

Übersetzung (Buch 1) durch den Sprachendienst des Bundesministeriums der Justiz.  
Übersetzung (Buch 2) durch den Sprachendienst des Bundesministeriums der Justiz.  
Laufende Aktualisierung durch Samson-Übersetzungen GmbH, Dr. Carmen v. Schöning.  
Übersetzung (Buch 3, 4 und 5) durch Samson-Übersetzungen GmbH, Dr. Carmen v. Schöning.

Translation (Book 1) provided by the Language Service of the Federal Ministry of Justice.  
Translation (Book 2) provided by the Language Service of the Federal Ministry of Justice.  
Translation regularly updated by Samson-Übersetzungen GmbH, Dr. Carmen v. Schöning.  
Translation (Book 3, 4 und 5) provided by Samson-Übersetzungen GmbH, Dr. Carmen v. Schöning.

Stand: Die Übersetzung (Buch 1) berücksichtigt die Änderung(en) des Gesetzes durch Artikel 11 des Gesetzes vom 18. Juli 2017 (BGBl. I S. 2745)

Stand: Die Übersetzung (Buch 2) berücksichtigt die Änderung(en) des Gesetzes durch Artikel 14 des Gesetzes vom 22. Dezember 2020 (BGBl. I S. 3256)

Stand: Die Übersetzung (Buch 3) berücksichtigt die Änderung(en) des Gesetzes durch Artikel 5 des Gesetzes vom 7. August 2021 (BGBl. I S. 3311)

Stand: Die Übersetzung (Buch 4) berücksichtigt die Änderung(en) des Gesetzes durch Artikel 184 des Gesetzes vom 19. Juni 2020 (BGBl. I S. 1328)

Stand: Die Übersetzung (Buch 5) berücksichtigt die Änderung(en) des Gesetzes durch Artikel 184 des Gesetzes vom 19. Juni 2020 (BGBl. I S. 1328)

Version information: The translation (Book 1) includes the amendment(s) to the Act by Article 11 of the Act of 18 July 2017 (Federal Law Gazette Part I p. 2745).

Version information: The translation (Book 2) includes the amendment(s) to the Act by Article 14 of the Act of 22 December 2020 (Federal Law Gazette Part I p. 3256)

Version information: The translation (Book 3) includes the amendment(s) to the Act by Article 5 of the Act of 7 August 2021 (Federal Law Gazette Part I p. 3311)

Version information: The translation (Book 4) includes the amendment(s) to the Act by Article 184 of the Act of 19 June 2020 (Federal Law Gazette Part I p. 1328)

Version information: The translation (Book 5) includes the amendment(s) to the Act by Article 184 of the Act of 19 June 2020 (Federal Law Gazette Part I p. 1328)

Zur Nutzung dieser Übersetzung lesen Sie bitte den Hinweis auf [www.gesetze-im-internet.de](http://www.gesetze-im-internet.de) unter "[Translations](#)".

For conditions governing use of this translation, please see the information provided at [www.gesetze-im-internet.de](http://www.gesetze-im-internet.de) under "[Translations](#)".

## **Commercial Code (Handelsgesetzbuch – HGB)**

Commercial Code in the revised version published in the Bundesgesetzblatt (BGBl., Federal Law Gazette), Part III, Section 4100-1, Book 1, as amended by Article 11 of the Act of 18 July 2017 (Federal Law Gazette Part I p. 2745), Book 2, as amended by Article 14 of the Act of 22 December 2020 (Federal Law Gazette Part I p. 3256), Book 3, as amended by Article 5 of the Act of 7 August 2021 (Federal Law Gazette Part I p. 3311), Book 4, as amended by Article 184 of the Act of 19 June 2020 (Federal Law Gazette Part I p. 1328) and Book 5, as amended by Article 184 of the Act of 19 June 2020 (Federal Law Gazette Part I p. 1328)

### **Book One Commercial Entities**

#### **Part One Merchants**

### **Section 1**

- (1) A merchant within the meaning of this Code is a person who carries on a commercial business.
- (2) A commercial business is any commercial enterprise unless, by reason of its nature or size, the enterprise does not require a commercially organised business operation.

### **Section 2**

A commercial entity whose commercial enterprise is not deemed to be a commercial business pursuant to Section 1 subsection (2) shall be deemed to be a commercial business within the meaning of this Code if the business name of the enterprise is registered in the Commercial Register. The entrepreneur is entitled, but not obliged, to effect registration pursuant to the provisions in force for the registration of commercial business names. If such registration has been effected, the business name can also be deleted upon application of the entrepreneur, unless the requirement laid down in Section 1 subsection (2) has been fulfilled in the meantime.

### **Section 3**

- (1) The provisions of Section 1 shall not apply to agricultural or forestry operations.
- (2) Section 2 shall apply to agricultural or forestry enterprises which require a commercially organised business operation on account of their nature and size, subject to the proviso that, after registration in the Commercial Register, deletion of the business name shall be effected only pursuant to the general provisions which apply to the deletion of commercial business names.
- (3) If an agricultural or forestry operation has a cognate enterprise constituting only a business ancillary to the agricultural or forestry enterprise, the provisions of subsections (1) and (2) shall apply *mutatis mutandis* to the enterprise operated as an ancillary business.

### **Section 4 (deleted)**

### **Section 5**

If a business name is registered in the Commercial Register, it cannot be asserted against a person invoking such registration that the business conducted under the business name concerned is not a commercial business.

### **Section 6**

- (1) The provisions applicable to merchants shall also apply to commercial companies and partnerships.
- (2) The rights and duties of an association on which the law confers merchant status irrespective of the purpose of the enterprise shall remain unaffected, even if the requirements of Section 1 subsection (2) are not fulfilled.

### **Section 7**

The application of the provisions of this Code concerning merchants shall not be affected by public law provisions pursuant to which the right to carry on a commercial enterprise is excluded or made contingent upon certain conditions.

## **Part Two Commercial Register; Business Register**

### **Section 8 Commercial Register**

- (1) The Commercial Register shall be maintained in electronic form by the courts.
- (2) Other data collections shall not be put into circulation using or including the designation "Commercial Register".

### **Section 8a**

#### **Entries in the Commercial Register; Authorisation to Issue Ordinances**

(1) An entry in the Commercial Register shall be effective as soon as it is stored in the data memory assigned to the Commercial Register entries and can continually be reproduced in legible form with no change in content.

(2) The *Land* governments shall be authorised to establish, by statutory instrument, more specific provisions concerning electronic administration of the Commercial Register, electronic applications for registration, electronic submission of documents and their storage, unless relevant provisions are adopted by the Federal Ministry of Justice and Consumer Protection pursuant to section 387 subsection (2) of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction. In adopting such provisions, they can also regulate details of data transmission as well as determine the form of electronic documents to be transmitted, in order to ensure suitability for handling by the court. The *Land* governments can, by statutory instrument, transfer such authority to the *Land* departments of justice.

### **Section 8b**

#### **Business Register**

(1) Subject to any provision made pursuant to Section 9a subsection (1), the Business Register shall be maintained in electronic form by the Federal Ministry of Justice and Consumer Protection.

(2) The following shall be accessible via the website of the Business Register:

1. entries in the Commercial Register and their publication, as well as documents submitted to the Commercial Register;
2. entries in the Register of Cooperatives and their publication, as well as documents submitted to the Register of Cooperatives;
3. entries in the Register of Partnerships and their publication, as well as documents submitted to the Register of Partnerships;
4. accounting documents pursuant to Sections 325 and 339 and documents pursuant to Section 341w, after their publication;
5. publications in the Federal Gazette that are required under partnership and company law;
6. entries in the shareholders' forum pursuant to section 127a of the Stock Corporation Act;
7. notifications in the Federal Gazette by enterprises pursuant to the Securities Trading Act or the Capital Investment Act, by bidders, companies, executive boards and supervisory boards pursuant to the Securities Acquisition and Takeover Act, as well as notifications in the Federal Gazette pursuant to the Stock Exchange Admission Ordinance;
8. publications and notifications in the Federal Gazette by capital management companies and externally managed investment companies pursuant to the Investment Code, the Investment Act and the Investment Tax Act;
9. notifications and other information made available to the public pursuant to sections 5 and 26 subsections (1) and (2), section 40 subsection (1), sections 41 and 46 subsection (2), sections 50 and 51 subsection (2), section 114 subsection (1) to section 116 subsection (2), sections 117 and 118 subsection (4), and section 127 of the Securities Trading Act, if the notification has not already been made available in the Business Register via number 4 or number 7;

10. communications concerning notifications required by capital market law to the Federal Financial Supervisory Authority, if the notification itself has not already been made available in the Business Register via number 7 or number 9;

11. publications by the insolvency courts pursuant to section 9 of the Insolvency Statute, with the exception of proceedings pursuant to Part Ten of the Insolvency Statute.

(3) The following shall be transmitted to the Business Register for entry in the Business Register:

1. data pursuant to subsection (2), numbers 4 to 8, and deposited balance sheets of micro share capital companies pursuant to Section 326 subsection (2), via the operator of the Federal Gazette;

2. data pursuant to subsection (2), numbers 9 and 10, via the respective entity subject to the notification requirement, or via the third party commissioned by that entity to effect such notification.

The *Land* departments of justice shall transmit to the Business Register the data pursuant to subsection (2) numbers 1 to 3 and 11, insofar as such transmission is required to create access to the original data via the website of the Business Register. The Federal Financial Supervisory Authority shall monitor the transmission of the notifications and other information made available to the public pursuant to sections 5 and 26 subsections (1) and (2), section 40 subsection (1), sections 41 and 46 subsection (2), sections 50 and 51 subsection (2), section 114 subsection (1) to section 116 subsection (2), sections 117 and 118 subsection (4), and section 127 of the Securities Trading Act to the Business Register for the purpose of storage, and may make orders which are apt and necessary to enforce such transmission. In cases where the transmission requirement is not complied with, or not complied with correctly, fully or in the prescribed manner, the Federal Financial Supervisory Authority can carry out, at the expense of those subject to the requirement, such compulsory transmission of notifications, of information made available to the public and communications as are referred to in the third sentence. Section 6 subsection (3), first and third sentences, subsections (15) and (16), and sections 13, 18 and 21 of the Securities Trading Act shall apply *mutatis mutandis* to the supervisory activities of the Federal Financial Supervisory Authority.

(4) The service provided by the Business Register shall include the provision of printouts and certification according to Section 9, subsections (3) and (4), for accounting documents within the meaning of subsection (2), number 4, stored in the Business Register. The same shall apply to electronic transmission of paper documents submitted to the Commercial Register pursuant to Section 9 subsection (2), insofar as the request therefor concerns accounting documents within the meaning of subsection (2) number 4; Section 9 subsection (3) shall apply *mutatis mutandis*.

## Section 9

### Access to the Commercial Register and the Business Register

(1) Everyone shall be entitled to inspect the Commercial Register for information purposes, as well as the documents submitted thereto. The *Land* departments of justice shall designate the electronic information and communication system via which the data from the Commercial Register are retrievable, and shall be responsible for operating the electronic retrieval procedure. The *Land* government can, by statutory instrument, redistribute these responsibilities; it can, by statutory instrument, transfer such authority to the *Land* department of justice. The *Länder* can designate a nationwide, centralised electronic information and communication system. They can also agree to have the operational tasks transferred to the competent body of another *Land*, as well as agree with the operator of the Business Register to have the operational tasks transferred to the Business Register.

(2) Where documents are available only in paper form, electronic transmission can be requested only for such documents as were submitted to the Commercial Register less than ten years before the time when the request was made.

(3) Upon request, the court shall certify that the data transmitted is identical to the content of the Commercial Register and to the documents submitted to the Commercial Register. A qualified electronic signature shall be used for such certification.

(4) A printout of the entries and of the documents submitted can be requested. Where the documents submitted to the Commercial Register only exist in paper form, a copy can be requested. The copy shall be certified by the court registry and the printout shall be issued as an official copy, unless such certification is waived.

(5) Upon request, the court shall issue a certificate stating that no further entries exist with regard to the subject-matter of an entry, or that a certain entry has not been made.

(6) Subsection (1), first sentence, shall apply *mutatis mutandis* to inspection of the Business Register. Requests pursuant to subsections (2) to (5) can also be communicated to the court via the Business Register. An inspection of the balance sheet of a micro share capital company (Section 267a) that has exercised the right pursuant to Section 326 subsection (2) shall be effected only upon request by transmission of a copy.

#### **Section 9a**

##### **Transfer of Operation of the Business Register; Authorisation to Issue Ordinances**

(1) The Federal Ministry of Justice and Consumer Protection shall be authorised to transfer, by statutory instrument and with the approval of the Federal Council [Bundesrat], the tasks in Section 8b subsection (1) to a legal person under private law. The publicly appointed entity shall acquire the status of a federal judicial authority. For the purpose of issuing certifications, the public appointed entity shall have an official seal; more specific details may be regulated by statutory instrument pursuant to the first sentence. The duration of such public appointment shall be made subject to a time limit; this shall not be less than five years; provision shall be made for rights of termination for a compelling reason. A legal person under private law may be publicly appointed only if it has reasonable experience regarding the notification of information related to capital market law and of court communications, in particular Commercial Register data, and is equipped with sufficient technical and financial resources to ensure long-term and secure operation of the Business Register.

(2) The Federal Ministry of Justice and Consumer Protection shall be authorised to determine, by statutory instrument and with the approval of the Federal Council [Bundesrat], the details regulating data transmission between the authorities of the *Länder* and the Business Register, including specifications regarding data formats. Deviations from the administrative procedures enacted by *Land* legislation shall be precluded.

(3) The Federal Ministry of Justice and Consumer Protection shall be authorised, in adopting a statutory instrument and without the approval of the Federal Council [Bundesrat], to determine the technical details regulating the establishment and administration of the Business Register, to determine the details regulating data transmission including specifications regarding data formats which are not covered by subsection (2), to determine the time-limits for the storage and deletion of data in the Business Register, and the supervisory rights of the Federal Financial Supervisory Authority vis-à-vis the Business Register with respect to the transmission, entry, administration, processing and retrieval of data related to capital market law, including cooperation with officially appointed storage systems of other member states of the European Union or of other states which are parties to the Agreement on the European Economic Area within the framework of the establishment of a Europe-wide network between the storage systems, and to determine the admissibility, as well as the type and scope, of information services on such data stored in the Business Register as exceed the tasks that, pursuant to this statute, are involved in the service provided by the Business Register. Insofar as provisions are established which affect data related to capital market law, the statutory instrument pursuant to the first sentence shall be

enacted in agreement with the Federal Ministry of Finance. The statutory instrument pursuant to the first sentence shall duly take into account the enterprise's legitimate interest in excluding the possibility of the data stored in the register being used for a purpose different from the intended purpose.

### **Section 9b**

#### **European System of Interconnection of Registers; Authorisation to Issue Ordinances**

(1) The entries in the Commercial Register and the documents submitted to the Commercial Register as well as accounting documents pursuant to Section 325 shall, insofar as they concern share capital companies or branch offices of share capital companies that are subject to the law of another member state of the European Union or of another contracting party to the European Economic Area Agreement, also be accessible through the European Justice Portal. To this end, the *Land* departments of justice shall transmit data of the Commercial Register and the operator of the Business Register shall transmit data of accounting documents respectively to the central European platform pursuant to Article 4a paragraph (1) of Directive 2009/101/EC 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 54 of the Treaty, with a view to making such safeguards equivalent (OJ L 258, 1.10.2009, p. 11), as last amended by Directive 2013/24/EU (OJ L 158, 10.6.2013, p. 365), insofar as such transmission is required to create access to the original data via the search service on the website of the European Justice Portal.

(2) The court of registration at which the register page of a share capital company or branch office of a share capital company within the meaning of subsection (1), first sentence, is maintained shall participate in the exchange of information between the registers via the central European platform. To this end, share capital companies and branch offices of share capital companies within the meaning of subsection (1), first sentence, shall be allocated a unique European identifier. In accordance with the following subsections, the court of registration shall transmit to the central European platform information on

1. the registration of the opening, revocation or termination of insolvency proceedings concerning the assets of the company,
2. the registration of the opening, revocation or termination of winding-up proceedings concerning the company,
3. the striking-off of the company, and
4. the coming into effect of a merger pursuant to section 122a of the Transformation Act.

(3) The *Land* departments of justice shall designate the electronic information and communication system through which the data from the Commercial Register are to be made accessible (subsection (1)) and transmitted and received in the exchange of information between the registers (subsection (2)), and they shall be responsible for operating the transfer of data pursuant to subsections (1) and (2), without prejudice to the responsibility of the operator of the Business Register pursuant to subsection (1) second sentence. Section 9 subsection (1), third to fifth sentences, shall apply *mutatis mutandis*.  
(4) The Federal Ministry of Justice and Consumer Protection shall be authorised to establish, by statutory instrument and with the approval of the Federal Council [Bundesrat], the necessary provisions concerning

1. the structure, allocation and use of the unique European identifier,
2. the scope of the obligation to notify in the exchange of information between the registers, and the list of data to be transmitted in this regard,

3. the details regulating the electronic transfer of data pursuant to subsections (1) and (2), including specifications regarding data formats and payment modalities, and
4. the date of the first data transmission.

#### **Section 10 Publication of the Entries**

The entries in the Commercial Register shall be published by the court, sorted by days and in the chronological order of their entry, in the electronic information and communication system designated by the *Land* department of justice; Section 9 subsection (1), fourth and fifth sentences, shall apply *mutatis mutandis*. Unless the law provides otherwise, the entries shall be notified in their entirety.

#### **Section 10a Application of Regulation (EU) 2016/679**

- (1) The right of access pursuant to Article 15 paragraph (1) and the right to obtain a copy pursuant to Article 15 paragraph (3) of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119 of 4 May 2016, p. 1; L 314 of 22 November 2016, p. 72) shall be afforded by ensuring that the data subject can access the Commercial Register and the documents submitted thereto, as well as the electronic information and communication system designated to publish the entries. The data subject shall not be informed of the specific recipients to whom personal data contained in the Register, in publications of the entries or in documents to be submitted to the Register, are disclosed.
- (2) With regard to the personal data contained in the Commercial Register, in publications of the entries or in documents to be submitted to the Commercial Register, the right to rectification pursuant to Article 16 of Regulation (EU) 2016/679 can be exercised only in accordance with the requirements for deletion or rectification set out in sections 393 to 395 and sections 397 to 399 of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction and in the statutory instrument pursuant to section 387 subsection (2) of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction.
- (3) The right to object pursuant to Article 21 of Regulation (EU) 2016/679 shall not apply as regards the personal data contained in the Commercial Register, in publications of the entries or in documents to be submitted to the Commercial Register.

#### **Section 11 Disclosure in an Official Language of a Member State of the European Union**

- (1) The documents to be submitted to the Commercial Register, as well as the content of an entry, can additionally be transmitted in any official language of a member state of the European Union. The translations shall be referred to appropriately. Section 9 shall apply *mutatis mutandis*.
- (2) In the event of the original version differing from a submitted translation, the latter cannot be cited against a third party; however such third party can invoke the submitted translation, unless the registered entity proves that the third party was aware of the original version.

#### **Section 12 Applications for Registration, and Submissions**

- (1) Applications for registration in the Commercial Register shall be submitted electronically in officially certified form. The same form shall be required for a power of attorney for purposes of making an application. A certification of a notary pursuant to section 21 subsection (3) of the Federal Regulations for Notaries may be submitted instead of a power of attorney. Legal successors of a party shall, to the extent feasible, prove the succession by means of public records and documents.

(2) Documents shall be submitted electronically. If an original document or a plain copy is to be submitted, or if the written form is prescribed for the document, transmission of an electronic record shall suffice; if a notarially recorded document or an officially certified copy is to be submitted, a document with a simple electronic certification (section 39a of the Notarial Recording Act) shall be transmitted.

### **Section 13**

#### **Branch Offices of Enterprises with a Seat in Germany**

(1) Registration of establishment of a branch office shall be applied for, respectively, by a sole trader or a legal person at the court of its main office, and by a commercial company or partnership at the court of its seat, and such application shall state the place and domestic business address of the branch office, and the addition to the business name of the branch office, if any such addition is appended. Registration of any subsequent changes to such facts as are required to be entered concerning the branch office shall be applied for in the same manner.

(2) Unless the branch office has obviously not been established, the competent court shall enter the branch office on the register page of the main office or seat, stating the place as well as the domestic business address of the branch office, and the addition to the business name of the branch office, if any such addition is appended.

(3) Subsections (1) and (2) shall apply *mutatis mutandis* to closure of the branch office.

### **Sections 13a to 13c (deleted)**

### **Section 13d**

#### **Seat or Main Office Abroad**

(1) If the main office of a sole trader or of a legal person or the seat of a commercial company or partnership is located abroad, all applications, submissions and entries concerning a domestic branch office shall be made at the court in whose district the branch office exists.

(2) The registration of establishment of a branch office shall also indicate the place and the domestic business address of the branch office; if an addition is appended to the business name of the branch office, the addition shall also be registered.

(3) Otherwise, the provisions concerning main offices or offices at the seat of the commercial entity shall, to the extent that foreign law does not necessitate divergence, apply *mutatis mutandis* to applications, submissions, entries, publications and changes of registered facts which concern the branch office of a sole trader, of a commercial company or partnership, or of a legal person, with the exception of stock corporations, public partly limited partnerships and limited liability companies.

### **Section 13e**

#### **Branch Offices of Share Capital Companies with a Seat Abroad**

(1) In addition to Section 13d, the following provisions shall apply to branch offices of stock corporations and limited liability companies with a seat abroad.

(2) In the case of a stock corporation, the application to have establishment of a branch office registered in the Commercial Register shall be made by the executive board, and in the case of a limited liability company, by the managing directors. When making the application, proof shall be provided of the existence of the company as such. The application shall also contain a domestic business address and an indication of the purpose of the branch office. In addition, the name and domestic address of a person authorised to receive declarations of intent and service of legal documents addressed to the company may be submitted for entry in the Commercial Register; with regard to third parties such authorisation shall be deemed to continue to exist until it has been deleted from the Commercial Register and notification of the deletion has been provided, unless the lack of such authorisation was known to the third party. The application shall also indicate



1. the register in which the company is registered and the registration number, insofar as the law of the country in which the company has its seat provides for such registration;
2. the legal form of the company;
3. the names of the persons authorised to represent the company in judicial and non-judicial matters as permanent representatives for the activities of the branch office, including an indication of their powers;
4. the law of the country to which the company is subject, if the company is not subject to the law of a member state of the European Union or of another contracting party to the European Economic Area Agreement.

(3) The persons referred to in subsection (2), fifth sentence number 3, shall apply for registration in the Commercial Register of any change in the identity of such persons or in the power of agency of one of these persons. With regard to a branch office, section 76 subsection (3), second and third sentences, of the Stock Corporation Act, and section 6 subsection (2), second and third sentences, of the Limited Liability Companies Act, shall apply *mutatis mutandis* to the statutory representatives of the company.

(3a) Declarations of intent and documents can be submitted to and served on the persons referred to as representatives of the company in subsection (2), fifth sentence number 3, at the branch office's domestic business address registered in the Commercial Register. Independently thereof, submission and service can also be effected to the registered address of the person authorised to receive such documents under subsection (2), fourth sentence.

(4) The persons referred to in subsection (2), fifth sentence number 3, or, if none have been registered, the statutory representatives of the company shall apply for registration in the Commercial Register of facts regarding the opening of, or refusal to open, insolvency proceedings or similar proceedings concerning the assets of the company.

(5) Where a company establishes several domestic branch offices, the articles of association and any amendments thereto may, at the option of the company, be submitted to the Commercial Register of only one of such branch offices. In such case, the persons bound by the duty to register pursuant to subsection (2), first sentence, shall apply to have the register which the company has selected and the number under which the respective branch office has been entered registered in the Commercial Registers of the other branch offices.

(6) The *Land* departments of justice shall ensure that the data of a share capital company with a seat abroad which are received within the framework of the European System of Interconnection of Registers (Section 9b) are forwarded to the court of registration having jurisdiction for a domestic branch office of the respective company.

### **Section 13f**

#### **Branch Offices of Stock Corporations with a Seat Abroad**

(1) The following provisions shall additionally apply to branch offices of stock corporations with a seat abroad.

(2) An officially certified copy of the articles of association and, insofar as such articles are not drawn up in the German language, a certified translation into German, shall be attached to the application. The provisions of section 37 subsections (2) and (3) of the Stock Corporation Act shall apply. To the extent that foreign law does not necessitate divergence, the provisions laid down in section 23 subsections (3) and (4) of the Stock Corporation Act, and the provisions of the articles of association concerning the composition of the executive board, shall be included in the application; if such application is made within the first two years following registration of the company in the Commercial Register of its seat, information regarding arrangements made pursuant to sections 26 and 27 of the Stock Corporation Act, and the issue price of the shares, as well as the name and place of

residence of the founders shall be included. The judicial publication issued for the seat of the company shall be attached to the application.

(3) The registration of establishment of a branch office shall also contain the particulars required by section 39 of the Stock Corporation Act as well as the particulars required by Section 13e subsection (2), third to fifth sentences.

(4) The executive board shall apply for registration in the Commercial Register of any amendments to the articles of association of the foreign company. To the extent that foreign law does not necessitate divergence, the provisions of section 181 subsections (1) and (2) of the Stock Corporation Act shall apply *mutatis mutandis* to the application.

(5) Otherwise, the provisions of sections 81 and 263 first sentence, section 266 subsections (1) and (2), and section 273 subsection (1), first sentence, of the Stock Corporation Act shall apply *mutatis mutandis*, to the extent that foreign law does not necessitate divergence.

(6) The provisions concerning establishment of a branch office shall apply *mutatis mutandis* to closure thereof.

(7) The provisions concerning branch offices of stock corporations with a seat abroad shall apply *mutatis mutandis* to branch offices of public partly limited partnerships with a seat abroad, to the extent not provided otherwise by the provisions of sections 278 to 290 of the Stock Corporation Act or by reason of the lack of an executive board.

### **Section 13g**

#### **Branch Offices of Limited Liability Companies with a Seat Abroad**

(1) The following provisions shall additionally apply to branch offices of limited liability companies with a seat abroad.

(2) An officially certified copy of the articles of association and, insofar as such articles are not drawn up in the German language, a certified translation into German, shall be attached to the application. The provisions of section 8 subsection (1), number 2, and subsections (3) and (4) of the Limited Liability Companies Act shall apply. Where an application for registration of establishment of a branch office is made within the first two years following registration of the company in the Commercial Register of its seat, the arrangements made pursuant to section 5 subsection (4) of the Limited Liability Companies Act shall be included in the application, to the extent that foreign law does not necessitate divergence.

(3) The registration of establishment of a branch office shall also contain the particulars required by section 10 of the Limited Liability Companies Act as well as the particulars required by Section 13e subsection (2), third to fifth sentences.

(4) The managing directors shall apply for registration in the Commercial Register of any amendments to the articles of association of the foreign company. To the extent that foreign law does not necessitate divergence, the provisions of section 54 subsections (1) and (2) of the Limited Liability Companies Act shall apply *mutatis mutandis* to the application.

(5) Otherwise, the provisions of sections 39 and 65 subsection (1), first sentence, section 67 subsections (1) and (2), and section 74 subsection (1), first sentence, of the Limited Liability Companies Act shall apply *mutatis mutandis*, to the extent that foreign law does not necessitate divergence.

(6) The provisions concerning establishment of a branch office shall apply *mutatis mutandis* to closure thereof.

### **Section 13h**

#### **Transfer of Seat of a Domestic Main Office**

(1) Where the main office of a sole trader or of a legal person, or the seat of a commercial company or partnership is transferred domestically, the application for registration of such transfer shall be submitted to the court of the previous main office or of the previous seat.

(2) Where the main office or the seat is transferred outside of the district of the court of the previous main office or of the previous seat, this court shall, of its own motion and without undue delay, notify such transfer to the court of the new main office or of the new seat. Such notification shall be accompanied by the entries for the previous main office or previous seat, as well as by the records and documents kept with the court having previous jurisdiction. The

court of the new main office or of the new seat shall examine whether the main office or the seat has been transferred properly and whether Section 30 has been complied with. If this is the case, the court shall register the transfer and adopt the entries of which it has been notified into its Commercial Register without further investigation. The registration shall be notified to the court of the previous main office or of the previous seat. This court shall make the necessary entries *proprio motu*.

(3) Where the main office or the seat is transferred to another location within the district of the court of the previous main office or of the previous seat, the court shall examine whether the main office or the seat has been transferred properly and whether Section 30 has been complied with. If this is the case, the court shall register the transfer.

#### **Section 14**

Whoever fails to comply with his duty to apply for registration or to submit documents to the Commercial Register shall be induced to do so by the court of registration by imposition of a coercive fine. An individual coercive fine shall not exceed the amount of five thousand euros.

#### **Section 15**

(1) As long as a fact required to be entered in the Commercial Register has not been entered and published, the person in respect of whose affairs it ought to have been entered cannot invoke it against a third party, unless the third party knew of such fact.

(2) Where the fact has been entered and published, a third party must allow it to be asserted against him. This shall not apply to legal acts effected within fifteen days of the publication, if the third party proves that he neither knew nor ought to have known of the fact.

(3) Where a fact required to be entered has been published inaccurately, a third party can invoke the published fact vis-à-vis the person in respect of whose affairs the fact was entered, unless the third party knew of the inaccuracy.

(4) With regard to business transactions with a branch office which is registered in the Commercial Register and belongs to an enterprise with a seat or main office abroad, the registration and publication by the court of the branch office shall be determinative for the purpose of these provisions.

#### **Section 15a** **Service by Publication**

If, in the case of a legal person obliged to register a domestic business address with the Commercial Register, it is not possible to serve a declaration of intent at the registered address, at an address registered in the Commercial Register of a person authorised to receive service of legal documents, or at any other domestic address obtained without any investigations, service can be effected pursuant to the provisions of the Civil Procedure Code which apply to service by publication. The local court in whose district the registered domestic business address of the company is located shall have jurisdiction. Section 132 of the Civil Code shall remain unaffected.

#### **Section 16**

(1) If, by virtue of a final and binding, or enforceable decision of the court hearing the case concerned, a duty to cooperate in the application for registration in the Commercial Register, or a legal relationship with respect to which a registration is to be effected, is established in respect of one of several persons required to participate in the application process, filing of an application by the other participants shall be sufficient for registration. If the decision on the basis of which the registration was effected is revoked, this fact shall be entered in the Commercial Register upon application of one of the participants.

(2) If, by a final and binding, or enforceable decision of the court hearing the case concerned, the effecting of a registration is declared inadmissible, such registration cannot be effected contrary to the objections of the party who obtained the decision.

### **Part Three** **Commercial Business Name**

#### **Section 17**

- (1) The business name of a merchant is the name under which he carries on his business and signs his signature.
- (2) A merchant can sue and be sued under his business name.

#### **Section 18**

- (1) The business name shall be suited to designate the merchant and shall have a distinctive character.
- (2) The business name shall not contain any information which is apt to be misleading with respect to business circumstances that are of material relevance for the market groups concerned. In proceedings before the court of registration, the aptness to mislead shall be taken into consideration only if it is apparent.

#### **Section 19**

- (1) Even if the business name is continued pursuant to Sections 21, 22, 24 or other statutory provisions, it shall include:
  1. in the case of sole traders, the designation “*eingetragener Kaufmann*” [registered merchant], “*eingetragene Kauffrau*” [registered female merchant], or a generally comprehensible abbreviation of this designation, in particular “e.K.,” “e.Kfm.” or “e.Kfr.”;
  2. in the case of a general partnership, the designation “*offene Handelsgesellschaft*” [general partnership] or a generally comprehensible abbreviation of this designation;
  3. in the case of a partly limited partnership, the designation “*Kommanditgesellschaft*” [partly limited partnership] or a generally comprehensible abbreviation of this designation.
- (2) If in the case of a general partnership or a partly limited partnership no natural person is personally liable, the business name shall, even if it is continued pursuant to Sections 21, 22, 24 or other statutory provisions, contain a designation indicating the limitation of liability.

#### **Section 20 (deleted)**

#### **Section 21**

Where the name of the business owner, partner or shareholder whose name is included in the business name is changed without there being a change in the identity of the respective person, the existing business name may continue to be used.

#### **Section 22**

- (1) Whoever acquires an existing commercial business *inter vivos* or *mortis causa* may, with or without appending an addition indicating successorship, carry on the business under the existing business name even if it includes the name of the former business owner, provided that the former business owner or his heirs expressly consent to the continuation of the business name.
- (2) Where a commercial business is taken over on the basis of a usufructuary right, a leasehold agreement, or a similar relationship, these provisions shall apply *mutatis mutandis*.

#### **Section 23**

The business name cannot be transferred separately from the commercial business for which it is used.

#### **Section 24**

- (1) Where a person is admitted as a partner into an existing commercial business, or a shareholder or partner either joins or leaves a commercial company or partnership, the

existing business name may, notwithstanding such change, continue to be used, even if it includes the name of the former business owner or names of shareholders or partners.

(2) In the event of the departure of a partner or shareholder whose name is included in the business name, the express consent of such partner or his heirs shall be required for continuation of the business name.

#### **Section 25**

(1) Whoever carries on a commercial business acquired *inter vivos* under the previous business name, with or without an addition indicating successorship, shall be liable for all obligations of the former owner incurred in the operation of the business. Where the former owner or his heirs have consented to continuation of the business name, claims arising out of the operation of the business shall, with respect to debtors, be deemed to have devolved to the transferee.

(2) A divergent agreement shall be effective vis-à-vis third parties only if it has been entered in the Commercial Register and published, or if the third party has been notified thereof by the transferee or the transferor.

(3) Where the business name is not continued, the transferee of a commercial business shall be liable for the prior business obligations only if a specific ground for liability exists, in particular if the assumption of the obligations has been made public by the transferee in a manner such as is customary in the trade.

#### **Section 26**

(1) Where the transferee of the commercial business is liable for prior business obligations by virtue of continuing the business name or by virtue of the public announcement referred to in Section 25 subsection (3), the former business owner shall be liable for such obligations only if they are due before five years have elapsed and claims against him resulting therefrom have been determined in a manner specified in section 197 subsection (1), numbers 3 to 5, of the Civil Code, or if a judicial or official act of execution is undertaken or applied for; in the case of public law obligations, the issuance of an administrative act shall suffice. In the case of Section 25 subsection (1) the time period shall begin to run at the end of the day on which the new holder of the business name is entered in the Commercial Register of the court of the main office, and in the case of Section 25 subsection (3) it shall begin to run at the end of the day on which the assumption of the obligations is made public. The provisions of sections 204, 206, 210, 211 and 212 subsections (2) and (3) of the Civil Code applying to limitation shall apply *mutatis mutandis*.

(2) Insofar as the former business owner has recognised the claim in writing, a determination in a manner specified in section 197 subsection (1), numbers 3 to 5, of the Civil Code shall not be necessary.

#### **Section 27**

(1) If a commercial business forming part of an estate is continued by the heirs, the provisions of Section 25 shall apply *mutatis mutandis* to the liability of the heirs for prior business obligations.

(2) Unlimited liability pursuant to Section 25 subsection (1) shall not arise if continuation of the business is terminated within three months of the date on which the heir gained knowledge of the devolution of the inheritance. The provisions applicable to limitation in section 210 of the Civil Code shall apply *mutatis mutandis* to the running of the time period. Where the right to disclaim the inheritance has not been forfeited at the end of the three months, the time limit shall not end prior to the expiry of the period for disclaimer.

