descendants of the parent succeed in the stead of that parent.

(3) If a grandparent debarred from succession has no descendant, or if the descendant is excluded from succession, the spouse of such grandparent shall succeed in his/her stead, and if he/she too is debarred, his/her descendants shall succeed in his/her place.

(4) If either set of grandparents has been debarred and there are no descendants in their place or if they are excluded from succession, the entire estate shall be inherited by the other set of grandparents or their descendants.

Section 7:65

[Inheritance by great-grandparent and great-grandparent's descendant]

(1) If there are no grandparents and descendants of grandparents, or if they are excluded from succession, the great-grandparents of the decedent shall become legal heirs in equal shares.

(2) In the place of a great-grandparent debarred from succession, the descendants of such great-grandparent shall succeed in the same manner in which the descendants of the grandparent succeed in the stead of that grandparent.

(3) If a great-grandparent debarred from succession has no descendant, or if the descendant is excluded from succession, the spouse of such great-grandparent shall succeed in his/her stead, and if he/she too is debarred, his/her descendants shall succeed in his/her place.

(4) If either set of great-grandparents has been debarred and there are no descendants in their place or if they are excluded from succession, the entire estate shall be inherited by the other set of great-grandparents in equal shares.

(5) If either of the great-grandparents succeeding under Subsection (4) is debarred, the provisions set out in Subsections (2) and (3) shall apply.

Section 7:66

[Inheritance by distant relatives]

If there are no great-grandparents and descendants of great-grandparents, or if they are excluded from succession, the distant relatives of the decedent shall become legal heirs in equal shares.

TITLE IX

LINEAL SUCCESSION

Section 7:67

[Lineal property]

(1) If the legal heir is not a descendant of the decedent, any property that has come down to the decedent from an ancestor by inheritance or gift shall be subject to lineal succession.

(2) Property inherited or received as a gift from a sibling or his descendant shall also be subject to lineal succession if the property had been inherited or received as a gift by the sibling or his/her descendant from his/her and the decedent's common ancestor.

(3) Whosoever would inherit under this title shall prove the lineal nature of the property.

Section 7:68

[Lineal heirs]

(1) A parent shall succeed to property that has come down to the decedent from him/her or one of his/her ancestors. Descendants of a debarred parent shall succeed in his/her place according to the general provisions on intestate succession.

(2) If the parent who is entitled to succeed to a lineal property and the parental descendant are both debarred, the grandparent, and if the grandparent is also debarred, a more distant ancestor of the decedent shall inherit the property that has come down to the decedent from him/her or from one of his ancestors.

(3) If there is no lineal heir, lineal property shall be treated the same as the decedent's other property.

Section 7:69

[Spouse's life estate on lineal property]

(1) The spouses shall be entitled to life estate on lineal property.

(2) The spouse and the lineal heir both shall be entitled to request the redemption of the right to life estate any time for future considerations. Redemption from the spouse relating to life estate on the family dwelling used together with the testator, including furnishings and appliances, may not be requested.

(3) With respect to redemption, the spouse is entitled to one-third of the lineal property.

(4) Redemption of life estate shall be carried out in due consideration of the reasonable interests of the holder of life estate and the heir of the property.

Section 7:70

[Property excluded from lineal succession]

(1) The provisions on lineal succession shall not apply to gifts of ordinary value.

(2) The provisions on lineal succession shall not apply to any property that no longer exists at the time of the testator's death, however, they shall apply to any substitute property or a property purchased from the proceeds received for such property.

(3) No claim can be filed, on the grounds of lineal succession, for furnishings and/or household accessories of common value against the testator's spouse.

Section 7:71

[Lineal estate]

Lineal property shall be inherited in kind. If succession in kind appears to be impossible or impractical, the court may - at the request of either of the parties affected - order payment of the monetary value of the lineal property.

TITLE X

PROVISIONS ON INHERITANCE RELATING TO ADOPTION

Section 7:72

[Inheritance by adopted persons]

(1) An adopted person shall, during the existence of adoption, inherit as a blood descendant of the adoptive parent from the estate of the adoptive parent and his/her relatives.

(2) Adoption shall not affect the adopted person's legal right to inherit from his/her blood relatives, if adoption was implemented by the adopted person's relative in the ascending line, sibling, or a descendant of such relative in the ascending line.