#### **Section 28**

(1) Where a person joins the business of a sole trader as a general partner or as a limited partner, the partnership shall be liable for all obligations of the former business owner incurred in the operation of the business, even if the partnership does not continue the

previous business name. With respect to debtors, claims arising out of the operation of the business shall be deemed to have devolved to the partnership.

(2) A divergent agreement shall be effective vis-à-vis third parties only if it has been entered in the Commercial Register and published, or if the third party has been notified thereof by a partner.

(3) Where the former business owner becomes a limited partner and the partnership is liable for obligations incurred in the operation of his business, Section 26 shall apply *mutatis mutandis* to the limitation of his liability, subject to the proviso that the time period specified in Section 26 subsection (1) begins to run at the end of the day on which the partnership is registered in the Commercial Register. This shall also apply if he becomes active in the management of the partnership or of an enterprise belonging to it as partner. His liability as limited partner shall remain unaffected.

### **Section 29**

Every merchant is obliged to apply to the court in whose district his establishment is located to have his business name and the place and domestic address of his commercial establishment registered in the Commercial Register.

### **Section 30**

(1) Every new business name shall be clearly distinguishable from all other business names already existing in the same place or in the same municipality and already registered in the Commercial Register or the Register of Cooperatives.

(2) If a merchant has the same forename and the same surname as an already registered merchant and also wishes to use these names as his business name, he shall append an addition to the business name so as to make it clearly distinguishable from the already registered business name.

(3) If the same business name is already registered in the place or in the municipality where a branch office is to be established, the business name of the branch office shall include an addition pursuant to the provision of subsection (2).

(4) The *Land* governments can determine that neighbouring places or municipalities are to be considered as one place or one municipality within the meaning of these provisions.

### **Section 31**

(1) A change in the business name or in the identity of its holder, a transfer of the establishment to another location, or a change in the domestic business address shall be submitted for entry in the Commercial Register pursuant to the provisions of Section 29.

(2) The same shall apply if the business name ceases to exist. Where the application for entry of the cessation of a registered business name by the persons obliged to make such application cannot be effected in the manner referred to in Section 14, the court shall register the cessation *proprio motu*.

### **Section 32**

(1) If insolvency proceedings are opened in respect of the assets of a merchant, this shall be entered *proprio motu* in the Commercial Register. The same shall apply to

1. the revocation of the order opening the insolvency proceedings,
2. the appointment of a provisional insolvency administrator, if in addition the debtor is generally enjoined from transferring assets or it is ordered that disposals by the debtor are effective only with the approval of the provisional insolvency administrator, and the termination of such a protective measure,
3. an order for debtor-in-possession management by the debtor and the revocation of this order, and an order that specific legal transactions of the debtor require approval,
4. the discontinuance and termination of the proceedings, and

5. the monitoring of compliance with an insolvency plan, and the termination of the monitoring.

(2) Such entries shall not be published. The provisions of Section 15 shall not apply.

### **Section 33**

(1) The application for registration of a legal person whose entry in the Commercial Register is required with regard to the purpose or to the nature and size of its commercial enterprise shall be made by all members of the executive board.

(2) The articles of association of the legal person, and the originals or officially certified copies of records and documents concerning the appointment of the executive board, shall be attached to the application for registration; furthermore, indication shall be made of the powers of representation that the executive board members have. The business name and the seat of the legal person, the purpose of the enterprise, the members of the executive board and their powers of representation must be stated when the entry is made in the Commercial Register. Special provisions of the articles of association concerning the duration of the enterprise shall also be registered.

(3) Registration of establishment of a branch office shall be applied for by the executive board.

(4) The provision of Section 37a shall apply *mutatis mutandis* to legal persons within the meaning of subsection (1).

### **Section 34**

(1) Any change in the facts to be entered pursuant to Section 33 subsection (2), second and third sentences, or any amendment to the articles of association, the dissolution of the legal person, unless such dissolution is the result of the opening of insolvency proceedings, as well as the identity of the liquidators, their powers of representation, any change in the identity of the liquidators and any change in their powers of representation, shall be submitted for entry in the Commercial Register.

(2) With regard to registering an amendment to the articles of association, it shall be sufficient, insofar as such amendment does not concern the particulars specified in Section 33 subsection (2), second and third sentences, to make reference to the records and documents submitted to the court in respect of the amendment.

(3) The application shall be made by the executive board or, if an entry is made after application for registration of the first liquidators, by the liquidators.

(4) Registration of court-appointed executive board members or liquidators shall be effected *proprio motu*.

(5) In the event of insolvency proceedings, the provisions of Section 32 shall apply.

### **Section 35**

**(deleted)**

### **Section 36**

**(deleted)**

### **Section 37**

(1) Whoever uses a business name to which he is not entitled pursuant to the provisions of this part shall be induced, by imposition of a coercive fine by the court of registration, to desist from using such business name.

(2) Any person whose rights are violated by another person's unauthorised use of a business name can demand that this person desist from using such business name. A right to damages pursuant to other provisions shall remain unaffected.

### **Section 37a**

(1) All business correspondence of the merchant which is addressed to a specific recipient must, irrespective of its form, indicate his business name, the designation pursuant to Section 19 subsection (1), number 1, the place of his commercial establishment, the court of

registration and the number under which the business name is registered in the Commercial Register.

(2) The particulars required in accordance with subsection (1) shall not be necessary in notifications or reports issued in connection with an existing business relationship and for which it is customary to use pre-printed forms in which only specific particulars necessary in the individual case need to be entered.

(3) Order forms shall be deemed to be business correspondence within the meaning of subsection (1). Subsection (2) shall not apply to them.

(4) Whoever fails to comply with his duty pursuant to subsection (1) shall be induced to do so by the court of registration by imposition of a coercive fine. Section 14, second sentence, shall apply *mutatis mutandis*.

#### **Part Four Books of Account**

#### **Sections 38 to 47b (deleted)**

#### **Part Five General Commercial Power of Representation and Commercial Authority to Act**

##### **Section 48**

(1) The general commercial power of representation can be granted only by the owner of the commercial business or by his legal representative and only by means of an express declaration.

(2) The general commercial power of representation can be conferred on several persons jointly (joint general commercial power of representation).

##### **Section 49**

(1) The general commercial power of representation shall confer authority to enter into all kinds of judicial and extrajudicial transactions and legal acts involved in the operation of a commercial business.

(2) The holder of a general commercial power of representation shall have authority to dispose of and encumber real property only if such authority has been specifically conferred on him.

##### **Section 50**

(1) A limitation on the scope of the general commercial power of representation shall be ineffective vis-à-vis third parties.

(2) This shall apply especially to a limitation whereby the general commercial power of representation is to be exercised only for particular transactions or particular kinds of transactions or only under certain circumstances or for a certain period of time or at specific places.

(3) A limitation of the general commercial power of representation to the operation of one of several establishments of the business owner shall be effective vis-à-vis third parties only if the establishments are operated under different business names. A business name shall also be different within the meaning of this provision if, for a branch office, an addition is appended to its business name to indicate that it is the business name of the branch office.

##### **Section 51**

The holder of a general commercial power of representation shall sign by adding to the business name his own name with an addition indicating the general commercial power of representation.

##### **Section 52**



- (1) The general commercial power of representation is revocable at any time irrespective of the legal relationship underlying the conferment thereof, without prejudice to the right to contractual remuneration.
- (2) The general commercial power of representation is not transferable.
- (3) The general commercial power of representation shall not terminate upon the death of the owner of the commercial business.

#### **Section 53**

- (1) The owner of the commercial business shall apply for registration of conferment of a general commercial power of representation in the Commercial Register. Where the general commercial power of representation has been conferred as a joint general commercial power of representation, this must also be submitted for entry.
- (2) Termination of the general commercial power of representation shall be submitted for entry in the same manner as conferment thereof.

#### **Section 54**

- (1) Where a person is authorised, without conferment of a general commercial power of representation, to operate a commercial business, to undertake a particular kind of transaction relating to a commercial business or to undertake individual transactions relating to a commercial business, such power of attorney (commercial authority to act) shall extend to all transactions and legal acts which are normally involved in the operation of such a commercial business or in the undertaking of such transactions.
- (2) The holder of a commercial authority to act shall have authority to dispose of or encumber real property, to enter into bill of exchange commitments, to take out loans and to conduct litigation only if such authority has been specifically conferred on him.
- (3) A third party must allow other limitations on the commercial authority to act to be asserted against him only if he knew or ought to have known of such limitations.

#### **Section 55**

- (1) The provisions of Section 54 shall also apply to holders of a commercial authority to act who are commercial agents or who in their capacity as commercial employees are entrusted with concluding transactions in the principal's name outside of the principal's business premises.
- (2) The authority conferred on such persons to conclude transactions shall not empower them to amend concluded agreements, especially as regards extending periods for payment.
- (3) Such persons shall be authorised to accept payments only if they have been specifically granted such authority.
- (4) Such persons shall be deemed to have authority to accept notice of defective goods, to accept declarations that goods will be made available and to accept similar declarations by which a third party asserts or reserves his rights arising from defective performance; they can assert rights of the entrepreneur (principal) to preserve evidence.

#### **Section 56**

A person employed in a shop or in a warehouse open to the public shall be deemed to have authority to handle any sales transactions or actions of acceptance customary in such a shop or warehouse.

#### **Section 57**

When signing, the holder of a commercial authority to act shall refrain from using any addition indicating a general commercial power of representation; he shall write his signature with an addition indicating the power of attorney conferred on him.

#### **Section 58**

The holder of a commercial authority to act may not transfer his authority to another without the consent of the owner of the commercial business.

## **Part Six Commercial Employees and Commercial Apprentices**

### **Section 59**

Whoever is employed in a commercial business for the performance of commercial services in return for remuneration (commercial employee) shall, unless special agreements have been made with respect to the nature and extent of his services or to the remuneration he is entitled to receive, perform such services as are in accordance with local custom and be entitled to remuneration in accordance with local custom. In the absence of local custom, such performances as are reasonable in the circumstances shall be deemed to have been agreed upon.

### **Section 60**

(1) Without the consent of the principal, the commercial employee may neither carry on a commercial business nor conduct transactions in the principal's branch of commerce for his own account or that of another.

(2) Consent to carry on a commercial business shall be deemed to be granted if the principal, at the time of hiring the employee, has knowledge of the employee's business and does not expressly stipulate that he give it up.

### **Section 61**

(1) If the commercial employee violates his duty under Section 60, the principal may claim damages; alternatively, he may demand that the commercial employee accept that the transactions made by him for his own account shall be considered as having been made for the principal's account, and that he surrender the remuneration received from transactions made for the account of third parties or assign his claim to such remuneration to the principal.

(2) These claims shall become statute-barred three months from the date on which the principal gained knowledge of the conclusion of the transaction or would have gained knowledge thereof had he not shown gross negligence; irrespective of such knowledge or of a grossly negligent lack of knowledge, the period of limitation shall be five years from the date of conclusion of the transaction.

### **Section 62**

(1) The principal shall be obliged to furnish and maintain the business premises and the specific devices and equipment used in the business operation, as well as to arrange the business operation and working hours, in such a way that the commercial employee is protected against any risk to his health, to the extent that the nature of the operation permits, and that the maintenance of morality and decency is ensured.

(2) Where the commercial employee has been taken into the household, the principal shall, with respect to living and sleeping space, the provision of food, and work and leisure time, make such provisions and arrangements as are necessary having regard to the health, morality and religion of the commercial employee.

(3) If the principal fails to fulfil the duties incumbent upon him with regard to the life and health of the commercial employee, the tort provisions of sections 842 to 846 of the Civil Code shall apply *mutatis mutandis* to his liability for damages.

(4) The duties incumbent upon the principal hereunder may not be cancelled or restricted in advance by contract.

### **Section 63 (deleted)**

### **Section 64**

Payment of the salary due shall be made to the commercial employee at the end of each month. Any agreement pursuant to which payment of the salary is to be made later shall be void.

#### **Section 65**

Where it is agreed that the commercial employee shall receive commission for transactions concluded or negotiated by him, the provisions applicable to commercial agents in Section 87 subsections (1) and (3) and in Sections 87a to 87c shall apply.

#### **Sections 66 to 72 (deleted)**

#### **Section 73 (deleted)**

#### **Section 74**

- (1) An agreement between the principal and the commercial employee which, after the employment relationship has terminated, restricts the employee in his business activities (non-competition clause) shall be in writing and shall be handed over to the employee as a document signed by the principal containing the agreed stipulations.
- (2) The non-competition clause shall be binding only if the principal undertakes to pay for the period of prohibition a compensation that for each year of the prohibition amounts to at least half of the most recent contractual remuneration received by the commercial employee.

#### **Section 74a**

- (1) The non-competition clause shall be non-binding insofar as it does not serve to protect a legitimate business interest of the principal. Furthermore, it shall be non-binding insofar as, taking into consideration the compensation granted, it constitutes an unreasonable obstacle to the employee's career prospects having regard to the place, time or subject-matter. The prohibition is not permitted to exceed a period of two years from termination of the employment relationship.
- (2) The clause shall be void if the employee is a minor at the time of contracting or if the principal accepts a promise of compliance therewith on the basis of a word of honour or similar assurances. An agreement by which a third party, in lieu of the employee, assumes the obligation to ensure that the employee will restrict his business activities after the employment relationship has terminated shall also be void.
- (3) The provisions of section 138 of the Civil Code concerning the nullity of legal transactions contrary to public policy shall remain unaffected.

#### **Section 74b**

- (1) The compensation payable to the commercial employee pursuant to Section 74 subsection (2) shall be paid at the end of each month.
- (2) Insofar as the contractual remuneration for the employee consists of commissions or other variable payments, the average thereof received over the last three years shall be used to calculate the compensation due. Where, at the time of termination of the employment relationship, the applicable contract provision regarding remuneration has been in existence for less than three years, the calculation shall be based on the average during the period for which such provision has been in force.
- (3) Insofar as payments are intended to compensate for specific expenses arising in connection with the employment, they shall not be included in the calculation.

#### **Section 74c**

- (1) The commercial employee must allow to be deducted from the compensation due all such amounts as, during the period for which compensation is to be paid, he earns, or wilfully fails to earn, through utilisation of his working capacity elsewhere, to the extent that the compensation plus such amounts would exceed the contractual remuneration last received by him by more than one tenth. If, in consequence of the non-competition clause, the employee is forced to change his residence, the amount of one tenth shall be replaced by one quarter. The employee may not claim compensation for any period in which he is serving a prison sentence.

(2) The employee shall be obliged, upon request, to furnish information to the principal as to the amount of his earnings.

#### **Section 75**

(1) Where the employee terminates the employment relationship pursuant to the provisions of *Sections 70 and 71* by reason of breach of contract by the principal, the non-competition clause shall be invalid if the employee declares in writing, within one month of giving notice of termination, that he does not consider himself bound by the agreement.

(2) If the principal terminates the employment relationship, the non-competition clause shall be invalid in the same way, unless a serious reason relating to the person of the employee exists for such termination or the principal declares, upon giving notice of termination, that during the period of restriction he will pay to the employee the full contractual remuneration last received by him. In the latter case, the provisions of Section 74b shall apply *mutatis mutandis*.

(3) Where the principal terminates the employment relationship pursuant to the provisions of *Sections 70 and 72* by reason of breach of contract by the employee, the employee shall have no right to compensation.

**Footnotes:** Text in italics in subsection (1): cf. section 626 of the Civil Code in accordance with Article 6 para. 5 of the Act of 14.8.1969 I 1106

Subsection (3): according to the judgment of the Federal Labour Court dated 23.2.1977, this violates Article 3 of the Basic Law and is therefore null and void, Federal Labour Court decisions 29, 30; for text in italics cf. footnote regarding Section 75 subsection (1) above

#### **Section 75a**

Prior to termination of the employment relationship, the principal can waive the non-competition clause, by means of a written declaration, to the effect that, at the end of one year after the declaration, he shall be free of the obligation to pay compensation.

#### **Section 75b (deleted)**

#### **Section 75c**

(1) Where the commercial employee has promised to be subject to a penalty in the event of failing to perform the obligation undertaken in the agreement, the principal may assert claims only in accordance with the provisions of section 340 of the Civil Code. The provisions of the Civil Code concerning reduction of a disproportionately high contractual penalty shall remain unaffected.

(2) Where the binding effect of the agreement is not contingent upon whether the principal undertakes to pay compensation to the employee, the principal can, if the employee has agreed to be subject to a contractual penalty of the kind referred to in subsection (1), demand only the penalty incurred; a claim to performance of contract or to compensation for further damage is excluded.

#### **Section 75d**

The principal cannot invoke rights resulting from an agreement which deviates from the provisions of Sections 74 to 75c to the detriment of the commercial employee. This shall also apply to agreements intended, by way of set-off or other means, to circumvent the statutory provisions concerning minimum compensation.

#### **Section 75e (deleted)**

#### **Section 75f**

In the case of an agreement by which a principal undertakes to another principal not to employ a commercial employee who is or was employed by the latter, or to employ him only under certain conditions, both parties shall be free to rescind the agreement. Neither a cause of action nor a defence may be founded on such agreement.

### **Section 75g**

Section 55 subsection (4) shall also apply to commercial employees who are entrusted with negotiating transactions on behalf of the principal outside of the principal's business premises. A third party must allow a limitation on these rights to apply against him only if he knew or ought to have known thereof.

### **Section 75h**

(1) Where a commercial employee who is entrusted only with negotiating transactions outside of the principal's business premises has concluded a transaction in the principal's name, and the third party did not know of the lack of power of agency, the transaction shall be deemed to be ratified by the principal if, after having been informed by the commercial employee, or by the third party, of the conclusion of such transaction and the material terms thereof, he fails to repudiate it without undue delay vis-à-vis the third party.

(2) The same shall apply if a commercial employee entrusted with concluding transactions has concluded a transaction in the principal's name which he is not authorised to conclude.

### **Sections 76 to 82 (deleted)**

### **Section 82a**

With regard to non-competition clauses in respect of persons who, without being taken on as apprentices, are employed to perform commercial services in an unpaid capacity for the purpose of their vocational training (unpaid trainees), the provisions applicable to commercial employees shall apply insofar as they do not relate to the remuneration payable to commercial employees.

### **Section 83**

With regard to persons who in the operation of a commercial business perform services other than commercial services, the provisions applicable to the employment relationships of such persons shall apply.

## **Part Seven Commercial Agents**

### **Section 84**

(1) A commercial agent is a self-employed intermediary who has continuing authority to negotiate transactions on behalf of another entrepreneur (the "principal") or to conclude transactions in the latter's name. A person is self-employed if he is essentially able to arrange his activities freely and to determine his working hours.

(2) Whoever, without being self-employed within the meaning of subsection (1), has continuing authority to negotiate transactions on behalf of a principal or to conclude transactions in the latter's name shall be deemed to be an employee.

(3) The principal can also be a commercial agent.

(4) The provisions of this part shall also apply if the commercial agent's enterprise, by reason of its nature or size, does not require a commercially organised business operation.

### **Section 85**

Each party shall be entitled to request that the terms of the agency contract, as well as any subsequent agreements to the contract, be set out in a document signed by the other party. This right cannot be excluded.

### **Section 86**

(1) The commercial agent shall make efforts to negotiate or conclude transactions; in doing so he shall look after the principal's interests.

(2) He shall furnish the principal with all necessary information and, in particular, inform him, without undue delay, of each negotiation and of each conclusion of a transaction.

(3) He shall perform his duties with the due care of a prudent merchant.

(4) Any agreements deviating from subsections (1) and (2) shall be ineffective.

#### **Section 86a**

(1) The principal shall provide the commercial agent with the documentation necessary for the performance of his activities, such as samples, drawings, price lists, printed advertising material, and terms and conditions of business.

(2) The principal shall furnish the commercial agent with all necessary information. He shall inform him, without undue delay, of his acceptance or refusal of a transaction negotiated by the commercial agent or a transaction concluded by the agent without power of agency, and of any non-execution of a transaction negotiated or concluded by the agent. He shall inform him, without undue delay, if it is probable that he is only able or willing to conclude transactions in a significantly lower volume than the commercial agent could expect under ordinary circumstances.

(3) Any agreements deviating from subsections (1) and (2) shall be ineffective.

#### **Section 86b**

(1) If a commercial agent undertakes to guarantee performance of the obligation arising from a transaction, he shall be entitled to claim special remuneration (*del credere* commission); such right cannot be excluded in advance. The guarantee may be undertaken only for a specific transaction or for transactions with specific third parties which the commercial agent negotiates or concludes. Such undertaking must be in writing.

(2) The right to *del credere* commission shall arise upon conclusion of the transaction.

(3) Subsection (1) shall not apply if the principal or the third party has his establishment, or, in the absence of such, his residence, abroad. Furthermore, it shall not apply to transactions for the conclusion and execution of which the commercial agent has unlimited authority.

#### **Section 87**

(1) The commercial agent shall be entitled to commission on all transactions concluded during the period covered by the agency contract which have been concluded as a result of his action or concluded with third parties whom he has acquired as customers for transactions of the same kind. He shall have no right to commission if, and to the extent that, the commission is payable to the previous commercial agent pursuant to subsection (3).

(2) Where the commercial agent is entrusted with a specific district or a specific group of customers, he shall also be entitled to commission on transactions entered into, without his participation, with persons belonging to his district or to his group of customers during the period covered by the agency contract. This shall not apply if, and to the extent that, the commission is payable to the previous commercial agent pursuant to subsection (3).

(3) For transactions concluded after the agency contract has terminated, the commercial agent shall be entitled to commission only if

1. he negotiated, initiated or prepared the transaction in such a way that conclusion thereof is mainly attributable to his efforts, and the transaction was concluded within a reasonable period after the agency contract terminated, or

2. the third party's offer to conclude a transaction for which the commercial agent is entitled to commission under subsection (1), first sentence, or subsection (2), first sentence, was received by the commercial agent or the principal before the agency contract terminated.

The subsequent commercial agent shall be entitled to a pro rata share of the commission referred to in the first sentence if, due to special circumstances, it is equitable for the commission to be shared.

(4) In addition to the right to commission for transactions concluded, the commercial agent shall be entitled to a collection commission for amounts collected by him as ordered.

#### **Section 87a**

- (1) The commercial agent shall be entitled to commission as soon as, and to the extent that, the principal has executed the transaction. A divergent agreement can be made, but the commercial agent shall, upon execution of the transaction by the principal, be entitled to a reasonable advance which shall be due not later than the last day of the following month. Irrespective of an agreement, however, the commercial agent shall be entitled to commission as soon as, and to the extent that, the third party has executed the transaction.
- (2) If it is established that the third party will not perform, there shall be no right to commission; any amounts already received shall be returned.
- (3) The commercial agent shall also be entitled to commission if it is established that the principal fails to execute the transaction at all or executes the transaction only partially, or in a manner divergent from the initial agreement. No right to commission shall exist in the event of failure to execute if, and to the extent that, such failure is due to a reason for which the principal is not to blame.
- (4) The claim to commission shall become payable on the last day of the month in which such claim is to be calculated pursuant to Section 87c subsection (1).
- (5) Any agreements deviating from subsection (2) first part of the sentence, or from subsections (3) and (4), to the detriment of the commercial agent, shall be ineffective.

#### **Section 87b**

- (1) Where the amount of commission is not specified, the customary rate shall be deemed to be agreed upon.
- (2) Commission shall be calculated on the basis of the remuneration payable by the third party or the principal. Discounts for cash payment shall not be deducted; the same shall apply to incidental costs, such as freight charges, packaging charges, customs duties, and taxes, unless the incidental costs are charged separately to the third party. Value-added tax itemised separately on invoices solely by reason of tax law provisions shall be deemed not to be charged separately.
- (3) In the case of fixed-term contracts on permitting use of property by third parties, the commission shall be calculated on the basis of the remuneration payable for the duration of the contract. In the case of contracts of indefinite duration, commission shall be calculated on the basis of the remuneration payable until the earliest date when the third party can terminate the contract; if the contract continues, the commercial agent shall be entitled to additional commission calculated accordingly.

#### **Section 87c**

- (1) The commission due the commercial agent shall be calculated by the principal on a monthly basis; this period can be extended to a maximum of three months. The calculation shall be effected without undue delay, at the latest by the end of the following month.
- (2) Upon calculation of the commission due, the commercial agent can demand an extract from the books concerning all transactions on which he is entitled to commission under Section 87.
- (3) The commercial agent can also demand information regarding all matters that are material to the entitlement to commission, its due date and the calculation thereof.
- (4) If the extract from the books is withheld, or reasonable doubt exists as to the correctness or completeness of the calculation or of the extract from the books, the commercial agent can demand that, at the principal's option, either he or an auditor or sworn certified accountant to be designated by him be permitted to inspect the business records or other documents to the extent necessary to determine the correctness or completeness of the calculation or of the extract from the books.
- (5) These rights of the commercial agent cannot be excluded or limited.

#### **Section 87d**

The commercial agent may demand reimbursement of expenses incurred to him in the ordinary course of business only if this is customary in the trade.

**Section 88  
(deleted)**

**Section 88a**

- (1) The commercial agent cannot waive his statutory rights of retention in advance.
- (2) After termination of the agency contract, the commercial agent shall have a right, under general provisions, to retain the documentation provided to him (Section 86a subsection (1)) only by reason of payable commissions and reimbursement of expenses.

**Section 89**

- (1) Where the agency contract is entered into for an indefinite period, it can be terminated during the first year of the contract by giving one month's notice of termination, during the second year of the contract by giving two months' notice of termination and during the third to the fifth year of the contract by giving three months' notice of termination. After a contract period of five years, the agency contract can be terminated by giving six months' notice of termination. Notice of termination is only permitted with effect to the end of a calendar month, unless otherwise agreed by the parties.
- (2) The periods of notice under subsection (1), first and second sentences, can be extended by agreement; the period of notice to be observed by the principal may not be shorter than that to be observed by the commercial agent. If a shorter period of notice for the principal is agreed upon, the period of notice for the commercial agent shall apply.
- (3) An agency contract entered into for a fixed period which continues to be performed by both parties after such agreed period has expired shall be deemed to be extended for an indefinite period. As regards the determination of the periods of notice under subsection (1), first and second sentences, the total duration of the agency contract shall be determinative.

**Section 89a**

- (1) Both parties can terminate the agency contract for a compelling reason without observing a notice period. Such right cannot be excluded or limited.
- (2) Where termination is caused by conduct for which the other party is to blame, such party shall be obliged to pay compensation for damage arising from the termination of the agency contract.

**Section 89b**

- (1) The commercial agent shall be entitled to demand a reasonable indemnity from the principal, after termination of the agency contract, if and to the extent that
  1. the principal continues to derive substantial benefits, even after termination of the agency contract, from business relations with new customers brought by the commercial agent, and
  2. the payment of an indemnity is equitable having regard to all the circumstances and, in particular, the commission lost by the commercial agent on the business transacted with such customers.If the commercial agent has so significantly increased the volume of business with a customer that it is economically equivalent to the acquisition of a new customer, it shall be deemed equal to the acquisition of a new customer.
- (2) The indemnity shall amount to not more than one year's commission or other annual remuneration calculated on the basis of the commercial agent's average earnings for his activities over the preceding five years; if the agency contract goes back less than five years, the average for the period of activity shall be determinative.
- (3) The claim to indemnity shall not arise if
  1. the commercial agent has terminated the agency contract, unless the conduct of the principal gave justified grounds for doing so, or the commercial agent cannot reasonably be expected to continue his activities on account of his age or of illness, or



2. the principal has terminated the agency contract and there was a compelling reason for such termination owing to culpable conduct on part of the commercial agent, or

3. a third party enters into the agency contract in place of the commercial agent on the basis of an agreement between the principal and the commercial agent; such agreement cannot be made prior to the termination of the agency contract.

(4) The claim to indemnity cannot be excluded in advance. It must be asserted within one year after termination of the agency contract.

(5) Subsections (1), (3) and (4) shall apply to insurance agents, subject to the proviso that procurement of new insurance contracts by the insurance agent shall be substituted for business relations with new customers brought by the commercial agent, and that it shall be deemed equal to the procurement of an insurance contract if the insurance agent has so significantly expanded an existing insurance contract that it is economically equivalent to the procurement of a new insurance contract. In deviation from subsection (2), the indemnity of an insurance agent shall amount to not more than three years' worth of commissions or annual remunerations. The provisions of the first and second sentences shall apply *mutatis mutandis* to agents of *Bausparkassen* [building and loan societies].

#### **Section 90**

The commercial agent shall not, even after termination of the agency contract, use or communicate to others business or trade secrets which have been entrusted to him or have become known to him by virtue of his activities for the principal, insofar as, considering all the circumstances, this would be contrary to the professional standards of a prudent merchant.

#### **Section 90a**

(1) An agreement restricting the business activities of a commercial agent following termination of the agency contract (restraint of trade clause) shall be in writing, and a document signed by the principal and containing the agreed provisions shall be handed over to the commercial agent. The agreement can be concluded for not more than two years starting from termination of the agency contract; such agreement shall cover only the district or group of customers assigned to the commercial agent and only the items in respect of which the commercial agent was required to employ his efforts in order to negotiate or conclude transactions for the principal. The principal shall be obliged to pay the commercial agent a reasonable compensation for the period of the restraint on trade.

(2) The principal can waive the restraint on trade in writing, up until the end of the agency contract, to the effect that, after the expiry of a six-month period following such declaration, he shall be free of the obligation to pay compensation.

(3) Where one party terminates the agency contract for a compelling reason owing to culpable conduct on part of the other party, he shall be entitled to declare himself not bound by the restraint of trade clause by means of a written declaration within one month of such termination.

(4) Divergent agreements to the detriment of the commercial agent are not permitted.

#### **Section 91**

(1) Section 55 shall also apply to a commercial agent who has authority to conclude transactions for a principal who is not a merchant.

(2) Even if a commercial agent has not been granted authority to conclude transactions, he shall be deemed to have authority to accept notice of defective goods, to accept declarations that goods will be made available and to accept similar declarations by which a third party asserts or reserves his rights arising from defective performance; he can assert the rights of the principal to preserve evidence. A third party must allow a limitation on these rights to apply against him only if he knew or ought to have known thereof.

#### **Section 91a**

(1) Where a commercial agent who is entrusted only with negotiating transactions has concluded a transaction in the principal's name, and the third party did not know of the lack of power of agency, the transaction shall be deemed to be ratified by the principal if, after having been informed by the commercial agent, or by the third party, of the conclusion of such transaction and the material terms thereof, he fails to repudiate it without undue delay vis-à-vis the third party.

(2) The same shall apply if a commercial agent entrusted with concluding transactions has concluded a transaction in the principal's name which he is not authorised to conclude.

#### **Section 92**

(1) An insurance agent is a person who, as a commercial agent, is entrusted with the negotiation or conclusion of insurance contracts.

(2) The agency contract between the insurance agent and the insurer shall be governed by the provisions applicable to the agency contract between the commercial agent and the principal, subject to subsections (3) and (4).

(3) In deviation from Section 87 subsection (1), first sentence, an insurance agent shall be entitled to commission only for transactions which are attributable to his efforts. Section 87 subsection (2) shall not apply to insurance agents.

(4) The insurance agent shall be entitled to commission (Section 87a subsection (1)) as soon as the insured party has paid the premium on the basis of which the commission is calculated pursuant to the agency contract.

(5) The provisions of subsections (1) to (4) shall apply *mutatis mutandis* to agents of *Bausparkassen* [building and loan societies].

#### **Section 92a**

(1) With regard to the agency contract of a commercial agent who is contractually not permitted to work for other principals, or for whom this is impossible due to the nature and scope of the activities demanded of him, the Federal Ministry of Justice and Consumer Protection can, in agreement with the Federal Ministry of Economic Affairs and Energy, after consultation with associations of commercial agents and of principals, prescribe by statutory instrument, which does not require the approval of the Federal Council [Bundesrat], the minimum level of contractual duties of the principal in order to ensure that the requisite social and economic needs of such commercial agents or of a particular group among such commercial agents are met. Such prescribed duties cannot be excluded or limited by contract.

(2) Subsection (1) shall also apply to the agency contract of an insurance agent who, by virtue of one or more contracts, is entrusted with negotiating or concluding transactions for several insurers belonging to an insurance group or to an organisational structure between insurers, to the extent that termination of the agency contract with one of these insurers would likely result in termination of the agency contracts with the other insurers. In such case, it can also be determined by statutory instrument, which does not require the approval of the Federal Council [Bundesrat], whether the duties prescribed are owed by all insurers jointly and severally, or pro rata, or by only one of the insurers, and how the duty to adjust advancements should be shared among them.

#### **Section 92b**

(1) Sections 89 and 89b shall not apply to sideline commercial agents. Where the agency contract is entered into for an indefinite period, it can be terminated by giving one month's notice of termination to become effective at the end of a calendar month; if a different period of notice is agreed upon, it must be the same for both parties. The right to a reasonable advance pursuant to Section 87a subsection (1), second sentence, can be excluded.

(2) Subsection (1) can be invoked only by a principal who has entrusted the commercial agent with the negotiation or conclusion of transactions expressly as a sideline commercial agent.

- (3) Whether a commercial agent is acting only as a sideline commercial agent shall be determined according to the generally accepted view in the trade.
- (4) The provisions of subsections (1) to (3) shall apply *mutatis mutandis* to insurance agents and to agents of *Bausparkassen* [building and loan societies].

#### **Section 92c**

- (1) If, according to the contract, the commercial agent is not to perform his activities for the principal within the territory of the European Community or of the other contracting states of the European Economic Area Agreement, other agreements can be made with regard to all provisions contained in this part.
- (2) The same shall apply if the commercial agent is entrusted with the negotiation or conclusion of transactions concerning the freighting, dispatching or outfitting of ships, or the booking of passages on ships.

### **Part Eight Commercial Brokers**

#### **Section 93**

- (1) Whoever, on a commercial basis, undertakes on behalf of others the negotiation of contracts concerning the purchase or sale of goods or securities, or concerning insurance, carriage of goods, chartering of ships or other commercial matters, without having continuing authority to do so by virtue of a contractual relationship, shall have the rights and duties of a commercial broker.
- (2) The provisions of this part shall not apply to the negotiation of transactions other than those specified above, particularly to the negotiation of transactions concerning immovable property, even if such negotiation is effected by a commercial broker.
- (3) The provisions of this part shall also apply if the commercial broker's enterprise, by reason of its nature or size, does not require a commercially organised business operation.

#### **Section 94**

- (1) The commercial broker shall, unless released therefrom by the parties or by local custom given the kind of goods involved, supply each party, without undue delay following the conclusion of the transaction, with a contract note signed by him, stating the parties, the subject-matter and terms of the transaction, and particularly in the case of sales of goods or securities the kind and quantity thereof, as well as the price and time of delivery.
- (2) Where the transactions are not to be performed immediately, the contract note shall be forwarded to the parties for their signature and each party shall be sent the contract note signed by the other party.
- (3) If one party refuses to accept or sign the contract note, the commercial broker shall notify the other party thereof without undue delay.

#### **Section 95**

- (1) Where one party accepts a contract note in which the commercial broker has not disclosed the identity of the other party, that party shall be bound to the transaction with the other party, whose identity is to be disclosed to him subsequently, unless reasonable objections are raised against the other party.
- (2) The identity of the other party shall be disclosed within a time period in accordance with local custom, or, in the absence thereof, within a time period appropriate in light of the circumstances.
- (3) If the identity is not disclosed or reasonable objections are raised against the disclosed person or firm, the party shall be entitled to hold the commercial broker liable for performance of the transaction. Such claim shall be excluded if the party does not, on request of the commercial broker, declare without undue delay whether it demands performance.

#### **Section 96**

The commercial broker shall, unless released therefrom by the parties or by local custom given the kind of goods, retain the sample of each piece of merchandise sold by sample as a result of his negotiation, provided such sample has been furnished to him, until the merchandise is accepted without objection as to its quality or the transaction is settled otherwise. He shall make the sample recognisable by a mark.

#### **Section 97**

The commercial broker shall not be deemed to have authority to accept a payment or any other consideration stipulated in the contract.

#### **Section 98**

The commercial broker shall be liable to both parties for damage caused by his fault.

#### **Section 99**

Where no agreement has been made between the parties as to who should pay the broker's fee, each party shall pay half in the absence of any local custom to the contrary.

#### **Section 100**

(1) The commercial broker shall maintain a journal and record in it daily all transactions concluded. The entries shall be made in chronological order; they shall contain the particulars specified in Section 94 subsection (1). The information entered shall be signed daily by the commercial broker or shall be signed electronically pursuant to section 126a subsection (1) of the Civil Code.

(2) The provisions of Sections 239 and 257 concerning the setting up and retention of books of account shall apply to the commercial broker's journal.

#### **Section 101**

The commercial broker shall furnish to the parties, at any time upon request, extracts from the journal, which are signed by him and contain everything recorded by him in respect of the transaction negotiated.

#### **Section 102**

During a legal dispute, the court can, even in the absence of a request by one of the parties, order that the journal be produced in order to compare it with the contract note, the extracts or other evidence.

#### **Section 103**

(1) A regulatory offence shall be committed by whoever as a commercial broker

1. intentionally or negligently fails to maintain a journal concerning the transactions concluded, or maintains the journal in a manner contrary to Section 100 subsection (1), or

2. destroys such a journal before expiry of the statutory retention period.

(2) This regulatory offence can be penalised by imposition of a regulatory fine not exceeding five thousand euros.

#### **Section 104**

The provisions concerning contract notes and journals shall not apply to persons who handle negotiation of small-scale merchandise transactions. The provisions concerning journals shall not apply to persons who negotiate insurance contracts or negotiate savings agreements under which a loan is granted by a *Bausparkasse* [building and loan society].

### **Part Nine Provisions on Regulatory Offences**

#### **Section 104a Provision on Regulatory Offences**

(1) Whoever intentionally or recklessly and contrary to Section 8b subsection (3), first sentence number 2, fails to transmit the data set out therein, or fails to transmit such data accurately or completely shall have committed a regulatory offence. This regulatory offence can be penalised by imposition of a regulatory fine not exceeding two hundred thousand euros.

(2) The administrative authority within the meaning of section 36 subsection (1), number 1, of the Regulatory Offences Act shall be the Federal Financial Supervisory Authority.

## **Book 2**

### **Commercial partnerships and silent partnership**

#### **Part 1**

#### **General partnership**

#### **Title 1**

#### **Formation of a partnership**

#### **Section 105**

(1) A partnership formed for the purpose of carrying on a commercial business under a joint business name is a general partnership if no partner's liability is limited vis-à-vis the partnership's creditors.

(2) A partnership, whose commercial enterprise is not deemed to be a commercial business pursuant to section 1 (2), or which manages only its own assets, is a general partnership if the business name of the enterprise is registered in the Commercial Register. Section 2 sentences 2 and 3 apply accordingly.

(3) Unless this Part provides otherwise, the provisions of the Civil Code concerning a partnership apply to the general partnership.

#### **Section 106**

(1) An application to have the partnership registered in the Commercial Register is to be made to the court in the district of which it has its seat.

(2) The application is to contain:

1. the surname, forename, date of birth and place of residence of each partner;
2. the business name of the partnership, the place where it has its seat, and the domestic business address;
3. (repealed)
4. the power of representation of the partners.

#### **Section 107**

If the business name of a partnership is changed, the seat of the partnership is transferred to another location, the domestic business address is changed, a new partner joins the partnership, or a partner's power of representation is changed, an application is to be filed with the Commercial Register to have such facts as well entered therein.

#### **Section 108**

The applications for registration are to be made by all the partners. This does not apply if only the domestic business address is changed.

#### **Title 2**

#### **Legal relations of partners to one another**

#### **Section 109**

The legal relations of partners to one another are determined primarily by the partnership agreement; the provisions of sections 110 to 122 apply only to the extent that the partnership agreement does not provide otherwise.

#### **Section 110**

(1) If, in the course of partnership affairs, a partner incurs expenses that they may reasonably consider necessary under the circumstances, or if they sustain losses as a direct consequence of their management of the affairs or as a consequence of risks which are inseparably connected with such management, the partnership will be obliged to reimburse the partner.

(2) From the date of the expense onwards, the partnership is to pay interest on the money expended.

#### **Section 111**

(1) A partner who fails to pay in their financial contribution on time or to timely deliver money received on behalf of the partnership to the partnership funds, or who without authorisation withdraws money from the partnership funds for their own use, is to pay interest from the date on which such payment or delivery should have occurred or the withdrawal of money was made.

(2) The assertion of further damage is not excluded.

#### **Section 112**

(1) Without the consent of the other partners, a partner may neither conduct any business in the partnership's branch of commerce nor participate as a general partner in another similar commercial partnership.

(2) Consent to participation in another partnership will be deemed granted if the other partners know at the time of entering the partnership that the partner is participating as a general partner in another partnership and nonetheless do not expressly stipulate that the partner give up such participation.

#### **Section 113**

(1) If a partner violates their duty under section 112, the partnership may claim damages; alternatively, it may demand of the partner to accept that the business the partner conducted for the partner's own account is considered as having been conducted for the partnership's account, and that that partner surrender the remuneration received from business conducted for the account of third parties or assign the partner's claim to such remuneration to the partnership.

(2) The other partners decide on whether to assert such claims.

(3) The claims will become statute-barred three months from the date on which the other partners gained knowledge of the conclusion of the transaction or of the partner's participation in another partnership, or would have gained knowledge thereof had they not shown gross negligence; irrespective of such knowledge or of a grossly negligent lack of knowledge, the period of limitation is five years from the date on which such claims arise.

(4) The right of the partners to demand dissolution of the partnership is not affected by these provisions.

#### **Section 114**

(1) All partners are entitled and obliged to manage the partnership business.

(2) If, under the partnership agreement, the management of the business is assigned to one or more partners, the other partners will be excluded from management of the business.

#### **Section 115**

(1) Where all or several partners have a right to manage the business, each of them has authority to act alone; if, however, another managing partner objects to the taking of an action, it must be refrained from.

(2) If the partnership agreement provides that the partners entitled to manage the business may act only jointly, each transaction will require the consent of all the managing partners, unless there is risk in delay.

#### **Section 116**

(1) The authority to manage the business extends to all acts involved in the ordinary course of the partnership's commercial business.

(2) Taking actions that exceed such scope requires a resolution of all the partners.

(3) The appointment of a holder of a general commercial power of representation requires the consent of all the managing partners, unless there is risk in delay. The general commercial power of representation may be revoked by any of the partners who are authorised to confer it or to participate in the conferment thereof.

#### **Section 117**

The authority to manage the business may, upon application by the other partners, be withdrawn from a partner by means of a judicial decision, if there is a compelling reason to do so; such a reason includes, in particular, gross breach of duty or inability to properly manage the business.

#### **Section 118**

(1) A partner may, even if excluded from management of the business, inform themselves personally of the partnership's affairs, inspect the books of account and documents of the partnership and draw up therefrom a balance sheet and an annual financial statement.

(2) An agreement that excludes or limits this right does not prevent such right from being asserted if there are grounds for assuming dishonest management of the business.

#### **Section 119**

(1) Resolutions to be taken by the partners require the consent of all partners entitled to participate in the passing of a resolution.

(2) If, under the partnership agreement, the majority of votes decides, a majority will be calculated, in case of doubt, in relation to the number of partners.

#### **Section 120**

(1) At the end of each fiscal year, the profits and losses for the year are to be determined on the basis of the balance sheet, and each partner's share of such profits and losses is to be calculated.

(2) The profits due a partner are to be added to the partner's share of capital; the losses allocated to a partner, as well as any money withdrawn from the share of capital during the fiscal year, are to be deducted therefrom.

#### **Section 121**

(1) Each partner initially is entitled to a share in the annual profits that amounts to four percent of their share of capital. Where the annual profits are not sufficient therefor, the shares are to be determined at a correspondingly lower rate.

(2) When calculating the profit share which a partner is due pursuant to subsection (1), payments which the partner made in the course of the fiscal year as contributions are to be taken into account in proportion to the time elapsed after such payment. If, during the fiscal year, the partner has withdrawn money from their share of capital, the amounts withdrawn are to be taken into account in proportion to the time elapsed prior to such withdrawal.

(3) That portion of the annual profits which exceeds the profit shares calculated pursuant to subsections (1) and (2), as well as the losses of a fiscal year, are to be distributed among all the partners equally.

#### **Section 122**

(1) Each partner is entitled to withdraw money from the partnership funds, for their own account, up to an amount equal to four percent of their share of capital as determined for the last fiscal year and, insofar as this does not cause obvious harm to the partnership, also to

demand payment of their profit share of the previous year in excess of the amount referred to above.

(2) Apart from this, a partner may not reduce their share of capital without consent of the other partners.

### **Title 3** **Legal relations of partners to third parties**

#### **Section 123**

(1) With respect to third parties, the general partnership becomes effective as of the time the partnership is registered in the Commercial Register.

(2) Where the partnership commences business before registration, it will become effective as of the time it commences business, unless section 2 or section 105 subsection (2) provides otherwise.

(3) Any agreement by which the partnership is to come into existence at a later date is ineffective vis-à-vis third parties.

#### **Section 124**

(1) The general partnership may acquire, under its business name, rights and enter into obligations, acquire ownership and other rights *in rem* in real property and may sue and be sued in court.

(2) In order to levy compulsory enforcement on the partnership's assets, an enforceable title of execution against the partnership is required.

#### **Section 125**

(1) Each partner has authority to represent the partnership if they have not been excluded from such representation by the partnership agreement.

(2) The partnership agreement may provide that all or several partners are to have authority to represent the partnership only jointly (joint representation). The partners authorised to represent the partnership jointly may authorise one or more of their number to undertake particular transactions or particular kinds of transactions. Where a declaration of intent is to be made to the partnership, it will suffice to make such declaration to one of the partners authorised to participate in representing the partnership.

(3) The partnership agreement may provide that, where several partners do not act jointly, the partners are to have authority to represent the partnership only jointly with a holder of a general commercial power of representation. In such case, the provisions of subsection (2) sentences 2 and 3 apply accordingly.

(4) (repealed)

#### **Section 125a**

(1) All business correspondence of the partnership which is addressed to a specific recipient must, irrespective of its form, indicate the legal form and the seat of the partnership, the court of registration and the number under which the partnership is registered in the Commercial Register. If none of the partners of the partnership is a natural person, the business correspondence of the partnership must also indicate the business names of the partners as well as the particulars concerning the partners which are required on business correspondence pursuant to section 35a of the Limited Liability Companies Act or section 80 of the Stock Corporation Act. The particulars pursuant to sentence 2 will not be required if one of the partners of the partnership is a general partnership or partly limited partnership in which a general partner is a natural person.

(2) Section 37a (2) and (3) apply accordingly to pre-printed forms and order forms, and section 37a (4) applies accordingly to coercive fines against the partners authorised to represent the partnership, or their organ representatives and the liquidators.

#### **Section 126**



(1) The partners' power of representation extends to all judicial and extrajudicial transactions and legal acts, including the disposal and encumbrance of real property and the conferment and revocation of a general commercial power of representation.

(2) A limitation on the scope of the power of representation is ineffective vis-à-vis third parties; this applies especially to a limitation whereby the representation may extend only to particular transactions or kinds of transactions or whereby it may be exercised only under certain circumstances or for a certain period of time or at specific places.

(3) Where such power of representation is limited to the operation of one of several establishments of the partnership, the provisions of section 50 (3) applies accordingly.

#### **Section 127**

The power of representation may, upon application by the other partners, be withdrawn from a partner by means of a judicial decision, if there is a compelling reason to do so; such a reason includes, in particular, gross breach of duty or inability to properly represent the business.

#### **Section 128**

The partners are personally and jointly and severally liable to the creditors for the partnership's obligations. Any agreement to the contrary are ineffective vis-à-vis third parties.

#### **Section 129**

(1) If a partner is held liable for an obligation of the partnership, they may assert objections that are not related to their person only insofar as the partnership is entitled to raise such objections.

(2) The partner may refuse to satisfy the creditor as long as the partnership is entitled to avoid the legal transaction on which the obligation is based.

(3) The partner also has the right to refuse to satisfy the creditor as long as the creditor is able to obtain satisfaction by set-off against a claim due the partnership.

(4) No compulsory enforcement may be effected against the partners on the basis of an enforceable title of execution against the partnership.

#### **Section 129a (repealed)**

#### **Section 130**

(1) Whoever joins an existing partnership will be liable to the same extent as the other partners, pursuant to sections 128 and 129, for the obligations of the partnership incurred prior to their joining, irrespective of whether or not the business name is changed.

(2) Any agreement to the contrary is ineffective vis-à-vis third parties.

### **Title 4**

#### **Dissolution of the partnership and withdrawal of partners**

#### **Section 131**

(1) The general partnership is dissolved:

1. by expiry of the period for which it was entered into;
2. by resolution of the partners;
3. by the opening of insolvency proceedings concerning the assets of the partnership;
4. by judicial decision.

(2) A general partnership in which none of the general partners is a natural person furthermore is dissolved:

1. upon final and binding effect of the decision by which the opening of insolvency proceedings is refused because of insufficiency of assets;
2. by deletion from the Commercial Register due to lack of assets pursuant to section 394 of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction.

This does not apply if one of the general partners is another general partnership or partly limited partnership in which a general partner is a natural person.

(3) In the absence of any agreement to the contrary, the following reasons will lead to withdrawal of a partner:

1. death of the partner,
2. opening of insolvency proceedings concerning the assets of the partner,
3. notice of termination given by the partner,
4. notice of termination given by the partner's personal creditor,
5. occurrence of other events provided for in the partnership agreement,
6. resolution of the partners.

The partner withdraws upon occurrence of the relevant event, but in the case of notice of termination not before expiry of the period of notice.

#### **Section 132**

If the partnership has been entered into for an indefinite period, a partner's notice of termination is only permitted with effect to the end of a fiscal year; it must be given at least six months before such time.

#### **Section 133**

- (1) Upon application by one of the partners, the dissolution of the partnership may be declared by judicial decision prior to the expiry of its fixed term or, if the partnership is entered into for an indefinite period, without notice if there is a compelling reason therefor.
- (2) Such a reason is deemed to exist particularly if another partner intentionally or with gross negligence violates a material obligation incumbent upon them under the partnership agreement, or if the performance of such an obligation becomes impossible.
- (3) An agreement by which a partner's right to demand dissolution of the partnership is excluded or limited contrary to these provisions is ineffective.

#### **Section 134**

A partnership which has been entered into for the lifetime of a partner or which is tacitly continued after expiry of its fixed term is deemed equivalent to a partnership of indefinite duration within the meaning of the provisions of sections 132 and 133.

#### **Section 135**

Where a personal creditor of a partner, after an attempt to levy compulsory enforcement on the movable property of the partner has proved unsuccessful within the past six months, obtains, by virtue of other than a merely provisionally enforceable title of execution, an attachment and transfer of claim to what is due the partner in the case of a winding up of the partnership, such personal creditor of a partner may terminate the partnership with effect to the end of the fiscal year, irrespective of whether the partnership was entered into for a fixed term or for an indefinite period, by giving notice six months before the end of such fiscal year.

#### **Sections 136 to 138 (repealed)**

### **Section 139**

- (1) If the partnership agreement provides that, in the event of a partner's death, the partnership is to be continued with the partner's heirs, each heir may make their remaining in the partnership contingent upon their being granted the status of a limited partner and retaining the previous profit share, and upon the deceased's share of contribution devolved on them being recognised as their contribution as a limited partner.
- (2) If the other partners refuse a request to this effect by the heir, the heir may declare their withdrawal from the partnership, without having to comply with a period of notice.
- (3) The rights referred to above may be asserted by the heir only within a period of three months from the date on which they gained knowledge of the devolution of the inheritance. The provisions applicable to limitation in section 210 of the Civil Code apply accordingly to the running of the time period. Where the right to disclaim the inheritance has not been forfeited at the end of the three months, the time limit will not end prior to the expiry of the period for disclaimer.
- (4) If the heir withdraws from the partnership within the period specified in subsection (3), or the partnership is dissolved during such period, or the heir is granted the status of a limited partner, the heir will be liable for the partnership debts incurred prior thereto only pursuant to the civil law provisions concerning the liability of heirs for obligations of the estate.
- (5) The partnership agreement cannot exclude application of the provisions of subsections (1) to (4); however, in the event that the heir has made their remaining in the partnership contingent upon being granted the status of a limited partner, their profit share may be determined differently from that of the deceased.

### **Section 140**

- (1) If a circumstance relating to the person of a partner arises which, pursuant to section 133, entitles the other partners to demand dissolution of the partnership, the court may order the expulsion of such partner from the partnership in lieu of dissolution, provided that the other partners have filed a motion to this effect. A court action to expel a partner will not be precluded by the fact that only one partner will remain after the expulsion.
- (2) The partnership's assets position at the time the action for expulsion was filed will be determinative for the apportionment of assets and liabilities between the partnership and the expelled partner.

### **Sections 141 and 142 (repealed)**

### **Section 143**

- (1) An application to have the dissolution of the partnership entered in the Commercial Register is to be filed by all of the partners. This does not apply if insolvency proceedings are opened in respect of the assets of the partnership or the opening of such proceedings is refused (Section 131 subsection (1) number 3 and subsection (2) number 1). In such cases, the court is to enter the dissolution and the reason therefor ex officio. If the partnership has been deleted (Section 131 (2) number 2), registration of dissolution will not be necessary.
- (2) Subsection (1) sentence 1 applies accordingly to the withdrawal of a partner from the partnership.
- (3) Where it is to be assumed that the death of a partner has resulted in dissolution or withdrawal, registration may also be effected without participation of the heirs in the filing of the application for registration, insofar as particular obstacles impede such participation.

### **Section 144**

- (1) If the partnership has been dissolved as a result of the opening of insolvency proceedings concerning its assets, but such proceedings are discontinued upon application of the debtor or cancelled after confirmation of an insolvency plan that provides for continuation of the partnership, the partners may pass a resolution to continue the partnership.

(2) An application to have the continuation entered in the Commercial Register is to be filed by all of the partners.

## **Title 5** **Liquidation of the partnership**

### **Section 145**

(1) Liquidation takes place after dissolution of the partnership, unless some other manner of arrangement has been agreed upon by the partners, or insolvency proceedings have been opened in respect of the assets of the partnership.

(2) Where the partnership has been dissolved as a result of termination by a creditor of one of the partners or as a result of the opening of insolvency proceedings concerning the assets of the partnership, liquidation may be averted only with the consent of the creditor concerned or of the insolvency administrator; if debtor-in-possession management has been ordered in the insolvency proceedings, consent of the debtor will replace consent of the insolvency administrator.

(3) If the partnership has been dissolved as a result of being deleted from the Commercial Register due to lack of assets, liquidation will take place only if, after being deleted, it is determined that assets exist which are subject to distribution.

### **Section 146**

(1) Liquidation is to be carried out by all of the partners as liquidators, unless it is delegated to individual partners or other persons by resolution of the partners or by the partnership agreement. Where a partner has several heirs, these are required to appoint a joint representative.

(2) Upon application of a party involved, the appointment of liquidators may be made, for compelling reasons, by the court in the district of which the partnership has its seat; in such case, persons other than partners may be appointed as liquidators by the court. In addition to the partners, in the case of section 135 the creditor who gave notice of termination also will be deemed a party involved. In the case of section 145 (3), the liquidators are to be appointed by the court upon application of one of the parties involved.

(3) If insolvency proceedings have been opened in respect of the assets of a partner and an insolvency administrator has been appointed, the insolvency administrator will act in place of the partner.

### **Section 147**

Removal of liquidators is effected by unanimous resolution of the parties involved pursuant to section 146 (2) and (3); upon application of one of the parties involved, removal also may be effected, for compelling reasons, by the court.

### **Section 148**

(1) An application to have the liquidators and their powers of representation entered in the Commercial Register is to be filed by all of the partners. The same applies to any change in the identity of the liquidators or in their powers of representation. In the event of a partner's death, if it can be assumed that the information in the application for registration corresponds to the facts, registration may also be effected without participation of the heirs in filing the application for registration, insofar as particular obstacles impede such participation.

(2) Registration of court-appointed liquidators as well as registration of a liquidator's removal by the court is effected ex officio.

(3) (repealed)

### **Section 149**

The liquidators are to wind up ongoing business, collect receivables, convert the remaining assets into cash and satisfy the creditors; in order to complete pending transactions, they may also enter into new transactions. Within the scope of their operations, the liquidators represent the partnership in court and out of court.

#### **Section 150**

- (1) Where there are several liquidators, they may only act jointly in matters pertaining to the liquidation, unless it is provided that they may act individually.
- (2) The provision of subsection (1) does not preclude the liquidators from authorising one or more of their number to undertake particular transactions or particular kinds of transactions. If a declaration of intent is to be made to the partnership, the provision of section 125 (2) sentence 3 applies accordingly.

#### **Section 151**

A limitation on the scope of the liquidators' powers is ineffective vis-à-vis third parties.

#### **Section 152**

Vis-à-vis the parties involved pursuant to section 146 (2) and (3), the liquidators, even if they are appointed by the court, must comply with directives which such parties have resolved unanimously with regard to the management of the business.

#### **Section 153**

The liquidators are to give their signature by adding their names to the former business name, which must be indicated as a firm in liquidation.

#### **Section 154**

The liquidators are to prepare a balance sheet at the beginning and at the end of the liquidation.

#### **Section 155**

- (1) Partnership assets remaining after payment of debts are to be distributed by the liquidators among the partners in proportion to their respective shares of capital as indicated by the closing balance sheet.
- (2) Money not required during the liquidation process is to be distributed provisionally. Amounts required to cover not yet due, or disputed obligations, and to secure the respective amounts payable to the partners upon the final distribution, are to be retained. The provisions of section 122 (1) do not apply during the liquidation period.
- (3) If a dispute arises among the partners regarding the distribution of partnership assets, the liquidators are to suspend the distribution until such dispute has been resolved.

#### **Section 156**

Until completion of the liquidation the provisions of Titles Two and Three apply to the legal relations of partners to one another and the legal relations of the partnership to third parties, unless the provisions of this Title or the purpose of the liquidation require otherwise.

#### **Section 157**

- (1) After the liquidation has been completed, the liquidators are to apply for the cessation of the business name to be registered in the Commercial Register.
- (2) The books and documents of the dissolved partnership are deposited for safekeeping with one of the partners or a third party. In the absence of an agreement, the respective partner or third party will be designated by the court in the district of which the partnership has its seat.
- (3) The partners and their heirs retain the right to inspect and use the books and documents.

#### **Section 158**

If the partners agree upon some other manner of arrangement in lieu of liquidation, the provisions concerning liquidation apply accordingly vis-à-vis third parties, as long as there are undistributed partnership assets.

### **Title 6**

#### **Statute of limitations. Time limit on liability.**

#### **Section 159**

- (1) Claims against a partner arising from obligations of the partnership will become statute-barred five years after dissolution of the partnership, unless the claim against the partnership is subject to a shorter period of limitation.
- (2) The period of limitation begins to run at the end of the day on which dissolution of the partnership is registered in the Commercial Register of the court having jurisdiction over the seat of the partnership.
- (3) If the creditor's claim against the partnership becomes due after the entry, the period of limitation begins to run from the due date.
- (4) In respect of the dissolved partnership, recommencement of the limitation period and suspension thereof under section 204 of the Civil Code will be effective also vis-à-vis partners who were members of the partnership at the time of its dissolution.

#### **Section 160**

- (1) If a partner withdraws from the partnership, the partner will be liable for its obligations incurred up to that point if they become due before the end of five years after the partner's withdrawal and claims against the partner resulting therefrom have been determined in a manner specified in section 197 (1) nos. 3 to 5 of the Civil Code, or if a judicial or official act of execution is undertaken or applied for; in the case of public law obligations, the issuance of an administrative act will suffice. The time period begins to run at the end of the day on which the withdrawal is registered in the Commercial Register of the court having jurisdiction over the seat of the partnership. The provisions of sections 204, 206, 210, 211 and 212 (2) and (3) of the Civil Code applying to limitation apply accordingly.
- (2) Insofar as the partner has recognised the claim in writing, a determination in a manner specified in section 197 subsection (1) nos. 3 to 5 of the Civil Code will not be necessary.
- (3) If a partner becomes a limited partner, subsections (1) and (2) apply accordingly to the limitation of their liability for the obligations already existing at the time of the entry of the change in the Commercial Register. This will apply even if the partner becomes active in the management of the partnership or of an enterprise belonging to it as partner. The partner's liability as limited partner remains unaffected.

### **Part 2**

#### **Partly limited partnership**

#### **Section 161**

- (1) A partnership formed for the purpose of carrying on a commercial business under a joint business name is a partly limited partnership if the liability of one or more of the partners is limited vis-à-vis the partnership's creditors to the amount of a specific contribution of assets (limited partners), while the other partners have unlimited liability (general partners).
- (2) Unless this Part provides otherwise, the provisions applicable to the general partnership applies to the partly limited partnership.

#### **Section 162**

- (1) The application for entry of the partnership in the Commercial Register is to contain, in addition to the particulars specified in section 106 (2), the names of the limited partners and each limited partner's respective amount of contribution for which the limited partner is liable towards third parties. If a civil-law partnership is a limited partner, applications to have its partners and subsequent changes in the composition of its partners entered in the Commercial Register in accordance with section 106 (2) likewise are to be filed.
- (2) Information to be disclosed in the publication of the registration of the partnership is not to include information on the limited partners; the provisions of section 15 do not apply in this regard.
- (3) These provisions apply accordingly in the event of a limited partner joining an existing commercial partnership and in the event of withdrawal of a limited partner from a partly limited partnership.

#### **Section 163**

Unless the partnership agreement provides otherwise, the special provisions of sections 164 to 169 apply to the relations of partners to one another.

#### **Section 164**

The limited partners are excluded from the management of the partnership business; they may not object to an action taken by the general partners unless such action exceeds the scope of the ordinary course of the partnership's commercial business. The provisions of section 116 (3) remain unaffected.

#### **Section 165**

Sections 112 and 113 do not apply to limited partners.

#### **Section 166**

- (1) The limited partner is entitled to demand a copy of the annual financial statement and to examine its accuracy by inspection of the books and documents.
- (2) The limited partner does not have the additional rights granted by section 118 to partners excluded from management of the business.
- (3) Upon application of a limited partner, the court may order at any time, for compelling reasons, that a balance sheet and an annual financial statement or other information be furnished and that books and documents be provided.

#### **Section 167**

- (1) The provisions of section 120 concerning the calculation of profits and losses apply also to limited partners.
- (2) However, the profits due a limited partner will be added to their share of capital only as long as such share has not reached the amount of the stipulated contribution.
- (3) The limited partner will participate in losses only up to the amount of their share of capital and their contribution still outstanding.

#### **Section 168**

- (1) The partners' profit shares are determined pursuant to the provisions of section 121 (1) and (2), insofar as the profits do not exceed four percent of the shares of capital.
- (2) With regard to profits in excess of this amount, and to losses, such distribution as is reasonable under the circumstances will be deemed to have been stipulated, unless agreed otherwise.

#### **Section 169**

- (1) Section 122 does not apply to limited partners. A limited partner is entitled only to payment of profits due to them; limited partners cannot demand payment of profits as long as their share of capital has been reduced by losses to less than the amount paid in as the stipulated contribution or would be reduced to less than this amount as a result of such payment.
- (2) The limited partner will not be obliged, by reason of subsequent losses, to repay profits received.

#### **Section 170**

The limited partner has no authority to represent the partnership.

#### **Section 171**

- (1) The limited partner is directly liable to the creditors of the partnership up to the amount of contribution for which they are liable towards third parties; such liability is excluded to the extent that the contribution has been made.
- (2) Where insolvency proceedings have been opened in respect of the assets of the partnership, the rights of the partnership's creditors pursuant to subsection (1) will be exercised by the insolvency administrator or the insolvency monitor during the course of the proceedings.

### **Section 172**

(1) With regard to the creditors of the partnership, the amount of contribution for which a limited partner is liable towards third parties will be determined, after entry in the Commercial Register, by such amount as is stated in the entry.

(2) The creditors may invoke an unregistered increase in the respective amount of contribution shown in the Commercial Register only if such increase has been announced in a manner customary in the trade or has been communicated to them by the partnership in some other manner.

(3) Any agreement between the partners by which a limited partner is released from making the contribution, or by which their obligation to make the contribution is deferred, is ineffective vis-à-vis the creditors.

(4) To the extent that the amount of contribution for which a limited partner is liable towards third parties has been repaid to the limited partner, it will be deemed, vis-à-vis the creditors, not to have been made. The same applies to the extent that a limited partner withdraws profit shares while their share of capital is reduced by losses to less than the amount paid in as the amount of contribution for which they are liable towards third parties, or to the extent that their share of capital would be reduced to less than the specified amount as a result of such withdrawal. Amounts within the meaning of section 268 (8) are not to be taken into account for the calculation of the share of capital pursuant to sentence 2.

(5) In no case will a limited partner be obliged to repay whatever they have received in good faith as profit on the basis of a balance sheet drawn up in good faith.

(6) Vis-à-vis the creditors of a partnership in which none of the general partners is a natural person, the amount of contribution for which a limited partner is liable towards third parties will be deemed not to have been made to the extent it is made in shares of the general partners. This does not apply if one of the general partners is a general partnership or partly limited partnership in which a general partner is a natural person.

### **Section 172a (repealed)**

### **Section 173**

(1) Whoever joins an existing commercial partnership as a limited partner will be liable, pursuant to sections 171 and 172, for the obligations of the partnership incurred prior to their joining, irrespective of whether or not the business name is changed.

(2) Any agreement to the contrary is ineffective vis-à-vis third parties.

### **Section 174**

A reduction in the amount of contribution for which a limited partner is liable towards third parties is ineffective vis-à-vis the creditors as long as it is not registered in the Commercial Register of the court in the district of which the partnership has its seat; creditors whose claims already existed at the time of registration need not allow such reduction to apply against them.

### **Section 175**

An application to have an increase or reduction in an amount of contribution for which a limited partner is liable towards third parties entered in the Commercial Register is to be filed by all of the partners. Section 162 (2) applies accordingly. The provisions of section 14 do not apply to registration in the Commercial Register of the partnership's seat.

### **Section 176**

(1) Where the partnership commences business before it has been registered in the Commercial Register of the court in the district of which it has its seat, each limited partner who consented to the commencement of business will be liable for the partnership's obligations incurred prior to its registration to the same extent as a general partner, unless their participation as a limited partner was known to the creditor. This provision does not apply insofar as section 2 or section 105 (2) provides otherwise.



(2) Where a limited partner joins an existing commercial partnership, the provision in subsection (1) sentence 1 applies accordingly to the partnership's obligations incurred in the period between the limited partner's joining and the registration thereof in the Commercial Register.

#### **Section 177**

Upon the death of a limited partner, the partnership will be continued, in the absence of any agreement to the contrary, with the limited partner's heirs.

#### **Section 177a**

Section 125a also applies to a partnership in which a limited partner is a natural person. The particulars concerning the partners prescribed under section 125a (1) sentence 2 are required only for the general partners of the partnership.

### **Sections 178 to 229 (repealed)**

#### **Part 3 Silent partnership**

#### **Section 230**

- (1) Whoever participates as a silent partner by means of a contribution of assets in a commercial business carried on by another person is to make the contribution such that it is transferred to the assets of the owner of the commercial business.
- (2) Solely the owner has rights and obligations arising from transactions concluded in the operation of the business.

#### **Section 231**

- (1) Where the silent partner's share in the profits and losses has not been specified, such share as is reasonable under the circumstances will be deemed to have been stipulated.
- (2) The partnership agreement may provide that the silent partner is not participate in losses; the silent partner's share in the profits cannot be excluded.

#### **Section 232**

- (1) At the end of each fiscal year, the profits and losses are to be calculated and the profits due the silent partner are to be paid out to them.
- (2) The silent partner participates in losses only up to the amount of their paid-in or still outstanding contribution. The silent partner is not obliged, by reason of subsequent losses, to repay profits received; however, as long as their contribution is reduced by losses, the annual profits are to be used to cover the losses.
- (3) Profits not withdrawn by the silent partner do not increase the silent partner's contribution, unless agreed otherwise.

#### **Section 233**

- (1) The silent partner is entitled to demand a copy of the annual financial statement and to examine its accuracy by inspection of the books and documents.
- (2) The silent partner does not have the additional rights granted by section 716 of the Civil Code to partners excluded from management of the business.
- (3) Upon application of the silent partner, the court may order at any time, for compelling reasons, that a balance sheet and an annual financial statement or other information be furnished and that books and documents be provided.

#### **Section 234**

- (1) The provisions of sections 132, 134 and 135 apply accordingly to the termination of the partnership by one of the partners or by a creditor of the silent partner. The provisions of section 723 of the Civil Code concerning the right to terminate the partnership for a compelling reason without observing a period of notice remain unaffected.

(2) The partnership will not be dissolved by the death of the silent partner.

#### **Section 235**

(1) After dissolution of the partnership, the owner of the commercial business is to calculate what is owed the silent partner and pay the silent partner the respective credit balance in money.

(2) Transactions pending at the time of dissolution are to be wound up by the owner of the commercial business. The silent partner participates in the profits and losses resulting from such transactions.

(3) The silent partner may demand, at the end of each fiscal year, an account of transactions completed in the meanwhile, payment of the amount due them and information on the status of still pending transactions.

#### **Section 236**

(1) If insolvency proceedings are opened in respect of the assets of the owner of the commercial business, the silent partner may, on account of the silent partner's contribution, assert their claim as an insolvency creditor, to the extent that the amount of the contribution exceeds the amount of their share of the losses.

(2) If the contribution is still outstanding, the silent partner is to pay it into the insolvency estate, up to the amount necessary to cover their share of the losses.

#### **Section 237 (repealed)**

### **Book 3 Commercial records**

#### **Division 1 Regulations applicable to all merchants**

#### **Subdivision 1 Bookkeeping, inventory**

#### **Section 238 Duty to keep books**

(1) Every merchant is obliged to keep books such that they reflect the merchant's business dealings and financial position in accordance with the principles of proper accounting. The bookkeeping must be of a nature permitting an external expert to gain an overview, within a reasonable period of time, of the undertaking's business transactions and its position. It must be possible to track the business transactions in terms of their origination and their execution.