Section 7:73

[Inheritance of the adopted person's property]

(1) The adopted person's descendant and spouse, or if there are no descendants, his/her spouse and adoptive parent, or if there are neither descendants nor spouse, the adoptive parent and his/her relatives shall be the heirs of the adopted person according to the provisions on intestate succession. The adoptive parent and his/her relatives shall inherit if the adoption existed at the time of the opening of the succession.

(2) If the persons referred to in Subsection (1) shall not inherit after the adopted person, the adopted person's blood relatives shall be legal heirs according to the provisions on intestate succession, provided that adoption was implemented by the adopted person's relative in the ascending line, sibling, or a descendant of such relative in the ascending line.

TITLE XI

ESCHEAT

Section 7:74

[Succession by the State of necessity]

(1) In the absence of legal heirs the estate shall revert to the State.

(2) The State, as a legal heir, shall not be entitled to disclaim an inheritance.

PART FOUR

COMPULSORY SHARE OF INHERITANCE

TITLE XII

ENTITLEMENT TO COMPULSORY SHARE

Section 7:75

[Compulsory heirs]

The descendants, spouse, and parents of a testator shall be entitled to a compulsory share if such person is a legal heir of the testator or would be one in the absence of a testamentary disposition at the time of the opening of the succession.

Section 7:76

[Lapse of right to compulsory share]

The period of limitation for claims for compulsory share shall be five years.

Section 7:77

[Disinheritance]

A person validly disinherited by a testator in his testamentary disposition shall be denied a compulsory share. Disinheritance shall be valid if the testamentary disposition expressly indicates the reason therefor.

Section 7:78

[Grounds for disinheritance]

(1) Disinheritance can take place if a person entitled to a compulsory share:

- a)* is undeserving of inheritance from the testator;
- b)* has committed a serious crime to the injury of the testator;
- c)* has attempted to take the life of the testator's spouse, domestic partner or his next of kin or has committed another serious crime to their injury;
- d)* has seriously violated his legal obligation to support the testator;
- e)* lives by immoral standards;
- f)* has been sentenced to an executable term of imprisonment, and has not yet served his term;
- g)* has failed to offer aid or assistance as it may be expected by the testator at a time of need.

(2) The testator may disinherit a descendant of legal age for reasons of gross ingratitude the descendant has displayed toward the testator.

(3) A parent may be disinherited by the testator for wrongful conduct which would also serve grounds for the termination of parental custody rights.

(4) A testator may disinherit his/her spouse because of a conduct seriously violating conjugal rights.

(5) Any person who is debarred from succession for reason of disinheritance shall not be entitled to administer the inheritance of the person replacing him. The provisions pertaining to the termination of the parents' asset management right shall apply *mutatis mutandis* to the administration of such assets.

Section 7:79

[Condonation]

(1) If the testator has condoned the reason for disinheritance before making his/her testamentary disposition, the disinheritance shall be annulled and the heir shall be entitled to a compulsory share.

(2) If the testator has condoned the reason for disinheritance after making his/her testamentary disposition, the disinheritance shall become invalid even if the testamentary disposition is not revoked.

Section 7:80

[Basis of compulsory share of inheritance]

(1) The basis of a compulsory share of inheritance is the net value of an estate, and the net value, at the time of advancement, of the advancement granted by the testator *inter vivos*.

(2) If applying the value of the advancement at the time when it was given is considered grossly unfair, the party affected may bring action asking the court to revise such value relying on the prevailing circumstances.

(3) When calculating the net value of an estate, legacies and devises shall not be considered as encumbrances.

(4) If succession has opened within two years from the time of conclusion of the agreement, the value of assets transferred under an agreement as to succession, a maintenance or life-annuity agreement or an agreement for providing care to the extent not covered by the maintenance, annuity or care actually provided shall be added to the basis of a compulsory share. The value of the transferred asset, maintenance or care provided, and the amount of the annuity shall be taken into account at the value prevailing at the time of the opening of the succession.