(2) The merchant is obliged to retain a true reproduction of the original commercial letters dispatched (copy, printout, duplicate or other reproduction of the letters' wording on a writing medium, image carrier or other data carrier).

#### **Section 239 Maintenance of commercial records**

(1) In maintaining the commercial records and the documentation otherwise required, the merchant is to use a living language. Where acronyms, numbers, letters of the alphabet or symbols are used, their meaning must be unequivocally defined in each individual case.

(2) The entries posted in the books and the documentation otherwise required must be complete, correct and timely and must be made in a structured manner.

(3) An entry or a documented record may not be modified such that it is no longer possible to establish its original content. Nor may any modifications be made that, by their nature, leave unclear whether they were already part of the entry or record originally or were made only at a later point in time.

(4) The commercial records and the documentation otherwise required may also consist of the structured collection of vouchers in a file, or of their structured storage on data carriers, provided that these forms of bookkeeping, including the procedure applied in this context, are in keeping with the principles of proper accounting. Where commercial records and the documentation otherwise required are maintained on data carriers, it must be ensured in particular that the data are available for the duration of the retention period and that they can be made readable at any time within a reasonable period. Subsections (1) to (3) apply accordingly.

#### **Section 240 Inventory**

(1) Upon commencing commercial activities, every merchant is to create an exact register of his or her plots of real estate, his or her receivables and debt obligations, the amount of his or her cash funds, as well as his or her other assets and, in the process, is to state the value of the individual assets and debt obligations.

(2) Thereafter, the merchant is to prepare such an inventory as per the close of every financial year. The duration of the financial year may not exceed twelve months. The inventory is to be prepared within a period commensurate with the due and proper course of business.

(3) Assets forming part of the tangible fixed assets as well as raw materials, auxiliary supplies and consumables may be recognised in an unchanging quantity and as having an unchanging value if they are replaced at regular intervals and if their total value is immaterial for the undertaking, provided that the stock of said raw materials, auxiliary supplies and consumables is subject to merely slight modifications in terms of its size, its value and its composition. However, stock is to be physically taken of the inventory, as a general rule, every three years.

(4) Like assets constituting the stocks of goods, as well as other like or nearly equivalent fungible assets and debt obligations, may be combined in each case to form a single group and may be recognised at the weighted average value.

#### **Section 241 Procedures for simplified inventory-taking**

(1) In preparing the inventory, it is also permissible to assess the stock of assets in terms of their nature, quantity and value by random sampling, using recognised mathematical-statistical methods. The procedure must be in keeping with the principles of proper accounting. The informational validity of the inventory prepared in this way must be equivalent to the informational validity of an inventory prepared by means of physical stocktaking.

(2) In preparing the inventory as per the close of a financial year, it is not necessary to physically take stock of the assets as per that point in time insofar as it is assured, by applying some other procedure that is in keeping with the principles of proper accounting, that the existing stock of assets can be determined in terms of their nature, quantity and value as per that point in time also without physically taking stock.

(3) Assets are not required to be included in the inventory as per the close of a financial year if

1. the merchant has itemised them in a separate inventory in terms of their nature, quantity and value based on the stock physically taken of them, or based on some other procedure permissible under subsection (2), and said separate inventory has been prepared as per a day within the last three months immediately preceding the close of the financial year or the first two months following it, and if

2. it is assured, based on the separate inventory and by applying an updating process or a back-calculation process that is in keeping with the principles of proper

accounting, that it is possible to value properly the stock of assets existing as per the close of the financial year for said point in time.

#### **Section 241a**

##### **Release from the obligation to keep books and to prepare an inventory**

Sole traders who, as per the balance sheet dates of two consecutive financial years, do not have more than 600,000 euros of annual turnover and 60,000 euros as their net income for the respective year are not required to apply sections 238 through 241. In cases in which a business has been newly established, the legal consequences will ensue already if the limits set out in sentence 1 are not exceeded on the first balance sheet date following the establishment of the business.

#### **Subdivision 2**

##### **Opening balance sheet. Annual financial statements**

#### **Title 1**

##### **General provisions**

#### **Section 242**

##### **Reporting requirement**

(1) Upon commencing their commercial business and as per the close of each financial year, merchants are to draw up a statement showing the relationship between their assets and debt obligations (opening balance sheet, balance sheet). The regulations applying to annual financial statements apply accordingly in drawing up the opening balance sheet insofar as they pertain to the balance sheet.

(2) The merchant is to draw up accounts juxtaposing, as per the close of each financial year, the expenditures and earnings of the financial year (profit and loss account).

(3) The balance sheet and the profit and loss account constitute the annual financial statements.

(4) Subsections (1) through (3) do not apply to sole traders within the meaning of section 241a. In cases in which a business has been newly established, the legal consequences set out in sentence 1 will ensue already if the limits stipulated by section 241a sentence 1 are not exceeded on the first balance sheet date following the establishment of the business.

#### **Section 243**

##### **Principles governing the process of drawing up reports**

(1) The annual financial statements are to be drawn up in keeping with the principles of proper accounting.

(2) They must be transparent and clearly arranged.

(3) The annual financial statements are to be drawn up within a period commensurate with the due and proper course of business.

#### **Section 244**

##### **Language. Currency**

The annual financial statements are to be drawn up in German and are to be denominated in euros.

#### **Section 245**

##### **Signature**

The merchant is to sign and date the annual financial statements. Where several general partners exist, they are all to affix their signatures.

#### **Title 2**

##### **Provisions on recognition**

#### **Section 246**

##### **Completeness. Prohibition of set-off**

(1) Unless provided for otherwise by law, annual financial statements are to set out the entirety of all assets, debt obligations, accrued and deferred items, as well as the expenditures and earnings. Assets are to be reported on the balance sheet of the owner; where an asset is not to be allocated in economic terms to the owner, but to a different party instead, that party is to show the asset on its balance sheet. Debt obligations are to be reported on the balance sheet of the debtor. The amount by which the consideration for the acquisition of an undertaking exceeds the value of the individual assets of the undertaking, minus its debt obligations at the time of the acquisition (goodwill acquired for valuable consideration), is deemed an asset having a limited useful life.

(2) Items posted as an asset may not be set off against items posted as a liability; expenditures may not be set off against earnings; property rights may not be set off against encumbrances on property. Assets that are protected against access by all remaining creditors and that exclusively serve the fulfilment of obligations under old-age pension scheme obligations or comparable obligations falling due in the long term are to be set off against these debt obligations; a corresponding procedure is to be applied where the appurtenant expenditures and earnings from discounting as well as the appurtenant expenditures and earnings from the assets to be set off are concerned. Where the fair value of the assets exceeds the amount of the debt obligations, the remainder is to be posted as an asset in a separate item.

(3) The recognition methods applied in drawing up the preceding annual financial statements are to be upheld. Section 252 (2) applies accordingly.

#### **Section 247**

##### **Content of the balance sheet**

(1) The balance sheet is to show separately the fixed assets and the current assets, the equity capital, the debt obligations as well as the accrued and deferred items and is to break them down in sufficient detail.

(2) Where fixed assets are reported, only those items are to be shown that are intended to serve business operations on a permanent basis.

(3) (repealed)

#### **Section 248**

##### **Items prohibited from inclusion on the balance sheet and options for including items on the balance sheet**

(1) The following may not be shown under assets on the balance sheet:

1. expenditures incurred for the formation of an undertaking,
2. expenditures incurred in procuring equity capital and
3. expenditures incurred in concluding insurance policies.

(2) Intangible assets forming part of the fixed assets that have been created by the undertaking itself may be posted as assets on the balance sheet. The following may not be reported: trademarks, mastheads, publishing titles, customer lists, in each case created by the undertaking itself, or comparable intangible assets forming part of the fixed assets.

#### **Section 249**

##### **Provisions**

(1) Provisions are to be formed for contingent liabilities and for anticipated losses on pending transactions. Furthermore, provisions are to be formed for:

1. Expenditures for maintenance and repairs not performed in the financial year, insofar as they will be incurred retroactively within the first three months of the subsequent financial year, or expenditures for the removal of overburden that will be incurred retroactively in the subsequent financial year,
2. warranty services provided without a legal obligation.

(2) Provisions may not be formed for other purposes than those set out in subsection (1). Provisions may be reversed only insofar as the reason for which they were formed has ceased to exist.

### **Section 250**

#### **Accrued and deferred items**

- (1) Expenses incurred prior to the balance sheet date are to be shown under assets as prepaid expenses insofar as they constitute expenditures for a certain period of time following that date.
- (2) Revenue received prior to the balance sheet date is to be shown under liabilities as prepaid income insofar as it constitutes the earnings for a certain period of time following that date.
- (3) Where the amount of the performance of an obligation exceeds the payout amount, the difference may be itemised under assets as prepaid expenses. The difference is to be redeemed by scheduled annual depreciations that may be distributed across the entire term of the liability.

### **Section 251**

#### **Contingent liabilities and commitments**

Unless they are to be shown under liabilities, the following are to be reported at the foot of the balance sheet: liabilities arising from the issue and transfer of bills of exchange; liabilities arising from sureties, bill guarantees and cheque guarantees; and liabilities arising from warranty agreements, as well as contingent liabilities and commitments arising from the provision of collateral for third-party liabilities; they may be stated in one single amount. Contingent liabilities and commitments are to be stated also in those cases in which they are counterbalanced by equivalent claims under a right of recourse.

### **Title 3**

#### **Valuation rules**

### **Section 252**

#### **General principles of valuation**

- (1) The following particularly applies to the valuation of the assets and debt obligations shown in the annual financial statements:
1. The values recognised in drawing up the opening balance sheet for the financial year must be congruent with those of the closing balance sheet for the preceding financial year.
  2. Unless factual or legal circumstances indicate otherwise, the valuation is to be based on the operative assumption that the undertaking will continue to pursue its activities as a going concern.
  3. The assets and debt obligations are to be valued individually as per the balance sheet date.
  4. Valuations are to be performed conservatively; namely, all foreseeable risks and losses that have arisen as per the balance sheet date are to be taken into account even if they have become known only in the period between the balance sheet date and the date on which the annual financial statements were drawn up; profits are to be taken into account only if they have been realised as per the balance sheet date.
  5. Expenditures and earnings for the financial year are to be taken into account in the annual financial statements independently of the points in time at which the corresponding payments were made.
  6. The valuation methods applied in drawing up the preceding annual financial statements are to be upheld.

(2) Deviations from the principles set out in subsection (1) are permissible only in justified exceptional cases.

### **Section 253**

#### **Initial recognition and subsequent valuation**

(1) At a maximum, assets are to be recognised at their cost of acquisition or at their production cost, minus the depreciations pursuant to subsections (3) to (5). Liabilities are to be recognised at the amount of the performance of the obligation and provisions are to be recognised at the amount that, when assessed exercising reasonable business judgment, will be necessary to settle the liability. Insofar as the amount of old-age pension scheme obligations exclusively is determined based on the fair value of investment securities within the meaning of section 266 (2) A. III. 5, provisions are to be recognised at the fair value of said investment securities, insofar as said value exceeds a guaranteed minimum amount. Assets to be set off pursuant to section 246 (2) sentence 2 are to be valued at their fair value. Micro share capital companies (section 267a) may base valuations on the fair value only if they have not taken recourse to any of the eased requirements provided for by section 264 (1) sentence 5 section 266 (1) sentence 4 section 275 (5) and section 326 (2). Where a micro share capital company takes recourse to at least one of the eased requirements set out in sentence 5, the assets are to be valued pursuant to sentence 1, also where offsetting is to be performed pursuant to section 246 (2) sentence 2.

(2) Provisions having a remaining term of more than one year are to be discounted at the market interest rate corresponding to their remaining term, averaged over the preceding ten financial years in the case of provisions formed for old-age pension scheme obligations, and averaged over the preceding seven financial years in the case of provisions formed for other purposes. In derogation from sentence 1, provisions for old-age pension scheme obligations or comparable obligations falling due in the long term may be discounted at a blanket rate, this being the average market interest rate resulting if a remaining term of 15 years is assumed. Sentences 1 and 2 apply accordingly to liabilities based on pension obligations for which no counterperformance is to be expected going forward. Deutsche Bundesbank defines the discounting rate to be applied pursuant to sentences 1 and 2, subject to the stipulations of a statutory instrument, and discloses it at monthly intervals. In the statutory instrument pursuant to sentence 4, which is not subject to approval by the Bundesrat, the Federal Ministry of Justice and Consumer Protection determines, after having consulted with Deutsche Bundesbank, the details of defining the discounting rates, particularly the methods used for such definition and their foundations, as well as the form in which they are to be published by notice.

(3) In reporting assets forming part of the fixed assets, the use of which is limited in time, the cost of acquisition or the production cost is to be reduced by scheduled depreciations. The schedule must allocate the cost of acquisition or production cost to those financial years in which it foreseeably will be possible to use the asset. If it is not possible, in exceptional cases, to reliably estimate the foreseeable useful life of an intangible asset created by the undertaking itself and forming part of the fixed assets, then the schedule is to provide for a depreciation of the production cost over a period of ten years. Sentence 3 applies accordingly to goodwill acquired for valuable consideration. Regardless of whether the useful life of any assets forming part of the fixed assets is limited in time, unscheduled depreciations are to be performed for these assets if a permanent impairment of their value is to be expected, in order to recognise them at the lower value attributable to them as per the balance sheet date. In the case of financial assets, unscheduled depreciations may be performed also in the event of a value impairment that is not expected to be permanent.

(4) Depreciations are to be performed for assets reported under current assets in order to recognise them at a lower value where this results from their trading price or market price as given on the balance sheet date. Where it is not possible to determine a trading price or market price and where the cost of acquisition or production cost exceeds the value

attributable to the assets on the balance sheet date, the depreciation is to be performed such that it reflects that value.

(5) A value recognised at a lower rate pursuant to subsection (3) sentence 5 or 6 and pursuant to subsection (4) may not be upheld if the grounds for which it was applied have ceased to exist. A value recognised at a lower rate for goodwill acquired for valuable consideration is to be upheld.

(6) In the case of provisions formed for old-age pension scheme obligations, the difference between the value recognised for the provisions based on the corresponding market interest rate averaged over the preceding ten financial years and the value recognised for the provisions based on the corresponding market interest rate averaged over the preceding seven financial years is to be identified in every financial year. Profits may be distributed only if the reserves remaining freely disposable after the distribution, plus the accumulated profits carried forward and minus the accumulated losses carried forward, correspond at a minimum to the difference pursuant to sentence 1. The difference pursuant to sentence 1 is to be presented in every financial year in the notes or at the foot of the balance sheet.

#### **Section 254**

##### **Creation of combined items for valuation purposes**

Where assets, debt obligations, pending transactions or transactions expected to materialise with a high degree of likelihood are combined with financial instruments in order to balance out contrary changes in value or contrary payment flows resulting from the occurrence of comparable risks (combined item for valuation purposes), section 249 (1), section 252 (1) nos. 3 and 4, section 253 (1) sentence 1 and section 256a do not apply, to that extent and for as long as the contrary changes in value or contrary payment flows offset each other. Forward transactions for the acquisition or sale of goods also are considered financial instruments within the meaning of sentence 1.

#### **Section 255**

##### **Standards of valuation**

(1) The term “cost of acquisition” designates the expenditures incurred in order to acquire an asset and to bring it into an operational condition, insofar as it is possible to attribute such cost to the asset on an individual basis. The cost of acquisition also includes the incidental expenses as well as the expenses incurred subsequent to the acquisition. Where it is possible to attribute reductions in the acquisition price to the asset on an individual basis, they are to be deducted.

(2) The term “production cost” designates the expenditures incurred for the consumption of goods and for the use of services in order to produce an asset, to expand it or to improve it materially beyond its original state. This includes cost of materials, the manufacturing cost and the special expenses directly attributable to the manufactured goods, as well as a reasonable proportion of the materials overheads, manufacturing overheads and the attrition of the fixed assets’ value, insofar as such attrition is caused by the manufacturing process. In calculating the production cost, a reasonable proportion of the general administrative expenses as well as reasonable expenditures for social services of the operation, for voluntary employee benefits and for the company old-age pension scheme may be included in this item to the extent that they relate to the period of production. The costs of research and the distribution costs may not be included in this item.

(2a) The term “production cost of an intangible asset created by the undertaking itself and forming part of the fixed assets” designates the expenditures incurred for its development pursuant to subsection (2). The term “development” designates the application of research results or of other knowledge to the new development of goods or processes or to the innovation of goods or processes by means of modifications of a material nature. The term “research” designates the independent and systematic search for new scientific or technical insights or experiences of a general nature, the technical usability and economic viability of which are fundamentally impossible to assess. Where it is impossible to distinguish research and development from one another in reliable fashion, they may not be posted as assets.



(3) Interest for third-party capital does not form part of the production cost. Interest for third-party capital used to finance the production of an asset may be recognised to the extent it relates to the period of production; in such event, the interest will be considered to constitute a production cost of the asset.

(4) The fair value corresponds to the market price. Where there is no active market that would allow the market price to be identified, the fair value is to be determined with the aid of generally accepted valuation methods. Where it is not possible to identify the fair value, either pursuant to sentence 1 or pursuant to sentence 2, the cost of acquisition or production cost is to be carried pursuant to section 253 (4). The last fair value identified pursuant to sentence 1 or 2 is considered the cost of acquisition or production cost within the meaning of sentence 3.

### **Section 256**

#### **Procedures for simplified valuation**

Insofar as this is in keeping with the principles of proper accounting, it is possible to proceed from the assumption, with regard to the value recognised for like assets forming part of the stocks of goods, that the assets first acquired or produced, or the assets last acquired or produced, respectively, are the ones to be used up or sold first. Section 240 (3) and (4) is applicable also to annual financial statements.

### **Section 256a**

#### **Currency translation**

Assets and liabilities denominated in a foreign currency are to be converted at the spot rate given on the balance sheet date. Where the remaining term is one year or less, section 253 (1) sentence 1 and section 252 (1) no. 4 half-sentence 2 do not apply.

### **Subdivision 3**

#### **Retention and production of documents**

### **Section 257**

#### **Retention of documents Periods of retention**

(1) Every merchant is obliged to retain the following documents in a structured manner:

1. commercial records, inventories, opening balance sheets, annual financial statements, standalone financial statements pursuant to section 325 (2a), management reports, consolidated financial statements, consolidated management reports, as well as the work instructions and other technical documents required to understand the above documents,
2. the commercial letters received,
3. reproductions of the commercial letters dispatched,
4. vouchers for accounting entries in the books the merchant is to keep pursuant to section 238 (1) (accounting vouchers).

(2) The term “commercial letters” solely designates documents pertaining to a business transaction.

(3) To the exception of the opening balance sheets and opening financial statements, the documents listed in subsection (1) also may be stored as reproductions on an image carrier or on other data carriers, provided that this is in keeping with the principles of proper accounting and provided that it is ensured that the reproduction or the data:

1. are true images of the commercial letters received and of the accounting vouchers and will be congruent with the substance of the other documents upon being made readable,

2. are available during the term of the retention period and can be made readable at any time within a reasonable period.

Where documents have been created, based on section 239 (4) sentence 1 on data carriers, the data also may be retained as printouts instead of retaining the data carriers; the documents so printed out also may be retained in accordance with the stipulations of sentence 1.

(4) The documents listed in subsection (1) nos. 1 and 4 are to be retained for ten years, the other documents listed in subsection (1) are to be retained for six years.

(5) The retention period commences at the end of that calendar year in which the most recent entry was made into the commercial record, or in which the inventory was prepared, or in which the opening balance sheet or the annual financial statements was/were adopted, or in which the standalone financial statements pursuant to section 325 (2a) or the consolidated financial statements were drawn up, or in which the commercial letter was received or dispatched, or in which the accounting voucher was created.

#### **Section 258**

##### **Production of records in a legal dispute**

(1) In the course of a legal dispute, the court may order, either pursuant to a petition filed by a party or *ex officio*, that the commercial records of a party be produced.

(2) The provisions of the Code of Civil Procedure (*Zivilprozessordnung*) concerning the obligation of the opposing party to produce records or documents remain unaffected hereby.

#### **Section 259**

##### **Excerpt of records produced in a legal dispute**

Where commercial records are produced in a legal dispute, their content is to be inspected with the involvement of the parties, insofar as the content concerns the matter in dispute, and an excerpt is to be taken where this is suitable. The remaining content of the books is to be disclosed to the court insofar as this is necessary for verifying that they have been properly kept.

#### **Section 260**

##### **Production of records in the case of distributions of assets**

In the case of distributions of assets, and more particularly in matters pertaining to the distribution of an inheritance, to the joint ownership of property and to the splitting of companies, the court may order that the commercial records be produced in order to obtain knowledge of their full contents.

#### **Section 261**

##### **Production of documents on image carriers or data carriers**

Whoever is able to produce documents that are subject to the retention obligation only in the form of a reproduction on an image carrier or on other data carriers is obliged to make available, at their own expense, those aids that are required to make the documents readable; to the extent necessary, they are to print out the documents at their own expense or they are to adduce reproductions that are readable without any auxiliary means.

#### **Subdivision 4**

##### **Laws applicable at the *Land* level**

#### **Section 262**

**(repealed)**

#### **Section 263**

##### **Reservation of the provisions of the laws applicable at the *Land* level**

In the case of undertakings having no legal personality of their own that belong to a municipality, a municipal association or an inter-municipal utility management undertaking,

those provisions of *Land* law remain unaffected that are in derogation from the regulations set out in the present Division.

## **Division 2**

### **Supplementary provisions for share capital companies (stock corporations, public partly limited partnerships and limited liability companies) as well as for certain commercial partnerships**

#### **Subdivision 1**

#### **Annual financial statements of the share capital company and management report**

##### **Title 1**

##### **General provisions**

##### **Section 264**

##### **Reporting requirement; exemption**

(1) The legal representatives of a share capital company are to supplement the annual financial statements (section 242) by notes that, together with the balance sheet and the profit and loss account, form a single whole; they also are to draw up a management report. The legal representatives of a publicly traded share capital company that is not obliged to draw up consolidated financial statements are to supplement the annual financial statements by a statement of cash flows and statement of changes in equity forming a single whole together with the balance sheet, profit and loss account and the notes; they may supplement the annual financial statements by segment reporting. The legal representatives are to draw up the annual financial statements and the management report within the first three months of the financial year for the past financial year. Small share capital companies (section 267 (1)) are not required to draw up a management report; they may draw up the annual financial statements also at a later point in time if this is commensurate with the due and proper course of business, but must do so within the first six months of the financial year. Micro share capital companies (section 267a) are not required to supplement the annual financial statements by notes if they provide the following at the foot of the balance sheet:

1. the information set out in section 268 (7),
2. the information set out in section 285, no. 9, letter c, and,
3. if they are a stock corporation, the information set out in section 160 (3) sentence 2 of the Stock Corporation Act (*Aktiengesetz*).

(1a) The annual financial statements are to state the business name, the seat, the court of registration and the number under which the company has been entered in the Commercial Register. Where the company is in liquidation or is in the process of being wound up, this is to be disclosed as well.

(2) The annual financial statements of the share capital company are to present accurately the share capital company's assets, liabilities, financial position and profit or loss in keeping with its actual circumstances and are to comply with the principles of proper accounting. Where, due to special circumstances, the annual financial statements do not accurately present the actual circumstances within the meaning of sentence 1, additional information is to be provided in the notes. The members of the representative body of a share capital company that issues securities (section 2 (1) of the Securities Trading Act (*Wertpapierhandelsgesetz*) as a domestic issuer (section 2 (14) of the Securities Trading Act) and that is not a share capital company within the meaning of section 327a are to give an assurance in a written declaration to be attached to the annual financial statements that, to the best of their knowledge, the annual financial statements accurately present the actual circumstances within the meaning of sentence 1 or that the notes include information pursuant to sentence 2. Where a micro share capital company takes recourse to the eased requirement pursuant to subsection (1) sentence 5, the additional information required

pursuant to sentence 2 is to be included at the foot of the balance sheet. The operative assumption is that annual financial statements drawn up with due regard having been had to the eased requirements for micro share capital companies are compliant with the requirements set out in sentence 1.

(3) A share capital company that is not publicly traded within the meaning of section 264d and that, because it is a subsidiary undertaking, is included in the consolidated financial statements of its parent undertaking, such parent undertaking having its seat in a Member State of the European Union or in some other state party to the Agreement creating the European Economic Area, is not required to apply the provisions of this Subdivision and of Subdivisions 3 and 4 of this Division if all of the pre-requisites set out hereinbelow have been met:

1. All of the subsidiary undertaking's shareholders have approved the exemption for the respective financial year;
2. the parent undertaking has declared that it guarantees, for the subsequent financial year, the commitments entered into by the subsidiary undertaking up until the balance sheet date;
3. the consolidated financial statements of the parent undertaking and its consolidated management report have been drawn up and audited pursuant to the laws of the state in which the parent undertaking has its seat, and in conformity with the following Directives:
  - a) Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182 of 29 June 2013, p. 19), last amended by Directive 2014/102/EU (OJ L 334 of 21 November 2014, p. 86);
  - b) Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC (OJ L 157 of 9 June 2006, p. 87), which has been amended by Directive 2013/34/EU (OJ L 182 of 29 June 2013, p. 19);
4. the exemption of the subsidiary undertaking has been stated in the notes to the consolidated financial statements of the parent undertaking and
5. the following have been disclosed with regard to the subsidiary undertaking pursuant to section 325 (1) to (1b):
  - a) the resolution pursuant to no. 1,
  - b) the declaration pursuant to no. 2,
  - c) the consolidated financial statements,
  - d) the consolidated management report and
  - e) the audit report on the consolidated financial statements of the parent undertaking and on its consolidated management report pursuant to no. 3.

Where the parent undertaking has already disclosed individual or all of the documents designated in sentence 1 under no. 5, the subsidiary undertaking is not required to once again disclose the documents concerned if they are locatable in the Federal Gazette in the entry for the subsidiary undertaking; section 326 (2) does not apply to this disclosure.

Sentence 2 will apply only if the parent undertaking has disclosed the document concerned in the German or English language, or if the subsidiary undertaking additionally discloses a certified translation of this document into German pursuant to section 325 (1) to (1b).

(4) Subsection (3) does not apply if a share capital company is the subsidiary undertaking of a parent undertaking that has drawn up consolidated financial statements pursuant to the provisions of the Financial Accounting and Disclosures Act (*Publizitätsgesetz*), and if, in said consolidated financial statements, the reporting option has been elected that has been provided for by section 13 (3) sentence 1 of the Financial Accounting and Disclosures Act; section 314 (3) hereof remains unaffected.

#### **Section 264a**

##### **Application to certain general partnerships and partly limited partnerships**

(1) The provisions of Subdivision 1 to 5 of Division 2 also apply to any general partnerships and partly limited partnerships that do not have at least one general partner who is

1. a natural person or
2. a general partnership, partly limited partnership or other private company with a natural person as general partner

or where the ties between companies continue in this manner.

(2) In the provisions of this Division, the members of the representative body of the companies authorised to represent a general partnership and a partly limited partnership are considered the legal representatives of said partnerships pursuant to subsection (1).

#### **Section 264b**

##### **Exemption of the general partnerships and partly limited partnerships within the meaning of section 264a from application of the provisions of this Division**

A commercial partnership within the meaning of section 264a (1) that is not publicly traded within the meaning of section 264d is exempt from the obligation to draw up annual financial statements and a management report in accordance with the provisions of this Division, to have them audited and to disclose them if all of the pre-requisites set out below have been met:

1. The company concerned is included in the consolidated financial statements and in the consolidated management report that has been drawn up
  - a) by a general partner of the company concerned or
  - b) by a parent undertaking having its seat in a Member State of the European Union or in some other state party to the Agreement creating the European Economic Area, if a larger body of undertakings is included in these consolidated financial statements;
2. the pre-requisite set out in section 264 (3) sentence 1 no. 3, has been met;
3. the exemption of the commercial partnership has been stated in the notes to the consolidated financial statements and
4. the consolidated financial statements, the consolidated management report and the audit report for the commercial partnership have been disclosed pursuant to section 325 (1) to (1b); section 264 (3) sentences 2 and 3 applies accordingly.

#### **Section 264c**

##### **Special provisions for general partnerships and partly limited partnerships within the meaning of section 264a**

(1) As a rule, loans, receivables and liabilities vis-à-vis shareholders are each to be shown separately as such or are to be stated in the notes. Where they are shown under other items, a corresponding entry must be made.

(2) Section 266 (3) (A) applies, with the proviso that the following items are to be shown separately as equity capital:

- I. equity shares
- II. reserves
- III. accumulated profits / losses carried forward from the previous year
- IV. net income / net loss for the year.

The equity shares held by the general partners are to be shown instead of the item “Subscribed capital;” they also may be aggregated and shown as a single item. The loss for the financial year attributable to the equity share of a general partner is to be written off from the equity share. To the extent the loss exceeds the equity share, it is to be shown separately under assets in the item “Capital contribution commitments of the general partners” as part of the receivables insofar as a payment obligation exists. Where no payment obligation exists, the amount is to be designated “General partners’ portion of the loss not covered by assets contributed” and is to be shown pursuant to section 268 (3). Sentences 2 and 5 apply accordingly to the contributions by limited partners, whereby these contributions collectively are to be shown separately from the equity shares of the general partners. However, a receivable may be shown only to the extent a capital contribution commitment exists; the same will apply where a limited partner withdraws shares of the profits while that partner’s equity share has been reduced by losses to an amount below the amount of the contribution paid in, or insofar as the withdrawal reduces the equity share to an amount below the designated amount. Solely those amounts are to be shown as reserves that have been formed on the basis of an agreement under corporate law. The amount of the contributions entered in the Commercial Register pursuant to section 172 (1) is to be stated in the notes, insofar as these contributions have not been paid in.

(3) The other assets of the shareholders (personal assets) may not be included on the balance sheet, nor may the expenditures and earnings attributable to the personal assets be included in the profit and loss account. However, the tax expenditures of the shareholders may be shown separately as a deduction or as an addition in the profit and loss account following the item “Net income / net loss for the year” in keeping with the tax rate of the corporate general partner.

(4) Shares in corporate general partners are to be shown under assets on the balance sheet under items A.III.1 or A.III.3. Section 272 (4) applies with the proviso that a special item “Adjustment item for own shares posted as an asset” is to be created for these shares, in the amount posted as an asset, following the item “Equity capital.”

(5) Where the company elects a reporting option pursuant to section 266 (1) sentence 3 or 4, the classifications used in the abridged balance sheet will be governed by the reporting option so elected. The calculation of the balance sheet items pursuant to the above subsections remains unaffected.

#### **Section 264d**

##### **Publicly traded share capital company**

A share capital company is publicly traded if it takes recourse to an organised market within the meaning of section 2 (11) of the Securities Trading Act by way of securities it has issued within the meaning of section 2 (1) of the Securities Trading Act or if it has applied for such securities to be admitted to trading on an organised market.

#### **Section 265**

##### **General principles governing classifications**

(1) The form of presentation, and more particularly the classifications used, are to be upheld in the consecutive balance sheets and profit and loss accounts unless exceptional cases require deviations due to special circumstances. The deviations are to be stated in the notes and the reasons therefor are to be provided.

(2) The balance sheet as well as the profit and loss account are to state the amount reported for each item for the preceding financial year. Where the amounts are not comparable, this fact is to be stated in the notes and an explanation therefor is to be provided. Where the amount reported for the preceding financial year is adjusted, this is likewise to be stated in the notes and an explanation therefor is to be provided.

(3) Where an asset or a debt obligation relates to more than one balance sheet item, its additional relationship to other items is to be noted in the item in which the asset or debt obligation has been reported, or this fact is to be stated in the notes, should this be required in order to draw up transparent and clearly arranged annual financial statements.

(4) Where several lines of business exist and this calls for the classifications used in the annual financial statements to comply with different classification rules, the annual financial statements are to be drawn up in accordance with the classification rules applying to one line of business and are to be supplemented in accordance with the classification rules applying to the other line of business. The supplementation is to be stated in the notes and the reasons therefor are to be provided.

(5) It is permissible to further break down the items into more detailed classifications; however, the classifications stipulated by the classification rules are to be adhered to. New items and subtotals may be added if they are not covered, in terms of their substance, by an item stipulated by the classification rules.

(6) The classifications used for those items of the balance sheet and the profit and loss account identified by Arabic numerals and their designations are to be modified if this is necessary, given the particular nature of the share capital company, in order to draw up transparent and clearly arranged annual financial statements.

(7) Those items of the balance sheet and of the profit and loss account identified by Arabic numerals may be aggregated and shown as a single item unless the regulations require special form sheets to be used, provided that

1. they include an amount that is not essential for the purpose of accurately presenting the situation in keeping with actual circumstances within the meaning of section 264 (2), or provided that

2. this serves to enhance the clarity of the presentation; in such event, however, the aggregated items must be shown separately in the notes.

(8) An item of the balance sheet or of the profit and loss account that does not show any amount is not required to be listed unless an amount was shown under this item in the preceding financial year.

## **Title 2 Balance sheet**

### **Section 266 Layout of the balance sheet**

(1) The balance sheet is to be drawn up in the form of accounts. In the process, medium-sized and large share capital companies (section 267 (2) and (3)) are to separately show under assets the items designated in subsection (2) and are to separately show under liabilities the items designated in subsection (3); they are to do so in the sequence stipulated therein. Small share capital companies (section 267 (1)) are only required to draw up an abridged balance sheet in which the items listed in subsections (2) and (3) designated by letters of the alphabet and Roman numerals are included as separate items in the sequence stipulated therein. Micro share capital companies (section 267a) are only required to draw up an abridged balance sheet in which the items listed in subsections (2) and (3) designated by letters of the alphabet are reported as separate items in the sequence stipulated therein.

(2) Assets

A. Fixed assets:

- I. Intangible assets:
    - 1. Industrial property rights, created by the undertaking itself, and similar rights and assets;
    - 2. Concessions, industrial property rights and similar rights and assets purchased for valuable consideration, as well as licenses to such rights and assets;
    - 3. Goodwill;
    - 4. Payments on account;
  - II. Tangible fixed assets:
    - 1. Real property and equivalent rights as well as buildings, including buildings on third-party real estate;
    - 2. Plant and machinery;
    - 3. Other equipment, factory equipment and furnishings and fixtures;
    - 4. Payments on account and tangible assets in the course of construction;
  - III. Financial assets:
    - 1. Shares in affiliated undertakings;
    - 2. Loans to affiliated undertakings;
    - 3. Participating interests;
    - 4. Loans to undertakings with which the undertaking is linked by virtue of participating interests;
    - 5. Investment securities held as fixed assets;
    - 6. Other loans.
- B. Current assets:
- I. Stocks:
    - 1. Raw materials, auxiliary supplies and consumables;
    - 2. Work in progress, uncompleted contracts;
    - 3. Finished goods and goods for resale;
    - 4. Payments on account;
  - II. Receivables and other assets:
    - 1. Trade receivables;
    - 2. Amounts owed by affiliated undertakings;
    - 3. Amounts owed by undertakings with which the undertaking is linked by virtue of participating interests;
    - 4. Other assets;
  - III. Investment securities:



1. Shares in affiliated undertakings;
  2. Other investment securities;
- IV. Cash in hand, deposits with Deutsche Bundesbank, bank balances, and cheques.
- C. Prepayments and accrued income.
- D. Deferred tax assets.
- E. Net defined benefit asset.
- (3) Liabilities
- A. Equity capital:
- I. Subscribed capital;
  - II. Capital reserve;
  - III. Retained earnings:
    1. Legal reserve;
    2. Reserve for shares in a controlling undertaking or in an undertaking holding a majority interest;
    3. Reserves provided for by the statutes;
    4. Other retained earnings;
  - IV. Accumulated profit / loss carried forward from the previous year;
  - V. Net income for the year / net loss for the year.
- B. Provisions:
1. Provisions for pensions and similar obligations;
  2. Provisions for taxation;
  3. Other provisions.
- C. Liabilities:
1. Debentures  
showing convertible debentures separately;
  2. Payables owed to credit institutions;
  3. Payments received on account of orders;
  4. Trade payables;
  5. Liabilities arising from the acceptance of drafts and the issuance of promissory notes;
  6. Payables owed to affiliated undertakings;
  7. Payables owed to undertakings with which the undertaking is linked by virtue of participating interests;
  8. Other payables,

with a separate indication of taxes,

with a separate indication of any payables related to social security contributions.