Section 7:81

[Donations deducted from the basis of compulsory share of inheritance]

(1) The following shall not pertain to the basis of a compulsory share of inheritance:

a) the values of advancements granted by the testator to anybody more than ten years prior to his death;

b) the value of advancements granted by the testator before the creation of a relationship conveying entitlement to a compulsory share of inheritance;

c) the value of advancements not exceeding the common value;

d) the value of maintenance given to a spouse or domestic partner and descendants;

e) the value of maintenance provided without consideration to other persons in need up to the extent necessary for subsistence.

(2) The time of entering into a relationship conveying entitlement to a compulsory share shall mean the date of marriage in respect of a child born in wedlock or adopted by the spouses in community, the date of adoption in respect of other adopted children, or the date of conception of the child in other cases.

(3) Advancements the inclusion of which has been canceled by the testator shall not be added to the basis of a beneficiary's own compulsory share.

Section 7:82

[Extent of compulsory share of inheritance]

(1) Under the title of compulsory share of inheritance, the person entitled to a compulsory share shall be entitled to one third of what is due to a legal heir as calculated on the basis of the compulsory share.

(2) If a spouse is entitled to beneficial interest as a legal heir, his/her compulsory share of inheritance shall be the limited degree of beneficial interest that provides for his/her needs, in consideration of the property he/she has inherited.

(3) The spouse who is entitled to beneficial interest as a legal heir shall be entitled to lay claim to his/her compulsory share as if his/her beneficial interest had been redeemed.

TITLE XIII

SATISFACTION OF A COMPULSORY SHARE

Section 7:83

[Inclusion]

(1) Everything received by a beneficiary from an estate under any title as well as any advancements he has received from the testator shall be applied to satisfy the compulsory share, on condition that it shall be added to the basis of the compulsory share.

(2) If a descendant entitled to a compulsory share has been debarred from succession, the value of all of the advancements received by that person or his descendants shall be included in his descendant's compulsory share. Two or more descendants shall include advancements in proportion to their shares in the estate.

(3) A testator shall be entitled to cancel inclusion with an express statement. Cancellation of inclusion shall not be effected if it would injure the compulsory share of another compulsory heir.

Section 7:84

[Responsibility for satisfaction of a compulsory share]

(1) Dispensation, or completion, of compulsory shares can be demanded in the following order:

a) responsibility for satisfaction of a compulsory share primarily falls on persons having a share of the estate;

b) the persons receiving advancements from a testator within ten years prior to his death shall be responsible for that part of the compulsory share that cannot be satisfied from the estate, irrespective of the chronological order in which the advancements were received.

(2) The share of responsibility of several persons shall be determined by the applicable value of their grants.

(3) A person who has lost a grant through no fault of his own shall not be liable for a compulsory share.

Section 7:85

[Limited liability of compulsory heirs and their family members]

(1) Any person who has received an advancement grant shall be responsible for satisfying a compulsory share up to the total value of his advancement. A compulsory heir shall be responsible only up to the value of the advancement that is in excess of his legitimate share in the succession.

(2) The spouses and descendants of persons entitled to a compulsory share as well as the descendants' spouses shall be exempt from responsibility if the total value of their advancements, even if combined with the value of the advancement of the compulsory heir, do not exceed the legitimate share of the compulsory heir in the succession. This provision shall not apply if the compulsory heir asserts his claim against his/her spouse or descendant, or his/her descendant's spouse.

(3) In the aforementioned cases, the legal share in the succession shall be taken into account in accordance with the basis of the compulsory share.

Section 7:86

[Dispensation of compulsory share]

(1) Compulsory shares of inheritance shall be dispensed without any encumbrance or limitation. If, however, a compulsory share is dispensed and the remaining property is insufficient to ensure the limited right of survivorship of the testator's spouse, the part of the

compulsory share ensuring limited enjoyment can only be dispensed after enjoyment is terminated.

(2) If the testator has left property with any limitation or encumbrance to a compulsory heir, the limitation shall only apply to that of which is above and beyond the compulsory share. Furthermore, the testator shall be entitled to provide that the beneficiary shall only receive the compulsory share if he/she does not accept the limitation or encumbrance in respect of the compulsory share.

(3) A compulsory heir shall be entitled to request that his/her share be dispensed in money. Apart from the right of survivorship, a compulsory share may be requested in kind if it was the testator's intention declared inter vivos or by a testamentary disposition.