- D. Prepaid income.
- E. Deferred tax liabilities.

### **Section 267**

#### **Allocation to size categories**

(1) The term “small share capital companies” designates share capital companies that do not exceed the limits of at least two of the three following criteria:

- 1. balance sheet total of 6,000,000 euros.
- 2. turnover of 12,000,000 euros in the twelve months prior to the balance sheet date.
- 3. average number of fifty employees during the financial year.

(2) The term “medium-sized share capital companies” designates share capital companies that exceed the limits of at least two of the three criteria set out in subsection (1) and that do not exceed the limits of at least two of the three following criteria:

- 1. balance sheet total of 20,000,000 euros.
- 2. turnover of 40,000,000 euros in the twelve months prior to the balance sheet date.
- 3. average number of 250 employees during the financial year.

(3) The term “large share capital companies” designates share capital companies that exceed at least two of the three criteria set out in subsection (2). A share capital company within the meaning of section 264d is considered a large share capital company in all cases.

(4) The legal consequences entailed by the criteria set out in subsection (1) to (3) sentence 1 will ensue only if the thresholds are exceeded or not attained as per the balance sheet dates of two consecutive financial years. In the case of an undertaking’s transformation or new formation, the legal consequences will ensue already if the pre-requisites set out in subsections (1), (2) or (3) are met on the first balance sheet date following the transformation or new formation. In the event of a change of legal form, sentence 2 does not apply if the legal entity changing its legal form is a share capital company or a commercial partnership within the meaning of section 264a (1).

(4a) The balance sheet total is comprised of the items listed under letters A to E of section 266 (2). Any deficit shown under assets (section 268 (3)) will not be included in the balance sheet total.

(5) The average number of employees is considered to consist of one quarter of the sum of the number of persons employed on 31 March, 30 June, 30 September and 31 December, respectively, including the persons employed abroad; however, the members of staff receiving vocational training are not to be counted.

(6) The rights of employee representatives to obtain information and to make enquiries under other laws remain unaffected.

### **Section 267a**

#### **Micro share capital companies**

(1) The term “micro share capital companies” designates small share capital companies that do not exceed the limits of at least two of the three following criteria:

- 1. balance sheet total of 350,000 euros;

2. turnover of 700,000 euros in the twelve months prior to the balance sheet date;
3. average number of ten employees during the financial year.

Section 267 (4) to (6) applies accordingly.

(2) Unless stipulated otherwise, the special regulations made in the present Code for small share capital companies (section 267 (1)) apply accordingly to micro share capital companies.

(3) The following are not micro share capital companies:

1. investment companies within the meaning of section 1 (11) of the Investment Code (*Kapitalanlagegesetzbuch*),
2. equity finance companies within the meaning of section 1a (1) of the Act on Equity Finance Companies (*Gesetz über Unternehmensbeteiligungsgesellschaften*), or
3. undertakings the sole object of which is to acquire participating interests in other undertakings and to manage such holdings and turn them to profit, without involving themselves directly or indirectly in the management of those undertakings, whereby the exercise of the rights to which they are entitled as a stockholder or shareholder are not to be taken into account.

#### **Section 268**

##### **Provisions regarding individual items of the balance sheet Information provided at the foot of the balance sheet**

(1) The balance sheet also may be drawn up with due regard being had to the full or partial appropriation of the profit / treatment of loss for the year. Where the balance sheet is drawn up with due regard being had to the partial appropriation of the profit / treatment of loss for the year, the items "Net income for the year / net loss for the year" and "Accumulated profits / losses carried forward" will be replaced by the item "Balance sheet profit / balance sheet loss;" any accumulated profits or accumulated losses carried forward are to be included in the item "Balance sheet profit / balance sheet loss" and are to be stated separately on the balance sheet. The information also may be provided in the notes.

(2) (repealed)

(3) Where the equity capital has been used up by losses so that the amount of the liability items exceeds that of the asset items, this amount is to be shown separately as the last item of the balance sheet on the assets side in the item "Deficit not covered by equity."

(4) In every item shown separately, an entry is to be made for the amount of the receivables having a remaining term of more than one year. If amounts are shown in the item "Other assets" for assets that are due to come into existence in legal terms only after the balance sheet date, then explanations must be provided in the notes for any amounts having a larger scope.

(5) In every item shown separately, an entry is to be made for the amount of liabilities having a remaining term of up to one year and for the amount of liabilities having a remaining term of more than one year. Payments received on account of orders are to be separately shown under liabilities unless advance payments made for stocks are shown separately as a deduction from the item "Inventories." If amounts for liabilities are shown in the item "Liabilities" that are due to come into existence in legal terms only after the balance sheet date, then an explanation must be provided in the notes for any amounts having a larger scope.

(6) A difference reported as a prepaid expense pursuant to section 250 (3) is to be shown separately on the balance sheet or is to be stated in the notes.

(7) Where the contingent liabilities and commitments designated in section 251 are concerned, the following applies:

1. The information regarding liabilities as well as contingent liabilities and commitments that are not to be shown under liabilities is to be provided in the notes,

2. whereby the contingent liabilities and commitments are to be separately stated in each case, along with the liens granted and other collateral provided, and

3. whereby a separate entry is to be made in each case for obligations concerning the old-age pension scheme and obligations vis-à-vis affiliated or associated undertakings.

(8) Where intangible assets created by the undertaking itself are shown on the balance sheet as part of the fixed assets, profits may be distributed only if the reserves remaining freely disposable after the distribution, plus the accumulated profits carried forward and minus the accumulated losses carried forward, correspond at a minimum to the amounts recognised in the aggregate, minus the deferred tax liabilities formed in their regard. Where deferred tax assets are shown on the balance sheet, sentence 1 applies to the amount by which the deferred tax assets exceed the deferred tax liabilities. In the case of assets within the meaning of section 246 (2) sentence 2, sentence 1 applies to that amount, minus the deferred tax liabilities formed in its regard, that is in excess of the cost of acquisition.

#### **Section 269 (repealed)**

#### **Section 270 Creation of certain items**

(1) Transfers made to the capital reserves and their reversal are to be performed already when drawing up the balance sheet.

(2) If the balance sheet is drawn up with due regard being had to the full or partial appropriation of the profit / treatment of loss for the year, then any withdrawals from retained earnings as well as any transfers made to the retained earnings that are to be performed by law, under the articles of incorporation or the statutes of the undertaking, or that have been resolved upon based on such regulations, are to be taken into account already when drawing up the balance sheet.

#### **Section 271 Participating interests. Affiliated undertakings**

(1) The term “participating interests” designates shares held in other undertakings, such shares being intended to contribute to own business operations by establishing a durable link with said undertakings. In this context, it is irrelevant whether the shares have been certificated as securities. A participating interest is assumed to be given if the shares held in an undertaking, in the aggregate, exceed one fifth of its nominal capital or, should no nominal capital exist, one fifth of the sum total of all equity shares in this undertaking.

Section 16 (2) and (4) of the Stock Corporation Act applies accordingly to the calculation. Membership in a registered cooperative society is not deemed a participating interest within the meaning of this Book.

(2) Affiliated undertakings within the meaning of this Book are undertakings that, according to the regulations applying to the full consolidation of financial statements, are to be included, whether as a parent undertaking or as a subsidiary undertaking (section 290), in the consolidated financial statements of that parent undertaking that, as the ultimate parent undertaking, is to draw up the furthest-reaching consolidated financial statements pursuant to Subdivision 2 (even if no such statement is drawn up), or which draws up, or is in a position to draw up, exempting consolidated financial statements pursuant to sections 291 or 292; subsidiary undertakings that are not included in the consolidated financial statements pursuant to section 296 likewise are affiliated undertakings.

#### **Section 272 Equity capital**

(1) Subscribed capital is to be recognised at its nominal amount. The contributions to the subscribed capital that are outstanding and have not been called in are to be shown separately as a deduction from the item “Subscribed capital;” the remaining amount is to be

shown in the item “Called-in capital” in the main column under liabilities; the amount called in that has not yet been paid in is to be separately shown under receivables and is to be designated accordingly.

(1a) The nominal amount or, should no such nominal amount exist, the calculated value of the own shares acquired is to be shown separately as a deduction in the summary column for the item “Subscribed capital.” The difference between the nominal amount or the calculated value and the cost of acquiring the own shares is to be set off from the freely disposable reserves. The expenditures constituting incidental expenses of the acquisition constitute expenditures of the financial year.

(1b) Following the sale of the own shares, they will cease to be shown pursuant to subsection (1a) sentence 1. Any difference that exceeds the nominal amount or the calculated value resulting from the sale proceeds is to be allocated to the respective reserves up to the amount set off from the freely disposable reserves. Any difference that is greater than this amount is to be allocated to the capital reserves pursuant to subsection (2) no. 1. The incidental expenses of the sale constitute expenditures of the financial year.

(2) The following are to be shown as capital reserves:

1. the amount obtained through the issue of shares, including shares of a new issue, insofar as it exceeds the nominal amount or, where no nominal amount exists, insofar as it exceeds the calculated value;
2. the amount obtained by the issue of debentures for convertible bonds and option rights for the acquisition of shares;
3. the amount of the additional payments made by shareholders in return for a preferential right for their shares;
4. the amount of other additional payments made by shareholders into the equity capital.

(3) The only amounts that may be shown as retained earnings are those that have been formed from the profit / loss for the financial year or from that for an earlier financial year. This includes legal reserves to be formed from the profit, or provisions to be formed pursuant to the articles of incorporation or statutes, as well as other retained earnings.

(4) A reserve is to be formed for shares held in a controlling undertaking or in an undertaking holding a majority participating interest. An amount is to be allocated to the reserve that corresponds to the amount recognised under assets on the balance sheet for the shares in the controlling undertaking or the undertaking holding a majority participating interest. The reserve, which is to be formed already when drawing up the balance sheet, may be formed using those freely disposable reserves that are available. The reserve is to be reversed insofar as the shares in the controlling undertaking or undertaking holding a majority participating interest are sold, issued or redeemed or if a lower amount is recognised under assets.

(5) If the portion of the net income for the year that is attributable to a participating interest in the profit and loss account exceeds the amounts that have been received as a dividend or as a share of the profits, or if it exceeds the amounts that the share capital company is entitled to receive in payment, then the difference is to be allocated to a reserve, the distribution of which is not permissible. The reserve is to be reversed to the extent the share capital company receives payment of the amounts or acquires a claim to their payment.

### **Section 273 (repealed)**

### **Section 274 Deferred taxes**

(1) Where there are differences between the values recognised under commercial law for the assets, debt obligations and accrued and deferred items and the values recognised for them

for tax purposes, and said differences are likely to narrow over the course of subsequent financial years, the total resulting tax burden is to be recognised on the balance sheet as a deferred tax liability (section 266 (3) E.). Any reduction of taxes resulting in the aggregate may be recognised on the balance sheet as a deferred tax asset (section 266 (2) D.). The resulting tax burden and the resulting tax reduction also may be recognised without a set-off being performed. In calculating deferred tax assets, tax loss carryforwards are to be taken into account in the amount of the loss set-off expected to be performed over the course of the upcoming five years.

(2) The amounts of the resulting tax burden and tax reduction are to be valued at the interest rates specific to the respective undertaking as given at the time the differences have narrowed; they are not to be discounted. The items shown are to be reversed as soon as the tax burden or tax reduction has arisen or its arising no longer can be reckoned with. The expenditures or earnings resulting from the changes in the deferred taxes reported on the balance sheet are to be shown separately in the profit and loss account in the item "Taxes on income and earnings."

#### **Section 274a**

##### **Eased requirements based on the size of the undertaking**

Small share capital companies are exempt from application of the following regulations:

1. section 268 (4) sentence 2 regarding the duty to provide an explanation for certain receivables in the notes,
2. section 268 (5) sentence 3 regarding the duty to provide an explanation for certain liabilities in the notes,
3. section 268 (6) regarding the accrued and deferred items pursuant to section 250 (3),
4. section 274 regarding deferred taxes.

#### **Title 3**

##### **Profit and loss account**

#### **Section 275**

##### **Layout**

(1) The profit and loss account is to be drawn up in a tiered format according to the "cost of production" method or according to the "cost of sales" method. In this context, the items designated in subsection (2) or (3) are to be shown separately in the stated sequence.

(2) The following are to be shown if the "cost of production" method is applied:

1. Turnover
2. Increase or reduction of stocks of finished goods and work in progress
3. Work performed by the undertaking for its own purposes and carried as an asset
4. Other operating earnings
5. Expenditures on materials:
  - a) Expenditures for raw materials, auxiliary supplies and consumables and for purchased goods
  - b) Expenditures for purchased services
6. Staff costs:
  - a) Wages and salaries

- b) Social security contributions and expenditures for old-age pension schemes and for support,
    - with a separate indication of those relating to the old-age pension scheme
  - 7. Amortisations / depreciations of:
    - a) Intangible assets forming part of the fixed assets and of tangible fixed assets
    - b) Assets reported as part of the current assets, to the extent that they exceed the depreciations customarily stated for the share capital company
  - 8. Other operating expenses
  - 9. Income from participating interests,
    - with a separate indication of that derived from affiliated undertakings
  - 10. Income from other investments and loans forming part of the financial assets,
    - with a separate indication of that derived from affiliated undertakings
  - 11. Other interest receivable and similar income,
    - with a separate indication of that derived from affiliated undertakings
  - 12. Depreciations of financial assets and of investment securities forming part of the current assets
  - 13. Interest payable and similar expenses,
    - with a separate indication of amounts payable to affiliated undertakings
  - 14. Taxes on income and earnings
  - 15. Profit or loss after taxes
  - 16. Other taxes
  - 17. Net income for the year / net loss for the year.
- (3) The following are to be shown if the “cost of sales” method is applied:
- 1. Turnover
  - 2. Cost of production of the services provided in order to attain the turnover
  - 3. Gross profit or loss
  - 4. Distribution costs
  - 5. General administrative expenses
  - 6. Other operating income
  - 7. Other operating expenses
  - 8. Income from participating interests,
    - with a separate indication of that derived from affiliated undertakings
  - 9. Income from other investments and loans forming part of the financial assets,
    - with a separate indication of that derived from affiliated undertakings
  - 10. Other interest receivable and similar income,

with a separate indication of that derived from affiliated undertakings

11. Depreciations of financial assets and of investments forming part of the current assets
12. Interest payable and similar expenses,  
with a separate indication of amounts payable to affiliated undertakings
13. Taxes on income and earnings
14. Profit or loss after taxes
15. Other taxes
16. Net income for the year / net loss for the year.

(4) Changes in the capital reserves and retained earnings may be shown in the profit and loss account only below the item “Net income for the year / net loss for the year.”

(5) Micro share capital companies (section 267a) may present their profit and loss account as follows, instead of the tiers set out in subsections (2) and (3):

1. Turnover,
2. Other earnings,
3. Expenditures on materials,
4. Staff costs,
5. Depreciations,
6. Other expenses,
7. Taxes,
8. Net income for the year / net loss for the year.

#### **Section 276**

##### **Eased requirements based on the size of the undertaking**

Small and medium-sized share capital companies (section 267 (1) and (2)) may aggregate the items set out in section 275 (2) nos. 1 to 5 or (3) nos. 1 to 3 and 6, and report them as a single item “Gross profit or loss.” The eased requirements pursuant to sentence 1 do not apply to micro share capital companies (section 267a) that take recourse to the provision made in section 275 (5).

#### **Section 277**

##### **Regulations on individual items of the profit and loss account**

(1) The revenue obtained by the share capital company from the sale and from letting or lease-out of products as well as from the provision of services, after deducting reductions in revenue and turnover tax as well as any other taxes directly linked to such sales, is to be shown as turnover.

(2) Variations in stocks both as concerns changes in quantity and as concerns changes in value are to be taken into account; however, depreciations are to be taken into account only insofar as they do not exceed the depreciations otherwise customary to the share capital company.

(3) Unscheduled depreciations pursuant to section 253 (3) sentences 5 and 6 are to be shown separately in each case or are to be stated in the notes. Income and expenditures from the absorption of losses, as well as profits received or remitted based on a profit pool, a profit and loss pooling agreement or an agreement on the partial pooling of profit and loss are to be shown separately in each case and are to be designated as such.



(4) (repealed)

(5) Income from discounting is to be shown separately in the profit and loss account in the item “Other interest receivable and similar income” and expenditures are to be shown separately in the item “Interest payable and similar expenses.” Income from currency translation is to be shown separately in the profit and loss account in the item “Other operating income” and expenses for currency translation are to be shown separately in the item “Other operating expenses.”

**Section 278  
(repealed)**

**Title 4  
(repealed)**

**Sections 279 to 283  
(repealed)**

**Title 5  
Notes**

**Section 284**

**Explanation of the balance sheet and of the profit and loss account**

(1) The notes are to include that information that is mandatorily to be provided for the respective items of the balance sheet or of the profit and loss account; the notes are to be presented in the sequence of the individual items of the balance sheet and of the profit and loss account. Moreover, that information is to be provided in the notes that was not reported on the balance sheet or in the profit and loss account due to a certain reporting option having been elected.

(2) The notes must:

1. state the accounting and valuation methods applied to the items of the balance sheet and of the profit and loss account;
2. state the deviations from accounting and valuation methods and provide the reasons therefor; their influence on the assets, liabilities, financial position and profit or loss is to be presented separately;
3. show, in the event a valuation method pursuant to section 240 (4), section 256 sentence 1 is applied, the differences as lump-sum amounts for the respective group if the valuation results in a significant difference as compared to a valuation based on the trading price or market price last known prior to the balance sheet date;
4. provide information on the inclusion of interest for third-party capital in the production cost.

(3) The notes are to present the development of the individual items of fixed assets in a separate breakdown. In the process, the additions, disposals, adjusting entries and write-ups for the financial year as well as the depreciations are to be stated separately, based on the total cost of acquisition and production cost. The following information is to be provided separately with regard to the depreciations:

1. the total amount of the depreciations at the beginning and end of the financial year,
2. the depreciations performed in the course of the financial year and
3. changes to the total amount of the depreciations made in respect of additions and disposals as well as in respect of adjusting entries in the course of the financial year.

If interest for third-party capital has been included in the production cost, then the amount of interest that has been posted as an asset in the financial year is to be stated for each item of the fixed assets.

**Section 285**  
**Other mandatory disclosures**

Furthermore, the notes are to state:

1. as regards the liabilities shown on the balance sheet:
  - a) the total amount of the liabilities having a remaining term longer than five years,
  - b) the total amount of the liabilities that have been secured by liens or similar rights, along with the nature and form of the collateral;
2. the breakdown of the information stipulated in no. 1 for each item on the liabilities side, in keeping with the stipulated layout;
3. the nature and purpose as well as the risks, advantages and financial effects of transactions not reported on the balance sheet, insofar as the risks and advantages are material and this disclosure is necessary in order to assess the financial position of the undertaking;
- 3a. the total amount of the other financial obligations not included on the balance sheet that are not to be stated pursuant to section 268 (7) or pursuant to no. 3, provided this information is relevant for the assessment of the financial position; of these, the amounts for the obligations relating to the old-age pension scheme and the obligations vis-à-vis affiliated or associated undertakings are to be stated separately in each case;
4. the turnover broken down by business fields as well as by geographically defined markets, insofar as, given the manner in which the sale, letting or lease-out of products and the provision of services by the share capital company are organised, the business fields and geographically defined markets are significantly distinct from one another;
5. (repealed)
6. (repealed)
7. the average number of employees in the course of the financial year, broken down by groups;
8. in the event of the “cost of sales” method being used (section 275 (3)):
  - a) the expenditures on materials for the financial year, broken down pursuant to section 275 (2) no. 5,
  - b) the staff costs for the financial year, broken down pursuant to section 275 (2) no. 6;
9. for the members of the management body, of a supervisory board, of an advisory council or of a similar institution, in each case broken down for each group of persons:
  - a) the aggregate amount of emoluments granted for activities pursued in the financial year (salaries, shares in the undertaking’s profits, subscription rights and other remuneration in accordance with a share-based remuneration scheme, expense allowances, payments made under insurance policies, commissions and fringe benefits of any kind). Those emoluments are also to be included in

calculating the aggregate amount of emoluments that are not disbursed and instead are converted into entitlements of a different nature or that serve to increase other entitlements. In addition to the emoluments for the financial year, those further emoluments are to be stated that were granted in the course of the financial year but that thus far have not been reported in any of the annual financial statements. Subscription rights and other remuneration under a share-based remuneration scheme are to be stated, including their number and their fair value as at the time at which they were granted; any subsequent changes in value are to be taken into account where they result from an amendment to the conditions of exercise;

b) the aggregate amount of emoluments (severance payments, pensions, survivors' pensions and benefits of a related nature) drawn by the former members of the bodies designated and of their survivors. Letter (a) sentences 2 and 3 applies accordingly. Furthermore, the amount of the provisions formed for the ongoing pensions payable to this group of persons and for their accrued pension rights, as well as the amount of the provisions not formed for these obligations, are to be stated;

c) the advances and loans granted, along with the interest rates, the material terms and conditions and any amounts, as the case may be, that have been repaid, written off or waived in the course of the financial year, as well as the contingent liabilities and commitments entered into for the benefit of these persons;

10. all members of the management body and of a supervisory board, even if they have left the undertaking in the course of the financial year or at a later time, designated by their family name and at least one full first name, along with the profession exercised and also, in the case of companies listed on the stock exchange, their membership in supervisory boards and other supervisory committees within the meaning of section 125 (1) sentence 5 of the Stock Corporation Act. The chairperson of a supervisory board, the chairperson's deputies and, insofar as this role exists, the chairperson of the management body are to be designated as such;

11. the names and seats of other undertakings, the amount of the share held in the capital, the equity capital and the profit / loss of these undertakings for that financial year for which annual financial statements are most recently available, insofar as these undertakings constitute participating interests within the meaning of section 271 (1) or insofar as such a share is held by a person for the account of the share capital company;

11a. the name, seat and legal form of the undertaking of which the share capital company is a shareholder having unlimited liability;

11b. all participating interests held by share capital companies listed on the stock exchange in large share capital companies are to be stated if they comprise more than 5 per cent of the voting rights;

12. an explanation for provisions that are not shown separately on the balance sheet in the item "Other provisions," if they are of a greater than negligible scope;

13. an explanation regarding the period over which goodwill acquired for valuable consideration will be amortised;

14. the name and seat of the share capital company's parent undertaking which draws up the consolidated financial statements for the largest body of undertakings, as well as the location at which the consolidated financial statements drawn up by said parent undertaking are available;

14a. the name and seat of the share capital company's parent undertaking which draws up the consolidated financial statements for the smallest body of undertakings, as well as the location at which the consolidated financial statements drawn up by said parent undertaking are available;

15. insofar as they are notes to the annual financial statements of a commercial partnership within the meaning of section 264a (1), the names and seats of the companies who are general partners as well as their subscribed capital;

15a. the existence of profit-participation certificates, profit-participation rights, convertible bonds, warrants, options, debtor warrants or comparable securities or rights, along with their number and the rights they confer;

16. that the declaration stipulated by section 161 of the Stock Corporation Act has been made and where it has been made publicly available;

17. the total fee charged by the statutory auditor for the financial year, broken down by the fees for

- a) the services for auditing the financial statements,
- b) other audit-related services,
- c) tax consultancy services,
- d) other services,

insofar as this information has not been set out in consolidated financial statements that include the undertaking;

18. for financial instruments forming part of the financial assets (section 266 (2) A. III.) that are shown at a value above their fair value since no unscheduled depreciation pursuant to section 253 (3) sentence 6 was performed:

- a) the book value and the fair value of the individual assets or of appropriate groupings of such assets, as well as
- b) the reasons for not performing the depreciation, including the factors indicating that the value impairment likely will not be permanent;

19. for each class of derivative financial instruments not reported at fair value on the balance sheet:

- a) their nature and extent,
- b) their fair value, insofar as it is possible to reliably identify it pursuant to section 255 (4), along with the valuation method applied,
- c) their book value and the balance sheet item in which the book value, if any, has been recorded, as well as
- d) the reasons for which it is impossible to determine the fair value;

20. for financial instruments valued at fair value:

- a) the underlying assumptions used as a basis for determining the fair value with the aid of generally accepted valuation methods, as well as
- b) for each class of derivative financial instruments, information about the scope and the nature of the instruments, including the material terms and

conditions that may affect the amount, timing and certainty of future payment flows;

21. at a minimum, the transactions that have been concluded at other than standard market terms, insofar as such transactions are material, with related undertakings and persons, including information about the nature of the related-party relationship, the amount of the transactions, as well as further information necessary to gain an understanding of the financial position; transactions are exempt that are concluded with and between undertakings of which 100% of the shares are held, whether indirectly or directly, and that are included in consolidated financial statements; information about individual transactions may be aggregated according to their nature except where separate information is necessary to gain an understanding of the effects that related-party transactions have on the financial position;

22. where they are shown as an asset pursuant to section 248 (2), the total amount of the research and development costs for the financial year, with a separate indication of the amount attributable to the intangible assets created by the undertaking itself and forming part of the fixed assets, as well as the amount attributable to the intangible assets;

23. in the case of section 254 applying:

- a) the amount at which assets, debt obligations, pending transactions and transactions expected to materialise with a high degree of likelihood, respectively, have been included in items combined for valuation purposes (stating the kinds of items) in order to hedge against risks (stating the risks), as well as the amount of the risks hedged against by the items combined for valuation purposes,
- b) for each of the risks hedged against: why, to which extent and for which period the contrary changes in value or contrary payment flows are likely to offset each other in future, including the method used to determine this,
- c) an explanation of the transactions expected to materialise with a high degree of likelihood that have been included in items combined for valuation purposes,

insofar as this information has not been provided in the management report;

24. as regards the provisions for pensions and similar obligations: the actuarial calculation method used as well as the assumptions underlying the calculation such as the interest rate, expected wage and salary increases and the mortality tables on which they are based;

25. in the event of assets and debt obligations having been set off against each other pursuant to section 246 (2) sentence 2: the cost of acquisition and the fair value of the assets set off, the value of the performance of obligations set off, as well as the expenditures and earnings set off; no. 20 letter a applies accordingly;

26. as regards shares in special investment funds within the meaning of section 1 (10) of the Investment Code, or as regards non-voting shares of stock in open-ended investment stock corporations with variable capital within the meaning of sections 108 to 123 of the Investment Code, or in comparable EU investment funds or comparable foreign investment funds, such shares comprising more than one tenth of said funds, broken down by the investment objectives: their value within the meaning of sections 168, 278 or 286 (1) of the Investment Code or of comparable foreign regulations governing the determination of the market value, the difference to the book value and the dividend paid out for the financial year, as well as restrictions of the possibility to effect returns on a daily basis; moreover, the reasons for not performing the depreciation pursuant to section

253 (3) sentence 6 including the factors indicating that the value impairment likely will not be permanent; inasmuch, no. 18 does not apply;

27. for liabilities and contingent liabilities and commitments shown in the notes pursuant to section 268 (7): the reasons underlying the estimation of the risk of their being asserted;

28. the total of the amounts within the meaning of section 268 (8), broken down into amounts resulting from intangible assets created by the undertaking itself and forming part of the intangible assets being reported as part of the fixed assets, amounts resulting from deferred taxes being recognised as an asset and amounts resulting from assets being shown as an asset at their fair value;

29. the differences or tax loss carryforwards on which the deferred taxes are based and the tax rates used to perform the valuation;

30. where a provision for deferred tax is recognised on the balance sheet, the deferred tax balances at the end of the financial year, and the changes in those balances in the course of the financial year;

31. in each case, the amount and the nature of the individual earnings and expenditures of exceptional scope or exceptional significance, insofar as the amounts are not immaterial;

32. an explanation of the individual earnings and expenditures as concerns their amount and their nature that are to be allocated to a different financial year, insofar as the amounts are not immaterial;

33. important events which have occurred after the close of the financial year and which have not been taken into account either in the profit and loss account or on the balance sheet, along with their nature and their financial effects;

34. the proposal for the appropriation of the profit / treatment of loss or the resolution adopted as to such appropriation / treatment.

### **Section 286**

#### **Non-disclosure of information**

(1) Insofar as the best interests of the Federal Republic of Germany or of one of its *Länder* so require, reporting must not be performed.

(2) The breakdown of the turnover pursuant to section 285 no. 4 may be omitted insofar as, when assessed exercising reasonable business judgment, the breakdown is suited to be seriously prejudicial to the share capital company; the application of this exemption is to be stated in the notes.

(3) The information pursuant to section 285 nos. 11 and 11b may be omitted insofar as it:

1. is immaterial for the presentation of the assets, liabilities, financial position and profit or loss of the share capital company pursuant to section 264 (2), or insofar as it

2. is suited, when assessed exercising reasonable business judgment, to be seriously prejudicial to the share capital company or the other undertaking.

The equity capital and the profit / loss for the year may be omitted if the undertaking to be reported on is not obliged to disclose its annual financial statements and the reporting share capital company is not able to exercise a dominant influence on the undertaking concerned. Sentence 1 no. 2 does not apply if, on the balance sheet date, the share capital company or one of its subsidiary undertakings (section 290 (1) and (2)) is being publicly traded within the meaning of section 264d. In all other regards, the application of the exemption pursuant to sentence 1 no. 2 is to be stated in the notes.

(4) In the case of companies that are not a stock corporation listed on the stock exchange, the information called for by section 285 no. 9 (a) and (b) regarding the aggregate amount of emoluments of the persons designated therein may be omitted if, on the basis of that information, it is possible to establish the emoluments of an individual member of the bodies listed.

(5) (repealed)

#### **Section 287 (repealed)**

#### **Section 288**

##### **Eased requirements based on the size of the undertaking**

(1) Small share capital companies (section 267 (1)) are not required to:

1. provide the information called for by section 264c (2) sentence 9, section 265 (4) sentence 2, section 284 (2) no. 3 and (3), section 285 nos. 2, 3, 4, 8, 9 (a) and (b), 10 to 12, 14, 15, 15a, 17 to 19, 21, 22, 24, 26 to 30, 32 to 34;
2. break down into groups the information called for by section 285 no. 7;
3. state, in providing the information called for by section 285 no. 14a, the location at which the consolidated financial statements drawn up by the parent undertaking are available.

(2) Medium-sized share capital companies (section 267 (2)) are not required to provide the information called for by section 285 nos. 4, 29 and 32. Where they do not provide the information called for by section 285 no. 17, they are obliged to transmit it to the Chamber of Public Accountants upon the latter's written demand. They are required to provide the information called for by section 285 no. 21 only in those cases in which the transactions were concluded directly or indirectly with a shareholder, with an undertaking in which the company itself holds a participating interest or with members of the managerial, supervisory or administrative body.

### **Title 6 Management report**

#### **Section 289 Content of the management report**

(1) The management report is to present accurately the business development, including the business performance of the share capital company and its position, in keeping with its actual circumstances. It is to include a balanced and comprehensive analysis of the business development of the company and of its position, consistent with the scope and complexity of its business operations. The analysis is to include the key financial performance indicators most relevant to the company's business operations and is to provide an explanation for them, referring to the amounts shown and information provided in the annual financial statements. Furthermore, the management report is to assess the company's likely future development as well as the material opportunities and risks it faces and is to provide an explanation therefor; any assumptions on which this assessment is based are to be stated. The members of the representative body of a share capital company that issues securities (section 2 (1) of the Securities Trading Act (*Wertpapierhandelsgesetz*) as a domestic issuer (section 2 (14) of the Securities Trading Act) and that is not a share capital company within the meaning of section 327a are to give an assurance in a written declaration to be attached to the management report that, to the best of their knowledge, the management report accurately presents the share capital company's business development, including its business performance and its position, in keeping with its actual circumstances, and that the material opportunities and risks within the meaning of sentence 4 have been described.

(2) The management report also is to give an indication of:

1.
  - a) the company's risk management objectives and methods, including the methods used for hedging each major type of transaction for which hedge accounting is used, as well as
  - b) the company's exposure to price risk, credit risk and liquidity risk as well as cash flow risk,

in each case with regard to the company's use of financial instruments and where material for the assessment of its position or its likely future development;

2. the activities in the field of research and development; as well as
3. the existing branch offices of the company;
4. (repealed)

Where information is to be provided in the notes pursuant to section 160 (1) no. 2 of the Stock Corporation Act, the management report is to refer to such information.

(3) If the company is a large share capital company (section 267 (3)), then subsection (1) sentence 3 applies accordingly to non-financial performance indicators such as information relating to environmental matters and employee concerns, insofar as this is relevant for understanding the company's business development or its position.

(4) Share capital companies within the meaning of section 264d are to describe in their management report the principal characteristics of their internal control process and their internal risk management system as regards the financial reporting process.

#### **Section 289a**

##### **Supplementary requirements for certain stock corporations and public partly limited partnerships**

Stock corporations and public partly limited partnerships taking recourse to an organised market within the meaning of section 2 (7) of the Securities Acquisition and Takeover Act (*Wertpapiererwerbs- und Übernahmegesetz*), by way of shares of stock with voting rights they have issued, additionally are to state the following in the management report:

1. the composition of the subscribed capital, separately showing the rights and duties that each class entails as well as the proportion of the capital held;
2. restrictions on voting rights or on the transfer of shares of stock, also as may result from agreements made among shareholders, insofar as the company's board of management is aware of them;
3. direct or indirect participating interests in the capital that comprise more than ten per cent of the voting rights;
4. the holders of shares of stock endowed with special rights granting powers of control and a description of such special rights;
5. the nature of the voting control if employees hold a share in the capital and do not directly exercise their rights of control;
6. the stipulations of the law and of the statutes regarding the appointment of the members of the board of management and their removal from office, as well as the stipulations regarding amendments to the statutes;
7. the powers of the board of management, in particular as regards the possibility of issuing shares of stock or repurchasing them;



8. material agreements of the company that are subject to a change of control clause in the event of a takeover bid, and the effects resulting therefrom;

9. compensation agreements the company has concluded with the members of the board of management or with employees for the case of a takeover bid.

The information called for by sentence 1, nos. 1, 3 and 9, may be omitted insofar as it is to be provided in the notes. Where information called for by sentence 1 is to be stated in the notes, a reference thereto is to be included in the management report. The information called for by sentence 1 no. 8 may be omitted insofar as it is suited to be seriously prejudicial to the company; the duty to provide information pursuant to other stipulations of the law remains unaffected.

### **Section 289b**

#### **Obligation to draw up a non-financial statement; exemptions**

(1) A share capital company is to supplement its management report by a non-financial statement if it fulfils the following criteria:

1. the share capital company meets the pre-requisites of section 267 (3) sentence 1,
2. the share capital company is publicly traded within the meaning of section 264d and
3. the share capital company employed more than 500 employees (average for the year).

Section 267 (4) to (5) applies accordingly. Where the non-financial statement constitutes a separate chapter of the management report, the share capital company may refer to the non-financial information set out elsewhere in the management report.

(2) A share capital company within the meaning of subsection (1) is exempted from the obligation to supplement its management report by a non-financial statement, notwithstanding other exemption regulations, in those cases in which

1. the share capital company is included in the consolidated management report of a parent undertaking, and
2. the consolidated management report pursuant to no. 1 is drawn up subject to the stipulations of the domestic laws of a Member State of the European Union or of some other state party to the Agreement creating the European Economic Area in conformity with Directive 2013/34/EU and includes a consolidated non-financial statement.

Sentence 1 applies accordingly to those cases in which the parent undertaking within the meaning of sentence 1 draws up, and makes publicly available, a separate consolidated non-financial report pursuant to section 315b (3) or subject to the stipulations of the domestic laws of a Member State of the European Union or of some other state party to the Agreement creating the European Economic Area in conformity with Directive 2013/34/EU. Where a share capital company is exempt, pursuant to sentence 1 or 2, from the obligation to draw up a non-financial statement, it is to indicate this fact in its management report, along with an explanation of which parent undertaking is making publicly available the consolidated management report or the separate consolidated non-financial report and where the report has been disclosed or published in German or in English.

(3) A share capital company within the meaning of subsection (1) is exempt from the obligation to supplement its management report by a non-financial statement also in those cases in which the share capital company draws up, for the same financial year, a separate non-financial report outside of its management report and in which the following pre-requisites are met:

1. At a minimum, the separate non-financial report meets the requirements concerning its content stipulated by section 289c, and

2. the share capital company makes publicly available the separate non-financial report by
  - a) disclosing it together with the management report pursuant to section 325 or by
  - b) publishing it on the share capital company's website no later than four months after the balance sheet date and for at least ten years, if the management report refers to this publication and cites the website.

Subsection (1) sentence 3 and sections 289d and 289e apply accordingly to the non-financial report.

(4) Where the non-financial declaration or the separate non-financial report has been checked in terms of its substance, the assessment of the result obtained by said check is to be made publicly available in the same manner as the non-financial declaration or the separate non-financial report.

### **Section 289c**

#### **Content of the non-financial statement**

- (1) The non-financial statement within the meaning of section 289b is to include a brief description of the business model of the share capital company.
- (2) Moreover, the non-financial statement at a minimum is to refer to the following aspects:
  1. environmental matters, whereby the information may relate, for instance, to greenhouse gas emissions, water consumption, air pollution, the use of renewable and/or non-renewable energy or the protection of biological diversity,
  2. employee-related matters, whereby the information may relate, for instance, to the actions taken to ensure gender equality, the working conditions, implementation of fundamental conventions of the International Labour Organisation, respect for the right of workers to be informed and consulted, social dialogue, respect for trade union rights, health and safety at work,
  3. social matters, whereby the information may relate, for instance, to the dialogue at the local or regional level or the actions taken to ensure the protection and the development of local communities,
  4. respect for human rights, whereby the information may relate, for instance, to the prevention of human rights abuses, and
  5. combating corruption and bribery, whereby the information may relate, for instance, to the instruments in place to fight corruption and bribery.
- (3) The aspects set out in subsection (2) are to be supplemented in the non-financial statement in each case by that information that is necessary for an understanding of the share capital company's business development, performance and position, as well as of the impact of its activity on the aspects set out in subsection (2), including
  1. a description of the policies pursued by the share capital company, including due diligence processes applied by the share capital company,
  2. the outcome of the policies set out in no. 1,
  3. the principal risks that are related to the own business operations of the share capital company and that are highly likely to cause, now or in the future, seriously adverse impacts on the aspects set out in subsection (2), as well as how the share capital company manages those risks,
  4. the principal risks related to the share capital company's business relationships, products and services which are very likely to cause, now or in future, seriously adverse

impacts on the aspects set out in subsection (2), insofar as the information is material and the reporting about these risks is proportionate, as well as how the share capital company manages those risks,

5. the key non-financial performance indicators most relevant to the share capital company's business operations,

6. insofar as this is required for ease of understanding, references to amounts itemised in the annual financial statements along with additional explanations.

(4) Where the share capital company does not pursue policies with regard to one or several of the aspects set out in subsection (2), it is to provide a clear and reasoned explanation for not doing so in the non-financial statement instead of providing the information regarding the aspect concerned as stipulated by subsection (3) nos. 1 and 2.

#### **Section 289d**

##### **Use of frameworks**

The share capital company may rely on national, Union-based or international frameworks in drawing up the non-financial statement. The statement is to specify whether the share capital company relied on a framework in drawing up the non-financial statement and, if that is the case, which framework it relied upon; if that is not the case, it is to specify why no framework was relied upon.

#### **Section 289e**

##### **Omission of detrimental information**

(1) As an exception, the share capital company is not required to report any information on future developments or on matters that are the subject of negotiations in the non-financial statement if

1. the information is suited, when assessed exercising reasonable business judgment by the members of the share capital company's representative body, to be seriously prejudicial to the share capital company, and

2. the omission of such information will not prevent a balanced understanding from being gained in keeping with the actual circumstances of the share capital company's business development, performance and position, as well as of the impacts of its activity.

(2) Where a share capital company takes recourse to the exemption in subsection (1) and where the grounds based on which the information was not reported cease to exist following the publication of the non-financial statement, the information is to be included in the subsequent non-financial statement.

#### **Section 289f**

##### **Corporate governance statement**

(1) Stock corporations listed on the stock exchange as well as stock corporations that have exclusively issued securities other than shares of stock for trading on an organised market within the meaning of section 2 (11) of the Securities Trading Act, and the issued shares of stock of which are being traded, at their own initiative, in a multilateral trading facility within the meaning of section 2 (8) sentence 1 no. 8 of the Securities Trading Act, are to include in their management report a corporate governance statement constituting a separate section of said management report. The corporate governance statement also may be made publicly available on the company's website. In such event, the management report is to include a reference to the website.

(2) The corporate governance statement is to contain the following:

1. the declaration pursuant to section 161 of the Stock Corporation Act;

1a. a reference to the company's website on which the remuneration report for the prior financial year is made publicly available along with the opinion by the statutory

auditor on the remuneration report, as defined in section 162 of the Stock Corporation Act, the remuneration system in place as defined in section 87a (1) and (2) sentence 1 of the Stock Corporation Act and the resolution most recently adopted regarding the remuneration granted as defined in section 113 (3) of the Stock Corporation Act;

2. relevant information about the governance practices applied over and above the requirements of the law, along with an indication of where such information is publicly available;

3. a description of the operating methods of the board of management and of the supervisory board, as well as of the composition and operating methods of their committees; if the information is publicly available on the company's website, then this may be indicated by a corresponding reference;

4. in the case of stock corporations within the meaning of subsection (1) that are under obligation, pursuant to section 76 (4) and section 111 (5) of the Stock Corporation Act, to stipulate target values for the percentage of women as well as the periods within they are to be attained, and to provide the reasoning based on which "zero" was stipulated as the target value: the stipulations and reasonings as well as the statement whether the stipulated target values were attained in the course of the relevant period; if they were not attained, the reasons therefor are to be provided;

5. in the case of stock corporations listed on the stock exchange that, in accordance with section 96 (2) and (3) of the Stock Corporation Act, are to comply with minimum ratios applying to the appointment of men and women, respectively, to the supervisory board, the statement whether the company has complied with the minimum ratios in the relevant period and, if not, the reasons therefor; in the case of European public limited-liability companies (SE) listed on the stock exchange, section 96 (2) and (3) of the Stock Corporation Act is replaced by section 17 (2) or section 24 (3) of the Act implementing the Regulation on the Statute for a European Company (*SE-Ausführungsgesetz*).

5a. in the case of stock corporations listed on the stock exchange that, in accordance with section 76 (3a) of the Stock Corporation Act, must appoint at least one woman and at least one man as a member of the management board, the statement whether the company has complied with this requirement in the relevant period and, if not, the reasons therefor; in the case of European public limited-liability companies (SE) listed on the stock exchange, section 76 (3a) of the Stock Corporation Act is replaced by section 16 (2) or section 40 (1a) of the Act implementing the Regulation on the Statute for a European Company (*SE-Ausführungsgesetz*).

6. In the case of stock corporations within the meaning of subsection (1) that are large share capital companies pursuant to section 267 (3) sentence 1 and (4) to (5), a description of the diversity policy that is being pursued in relation to the composition of the representative body and of the supervisory board with regard to aspects such as, for instance, age, gender or educational and professional backgrounds, as well as the objectives of said diversity policy, the nature and manner in which it has been implemented and the results achieved in the reporting period.

(3) Subsections (1) and (2) apply accordingly to public partly limited partnerships listed on the stock exchange.

(4) Other share capital companies are to include as a separate section in their management report a corporate governance statement setting out the stipulations, reasonings and information called for by subsection (2) no. 4 if they are under obligation, in accordance with section 76 (4) or section 111 (5) of the Stock Corporation Act or pursuant to section 36 or section 52 (2) of the Limited Liability Companies Act (*Gesetz betreffend die Gesellschaften mit beschränkter Haftung*), to stipulate target values for the percentage of women appointed

and to determine periods within which these target values are to be attained, and are to provide the reasoning based on which “zero” was stipulated as the target value. Subsection (1) sentences 2 and 3 applies accordingly. Share capital companies not obliged to draw up a management report are to draw up a declaration setting out the stipulations, reasonings and information called for by sentence 1 and are to publish it on the company’s website. They may comply with this duty also by disclosing a management report that was drawn up with due regard having been had to sentence 1.

(5) Where a company pursuant to subsection (2) no. 6, also read in conjunction with subsection (3), does not pursue a diversity concept, it is to provide an explanation therefor in its corporate governance statement.

## **Subdivision 2** **Consolidated financial statements and consolidated management report**

### **Title 1** **Scope of application**

#### **Section 290** **Reporting requirement**

(1) In the course of the first five months of the financial year of the group, the legal representatives of a share capital company (parent undertaking) having its seat within Germany are to draw up consolidated financial statements and a consolidated management report for the past financial year of the group, if such parent undertaking has the ability to directly or indirectly exercise a dominant influence on some other undertaking (subsidiary undertaking). Where the parent undertaking is a share capital company within the meaning of section 325 (4) sentence 1 the consolidated financial statements as well as the consolidated management report for the past financial year of the group are to be drawn up in the course of the first four months of the financial year of the group.

(2) A parent undertaking will be considered to have dominant influence in all cases in which

1. it is entitled to the majority of the shareholder voting rights in another undertaking;
2. it is entitled to the right to appoint or remove from office, within another undertaking, the majority of the members of the administrative, managerial or supervisory body determining the financial and operating policies, while concurrently being a shareholder in said undertaking;
3. it is entitled to the right to determine the financial and operating policies pursuant to a control agreement concluded with another undertaking or pursuant to a provision made in the statutes of the other undertaking, or
4. the majority of the risks and rewards, in economic terms, of an undertaking that serves to achieve a narrowly delimited and precisely defined objective pursued by the parent undertaking (special purpose entity) rests with the parent undertaking. Besides being structured as an undertaking, special purpose entities may also consist of other legal persons governed by private law or legally dependent separate investment funds governed by private law, to the exception of domestic, open-ended specialised AIFs with fixed investment terms launched as separate investment funds within the meaning of section 284 of the Investment Code or comparable EU investment funds or foreign investment funds that are comparable to the domestic, open-ended specialised AIFs with fixed investment terms launched as separate investment funds within the meaning of section 284 of the Investment Code, or domestic, closed specialised AIFs launched as separate investment funds or EU investment funds or foreign investment funds comparable to the domestic, closed specialised AIFs launched as separate investment funds.

(3) The rights to which some other subsidiary undertaking is entitled, as well as the rights to which the persons acting for the account of the parent undertaking or for the account of subsidiary undertakings are entitled, also are considered rights to which a parent undertaking is entitled pursuant to subsection (2). Those rights are counted among the rights to which a parent undertaking is entitled in some other undertaking that the parent undertaking itself or one of its subsidiary undertakings may exercise based on an agreement concluded with other shareholders of said undertaking. Those rights are not to be counted among such rights that

1. are tied to shares held by the parent undertaking or by its subsidiary undertakings for the account of some other person, or that

2. are tied to shares held as collateral, if these rights are exercised according to the guarantor's instructions or, in cases in which a credit institution holds the shares as collateral for a loan, if these rights are exercised in the interests of the guarantor.

(4) The question of to which part of the voting rights an undertaking is entitled is determined, for purposes of calculating the majority pursuant to subsection (2) no. 1, by the ratio between the number of voting rights that the undertaking may exercise based on the shares belonging to it, and the total number of all voting rights. Those voting rights are to be deducted from the total number of all voting rights that are based on own shares belonging to the subsidiary undertaking itself, one of its subsidiary undertakings or to some other person for the account of these undertakings.

(5) A parent undertaking will be released from the duty to draw up consolidated financial statements and a consolidated management report if the only subsidiary undertakings it has are ones it is not required to include in the consolidated financial statements pursuant to section 296.

### **Section 291**

#### **Exemptive effect of consolidated financial statements drawn up in accordance with EU/EEA accounting standards**

(1) A parent undertaking that, concurrently, is a subsidiary undertaking of a parent undertaking having its seat in a Member State of the European Union or in some other state party to the Agreement creating the European Economic Area will not be required to draw up consolidated financial statements or a consolidated management report if its parent undertaking discloses consolidated financial statements and a consolidated management report, all of them in German or English, that are compliant with the requirements of subsection (2), including the audit report or the adverse audit report, in accordance with the regulations governing the consolidated financial statements and consolidated management report that are not required to be drawn up. Exempting consolidated financial statements and an exempting consolidated management report may be drawn up by any undertaking, independently of its legal form and size, if that undertaking would be under obligation, as a share capital company having its seat in a Member State of the European Union or in some other state party to the Agreement creating the European Economic Area, to draw up consolidated financial statements that include the parent undertaking that is to be exempted and its subsidiary undertakings.

(2) The consolidated financial statements and consolidated management report of a parent undertaking having its seat in a Member State of the European Union or in some other state party to the Agreement creating the European Economic Area will have exemptive effect where

1. the parent undertaking to be exempted and its subsidiary undertakings have been included in the exempting consolidated financial statements notwithstanding section 296,

2. the exempting consolidated financial statements have been drawn up in accordance with the laws applicable to the parent undertaking in conformity with Directive

2013/34/EU or in conformity with the international accounting standards designated in section 315e (1), and where they have been audited in conformity with Directive 2006/43/EC,

3. the exempting consolidated management report has been drawn up according to the laws applicable to the parent undertaking in conformity with Directive 2013/34/EU and has been audited in conformity with Directive 2006/43/EC,

4. the notes to the annual financial statements of the undertaking to be exempted provide the following information:

- a) the name and seat of the parent undertaking drawing up the exempting consolidated financial statements and the consolidated management report,
- b) an indication of the exemption from the obligation to draw up consolidated financial statements and a consolidated management report, and
- c) an explanation of the accounting, valuation and consolidation methods applied in derogation from German law in drawing up the exempting consolidated financial statements.

Sentence 1 applies accordingly to credit institutions and insurance undertakings; notwithstanding the other pre-requisites set out in sentence 1, the exempting consolidated financial statements and the exempting consolidated management report are to be drawn up by credit institutions in conformity with Council Directive 86/635/EEC of 8 December 1986 on the annual financial statements and consolidated accounts of banks and other financial institutions (OJ EC L 372 p. 1), and by insurance undertakings in conformity with Council Directive 91/674/EEC of 19 December 1991 on the annual financial statements and consolidated accounts of insurance undertakings (OJ EC L 374 p. 7), as such Directives may be amended.

(3) A parent undertaking may not take recourse to the exemption pursuant to subsection (1), in spite of the pre-requisites pursuant to subsection (2) having been met, where

1. the parent undertaking to be exempted takes recourse to an organised market within the meaning of section 2 (11) of the Securities Trading Act by means of the securities it issues within the meaning of section 2 (1) of the Securities Trading Act,
2. shareholders holding a participating interest, in the case of stock corporations and public partly limited partnerships, of no less than ten per cent in the parent undertaking to be exempted and holding a participating interest, in the case of limited liability companies, of no less than twenty per cent in the parent undertaking to be exempted have moved, at a point in time no later than six months prior to expiry of the financial year of the group, that consolidated financial statements and a consolidated management report be drawn up.

## **Section 292**

### **Exemptive effect of consolidated financial statements drawn up in accordance with the accounting standards of a third state**

(1) A parent undertaking that, concurrently, is a subsidiary undertaking of a parent undertaking having its seat in a state that is not a Member State of the European Union and that is also not a state party to the Agreement creating the European Economic Area, will not be required to draw up consolidated financial statements or a consolidated management report if that other parent undertaking draws up consolidated financial statements that are compliant with section 291 (2) no. 1 (exempting consolidated financial statements) and a consolidated management report that is compliant with section 291 (2) no. 1 (exempting consolidated management report) and if, furthermore, all of the following pre-requisites are met:

1. The exempting consolidated financial statements are drawn up as follows:
    - a) as laid down by the laws of a Member State of the European Union or of some other state party to the Agreement creating the European Economic Area in conformity with Directive 2013/34/EU,
    - b) in conformity with the international accounting standards designated in section 315e (1),
    - c) such that they are equivalent to consolidated financial statements drawn up in accordance with the requirements stipulated in letter a), or
    - d) such that they comply with international accounting standards as determined in their applicable version pursuant to Commission Regulation (EC) No 1569/2007 of 21 December 2007 establishing a mechanism for the determination of equivalence of accounting standards applied by third country issuers of securities pursuant to Directives 2003/71/EC and 2004/109/EC of the European Parliament and of the Council (OJ L 340 of 22 December 2007, p. 66), amended by Delegated Regulation (EU) No 310/2012 (OJ L 103 of 13 April 2012, p. 11);
  2. the exempting consolidated management report is drawn up in accordance with the requirements set out in in no. 1 (a) or is equivalent to a consolidated management report drawn up in accordance with said requirements;
  3. the exempting consolidated financial statements have been audited by one or several statutory auditors or by one or several audit firms who have been approved to carry out statutory audits of annual financial statements based on the national laws to which the undertaking is subject that has drawn up said financial statements;
  4. the exempting consolidated financial statements, the exempting consolidated management report and the audit report have been disclosed in German or English in accordance with the regulations governing those consolidated financial statements and that consolidated management report that are not required to be drawn up.
- (2) The exemptive effect will be given only if the notes to the annual financial statements of the undertaking to be exempted provide the information stipulated in section 291 (2) sentence 1 no. 4, and if it is additionally stated according to which of the requirements set out in subsection (1) no. 1 and, as the case may be, according to the laws of which state the exempting consolidated financial statements and the exempting consolidated management report have been drawn up. In all other regards, section 291 (2) sentence 2 and (3) applies accordingly.
- (3) Where consolidated financial statements that are permissible under subsection (1) have not been audited by a statutory auditor approved to carry out statutory audits in accordance with the provisions of Directive 2006/43/EC, they will have an exemptive effect only if the auditor has qualifications equivalent to the requirements made by said Directive and if the consolidated financial statements have been audited in a manner compliant with the requirements stipulated in Subdivision 3. Any auditors who have not been approved to carry out statutory audits in accordance with the provisions of Directive 2006/43/EC and who act as auditors of an undertaking having its seat in a third state within the meaning of section 3 (1) sentence 1 of the Act on the Profession of Auditors (*Wirtschaftsprüferordnung*), the securities of which, within the meaning of section 2 (1) of the Securities Trading Act, are admitted by a domestic stock exchange to trading on the regulated market, will be considered to have qualifications equivalent to the requirements of the Directive only if said qualifications have been registered by the Chamber of Public Accountants pursuant to section 134 (1) of the Act on the Profession of Auditors or if their equivalence has been recognised pursuant to section 134 (4) of the Act on the Profession of Auditors. Sentence 2



does not apply insofar as exclusively debt instruments within the meaning of section 2 (1) no. 3 of the Securities Trading Act

1. are admitted by a domestic stock exchange to trading on the regulated market at a minimum denomination of 100,000 euros each or in a corresponding amount in another currency or
2. are admitted by a domestic stock exchange to trading on the regulated market at a minimum denomination of 50,000 euros each or in a corresponding amount in another currency, and these debt instruments have been issued prior to 31 December 2010.

In the case governed by sentence 2, a certification from the Chamber of Public Accountants pursuant to section 134 (2a) of the Act on the Profession of Auditors is to be disclosed along with the audit report pursuant to subsection (1) no. 4, certifying that the auditor has been registered, or a confirmation from the Chamber of Public Accountants pursuant to section 134 (4) sentence 8 of the Act on the Profession of Auditors is to be disclosed along with the audit report pursuant to subsection (1) no. 4, confirming that the auditor is exempt from the registration obligation.

#### **Section 292a (repealed)**

#### **Section 293**

##### **Exemptions granted based on the size of the undertaking**

(1) A parent undertaking is exempted from the duty to draw up consolidated financial statements and a consolidated management report if

1. it fulfils no fewer than two of the three criteria set out below on the balance sheet date of its annual financial statements and applied to it on the preceding balance sheet date:
  - a) the balance sheet totals of the balance sheets of the parent undertaking and of the subsidiary undertakings that would have to be included in the consolidated financial statements do not exceed an aggregate amount of 24,000,000 euros.
  - b) the turnover of the parent undertaking and of the subsidiary undertakings that would have to be included in the consolidated financial statements do not exceed, in the twelve months prior to the balance sheet date, an aggregate amount of 48,000,000 euros.
  - c) the parent undertaking and those subsidiary undertakings that would have to be included in the consolidated financial statements have not employed, in the twelve months prior to the balance sheet date, more than 250 employees (average for the year);
- or
2. it fulfils no fewer than two of the three criteria set out below on the balance sheet date of the consolidated financial statements to be drawn up by it, and applied to it on the preceding balance sheet date:
  - a) the balance sheet total does not exceed 20,000,000 euros.
  - b) the turnover in the twelve months prior to the balance sheet date do not exceed 40,000,000 euros.
  - c) the parent undertaking and the undertakings included in the consolidated financial statements have not employed, in the twelve months prior to the balance sheet date, more than 250 employees (average for the year).

Section 267 (5) applies in identifying the average number of employees.

(2) Section 267 (4a) applies accordingly in determining the balance sheet total.

(3) (repealed)

(4) Except in the cases governed by subsection (1), a parent undertaking will be exempt from the duty to draw up the consolidated financial statements and the consolidated management report if the pre-requisites of subsection (1) are met only on the balance sheet date or only on the preceding balance sheet date and if the parent undertaking was exempt from the duty to draw up the consolidated financial statements and the consolidated management report on the preceding balance sheet date. Section 267 (4) sentences 2 and 3 applies accordingly.

(5) Subsections (1) and (4) do not apply if the parent undertaking or a subsidiary undertaking included in its consolidated financial statements is publicly traded within the meaning of section 264d on the balance sheet date or if it is subject to the provisions of Subdivision 1 or 2 of Division 4.

## **Title 2** **Scope of consolidation**

### **Section 294**

#### **Undertakings to be included, duties to make submissions and provide information**

(1) The consolidated financial statements are to include the parent undertaking and all subsidiary undertakings, without regard to the seat and the legal form of the subsidiary undertakings, unless no such inclusion takes place pursuant to section 296.

(2) In the event of the composition of the undertakings included in the consolidated financial statements having undergone a material change in the course of the financial year, the consolidated financial statements are to provide information allowing a meaningful comparison of the consecutive consolidated financial statements.

(3) The subsidiary undertakings are to submit to the parent undertaking, without undue delay, their annual financial statements, standalone financial statements pursuant to section 325 (2a), management reports, separate non-financial reports, consolidated financial statements, consolidated management reports, separate consolidated non-financial reports and, where a statutory audit has been performed, the auditor's additional reports as well as, where interim financial statements are to be drawn up, financial statements drawn up as per the cut-off date for the consolidated financial statements. The parent undertaking may demand, from any of its subsidiary undertakings, all clarifications and proof that are required in order to draw up the consolidated financial statements, the consolidated management report and the separate consolidated non-financial reports.

### **Section 295** **(repealed)**

### **Section 296**

#### **Waiver of inclusion**

(1) A subsidiary undertaking is not required to be included in the consolidated financial statements if

1. significant and continuing restrictions impair, in sustained fashion, the exercise of the rights enjoyed by the parent undertaking with regard to the assets or the business management of said undertaking,
2. it is not possible to obtain the information required to draw up the consolidated financial statements without incurring disproportionately high costs or suffering inappropriate delays,
3. the shares of the subsidiary undertaking are being held exclusively for purposes of an onward sale.

(2) A subsidiary undertaking is not required to be included in the consolidated financial statements if it is immaterial for the obligation to present accurately the group's assets, liabilities, financial position and profit or loss in keeping with its actual circumstances. Where several subsidiary undertakings meet the pre-requisite set out in sentence 1, these undertakings are to be included in the consolidated financial statements if, taken together, they are not immaterial.

(3) The reasons for applying subsections (1) and (2) are to be provided in the notes to the consolidated financial statements.

### **Title 3**

## **Content and form of the consolidated financial statements**

### **Section 297**

#### **Content**

(1) The consolidated financial statements consist of the consolidated balance sheet, the consolidated profit and loss account, the notes to the consolidated financial statements, the statement of cash flows and the statement of changes in equity. They may be supplemented by segment reporting.

(1a) The consolidated financial statements are to state the business name, seat, court of registration and the number under which the parent undertaking has been entered in the Commercial Register. Where the parent undertaking is in liquidation or in the process of being wound up, this is to be disclosed as well.

(2) The consolidated financial statements are to be drawn up such that they are transparent and clearly arranged. They are to present accurately the group's assets, liabilities, financial position and profit or loss in keeping with its actual circumstances and are to comply with the principles of proper accounting. Where special circumstances result in the consolidated financial statements not accurately presenting the actual circumstances within the meaning of sentence 2, the notes to the consolidated financial statements are to provide additional information. The members of the representative body of a parent undertaking that issues securities (section 2 (1) of the Securities Trading Act (*Wertpapierhandelsgesetz*) as a domestic issuer (section 2 (14) of the Securities Trading Act) and that is not a share capital company within the meaning of section 327a are to give an assurance in a written declaration to be attached to the consolidated financial statements that, to the best of their knowledge, the consolidated financial statements accurately present the actual circumstances within the meaning of sentence 2 or that the notes to the consolidated financial statements include information pursuant to sentence 3.

(3) The consolidated financial statements are to present the assets, liabilities, financial position and profit or loss of the undertakings included in them as if these undertakings collectively were one single undertaking. The consolidation methods applied in drawing up the previous consolidated financial statements are to be upheld. In exceptional cases, it will be permissible to act in derogation from sentence 2. Such exceptional cases are to be stated in the notes to the consolidated financial statements and the reasons therefor are to be provided. Their influence on the assets, liabilities, financial position and profit or loss of the group is to be stated.

### **Section 298**

#### **Applicable regulations; Eased requirements**

(1) Unless the nature inherent to the consolidated financial statements calls for a deviation or unless the following regulations stipulate otherwise, sections 244 to 256a, 264c, 265, 266, 268 (1) to (7), 270, 271, 272 (1) to (4), 274, 275 and 277 regarding the annual financial statements as well as the regulations applying to the legal form and the line of business of the undertakings included in the consolidated financial statements that have their seat in the territorial scope of this statute, to the extent they apply to large share capital companies, apply accordingly to the consolidated financial statements.

(2) The notes to the consolidated financial statements and the notes to the annual financial statements of the parent undertaking may be combined. In such event, the consolidated financial statements and the annual financial statements of the parent undertaking must be disclosed together. The combined notes must show which information refers to the group and which information refers solely to the parent undertaking.

#### **Section 299**

##### **Cut-off date for drawing up the consolidated financial statements**

(1) The consolidated financial statements are to be drawn up as per the balance sheet date of the annual financial statements of the parent undertaking.

(2) The annual financial statements of the undertakings included in the consolidated financial statements are to be prepared, as a rule, as per the cut-off date for the consolidated financial statements. Where the balance sheet date of an undertaking precedes the cut-off date for the consolidated financial statements by more than three months, that undertaking is to be included in the consolidated financial statements based on interim financial statements drawn up as per the cut-off date and as per the period of the consolidated financial statements.

(3) Where, in the case of deviating balance sheet dates, an undertaking is not included in the consolidated financial statements based on interim financial statements drawn up as per the cut-off date and as per the period of the consolidated financial statements, the consolidated balance sheet and the consolidated profit and loss account are to take account of events having particular importance for the assets, liabilities, financial position and profit or loss of an undertaking included in the consolidated financial statements where such events have occurred between the balance sheet date of this undertaking and the balance sheet date of the consolidated financial statements, or they are to be stated in the notes to the consolidated financial statements.

#### **Title 4**

#### **Full consolidation**

#### **Section 300**

##### **Consolidation principles; Requirement to provide full and complete information**

(1) Consolidated financial statements are to combine the annual financial statements of the parent undertaking with the annual financial statements of the subsidiary undertakings. The subsidiary undertakings' assets, debt obligations, accrued and deferred items, as well as special items, insofar as they are capable of being recognised on the balance sheet pursuant to the laws governing the parent undertaking, will take the stead of the shares in the consolidated subsidiary undertakings belonging to the parent undertaking unless the nature inherent to the consolidated financial statements calls for a deviation or unless the following regulations stipulate otherwise.

(2) The assets, debt obligations, accrued and deferred items, as well as the earnings and expenditures of the undertakings included in the consolidated financial statements, are to be reported fully and completely in the consolidated financial statements, independently of whether they have been taken into account in the annual financial statements of these undertakings, unless the laws governing the parent undertaking stipulate that they are prohibited from inclusion on the balance sheet or that including such items on the balance sheet is optional. Reporting options permissible pursuant to the laws governing the parent undertaking may be elected in the consolidated financial statements, independently of whether they have been elected in the annual financial statements of the undertakings included in the consolidated financial statements. Values recognised as a consequence of the regulations governing credit institutions or insurance undertakings having been applied due to the specific nature of the line of business may be upheld; the notes to the consolidated financial statements are to indicate that this exemption has been applied.

### **Section 301** **Consolidation of capital**

- (1) The value recognised for the shares belonging to the parent undertaking of an undertaking included in the consolidated financial statements are set off from the amount of the equity capital of the subsidiary undertaking attributable to these shares. The equity capital is to be recognised at the amount corresponding to the fair value of the assets, debt obligations, accrued and deferred items and special items to be reported in the consolidated financial statements, which is attributable to them at the point in time relevant for the set-off pursuant to subsection (2). Provisions are to be valued pursuant to section 253 (1) sentences 2 and 3 and (2), while deferred taxes are to be valued pursuant to section 274 (2). (2) The set-off pursuant to subsection (1) is to be performed on the basis of the values recognised at the point in time at which the undertaking became a subsidiary undertaking. If it is impossible, at that point in time, to identify conclusively the valuations to be recognised, then they are to be adjusted in the course of the subsequent twelve months. Where a parent undertaking draws up consolidated financial statements for the first time, the values recognised at the time at which the subsidiary undertaking is included in the consolidated financial statements are to be taken as a basis, unless the subsidiary undertaking became a subsidiary undertaking in that year for which the consolidated financial statements are being drawn up. The same applies to instances in which a subsidiary undertaking is included in the consolidation for the first time, which inclusion had been previously waived pursuant to section 296. In exceptional cases, the values recognised pursuant to sentence 1 also may be taken as a basis in the cases governed by sentences 3 and 4; this is to be stated in the notes to the consolidated financial statements and the reasons therefor are to be provided. (3) A difference remaining after the set-off is to be shown as goodwill in the consolidated balance sheet if it is reported under assets and, if it is itemised under liabilities, then it is to be shown in the item "Difference resulting from the consolidation of capital" following the equity capital. The items as well as any material changes in relation to the preceding financial year are to be explained in the notes to the consolidated financial statements. (4) Shares in the parent undertaking belonging to an undertaking included in the consolidated financial statements are to be shown separately as a deduction in the consolidated balance sheet as own shares of the parent undertaking at their nominal value or, should no such nominal value exist, at their calculated value, in the summary column for the item "Subscribed capital."

### **Section 302** **(repealed)**

### **Section 303** **Consolidation of debt obligations**

- (1) Loans and other receivables, provisions and liabilities between the undertakings included in the consolidated financial statements as well as the corresponding accrued and deferred items are to be eliminated. (2) Subsection (1) is not required to be applied if the amounts to be eliminated are immaterial for accurately presenting the group's assets, liabilities, financial position and profit or loss in keeping with its actual circumstances.

### **Section 304** **Treatment of interim profits or losses**

- (1) Assets to be incorporated into the consolidated financial statements that are based, as a whole or in part, on deliveries or services between the undertakings included in the consolidated financial statements are to be recognised in the consolidated balance sheet in an amount at which they could be recognised in the annual balance sheet of that undertaking drawn up as per the cut-off date for the consolidated financial statements if the undertakings included in the consolidated financial statements formed one single undertaking also in legal terms.

(2) Subsection (1) is not required to be applied if the treatment of the interim profits or losses pursuant to subsection (1) is immaterial for accurately presenting the group's assets, liabilities, financial position and profit or loss in keeping with its actual circumstances.

### **Section 305**

#### **Consolidation of expenditures and earnings**

(1) The following are to be set off in the consolidated profit and loss account:

1. for the turnover, the proceeds from deliveries and services between the undertakings included in the consolidated financial statements from the expenditures attributable to them, unless they are to be shown as an increase of stocks of finished goods and work in progress or as other work performed by the undertaking for its own purposes and carried as an asset,

2. other earnings from deliveries and services between undertakings included in the consolidated financial statements from the expenditures attributable to them, unless they are to be shown as other work performed by the undertaking for its own purposes and carried as an asset.

(2) Pursuant to subsection (1), expenditures and earnings are not required to be eliminated if the amounts to be eliminated are immaterial for accurately presenting the group's assets, liabilities, financial position and profit or loss in keeping with its actual circumstances.

### **Section 306**

#### **Deferred taxes**

If measures taken in accordance with the provisions of the present Title result in differences between the values recognised under commercial law for the assets, debt obligations or accrued and deferred items and the values recognised for them for tax purposes, and if said differences are likely to narrow over the course of subsequent financial years, then the total resulting tax burden is to be recognised on the consolidated balance sheet as a deferred tax liability and the total resulting reduction of taxes is to be recognised on the consolidated balance sheet as a deferred tax asset. The resulting tax burden and the resulting tax reduction also may be recognised without a set-off being performed. Differences resulting from the fact that a difference remaining pursuant to section 301 (3) is recognised for the first time will not be taken into account. This will also apply to differences that result between the value recognised for tax purposes for a participating interest in a subsidiary undertaking, associated undertaking or a joint venture within the meaning of section 310 (1) and the value recognised under commercial law for the net assets in the consolidated financial statements. Section 274 (2) applies accordingly. The items may be combined with the items pursuant to section 274.