(4) If dispensation of a compulsory share of inheritance in money is injurious either to the beneficiary or to the obligor, the court shall, in light of all of the circumstances, be entitled to order the compulsory share to be dispensed wholly or partly in kind.

PART FIVE

LEGAL EFFECTS OF SUCCESSION

TITLE XIV

ACQUISITION OF INHERITANCE

Section 7:87

[Descent and distribution]

(1) Succession shall open upon the death of the testator.

(2) Upon the opening of the succession the heir shall acquire an estate, or his/her rightful share or certain objects from an estate, without acceptance or other legal act.

Section 7:88

[Delivery of specific property from the estate encumbered by right of survivorship]

If the spouse of the testator has the right of survivorship on a property as an heir, such property shall be released after the right of survivorship is terminated.

Section 7:89

[Disclaimer of inheritance]

(1) An heir shall be entitled to disclaim an inheritance after the time of the opening of the succession.

(2) The heir shall be entitled to separately disclaim inheritance of a farmland and/or its equipment, accessories, livestock, and tools and implements, if he is not engaged in agricultural production by profession.

(3) If the heir inherits property by testate and intestate succession alike, he/she shall be entitled to refuse to accept property under either title separately.

(4) Any disclaimer rendered contingent on a condition or time or made with a restriction, as well as any unlawful partial disclaimer shall be invalid.

Section 7:90

[Waiver of the right of disclaimer]

(1) An heir who explicitly or implicitly waives the right to disclaim his inheritance after the time of the opening of the succession shall no longer be entitled to disclaim the inheritance.

(2) Taking possession of the inheritance or any other act relating to the estate that demonstrates the heir's unambiguous intention to accept the inheritance shall also be construed as abjuration of the right to disclaim an inheritance. An heir's failure to file a disclaimer of the inheritance within the time period set by a notary public at the request of any person concerned shall also be construed as a disclaimer.

Section 7:91

[Acquisition of legacy and devise]

The provisions on the acquisition of inheritance shall also apply with regard to legacies and devises mutatis mutandis.

TITLE XV

LEGAL STATUS OF HEIRS

Section 7:92

[Legal status of co-heirs]

(1) Two or more heirs shall be jointly entitled to the property of an estate before the division of the succession (hereinafter referred to as „sharing the inheritance”).

(2) The general provisions of co-ownership shall apply to the community of co-heirs, with the proviso that before the sharing of the inheritance any claim as to succession may only be enforced in the name and for the benefit of all heirs, and the debtor shall be liable to effect performance to all of the heirs.

(3) A community of co-heirs shall cease upon the division of the succession. The mode of division of the succession may be determined by the testator by way of testamentary disposition. Unless the testamentary disposition provides otherwise, the provisions on the termination of joint ownership shall apply mutatis mutandis to the division of the succession.

Section 7:93

[Allocation agreement]

The heirs shall be entitled to share the estate - pertaining to succession property exclusively - by agreement concluded within the framework of probate proceedings. In the case of an allocation agreement the estate shall be delivered under the title of succession according to the agreement.

TITLE XVI

ESTATE DEBTS AND THEIR SATISFACTION

Section 7:94

[Estate debts]

(1) The following shall be construed as estate debts:

- a) costs of a proper burial for the testator;
- b) applicable costs of acquiring, securing, and handling an estate (hereinafter referred to as „estate costs”), as well as the costs of probate proceedings;
- c) the testator’s debts;
- d) obligations based on the compulsory share;
- e) liabilities based on legacies and devises.

(2) The nature and existence of an estate debt shall not be affected by the fact that it was incurred in favor of the heir as a creditor either before or after the time of the opening of the succession.

Section 7:95

[Order of satisfaction of estate debts]

(1) Debts shall be satisfied in the sequence established for the different categories of estate debts.

(2) In respect of a debt category in which full satisfaction of all of the debts is no longer possible, satisfaction shall be made according to the proportion of claims.

Section 7:96

[Responsibility for estate debts]

(1) Heirs shall be responsible to creditors for estate debts with the objects and proceeds of the estate. If the objects or proceeds of an estate are not in the heir’s possession at the time the claims are enforced, the heir’s other property shall also be appropriated up to the value of their inheritance to cover the claims.

(2) The items of property that have not come into the heir’s possession, the claims and other rights that could not be enforced, as well as the non-existing proceeds of the received property shall be taken into account when determining the degree of the heir’s responsibility only so far as the heir has lost these for reasons within his control.

(3) The heir shall bear liability with his/her personal assets for estate costs and for the costs of probate proceedings.

(4) The spouse shall endure the satisfaction of creditors’ claims, with the exception of legacies and devises, from the property encumbered with a right of survivorship.

Section 7:97

[Liability of co-heirs]

(1) Co-heirs shall be subject to joint and several liability for common estate debts both before and after the division of the succession.

(2) The heir to whom a testator has left a specific property or right that is of no greater value than a gift of usual value shall be liable for the claims of estate creditors only if the claims cannot be recovered from the other co-heirs.

Section 7:98

[Satisfaction by an heir]

(1) The heir shall be allowed to satisfy debts without adhering to the order of satisfaction as long as there are grounds to assume that the estate debts are fully covered by the estate, if he disregards the obligations assumed by the testator inter vivos without consideration as well as the obligations based on legacies and devises. Otherwise, the heir shall be entitled to provide satisfaction only in accordance with the prescribed order.

(2) Any creditor who holds a lien on some item of property that belongs to an estate shall be entitled to seek full satisfaction up to the value of the collateral, irrespective of its place in the sequence of estate debts.

(3) If the heir fails to observe these provisions for reasons within his control, he shall, for this reason, be responsible to creditors who remain unsatisfied with his entire property.

Section 7:99

[Liability of the legatee]

(1) A legatee who has received satisfaction at the expense of another estate creditor shall, in accordance with the regulations governing unjust enrichment, be liable to that creditor if the creditor has not been able to obtain satisfaction from the heir.

(2) A legatee shall be responsible, as would an heir, with respect to the legacy or devise burdening him.

Section 7:100

[Notification of estate creditors]

(1) If there are reasonable grounds for assuming that there are unknown estate debts, heirs shall be entitled to request the notary public to advise the estate creditors to notify their claims.

(2) A creditor who does not notify his claim within the period specified in the notice of the notary public shall not be entitled to raise objections to satisfactions effected before his notice with regard to the order of satisfaction and the proportion of the satisfaction of creditors within the same category. If an estate has already been distributed, the aforementioned creditor shall only be entitled to seek satisfaction from the co-heirs in proportion to their respective shares, unless, in both cases, the heirs have been aware of the claim even without the notification.

BOOK EIGHT

CLOSING PROVISIONS

PART ONE

INTERPRETATIVE PROVISIONS

Section 8:1

[Interpretative provisions]

(1) For the purposes of this Act:

1. 'close relative' shall mean spouses, next of kin, adopted children, stepchildren, foster children, adoptive parents, stepparents, foster parents, and siblings;

2 'relative' shall mean close relatives, domestic partners, spouses of the next of kin, spouse's next of kin and siblings, and spouses of siblings;

3. 'consumer' shall mean any natural person acting for purposes which are outside his trade, business or profession;

4. 'business party' shall mean any person acting for purposes which are outside his trade, business or profession;

5. 'asset' shall mean tangible property, rights and claims;

6. 'bank' shall mean any person authorized to conduct the business of taking deposits and keeping payment accounts;

7.⁷⁴ 'contracting authority' shall mean the contracting entities so defined by the Act on Public Procurement, even if not required to conduct public procurement procedures.

(2) For the purposes of this Act, any directly applicable Community legislation that is binding in its entirety shall also be construed as part of the legal system.

(3) For the purposes of this Act, orders for payment shall also be recognized as court proceedings.

(4) For the purposes of this Act, half brothers and half sisters shall also be construed as siblings.

(5) For the purposes of this Act, the concept of stock exchange shall also cover markets authorized by the competent supervisory authority of the State where established, where securities are traded.

(6)⁷⁵ The provisions of the Civil Code on buildings shall also be applied to other construction works.

Section 8:2

[Influence]

(1) Majority control means a relationship where a natural or legal person (holder of a participating interest) controls over fifty per cent of the voting rights in a legal person, or in which it has a dominant influence.