### **Section 307**

#### **Shares of other shareholders**

(1) An adjustment item is to be shown separately, in the item "non-controlling interests" as part of the equity capital, in the consolidated balance sheet for shares in the undertakings included in the consolidated financial statements, such shares not belonging to the parent undertaking, in order to reflect the shares of the other shareholders in the amount of the share held by them in the equity capital.

(2) The consolidated profit and loss account is to show separately the profit included in the profit / loss for the year to which other shareholders are entitled and the losses allocated to them following the item "Net income for the year / net loss for the year" in the item "non-controlling interests."

## **Title 5**

### **Valuation rules**

### **Section 308** **Uniform valuation**

(1) The assets and debt obligations of the undertakings included in the consolidated financial statements that have been incorporated in the consolidated financial statements pursuant to section 300 (2) are to be valued uniformly in accordance with the valuation methods applicable to the annual financial statements of the parent undertaking. Valuation options permissible pursuant to the laws governing the parent undertaking may be elected in the consolidated financial statements, independently of whether they have been elected in the annual financial statements of the undertakings included in the consolidated financial statements. Deviations from the valuation methods applied in drawing up the annual financial statements of the parent undertaking are to be stated in the notes to the consolidated financial statements and the reasons therefor are to be provided.

(2) If assets or debt obligations of the parent undertaking or of the subsidiary undertakings that are to be reported in the consolidated financial statements have been valued in the annual financial statements of these undertakings pursuant to methods that differ from those that are to be applied in drawing up the consolidated financial statements, or that are applied in drawing up the consolidated financial statements by the legal representatives of the parent undertaking, by way of electing valuation options, then the assets or debt obligations valued in deviation from those methods are to be re-valued in accordance with the valuation methods applied in drawing up the consolidated financial statements and are to be incorporated in the consolidated financial statements at the revalued amounts recognised for them. Values recognised as a consequence of the regulations governing credit institutions or insurance undertakings having been applied due to the specific nature of the line of business may be upheld; the notes to the consolidated financial statements are to indicate that this exemption has been applied. A uniform valuation pursuant to sentence 1 is not required to be performed if its effects are immaterial for accurately presenting the group's assets, liabilities, financial position and profit or loss in keeping with its actual circumstances. Moreover, deviations are permissible in exceptional cases; they are to be stated in the notes to the consolidated financial statements and the reasons therefor are to be provided.

(3) (repealed)

### **Section 308a** **Conversion of financial statements presented in a foreign currency**

The asset and liability items of a balance sheet presented in a foreign currency are to be converted into euros at the average spot exchange rate as given on the balance sheet date, to the exception of the equity capital, which is to be converted into euros at the historical exchange rate. The items of the profit and loss account are to be converted into euros at the average exchange rate. A resulting exchange difference is to be shown as part of the group's equity capital following the reserves in the item "Equity capital difference resulting from currency translation." Where the subsidiary undertaking leaves the group as a whole or in part, the item is to be reversed and applied against income in the corresponding amount.

### **Section 309** **Treatment of the difference**

(1) The depreciation of goodwill to be shown pursuant to section 301 (3) is determined pursuant to the provisions of Division 1.

(2) A difference that is to be shown under liabilities pursuant to section 301 (3) may be reversed and applied against income insofar as proceeding in this manner corresponds to the principles of sections 297 and 298 in conjunction with the provisions of Division 1.

## **Title 6** **Proportional consolidation**

### **Section 310** **Proportional consolidation**

(1) If a parent or subsidiary undertaking included in the consolidated financial statements manages another undertaking jointly with one or several undertakings not included in the consolidated financial statements, then that other undertaking may be included in the consolidated financial statements in proportion to the shares in its capital held by the parent undertaking.

(2) Sections 297 to 301, sections 303 to 306, 308, 308a, 309 apply accordingly to the proportional consolidation.

## **Title 7 Associated undertakings**

### **Section 311**

#### **Definition; exemption**

(1) Where an undertaking included in the consolidated financial statements substantially influences the business and financial policies of an undertaking that is not consolidated, in which the undertaking holds a participating interest pursuant to section 271 (1) (associated undertaking), this participating interest is to be shown on the consolidated balance sheet in a separate item that is designated accordingly. Influence is assumed to be substantial where an undertaking holds no less than the fifth part of the shareholder voting rights in some other undertaking.

(2) Subsection (1) and section 312 are not required to be applied to a participating interest in an associated undertaking where the participating interest is immaterial for accurately presenting the group's assets, liabilities, financial position and profit or loss in keeping with its actual circumstances.

### **Section 312**

#### **Values recognised for participating interests and treatment of the difference**

(1) A participating interest in an associated undertaking is to be recognised at book value in the consolidated balance sheet. The difference between the book value and the pro-rated equity capital of the associated undertaking, as well as any goodwill or difference shown under liabilities that may be included therein, are to be stated in the notes to the consolidated financial statements.

(2) The difference pursuant to subsection (1) sentence 2 is to be attributed to the values recognised for assets, debt obligations, accrued and deferred items and special items of the associated undertaking insofar as their fair value is higher or lower than their book value. The difference attributed pursuant to sentence 1 is to be carried, depreciated or reversed in the consolidated financial statements in accordance with the treatment of the values recognised for these assets, debt obligations, accrued and deferred items and special items in the annual financial statements of the associated undertaking. Section 309 applies accordingly to any goodwill or difference shown under liabilities that remains after the attribution pursuant to sentence 1. Section 301 (1) sentence 3 applies accordingly.

(3) The value recognised for the participating interest as well as the difference are to be identified based on the values recognised at the point in time at which the undertaking became an associated undertaking. If it is impossible conclusively to identify the valuations to be applied as per this point in time, then they are to be adjusted in the course of the subsequent twelve months. Section 301 (2) sentences 3 to 5 applies accordingly.

(4) The value recognised for a participating interest that is identified pursuant to subsection (1) is to be increased or reduced in the subsequent years by the amount of the changes to the equity capital corresponding to the shares in the capital of the associated undertaking that belong to the parent undertaking; any distributions of profits attributable to the participating interest are to be deducted. The consolidated profit and loss account is to show the profit / loss attributable to the participating interests in associated undertakings in a separate item.

(5) Where the associated undertaking applies valuation methods in its annual financial statements that deviate from those applied in the consolidated financial statements, it is



possible, for the purposes of subsections (1) to (4), to value those assets or debt obligations that have been valued differently pursuant to the valuation methods applied in the consolidated financial statements. Where the valuation is not adjusted, this is to be stated in the notes to the consolidated financial statements. Sections 304 and 306 apply accordingly, insofar as the factual circumstances material for the assessment are known or accessible.

(6) In each case, the most recent annual financial statements of the associated undertaking are to be used as a basis. Where the associated undertaking draws up consolidated financial statements, they are to serve as a basis and not the annual financial statements of the associated undertaking.

## **Title 8**

### **Notes to the consolidated financial statements**

#### **Section 313**

##### **Explanation of the consolidated balance sheet and of the consolidated profit and loss account. Information on possession of participating interests**

(1) That information is to be reported in the notes to the consolidated financial statements that is mandatorily to be provided for the individual items of the consolidated balance sheet or of the consolidated profit and loss account; this information is to be presented in the sequence of the individual items of the consolidated balance sheet and of the consolidated profit and loss account. Moreover, that information is to be provided in the notes to the consolidated financial statements that was not reported in the consolidated balance sheet or in the consolidated profit and loss account due to a certain reporting option having been elected. The notes to the consolidated financial statements must

1. state the accounting and valuation methods applied to the items of the consolidated balance sheet and of the consolidated profit and loss account;
2. state the deviations from accounting, valuation and consolidation methods and provide the reasons therefor; their influence on the assets, liabilities, financial position and profit or loss of the group is to be presented separately.

(2) Furthermore, the notes to the consolidated financial statements are to state the following:

1. the names and seats of the undertakings included in the consolidated financial statements, the share held in the subsidiary undertakings' capital by the parent undertaking and by the subsidiary undertakings included in the consolidated financial statements or held by a person acting for the account of these undertakings, as well as the factual circumstances mandating the undertakings' inclusion in the consolidated financial statements, insofar as such inclusion is not based on the majority of the voting rights corresponding to the participating capital interest. Such information is to be provided also for subsidiary undertakings that have not been included pursuant to section 296;
2. the names and seats of the associated undertakings, the share held in the associated undertakings' capital by the parent undertaking and by the subsidiary undertakings included in the consolidated financial statements or held by a person acting for the account of these undertakings. If section 311 (2) applies, then this is to be stated in each case and the reasons therefor are to be provided;
3. the names and seats of the undertakings only proportionally consolidated pursuant to section 310, the factual circumstances on which the application of this regulation is based, as well as the share in these undertakings' capital held by the parent undertaking and by the subsidiary undertakings included in the consolidated financial statements or held by a person acting for the account of these undertakings;
4. the names and seats of other undertakings, the amount of the share held in the capital, the equity capital and the profit / loss of these undertakings for that financial year

for which annual financial statements are most recently available, insofar as they concern participating interests within the meaning of section 271 (1) or insofar as such a share is held by a person acting for the account of the parent undertaking or some other undertaking included in the consolidated financial statements;

5. all participating interests in large share capital companies that are not to be listed pursuant to nos. 1 to 4 that comprise more than 5 per cent of the voting rights, if they are held by a parent undertaking listed on the stock exchange, subsidiary undertaking listed on the stock exchange or by a person acting for the account of one of these undertakings;

6. the names, seats and legal forms of the undertakings of which the parent undertaking is a shareholder having unlimited liability, or some other undertaking included in the consolidated financial statements;

7. the name and seat of the undertaking drawing up the consolidated financial statements for the largest body of undertakings to which the parent undertaking belongs as a subsidiary undertaking, and, in the event of the consolidated financial statements drawn up by said other parent undertaking being disclosed, the location at which they are available;

8. the name and seat of the undertaking drawing up the consolidated financial statements for the smallest body of undertakings to which the parent undertaking belongs as a subsidiary undertaking, and, in the event of the consolidated financial statements drawn up by said other parent undertaking being disclosed, the location at which they are available.

(3) The information called for in subsection (2) is not required to be provided insofar as, when assessed exercising reasonable business judgment, it is to be assumed as highly likely that the information will be seriously prejudicial to the parent undertaking, a subsidiary undertaking or some other undertaking designated in subsection (2). If the exemption is applied, then this is to be stated in the notes to the consolidated financial statements. Sentence 1 does not apply if a parent undertaking or one of its subsidiary undertakings is publicly traded within the meaning of section 264d. The information pursuant to subsection (2) nos. 4 and 5 is not required to be provided if it is immaterial for accurately presenting the group's assets, liabilities, financial position and profit or loss in keeping with its actual circumstances. The duty to state the equity capital and profit or loss pursuant to subsection (2) no. 4 is not required to be complied with also in those cases in which the undertaking in which a participating interest is held does not disclose its annual financial statements.

(4) Section 284 subsection (2) no. 4 and subsection (3) applies accordingly.

## **Section 314**

### **Other mandatory disclosures**

(1) Furthermore, the notes to the consolidated financial statements are to state:

1. the total amount of the liabilities reported in the consolidated balance sheet having a remaining term of more than five years, as well as the total amount of the liabilities reported in the consolidated balance sheet that have been secured by the undertaking included in the consolidated financial statements by liens or similar rights, along with the nature and form of the collateral;

2. the nature and purpose as well as the risks, advantages and financial effects of transactions entered into by the parent undertaking and by the subsidiary undertakings included in the consolidated financial statements, such transactions not having been reported on the consolidated balance sheet, insofar as the risks and advantages are material and this disclosure is necessary in order to assess the financial position of the group;

2a. the total amount of the other financial obligations not included on the consolidated balance sheet that are not to be stated pursuant to section 298 (1) read in conjunction with section 268 (7) or pursuant to no. 2, provided this information is relevant for the assessment of the group's financial position; of these the amounts for the obligations relating to the old-age pension scheme and the obligations vis-à-vis subsidiary undertakings that are not included in the consolidated financial statements, or vis-à-vis associated undertakings are to be stated separately in each case.

3. the turnover of the group, broken down by business fields as well as by geographically defined markets, insofar as, given the manner in which the sale, letting or lease-out of products and the provision of services by the group are organised, the business fields and geographically defined markets are significantly distinct from one another;

4. the average number, in the course of the financial year, of employees of the undertakings included in the consolidated financial statements, broken down by groups and shown separately for the undertakings only proportionally consolidated pursuant to section 310, as well as the total staff costs for the financial year, unless they have been reported separately in the consolidated profit and loss account, broken down by wages and salaries, costs of social security and costs of the old-age pension scheme;

5. (repealed)

6. for the members of the management body, of a supervisory board, of an advisory council or of a similar institution of the parent undertaking, in each case broken down for each group of persons:

a) the aggregate amount of emoluments granted in the financial year in return for the performance of their duties in the parent undertaking and the subsidiary undertakings (salaries, shares in the undertaking's profits, subscription rights and other remuneration in accordance with a share-based remuneration scheme, expense allowances, payments made under insurance policies, commissions and fringe benefits of any kind). Those emoluments are also to be included in calculating the aggregate amount of emoluments that are not disbursed and instead are converted into entitlements of a different nature or that serve to increase other entitlements. In addition to the emoluments for the financial year, those further emoluments are to be stated that were granted in the course of the financial year but that thus far have not been reported in any of the consolidated financial statements. Subscription rights and other remuneration under a share-based remuneration scheme are to be stated, including their number and their fair value as at the time at which they were granted; any subsequent changes in value are to be taken into account where they result from an amendment to the conditions of exercise.

b) the aggregate amount of emoluments (severance payments, pensions, survivors' pensions and benefits of a related nature) granted to the former members of the bodies designated and of their survivors for the performance of their duties in the parent undertaking and the subsidiary undertakings; letter (a) sentences 2 and 3 applies accordingly. Furthermore, the amount of the provisions formed for the ongoing pensions payable to this group of persons and for their accrued pension rights, as well as the amount of the provisions not formed for these obligations, are to be stated;

c) the advances and loans granted by the parent undertaking and the subsidiary undertakings, along with any amounts, as the case may be, that have been repaid, written off or waived in the course of the financial year, as well as

the contingent liabilities and commitments entered into for the benefit of these persons;

7. the inventory of shares of stock in the parent undertaking that the parent undertaking or a subsidiary undertaking or some other party has acquired or accepted in pledge for the account of an undertaking included in the consolidated financial statements; in this context, the number of these shares of stock and their nominal amount or calculated value as well as the portion of the share capital they represent are to be stated;

7a. the number of the shares of each class of stock making up the stock of the parent undertaking subscribed in the course of the financial year as part of the authorised capital, in which context the nominal amount is to be stated for par-value shares and the calculated value is to be stated individually for each no-par value share;

7b. the existence of profit-participation certificates, convertible bonds, warrants, options or comparable securities or rights obligating the parent undertaking, along with their number and the rights they confer;

8. for each of the undertakings listed on the stock exchange included in the consolidated financial statements, that the declaration stipulated by section 161 of the Stock Corporation Act has been made and where it has been made publicly available;

9. the total fee charged by the statutory auditor of the consolidated financial statements for the financial year, broken down by the fees for

- a) the services for auditing the financial statements,
- b) other audit-related services,
- c) tax consultancy services,
- d) other services;

10. for financial instruments forming part of the financial assets (section 266 (2) A. III.), which are shown at a value above their fair value since no unscheduled depreciation pursuant to section 253 (3) sentence 6 was performed:

- a) the book value and the fair value of the individual assets or of appropriate groupings of such assets, as well as
- b) the reasons for not performing the depreciation, including the factors indicating that the reduction in value likely will not be permanent;

11. for each class of derivative financial instruments not reported at fair value on the balance sheet:

- a) their nature and extent,
- b) their fair value, insofar as it is possible to reliably identify it pursuant to section 255 (4), along with the valuation method applied,
- c) their book value and the balance sheet item in which the book value, if any, has been recorded, as well as
- d) the reasons for which it is impossible to determine the fair value;

12. for financial instruments valued at fair value:

- a) the assumptions underlying the determination of the fair value with the aid of generally accepted valuation methods, as well as

b) for each class of derivative financial instruments, information about the scope and the nature of the instruments, including the material terms and conditions that may affect the amount, timing and certainty of future payment flows;

13. at a minimum, the transactions that have been concluded at other than standard market terms by the parent undertaking and its subsidiary undertakings, insofar as such transactions are material, with related undertakings and persons, including information about the nature of the related-party relationship, the amount of the transactions, as well as further information necessary to gain an understanding of the financial position of the group; transactions are exempt that are concluded between related undertakings included in consolidated financial statements if these transactions are left out in the consolidation; information about individual transactions may be aggregated according to their nature except where separate information is necessary to gain an understanding of the effects that related-party transactions have on the financial position of the group;

14. where they are shown as an asset pursuant to section 248 (2), the total amount of the research and development costs incurred for the financial year by the undertakings included in the consolidated financial statements, with a separate indication of the amount attributable to the intangible assets created by the undertaking itself and forming part of the fixed assets;

15. in the case of section 254 being applied in drawing up the consolidated financial statements,

- a) the amount at which assets, debt obligations, pending transactions and transactions expected to materialise with a high degree of likelihood, respectively, have been included in items combined for valuation purposes (stating the kinds of items) in order to hedge against risks (stating the risks), as well as the amount of the risks hedged against by the items combined for valuation purposes,
- b) for each of the risks hedged against: why, to which extent and for which period the contrary changes in value or contrary payment flows are likely to offset each other in future, including the method used to determine this,
- c) an explanation of the transactions expected to materialise with a high degree of likelihood that have been included in items combined for valuation purposes,

insofar as this information has not been provided in the consolidated management report;

16. as regards the provisions for pensions and similar obligations reported in the consolidated financial statements: the actuarial calculation method used as well as the assumptions underlying the calculation such as the interest rate, expected wage and salary increases and the mortality tables on which they are based;

17. in the event of assets and debt obligations reported in the consolidated balance sheet having been set off against each other pursuant to section 246 (2) sentence 2: the cost of acquisition and the fair value of the assets set off, the value of the performance of the obligation set off, as well as the expenditures and earnings set off; no. 12 (a) applies accordingly;

18. as regards shares in special investment funds within the meaning of section 1 (10) of the Investment Code, or as regards non-voting shares of stock in open-ended investment stock corporations with variable capital within the meaning of sections 108 to 123 of the Investment Code, or in comparable EU investment funds or comparable foreign investment funds, such shares being reported in the consolidated balance sheet and comprising more than one tenth of said funds, broken down by the investment

objectives: their value within the meaning of sections 168, 278 or 286 (1) of the Investment Code or of comparable foreign regulations governing the determination of the market value, the difference to the book value and the dividend paid out for the financial year, as well as restrictions of the possibility to effect returns on a daily basis; moreover, the reasons for not performing the depreciation pursuant to section 253 (3) sentence 6 including the factors indicating that the value impairment likely will not be permanent; inasmuch, no. 10 does not apply;

19. for liabilities and contingent liabilities and commitments shown in the notes to the consolidated financial statements pursuant to section 268 (7): the reasons underlying the estimation of the risk of their being asserted;

20. in each case, an explanation of the period of time over which goodwill acquired against consideration is depreciated;

21. the differences or tax loss carryforwards on which the deferred taxes are based and the tax rates used to perform the valuation;

22. where a provision for deferred tax is recognised on the consolidated balance sheet, the deferred tax balances at the end of the financial year and the changes in those balances during the financial year;

23. in each case, the amount and the nature of the individual earnings and expenditures of exceptional scope or exceptional significance, insofar as the amounts are not immaterial;

24. an explanation of the individual earnings and expenditures as concerns their amount and their nature, which are to be allocated to a different financial year of the group, insofar as the amounts are not immaterial for purposes of gaining an understanding of the group's assets, liabilities, financial position and profit or loss;

25. important events that have occurred after the close of the financial year of the group and have not been taken into account either in the group's profit and loss account or in the consolidated balance sheet, along with their nature and their financial effects;

26. the proposal for the appropriation of the profit / treatment of loss of the parent undertaking or, as the case may be, the resolution as to the appropriation of the profit / treatment of loss of the parent undertaking.

(2) Parent undertakings supplementing the consolidated financial statements by segment reporting (section 297 (1) sentence 2) are exempt from the duty to provide information pursuant to subsection (1) no. 3.

(3) Section 286 (4) applies accordingly to the duty to provide information pursuant to subsection (1) no. 6 (a) and (b).

## **Title 9 Consolidated management report**

### **Section 315 Content of the consolidated management report**

(1) The consolidated management report is to present accurately the business development, including the business performance of the group and its position, in keeping with its actual circumstances. It is to include a balanced and comprehensive analysis of the business development of the group and of its position, consistent with the scope and complexity of its business operations. The analysis is to include the key financial performance indicators most relevant to the business operations and is to provide an explanation for them with reference to the amounts shown and information provided in the consolidated financial statements. Furthermore, the consolidated management report is to assess the group's likely future

development as well as the material opportunities and risks it faces and is to provide an explanation therefor; any assumptions on which this assessment is based are to be stated. The members of the representative body of a parent undertaking that issues securities (section 2 (1) of the Securities Trading Act (*Wertpapierhandelsgesetz*) as a domestic issuer (section 2 (14) of the Securities Trading Act) and that is not a share capital company within the meaning of section 327a are to give an assurance in a written declaration to be attached to the consolidated management report that, to the best of their knowledge, the consolidated management report accurately presents the group's business development including its business performance as well as its position in keeping with its actual circumstances and that the material opportunities and risks within the meaning of sentence 4 have been described.

(2) The consolidated management report also is to give an indication of:

1.
  - a) the group's risk management objectives and methods, including the methods used for hedging each major type of transaction for which hedge accounting is used, as well as
  - b) the group's exposure to price risk, credit risk and liquidity risk as well as cash flow risk,

in each case with regard to the group's use of financial instruments and where material for the assessment of its position or its likely future development;

2. the group's activities in the field of research and development; and
3. the branch offices of the undertakings collectively included in the consolidated financial statements that are material for the purpose of gaining an understanding of the group's position.

Where the parent undertaking is a stock corporation, it is to refer in its consolidated management report to the information to be provided in the notes pursuant to section 160 (1) no. 2 of the Stock Corporation Act.

(3) Subsection (1) sentence 3 applies accordingly to non-financial performance indicators such as information relating to environmental and employee matters, insofar as this is relevant for understanding the group's development or its position.

(4) Where the parent undertaking or a subsidiary undertaking included in the consolidated financial statements is publicly traded within the meaning of section 264d, the consolidated management report also is to address the principal characteristics of the internal control process and the internal risk management system with regard to the group's financial reporting process.

(5) Section 298 (2) on the combination of the notes to the consolidated financial statements with the notes applies accordingly.

### **Section 315a**

#### **Supplementary provisions for certain stock corporations and public partly limited partnerships**

Parent undertakings (section 290) taking recourse to an organised market within the meaning of section 2 (7) of the Securities Acquisition and Takeover Act (*Wertpapiererwerbs- und Übernahmegesetz*), by way of shares of stock with voting rights they have issued, furthermore are to state the following in the consolidated management report:

1. the composition of the subscribed capital, separately showing the rights and duties that each class entails as well as the proportion of the capital held;

2. restrictions on voting rights or on the transfer of shares of stock, also as may result from agreements made among shareholders, insofar as the company's board of management is aware of them;
3. direct or indirect participating interests in the capital that comprise more than ten per cent of the voting rights;
4. the holders of shares of stock endowed with special rights granting powers of control and a description of such special rights;
5. the nature of the voting control if employees hold a share in the capital and do not directly exercise their rights of control;
6. the stipulations of the law and of the statutes regarding the appointment of the members of the board of management and their removal from office, as well as the stipulations regarding amendments to the statutes;
7. the powers of the board of management, in particular as regards the possibility of issuing shares of stock or repurchasing them;
8. material agreements of the parent undertaking that are subject to a change of control clause in the event of a takeover bid and the effects resulting therefrom;
9. compensation agreements the parent undertaking has concluded with the members of the board of management or with employees for the case of a takeover bid.

The information called for by sentence 1, nos. 1, 3 and 9, may be omitted insofar as it is to be provided in the notes to the consolidated financial statements. Where information called for by sentence 1 is to be provided in the notes to the consolidated financial statements, a reference thereto will be included in the consolidated management report. The information called for by sentence 1 no. 8 may be omitted insofar as it is suited to be seriously prejudicial to the parent undertaking; the duty to provide information pursuant to other stipulations of the law remains unaffected.

#### **Section 315b**

##### **Obligation to draw up a consolidated non-financial statement; exemption**

(1) A share capital company that is a parent undertaking (section 290) is to supplement its consolidated management report by a consolidated non-financial statement if it fulfils the following criteria:

1. the share capital company is publicly traded within the meaning of section 264d,
2. the following applies to the undertakings to be included in the consolidated financial statements:
  - a) they do not meet the pre-requisites for an exemption stipulated by section 293 (1) sentence 1 no. 1 or 2 based on the size of the undertaking, and
  - b) they employ, in the aggregate, more than 500 employees (average for the year).

Section 267 (4) to (5) as well as section 298 (2) apply accordingly. Where the consolidated non-financial statement constitutes a separate chapter of the consolidated management report, the share capital company may refer to the non-financial information set out elsewhere in the consolidated management report.

(2) A parent undertaking within the meaning of subsection (1) is exempted from the obligation to supplement its consolidated management report by a consolidated non-financial statement, notwithstanding other exemption regulations, in those cases in which



1. the parent undertaking concurrently is a subsidiary undertaking that is included in the consolidated management report of some other parent undertaking, and
2. the consolidated management report pursuant to no. 1 is drawn up subject to the stipulations of the domestic laws of a Member State of the European Union or of some other state party to the Agreement creating the European Economic Area in conformity with Directive 2013/34/EU and includes a consolidated non-financial statement.

Sentence 1 applies accordingly to those cases in which the other parent undertaking within the meaning of sentence 1 draws up, and makes publicly available, a separate consolidated non-financial report pursuant to subsection (3) or subject to the stipulations of the domestic laws of a Member State of the European Union or of some other state party to the Agreement creating the European Economic Area in conformity with Directive 2013/34/EU. Where a parent undertaking is exempt, pursuant to the sentence 1 or 2, from the obligation to draw up a consolidated non-financial statement, it is to indicate this fact in its consolidated management report, along with an explanation of which other parent undertaking is making publicly available the consolidated management report or the separate consolidated non-financial report and where the report has been disclosed or published in German or in English.

(3) A parent undertaking within the meaning of subsection (1) is exempt from the obligation to supplement its consolidated management report by a consolidated non-financial statement also in those cases in which the parent undertaking draws up, for the same financial year, a separate consolidated non-financial report outside of its consolidated management report and in which the following pre-requisites are met:

1. the separate consolidated non-financial report at a minimum meets the requirements concerning its content stipulated by section 315c read in conjunction with section 289c, and
2. the parent undertaking makes publicly available the separate consolidated non-financial report by
  - a) disclosing it together with the consolidated management report pursuant to section 325, or by
  - b) publishing it on the parent undertaking's website no later than four months after the balance sheet date and for at least ten years, if the consolidated management report refers to this publication and cites the website.

Subsection (1) sentence 3, sections 289d and 289e as well as section 298 (2) apply accordingly to the separate consolidated non-financial report.

(4) Where the consolidated non-financial declaration or the separate consolidated non-financial report has been checked in terms of its substance, the assessment of the result obtained by said check is to be made publicly available in the same manner as the consolidated non-financial declaration or the separate consolidated non-financial report.

### **Section 315c**

#### **Content of the consolidated non-financial statement**

- (1) Section 289c applies accordingly to the content of the consolidated non-financial statement.
- (2) Section 289c (3) applies with the proviso of that information having to be provided that is necessary for an understanding of the group's business development, performance, position and impact of its activity on the aspects set out in section 289c (2).
- (3) Sections 289d and 289e apply accordingly.

### **Section 315d**

#### **Consolidated corporate governance statement**

A parent undertaking that is a company within the meaning of section 289f (1) or (3) is to draw up a corporate governance statement behalf of the group and is to include this as a separate section in the consolidated management report. Section 289f applies accordingly.

**Title 10**  
**Consolidated financial statements in accordance with international accounting standards**

**Section 315e**

(1) Where a parent undertaking that is to draw up consolidated financial statements under the provisions of Title 1 is under obligation, pursuant to Article 4 of the Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002, as amended, to apply the international accounting standards adopted pursuant to Articles 2, 3 and 6 of said Regulation, the sole provisions of Titles 2 to 8 having application will be section 294 (3), section 297 (1a) and (2) sentence 4, section 298 (1), the latter, however, only read in conjunction with sections 244 and 245, furthermore section 313 (2) and (3), section 314 (1) nos. 4, 6, 8 and 9 and (3) as well as the provisions of Title 9 and the regulations established outside of this Subdivision that govern consolidated financial statements or the consolidated management report.

(2) Parent undertakings that are not governed by subsection (1) are to draw up their consolidated financial statements pursuant to the international accounting standards and regulations set out therein if, up until the respective balance sheet date, an application has been filed domestically on their behalf for the admission of a security within the meaning of section 2 (1) of the Securities Trading Act to trading on an organised market within the meaning of section 2 (11) of the Securities Trading Act.

(3) Parent undertakings that are not governed by subsection (1) or (2) may draw up their consolidated financial statements pursuant to the international accounting standards and regulations set out in subsection (1). An undertaking electing this reporting option is to follow, fully and completely, the standards set out in subsection (1).

**Subdivision 3**  
**Audit**

**Section 316**  
**Duty to audit**

(1) The annual financial statements and the management report of share capital companies that are not small share capital companies within the meaning of section 267 (1) are to be audited by a statutory auditor. Where no audit has been performed, the annual financial statements cannot be adopted.

(2) The consolidated financial statements and the consolidated management report of share capital companies are to be audited by a statutory auditor. Where no audit has been performed, it will not be possible to approve the consolidated financial statements.

(3) Where the annual financial statements, the consolidated financial statements, the management report or the consolidated management report are amended after the auditor's additional report has been submitted, the statutory auditor is to audit these documents once again insofar as the amendment so requires. A report is to be prepared on the result of the audit; the audit report is to be supplemented accordingly. Sentences 1 and 2 apply accordingly to that reproduction of the annual financial statements, the management report, the consolidated financial statements and the consolidated management report that a share capital company issuing securities (section 2 (1) of the Securities Trading Act (*Wertpapierhandelsgesetz*) as a domestic issuer (section 2 (14) of the Securities Trading Act), which is not a share capital company within the meaning of section 327a, has prepared for disclosure purposes.

**Section 316a**  
**Audit of public-interest entities**

The provisions of this Subdivision apply to the statutory audit of share capital companies that are public-interest entities only insofar as Regulation (EU) No 537/2014 of the European Parliament and of the Council of 16 April 2014 on specific requirements regarding statutory audit of public-interest entities and repealing Commission Decision 2005/909/EC (OJ L 158 of 27 May 2014, p. 77, L 170 of 11 June 2014, p. 66) applies. Public-interest entities are undertakings that are

1. publicly traded within the meaning of section 264d,
2. CRR credit institutions within the meaning of section 1 (3d) sentence 1 of the Banking Act (*Kreditwesengesetz*), to the exception of those institutions listed in section 2 (1) nos. 1 and 2 of the Banking Act, and in Article 2 paragraph (5) no. 5 of Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176 of 27 June 2013, p. 338, L 208 of 2 August 2013, p. 73; L 20 of 25 January 2017, p. 1; L 203 of 26 June 2020, p. 95) last amended by Directive (EU) 2019/2034 (OJ L 314 of 5 December 2019, p.64), or
3. an insurance undertaking within the meaning of Article 2 paragraph (1) of Council Directive 91/674/EEC.

### **Section 317**

#### **Subject matter and scope of the audit**

(1) The audit of the annual financial statements is to include an audit of the bookkeeping. The scope of the audit of the annual financial statements and of the consolidated financial statements is to cover compliance with the statutory requirements, as well as the provisions complementing them that are stipulated by the articles of incorporation or statutes. The audit is to be structured such that any instances in which the reporting is incorrect or in which the stipulations of sentence 2 are violated, such that the presentation of the share capital company's assets, liabilities, financial position and profit or loss resulting from section 264 (2) is significantly affected, will be recognised assuming professional due diligence is applied.

(2) The management report and the consolidated management report are to be audited with a view to establishing whether the management report is consistent with the annual financial statements, as the case may be also with the standalone financial statements pursuant to section 325 (2a), and whether the consolidated management report is consistent with the consolidated financial statements, as well as with the findings made by the statutory auditor in the course of the auditor's audit, and whether the management report accurately presents, as a whole, the position of the share capital company and whether the consolidated management report accurately presents, as a whole, the position of the group. In this context, the audit also is to address whether the opportunities and risks that may result from future developments have been presented accurately. The scope of the audit of the management report and of the consolidated management report also is to cover compliance with the statutory requirements that govern the drawing-up of management reports or of consolidated management reports. As concerns the requirements stipulated by sections 289b to 289e and sections 315b and 315c, all that is to be audited is whether the non-financial statement or the separate non-financial report, the consolidated non-financial statement or the separate consolidated non-financial report has been submitted. In the case governed by section 289b (3) sentence 1 no. 2 (b), a supplementary audit is to be performed by the same statutory auditor four months after the balance sheet date in order to establish whether the separate non-financial report or the separate consolidated non-financial report has been submitted; section 316 (3) sentence 2 applies accordingly, with the proviso that the audit report is to be supplemented only if the separate non-financial report or the separate consolidated non-financial report has not been so submitted within four months of the

balance sheet date. The audit of the information provided pursuant to section 289f (2) and (5) as well as section 315d is to be restricted to establishing whether this information has been provided.

(3) The statutory auditor of the consolidated financial statements also is to audit the annual financial statements combined in the consolidated financial statements, in particular the adjustments entailed by the consolidation, by way of applying subsection (1) accordingly. Where such annual financial statements have been audited by a different statutory auditor, the statutory auditor of the consolidated financial statements is to verify the work done by that other auditor and is to document this review.

(3a) In the case of a share capital company that issues securities (section 2 (1) of the Securities Trading Act (*Wertpapierhandelsgesetz*) as a domestic issuer (section 2 (14) of the Securities Trading Act) and that is not a share capital company within the meaning of section 327a, the statutory auditor also is to assess in the context of the audit whether the reproduction of the annual financial statements prepared for disclosure purposes and the reproduction of the management report prepared for disclosure purposes comply with the requirements of section 328 (1). In the case of a share capital company within the meaning of sentence 1, the statutory auditor of the consolidated financial statements also is to assess in the context of the audit whether the reproduction of the consolidated financial statements prepared for disclosure purposes and the reproduction of the consolidated management report prepared for disclosure purposes comply with the requirements of section 328 (1).

(4) In the case of a stock corporation listed on the stock exchange, moreover, it is to be assessed in the context of the audit whether the board of management has taken the measures incumbent on it pursuant to section 91 (2) of the Stock Corporation Act in suitable form and whether the monitoring system to be instituted accordingly is suited to fulfil its task.

(4a) Unless provided for otherwise, the scope of the audit is not to cover an assurance as to the future viability of the share capital company so audited or as to the effectiveness or efficiency with which the management has conducted its affairs.