(2) The holder of a participating interest is deemed to have dominant influence on a legal person if it is a member of or shareholder in that company and:

a) it has the right to appoint and recall the majority of the executive officers or supervisory board members of the legal person; or

b) other members of or shareholder in that legal person are committed under agreement with the holder of a participating interest to vote in concert with the holder of a participating interest, or they exercise their voting rights through the holder of a participating interest, provided that together they control more than half of the votes.

(3) Majority control is also deemed to exist if the entitlements referred to in Subsections (2)-(3) are ensured indirectly to the holder of a participating interest.

(4) Indirect control on a legal person means a relationship where a person is able to exercise influence on a legal person that has voting right in that legal person (intermediary legal person). The scope of indirect control means the percentage of control held by the intermediary legal

⁷⁴ Enters into force as under Subsection (1) of Section 190 of Act CCLII of 2013.

⁷⁵ Enters into force as under Subsection (2) of Section 190 of Act CCLII of 2013.

person that correspond to the percentage of control the holder of a participating interest has in the intermediary legal person. If the holder of a participating interest controls more than half of the votes in the intermediary legal person, the control the intermediary legal person has in the legal person shall be taken into account in its entirety as indirect control held by the holder of a participating interest.

(5) The direct and indirect ownership interest and voting rights of close relatives shall be applied contemporaneously.

Section 8:3

[Time limits]

(1) The time limits prescribed in days for making legal statements or to do or not to do certain other acts shall not include the day from which the period runs.

(2) A time limit specified in weeks, months or years shall expire on the day that, by definition or number, corresponds to the day from which the period runs. If there is no such day during the last month, the time limit shall expire on the last day of the month.

(3) If the last day of the time limit is a public holiday, the time limit shall expire on the following working day.

(4) Where a right is contingent upon a specific day, it shall take effect at the beginning of that day.

PART TWO

ENTRY INTO FORCE AND TRANSITIONAL PROVISIONS

Section 8:4

[Entry into force]

This Act shall enter into force on 15 March 2014.

Section 8:5

[Transitional provisions]

The transitional provisions shall be established by an act of Parliament.

PART THREE

COMPLIANCE WITH THE LEGISLATION OF THE EUROPEAN UNION

Section 8:6

[Compliance with the Acquis]

This Act serves the purpose of compliance with:

a) Council Directive 82/891/EEC of 17 December 1982 based on Article 54(3)(g) of the Treaty, concerning the division of public limited liability companies;

b) Council Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products,

and Directive 1999/34/EC of the European Parliament and of the Council of 10 May 1999 amending it;

c) Council Directive 86/653/EEC of 18 December 1986 on the coordination of the laws of the Member States relating to self-employed commercial agents;

d) Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours;

e) Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts;

f) Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees;

g) Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce in the Internal Market;

h) Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements;

i) Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids;

j) Directive 2007/36/EC of the European Parliament and of the Council of 11 July 2007 on the exercise of certain rights of shareholders in listed companies;

k) Directive 2009/44/EC of the European Parliament and of the Council of 6 May 2009 amending Directive 98/26/EC on settlement finality in payment and securities settlement systems and Directive 2002/47/EC on financial collateral arrangements as regards linked systems and credit claims;

l) Directive of the European Parliament and of the Council of 16 September 2009 on coordination of safeguards which, for the protection of the interests of members and third parties, are required by Member States of companies within the meaning of the second paragraph of Article 48 of the Treaty, with a view to making such safeguards equivalent;

m) Directive 2009/102/EC of the European Parliament and of the Council of 16 September 2009 in the area of company law on single-member private limited liability companies;

n) Directive 2009/109/EC of the European Parliament and of the Council of 16 September 2009 amending Council Directives 77/91/EEC, 78/855/EEC and 82/891/EEC, and Directive 2005/56/EC as regards reporting and documentation requirements in the case of mergers and divisions;

o) Directive 2011/7/EU of the European Parliament and of the Council of 16 February 2011 on combating late payment in commercial transactions;

p) Directive 2011/35/EU of the European Parliament and of the Council of 5 April 2011 concerning mergers of public limited liability companies;

q) Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council;

r) Directive 2012/30/EU of the European Parliament and of the Council of 25 October 2012 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 54 of the Treaty on the Functioning of the European Union, in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent.