(5) In performing an audit, the statutory auditor is to apply those international auditing standards that the European Commission has adopted in the procedure pursuant to Article 26 (3) of Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC (OJ L 157 p. 87), which was last amended by Directive 2014/56/EU (OJ L 158 of 27 May 2014, p. 196).

(6) The Federal Ministry of Justice and Consumer Protection is authorised to determine, by way of statutory instrument issued in agreement with the Federal Ministry for Economic Affairs and Energy that is not subject to approval by the Bundesrat, further requirements for statutory audits in addition to the international auditing standards to be applied in performing the statutory audit pursuant to subsection (5) where this is called for by the scope of the statutory audit and serves the objectives of the audit set out in subsections (1) to (4).

### **Section 318**

#### **Appointment of the statutory auditor; removal from office**

(1) The shareholders of an undertaking elect the statutory auditor of the annual financial statements; the shareholders of the parent undertaking elect the statutory auditor of the consolidated financial statements. In the case of limited liability companies and of general partnerships and partly limited partnerships within the meaning of section 264a (1), the articles of incorporation may determine otherwise. In each case, the statutory auditor is to be elected, as a rule, prior to expiry of that financial year that is covered by the scope of the audit activity. The legal representatives are to award the contract without undue delay following such election; where the supervisory board is competent, the supervisory board will do so. It is possible to withdraw from the audit contract only if another auditor has been appointed pursuant to subsection (3).

(1a) Any agreement restricting the choice pursuant to subsection (1) to particular categories or lists of auditors or audit firms is null and void.

(2) Unless some other auditor is appointed, that auditor is considered to have been appointed as the statutory auditor of the consolidated financial statements who has been engaged for the audit of the annual financial statements of the parent undertaking included in the consolidated financial statements. Where the consolidation is based on interim financial statements, then unless some other auditor is appointed, that auditor is considered to have been appointed as the statutory auditor who had been engaged for the audit of the annual financial statements of the parent undertaking drawn up before the most recent cut-off date for the consolidated financial statements.

(3) Upon a corresponding petition being filed by the legal representatives, by the supervisory board or by shareholders, whose shares collectively make up one twentieth of the voting rights or of the subscribed capital or have a market value of 500,000 euros at the time of the petition, the court is to appoint a different statutory auditor after hearing the parties involved and the auditor appointed if

1. this seems to be mandated by a reason given in the person of the auditor elected, in particular if one of the preclusion criteria pursuant to section 319 (2) to (5) or pursuant to section 319b is given or if Article 5 paragraph (4) subparagraph 1 sentence 1 or paragraph (5) subparagraph 2 sentence 2 of Regulation (EU) No 537/2014 has been violated, or if

2. the regulations governing the appointment of the auditor pursuant to Article 16 of Regulation (EU) No 537/2014 or the regulations governing the audit engagement pursuant to Article 17 of Regulation (EU) No 527/2014 have not been complied with.

The petition is to be filed within two weeks following the day of the statutory auditor's election; stockholders may file such a petition only if they have raised their objection to the auditor's election at the time the resolution was adopted. Where grounds for appointing a different statutory auditor than the auditor elected become known only after the auditor's election, or where such grounds arise only after the auditor's election, the petition is to be filed within two weeks following the day on which the party entitled to file the petition became aware of the circumstances giving rise to the petition, or ought to have become aware of them barring gross negligence. Where stockholders file the petition, they are to demonstrate to the satisfaction of the court that they have been holding the shares of stock for at least three months prior to the date on which the statutory auditor was elected. A declaration made in lieu of an oath before a notary will suffice for the purpose of such demonstration to the satisfaction of the court. Where the company is subject to supervision by the state, the supervisory authority also may file the petition. The petition no longer may be filed after the audit report has been submitted, and in the case of a supplementary audit pursuant to section 316 (3), it may no longer be filed once the audit report has been supplemented. A complaint may be lodged against the decision taken.

(4) Where, by the expiry of the financial year, no statutory auditor has been elected, the court is to appoint the statutory auditor upon a corresponding petition having been filed by the legal representatives, the supervisory board or by a shareholder. This also will apply if a statutory auditor who has been elected has refused to accept the audit engagement, has ceased to be available or is prevented from concluding the audit in due time and no other statutory auditor has been elected. The legal representatives are under obligation to file the petition. A complaint may be lodged against the decision taken by the court; the appointment of the statutory auditor is incontestable.

(5) The court-appointed statutory auditor is entitled to claim reimbursement of his or her reasonable cash expenses and to remuneration for his or her activity. The court determines the expenses and the remuneration. A complaint may be lodged against the decision taken by the court; a complaint on points of law is precluded. Once the court's decision has

become final and unappealable, compulsory enforcement may be pursued under the Code of Civil Procedure.

(6) Once a statutory auditor has accepted an audit engagement, the statutory auditor may terminate it solely for grave cause. Grave cause will not be deemed given in the case of differences of opinion regarding the content of the audit report, as well as regarding the issuance of a qualified or adverse opinion. The reasons for the termination are to be stated in writing. The statutory auditor is to report on the result of his or her audit up to that point; section 321 applies accordingly.

(7) Where the statutory auditor terminates the audit contract pursuant to subsection (6), the legal representatives are to notify the supervisory board, the next upcoming general meeting or, in the case of limited liability companies, the shareholders of this fact. The legal representatives are to submit the report of the statutory auditor thus far mandated to the supervisory board and are to do so without undue delay. Each of the supervisory board members is entitled to obtain knowledge of the report. The report is to be handed over to each member of the supervisory board or, insofar as the supervisory board has so resolved, to the members of a committee. Where the supervisory board has engaged the statutory auditor, the duties of the legal representatives will be incumbent on the supervisory board, including the duty to notify the legal representatives.

(8) The statutory auditor and the legal representatives of the audited company are to notify the Chamber of Public Accountants without undue delay and in writing of the fact that the audit contract has been terminated or revoked, stating the reasons therefor.

### **Section 319**

#### **Selection of the auditors and preclusion criteria**

(1) Auditors and audit firms may be statutory auditors. Also, certified accountants and accountancy companies may serve as the statutory auditors of the annual financial statements and management reports of medium-sized limited liability companies (section 267 (2)) or of medium-sized commercial partnerships within the meaning of section 264a (1). The statutory auditors pursuant to sentences 1 and 2 must have available an excerpt from the professional register showing that the entry pursuant to section 38 no. 1 (h) or no. 2 (f) of the Act on the Profession of Auditors has been made; statutory auditors performing, for the first time, a statutory audit mandated by law pursuant to section 316 of the Commercial Code (*Handelsgesetzbuch*) must have available the excerpt from the professional register no later than six weeks after having accepted an audit engagement. The statutory auditors are under obligation to notify the company without undue delay of any cancellation of the entry made while the statutory audit is ongoing.

(2) An auditor or certified accountant is precluded from serving as statutory auditor if grounds are given, these being in particular relations of a business, financial or personal nature, in the course of the financial year as per the close of which the annual financial statements are being drawn up that are to be audited, or while the statutory audit is being performed, which give rise to the fear of bias.

(3) An auditor or a certified accountant will be precluded from performing a statutory audit in particular if the auditor or certified account or a person with whom the auditor or certified accountant jointly practices their profession

1. holds shares or has financial interests in the share capital company that is to be audited that are greater than negligible, or holds a participating interest in an undertaking that is affiliated with the share capital company to be audited or that owns more than twenty per cent of the shares therein;

2. is a statutory representative, member of the supervisory board or employee of the share capital company to be audited or of an undertaking that is affiliated with the share capital company to be audited or that owns more than twenty per cent of the shares therein;

3. has provided any of the following, above and beyond the audit activity, to the share capital company to be audited or on its behalf, in the course of the financial year to be audited or prior to the issuance of the audit report:

- a) assistance with keeping the books or drawing up the annual financial statements to be audited,
- b) assistance in performing internal audit tasks in a position of responsibility,
- c) services in the context of managing the undertaking or financial services, or
- d) independent actuarial or valuation services that have effects on the annual financial statements to be audited to a greater than negligible degree,

in each case provided that these activities are not immaterial; this will apply also if one of these activities was pursued for the share capital company to be audited in which the auditor or certified accountant is a statutory representative, employee, member of the supervisory board or a shareholder whose voting rights comprise more than twenty per cent of the voting rights to which shareholders are entitled;

4. employs a person in performing the audit who is not permitted to serve as statutory auditor pursuant to no. 1 to 3;

5. has earned, in the course of the last five years, more than thirty per cent of the total revenue generated by his or her professional activities in each respective year from the share capital company to be audited and from undertakings in which the share capital company to be audited holds more than twenty per cent of the shares, and this is to be expected also for the current financial year; in order to prevent undue hardships from arising, the Chamber of Public Accountants may grant exemptions for a limited period of time.

This will apply also if the spouse or life partner meets one of the preclusion criteria pursuant to sentence 1 no. 1, 2 or 3.

(4) Audit firms and accountancy companies are precluded from performing the statutory audit if they themselves, one of their legal representatives, a shareholder whose voting rights comprise more than twenty per cent of the voting rights to which shareholders are entitled, an affiliated undertaking, a shareholder employed for the audit in a position of responsibility or some other person they have employed who have the ability to influence the result of the audit are/is precluded pursuant to subsection (2) or (3). Sentence 1 will apply also if a member of the supervisory board is precluded pursuant to subsection (3) sentence 1 no. 2 or if several shareholders whose voting rights, taken together, comprise more than twenty per cent of the voting rights to which shareholders are entitled, are precluded either each of them individually or collectively pursuant to subsection (2) or (3).

(5) Subsection (1) sentence 3 as well as subsections (2) to (4) apply accordingly to the statutory auditor of the consolidated financial statements.

#### **Section 319a (repealed)**

#### **Section 319b Network**

(1) A statutory auditor will be precluded from performing the statutory audit if a member of the statutory auditor's network meets one of the preclusion criteria pursuant to section 319 (2), (3) sentence 1 nos. 1, 2 or 4, (3) sentence 2 or (4), unless the member of the network cannot influence the result of the statutory audit. The statutory auditor will be precluded if a member of the statutory auditor's network meets one of the preclusion criteria pursuant to section 319 (3) sentence 1 no. 3. A network is given wherever persons work together for a certain period in practicing their profession in order to pursue shared economic interests.

(2) Subsection (1) applies accordingly to the statutory auditor of the consolidated financial statements.

### **Section 320**

#### **Duty to submit documents; right to obtain information**

(1) The legal representatives of the share capital company are to submit to the statutory auditor the annual financial statements, the management report and the separate non-financial report without undue delay after these documents have been drawn up. They are to permit the statutory auditor to audit the books and records of the share capital company as well as the assets and debt obligations, namely the cash and the existing investments and goods. The legal representatives of a share capital company that issues securities (section 2 (1) of the Securities Trading Act (*Wertpapierhandelsgesetz*) as a domestic issuer (section 2 (14) of the Securities Trading Act) and that is not a share capital company within the meaning of section 327a also are to submit to the statutory auditor the reproduction of the annual financial statements prepared in keeping with the requirements stipulated by section 328 (1) for disclosure purposes and the reproduction of the management report prepared in keeping with said requirements.

(2) The statutory auditor may demand that the legal representatives provide all clarifications and all proof necessary for diligently performing the audit. Insofar as the preparations for the statutory audit require, the statutory auditor will have the rights pursuant to subsection (1) sentence 2 and pursuant to sentence 1 also prior to the annual financial statements being drawn up. Insofar as this is necessary in order to perform the audit diligently, the statutory auditor will have the rights pursuant to sentences 1 and 2 also vis-à-vis parent undertakings and subsidiary undertakings.

(3) The legal representatives of a share capital company obligated to draw up consolidated financial statements are to submit to the statutory auditor of the consolidated financial statements: the consolidated financial statements, the consolidated management report, the separate consolidated non-financial report, the annual financial statements, management reports, the separate non-financial reports and, where an audit has been performed, the auditor's additional reports pertaining to the parent undertaking and the subsidiary undertakings. The statutory auditor will have the rights pursuant to subsection (1) sentence 2 and pursuant to subsection (2) both vis-à-vis the parent undertaking and the subsidiary undertakings, and will have the rights pursuant to subsection (2) also vis-à-vis the statutory auditors of the parent undertaking and of the subsidiary undertakings. The legal representatives of a share capital company that issues securities (section 2 (1) of the Securities Trading Act (*Wertpapierhandelsgesetz*) as a domestic issuer (section 2 (14) of the Securities Trading Act) and that is not a share capital company within the meaning of section 327a also are to submit to the statutory auditor the reproduction of the consolidated financial statements prepared in keeping with the requirements stipulated by section 328 (1) for disclosure purposes and the reproduction of the consolidated management report prepared in keeping with said requirements.

(4) Upon a corresponding request being made in writing, the statutory auditor engaged thus far is to report to the statutory auditor the results of the audit thus far; section 321 applies accordingly.

(5) Where the share capital company is included as a subsidiary undertaking in the consolidated financial statements of a parent undertaking that does not have its seat in a Member State of the European Union or state party to the Agreement creating the European Economic Area, the auditor may forward documents made available pursuant to subsection (2) to the statutory auditor of the consolidated financial statements insofar as these are required for auditing the consolidated financial statements of the parent undertaking. The transmission of personal data must be performed in conformity with the requirements of Regulation (EU) 2016/679 and the general provisions of data protection law.

### **Section 321**

#### **Auditor's additional report**



(1) The statutory auditor is to report on the nature and scope of the audit as well as on its result; sentences 2 and 3 as well as subsections (2) to (4a) apply to the report. The report is to be prepared in writing and with the requisite clarity; at its outset, the statutory auditor is to state his or her position regarding the assessment by the legal representatives of the share capital company's or group's position; in particular, the assessment of the future viability and the future development of the share capital company are to be addressed with due regard being had to the management report and, where the audit relates to the consolidated financial statements of parent undertakings, also the future viability and future development of the group with due regard being had to the consolidated management report, insofar as the documents audited and the management report or the consolidated management report allow such an assessment to be made. Moreover, the statutory auditor is to report any instances of incorrect reporting or any violations of statutory requirements said auditor has established in the course of performing the audit, as well as any facts jeopardising the viability of the share capital company or group that has been audited, or that are suited to seriously prejudice its development, or that are an indication of grave violations committed by the legal representatives or employees of the law, the articles of incorporation or the statutes.

(2) The main part of the auditor's additional report is to establish whether the accounting records and the further documents audited, the annual financial statements, the management report, the consolidated financial statements and the consolidated management report comply with the statutory requirements and the provisions of articles of incorporation or of the statutes complementing such statutory requirements. In this context, deficiencies also are to be reported that have not caused a qualified or adverse opinion to be issued, insofar as this is relevant for monitoring the management and the audited share capital company. Furthermore, it is to be addressed whether the financial statements in their entirety accurately present the assets, liabilities, financial position and profit or loss of the share capital company or of the group in keeping with its actual circumstances, in compliance with the principles of proper accounting or other relevant financial reporting frameworks. To this end, essential bases of evaluation are to be addressed, as well as the question of how changes to the bases of valuation, including the election of reporting options and valuation options and instances in which margins of appreciation were applied, as well as measures taken for purposes of accounting policy, collectively influence the presentation of the assets, liabilities, financial position and profit or loss. In the process, the items of the annual financial statements and of the consolidated financial statements are to be broken down and explained in sufficient detail, insofar as the notes do not provide this information. It is to be presented whether the legal representatives have provided the clarifications and proof sought.

(3) In a separate section of the auditor's additional report, the audit's subject matter, nature and scope are to be explained. In this context, the accounting standards and audit principles applied are to be addressed.

(4) Where an assessment pursuant to section 317 (4) has been made in the context of the audit, its result is to be presented in a special part of the auditor's additional report. The question is to be addressed of whether measures need to be taken to improve the internal monitoring system.

(4a) The statutory auditor is to confirm his or her independence in the auditor's additional report.

(5) The statutory auditor is to date and sign the report and is to submit it to the legal representatives; section 322 (7) sentences 3 and 4 applies accordingly. Were the supervisory board has awarded the contract, the report is to be submitted to the supervisory board and, concurrently, to an audit committee it has instituted. In the case governed by sentence 2, the report is to be forwarded, without undue delay after having been submitted, to the representative managing body for it to state its position.

### **Section 321a**

#### **Disclosure of the auditor's additional report in special cases**

(1) Where insolvency proceedings are opened regarding the assets of the company, or where the petition filed for the opening of such proceedings is refused due to lack of assets, a creditor or shareholder has the option either himself or herself or through an auditor the creditor or shareholder is to determine or, in the case governed by section 319 (1) sentence 2, through a certified accountant to inspect the auditor's additional reports of the statutory auditor concerning the audit of the annual financial statements for the last three financial years performed based on statutory requirements, insofar as they relate to the reporting called for pursuant to section 321. The claim is to be made vis-à-vis that party that has the auditor's additional reports in its possession.

(2) In the case of a stock corporation or of a public partly limited partnership, the shareholders will be entitled to the rights pursuant to subsection (1) sentence 1 only if their shares collectively make up one hundredth of the share capital or have a market value of 100,000 euros at the time the claim is asserted. The statutory auditor may provide explanations of the auditor's additional report vis-à-vis the persons set out in subsection (1) sentence 1.

(3) The insolvency administrator or a statutory representative of the debtor may object to the disclosure of secrets, namely trade secrets or business secrets, if their disclosure is suited to be seriously prejudicial to the company. Section 323 (1) and (3) remains unaffected in all other regards. Notwithstanding the stipulations made in sentence 1, the parties entitled pursuant to subsection (1) sentence 1 are under obligation to keep confidential the contents of the documents they have inspected pursuant to subsection (1) sentence 1.

(4) Subsections (1) to (3) apply accordingly if the debtor is under obligation to draw up consolidated financial statements and consolidated management reports.

### **Section 322**

#### **Audit report**

(1) The statutory auditor is to summarise the result of the audit in a written audit report on the annual financial statements or on the consolidated financial statements. The audit report is to describe the audit's subject matter, nature and scope while also citing the accounting standards and audit principles applied; furthermore, it is to include an assessment of the audit result. An introductory section is to describe, at a minimum, the audit's subject matter and cite the accounting standards applied. In a separate section, the result of the audit performed in accordance with section 317 (3a) is to be reported.

(1a) In preparing the audit report, the statutory auditor is to apply the international auditing standards adopted by the European Commission in the procedure pursuant to Article 26 (3) of Directive 2006/43/EC.

(2) The assessment of the audit result must show, without a doubt, as to whether

1. an unqualified audit report was issued,
2. a qualified audit report was issued,
3. an adverse audit report was issued as a consequence of objections,
4. an adverse audit report was issued because the statutory auditor was not in a position to issue an audit opinion.

The audit result is to be assessed, as a rule, in a comprehensible and problem-oriented manner, having due regard to the circumstance that the legal representatives are responsible for the financial statements. Risks jeopardising the future viability of the share capital company or of a group undertaking are to be addressed separately. The audit report on the consolidated financial statements of the parent undertaking is not required to address risks jeopardising the future viability of a subsidiary undertaking if the subsidiary undertaking is immaterial for the accurate presentation of the group's assets, liabilities, financial position and profit or loss in keeping with its actual circumstances.

(3) In an unqualified audit report (subsection (2) sentence 1 no. 1), the statutory auditor is to declare that the audit he or she has performed pursuant to section 317 has not led to any objections and that, in the assessment of the statutory auditor based on the findings in the course of the audit, the annual financial statements or consolidated financial statements drawn up by the company's legal representatives are compliant with statutory requirements and accurately present, while observing the principles of proper accounting or other relevant financial reporting frameworks, the share capital company's or the group's assets, liabilities, financial position and profit or loss in keeping with its actual circumstances. The statutory auditor additionally may indicate circumstances that he or she specifically highlights without qualifying the audit report.

(4) Where objections are to be raised, the statutory auditor is to qualify the declaration pursuant to subsection (3) sentence 1, (subsection (2) sentence 1 no. 2) or is to issue an adverse audit report (subsection (2) sentence 1 no. 3). The fact that the audit report is an adverse report is to be included in the report, which no longer is to be designated a "*Bestätigungsvermerk*" (report confirming compliance). The reasons for issuing a qualified or adverse audit report are to be stated; subsection (3) sentence 2 applies. A qualified audit report may be issued only if the audited financial statements present the assets, liabilities, financial position and profit or loss essentially in keeping with the actual circumstances, taking into account the restriction made by the statutory auditor the implications of which are recognisable.

(5) The audit report is to be issued as an adverse audit report also in those cases in which the statutory auditor is not in a position, after having exhausted all reasonable opportunities to clear up the factual circumstances, to issue an audit opinion (subsection (2) sentence 1 no. 4). Subsection (4) sentences 2 and 3 applies accordingly.

(6) The scope of the assessment of the audit result also is to cover whether the management report or the consolidated management report is consistent, in the assessment by the statutory auditor, with the annual financial statements and, as the case may be, with the standalone financial statements pursuant to section 325 (2a) or with the consolidated financial statements, whether the statutory requirements governing the drawing up of the management report or consolidated management report have been complied with and whether the management report or consolidated management report accurately presents the position of the share capital company or of the group when seen overall. In this context, the matter is to be addressed of whether the opportunities and risks of the future development have been presented accurately.

(6a) Where several auditors or audit firms were jointly appointed to serve as statutory auditor, the assessment of the audit result is to be performed uniformly, as a rule. Where, in an exceptional case, a uniform assessment is not possible, the reasons therefor are to be presented; in each case, the assessment is to be performed in a separate paragraph. Sentences 1 and 2 apply to joint appointments of

1. auditors or audit firms,
2. certified accountants or accountancy companies, as well as
3. auditors or audit firms pursuant to nos. 1 and 2

(7) The statutory auditor is to sign the audit report or the adverse audit report, citing the location of the statutory auditor's branch office and the date on which the audit report was signed; in the case governed by subsection (6a), all persons appointed are to sign the audit report. The audit report or the adverse audit report also is to be incorporated into the auditor's additional report. Where the statutory auditor is an audit firm, at a minimum that auditor is to sign it who has performed the statutory audit on behalf of the audit firm. Sentence 3 applies accordingly to accountancy companies.

### **Section 323** **Responsibilities of the statutory auditor**

(1) The statutory auditor, his or her agents and the legal representatives of an audit firm assisting with the audit are under obligation to perform the audit diligently and impartially and to maintain confidentiality; notification obligations stipulated by law remain unaffected. They are not permitted to exploit without authorisation any trade secrets or business secrets of which they have become apprised in the course of their activities. Whoever breaches his or her duties, whether intentionally or negligently, will be liable to the share capital company and, if an affiliated undertaking has suffered damages, also to the affiliated undertaking, for compensation of the damages resulting therefrom. A plurality of persons will be liable as joint and several debtors.

(2) The audit-related indemnification obligation of the persons named in subsection (1) sentence 1 is limited as follows, subject to the stipulations of sentences 2 to 4:

1. in the case of share capital companies that are a public-interest entity as defined in section 316a sentence 2 no. 1: to 16 million euros;
2. in the case of share capital companies that are a public-interest entity as defined in section 316a sentence 2 no. 2 or 3, but not as defined in section 316a sentence 2 no. 1: to 4 million euros;
3. in the case of share capital companies not set out in nos. 1 and 2: to 1 million 500,000 euros.

This applies neither to persons who have acted with intent nor to the statutory auditor of a share capital company pursuant to sentence 1 no. 1 who has acted with gross negligence. In derogation from sentence 1 no. 2, the indemnification obligation of the statutory auditor of a share capital company under sentence 1 no. 2 is limited, in the case of the statutory auditor having acted with gross negligence, to 32 million euros per audit. In derogation from sentence 1 no. 3, the indemnification obligation of the statutory auditor of a share capital company under sentence 1 no. 3 is limited, in the case of the statutory auditor having acted with gross negligence, to 12 million euros per audit. The liability caps provided for by sentences 1, 3 and 4 apply also if a plurality of persons was involved in the audit or if several actions were taken obligating those taking them to provide compensation, and having no regard to whether other parties involved acted with intent or gross negligence.

(3) If an audit firm serves as the statutory auditor, then the confidentiality obligation will be given also vis-à-vis the supervisory board and the members of the supervisory board of the audit firm.

(4) The obligation to indemnify pursuant to these regulations may not be precluded or restricted by contract.

(5) The notification stipulated by Article 7 paragraph (2) of Regulation (EU) No 537/2014 is to be addressed to the Federal Financial Supervisory Authority; if it is suspected that a criminal offence or a regulatory offence has been committed, then such notification is to be addressed also to the prosecution authority respectively competent.

#### **Section 324** **Audit committee**

(1) Share capital companies that are public-interest entities (section 316a sentence 2) and that have no supervisory board or administrative body that must meet the pre-requisites set out in section 100 (5) of the Stock Corporation Act are under obligation to institute an audit committee in accordance with subsection (2), the remit of which in particular includes the tasks described in section 107 (3) sentences 2 and 3 of the Stock Corporation Act. This does not apply to share capital companies within the meaning of sentence 1

1. the exclusive purpose of which consists of the issuance of securities within the meaning of section 2 (1) of the Securities Trading Act that are securitised by assets;
2. that are credit institutions within the meaning of section 340 (1) and that are taking recourse to an organised market within the meaning of section 2 (11) of the

Securities Trading Act solely by way of issuing debt instruments within the meaning of section 2 (1) no. 3 (a) of the Securities Trading Act, if their nominal value is not greater than 100 million euros and insofar as there is no obligation to publish a prospectus pursuant to the Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC (OJ L 168 of 30 June 2017, p. 12), last amended by Regulation (EU) 2019/2146 (OJ L 325 of 16 December 2019, p. 43);

3. that are investment funds within the meaning of section 1 (1) of the Investment Code.

In the case governed by sentence 2 no. 1, the notes are to present why an audit committee is not being instituted.

(2) The members of the audit committee are to be elected by the shareholders. The majority of the members, among them the chairperson, must be independent; in all other cases, section 100 (5) of the Stock Corporation Act is to be applied accordingly. The chairperson of the audit committee may not be tasked with managing the undertaking's affairs. Section 107 (3) sentence 8, section 124 (3) sentence 2 and section 171 (1) sentences 2 and 3 of the Stock Corporation Act apply accordingly. The audit committee is to submit to the shareholders a proposal for the election of the statutory auditor if the share capital company does not have a supervisory board or administrative body or if it is not incumbent on the supervisory board or administrative body to make such a proposal.

(3) The Auditor Oversight Body with the Federal Office for Economic Affairs and Export Control may demand, in order to fulfil its tasks pursuant to Article 27 (1) (c) of Regulation (EU) No 537/2014, that a share capital company that is a public-interest entity (section 316a sentence 2) present and explain the result as well as the pursuit of the activities by its audit committee. As a rule, the Auditor Oversight Body initially is to take recourse to publicly accessible sources.

#### **Section 324a**

##### **Application to the standalone financial statements pursuant to section 325 (2a)**

(1) The provisions of this Subdivision relating to annual financial statements apply accordingly to standalone financial statements pursuant to section 325 (2a). Instead of section 316 (1) sentence 2, section 316 (2) sentence 2 applies accordingly.

(2) That auditor will be considered to have been appointed as statutory auditor of the standalone financial statements pursuant to section 325 (2a) who has been appointed for the audit of the annual financial statements. The auditor's additional report concerning the standalone financial statements pursuant to section 325 (2a) may be combined with the auditor's additional report on the annual financial statements.

#### **Subdivision 4**

##### **Disclosure. Verification by the operator of the Federal Gazette**

#### **Section 325**

##### **Disclosure**

(1) The members of the representative body of share capital companies are to disclose the following documents on behalf of the company, such documents being in German:

1. the annual financial statements as adopted or approved, the management report, the declarations within the meaning of section 264 (2) sentence 3 and section 289 (1) sentence 5, and the audit report or the adverse audit report, as well as
2. the report of the supervisory board and the declaration stipulated by section 161 of the Stock Corporation Act.

The documents are to be submitted electronically to the operator of the Federal Gazette in a form enabling their publication by notice.

(1a) The documents pursuant to subsection (1) sentence 1 are to be submitted no later than one year following the balance sheet date for the financial year to which they relate. Where the documents pursuant to subsection (1) sentence 1 no. 2 are not available within the period set, they are to be disclosed pursuant to subsection (1) without undue delay once they have become available.

(1b) Where the annual financial statements or the management report are amended, that amendment as well is to be disclosed pursuant to subsection (1) sentence 1. Where the annual financial statements only include the proposal for the appropriation of the profit / treatment of loss, the resolution concerning the appropriation of the profit / treatment of loss is to be disclosed pursuant to subsection (1) sentence 1 once it has become available.

(2) The members of the representative body of the share capital company are to have the documents designated in subsection (1) published by notice in the Federal Gazette on behalf of the share capital company, and are to arrange for this without undue delay once the documents have been submitted.

(2a) Where the disclosure pursuant to subsection (2) is made, standalone financial statements may take the stead of the annual financial statements that have been drawn up in accordance with the international accounting standards designated in section 315e (1). An undertaking that elects this reporting option is to follow fully and completely the standards set out therein. Section 243 (2), sections 244, 245, 257, section 264 (1a) and (2) sentence 3, section 285 no. 7, no. 8 (b), nos. 9 to 11a, 14 to 17, section 286 (1) and (3) apply to such financial statements. The obligation to disclose a management report remains unaffected; the management report pursuant to section 289 also must make reference, in the scope required, to the standalone financial statements pursuant to sentence 1. The other provisions of Subdivision 2 of Division 1 and of Subdivision 1 of Division 2 do not apply in this regard. In those cases in which it is not possible to meet the pre-requisite set out in sentence 2 due to section 286 (1) being applied to the notes, the reporting option pursuant to sentence 1 will no longer be given.

(2b) The disclosure of the standalone financial statements will have exemptive effect pursuant to subsection (2a) in those cases

1. in which, instead of the audit report or the adverse audit report issued by the statutory auditor on the annual financial statements, the corresponding report on the financial statements pursuant to subsection (2a) is included in the disclosure pursuant to subsection (2),

2. in which the proposal for the appropriation of the profit / treatment of loss and, as the case may be, the resolution in that regard is included in the disclosure pursuant to subsection (2), citing the net income for the year or net loss for the year, and

3. the annual financial statements are disclosed with the audit report or the adverse audit report pursuant to subsection (1) and subsection (1a) sentence 1.

(3) Subsections (1) to (2) and (4) sentence 1 apply accordingly to the members of the representative body of a share capital company who are to draw up consolidated financial statements and a consolidated management report.

(3a) Where the consolidated financial statements are published by notice together with the annual financial statements of the parent undertaking or together with standalone financial statements drawn up by the parent undertaking pursuant to subsection (2a), the audit reports of the statutory auditor pursuant to section 322 on both financial statements may be combined; in such event, the respective auditor's additional reports also may be combined.

(4) In the case of a share capital company within the meaning of section 264d, which is not a share capital company within the meaning of section 327a, the period pursuant to subsection (1a) sentence 1 will not exceed four months. The point in time at which the documents are submitted will govern in determining compliance with the deadlines set pursuant to sentence 1 and subsection (1a) sentence 1.

(5) Duties of the company based on the law, its articles of incorporation or its statutes to in some other manner publish, submit or make accessible to persons the annual financial statements, the standalone financial statements pursuant to subsection (2a), the management report, the consolidated financial statements or the consolidated management report remains unaffected.

(6) Section 11 and section 12 (2) apply accordingly to the documents to be submitted to the operator of the Federal Gazette; section 325a (1) sentence 5 and section 340I (2) sentence 6 remain unaffected.

### **Section 325a**

#### **Branch offices of share capital companies having their seat abroad**

(1) In the case of domestic branch offices of share capital companies having their seat in some other Member State of the European Union or a state party to the Agreement creating the European Economic Area, the persons set out in section 13e (2) sentence 4 no. 3 or, if no such persons have been entered in the Commercial Register, the legal representatives of the company are to disclose, on the company's behalf, the financial reporting documents of the main office, which have been drawn up, audited and disclosed or lodged pursuant to the laws governing the main office, such disclosure being performed pursuant to sections 325, 328 and 329 (1) and (4). Where several domestic branch offices of one and the same company exist, the financial reporting documents of the main office need to be disclosed only by the persons obligated in accordance with sentence 1 of one of these branch offices. In this case, the duty to make disclosures incumbent on the other branch offices will be limited to providing the name of the branch, the register and the number under which that branch office is entered in the register for which the disclosure in accordance with sentence 2 has been effected. The documents are to be submitted in German. Insofar as German is not the official language at the seat of the main office, the documents of the main office also may be submitted

1. in English, or
2. as a copy authenticated by the commercial register competent for the main office, or
3. where no institution exists that is comparable to a commercial register or where that institution is not competent to authenticate documents, as a copy certified by an auditor, together with the declaration that either no institution comparable to a commercial register exists or that the institution is not competent to authenticate documents;

a certified translation into German of the authentication by the commercial register is to be submitted.

(2) This regulation does not apply to branch offices established by credit institutions within the meaning of section 340 or by insurance undertakings within the meaning of section 341.

(3) In applying subsection (1), the laws of the other Member State of the European Union or the laws of the other state party to the Agreement creating the European Economic Area will govern the allocation of a share capital company to the size category "micro share capital company" (section 267a) and the scope of eased requirements for financial reporting.

Where, according to the laws governing it, a micro share capital company may fulfil its duty to make disclosures by lodging the balance sheet with a commercial register, it likewise may effect the disclosure pursuant to subsection (1) by lodging the documents. Section 326 (2) applies accordingly.

### **Section 326**

#### **Eased disclosure requirements, based on the size of the undertaking, for small share capital companies and micro share capital companies**

(1) Section 325 (1) applies to small share capital companies (section 267 (1)), with the proviso that the legal representatives are to submit no more than the balance sheet and the

notes. The notes are not required to include the information concerning the profit and loss account.

(2) The legal representatives of micro share capital companies (section 267a) may also fulfil their duties resulting from section 325 (1) to (2) by submitting the balance sheet in electronic form to the operator of the Federal Gazette for permanent lodgment, and by issuing corresponding instructions as to lodgment. Section 325 (1) sentence 2, (1a) and (1b) applies accordingly. Micro share capital companies may exercise the right provided for in sentence 1 only if they notify the operator of the Federal Gazette that, as per the relevant balance sheet dates stipulated by section 267 (4), they fulfil two of the three criteria specified in section 267a (1).

### **Section 327**

#### **Eased disclosure requirements, based on the size of the undertaking, for medium-sized share capital companies**

Section 325 (1) applies to medium-sized share capital companies (section 267 (2)) with the proviso that the legal representatives

1. are required to submit to the operator of the Federal Gazette the balance sheet only in the form stipulated for small share capital companies pursuant to section 266 (1) sentence 3. However, the following items of section 266 (2) and (3) additionally are to be stated separately on the balance sheet or in the notes:

Under assets:

- A I 1 Industrial property rights created by the undertaking itself and similar rights and assets;
- A I 2 Goodwill;
- A II 1 Real property and equivalent rights as well as buildings, including buildings on third-party real estate;
- A II 2 Plant and machinery;
- A II 3 Other equipment, factory equipment and furnishings and fixtures;
- A II 4 Payments on account and tangible assets in the course of construction;
- A III 1 Shares in affiliated undertakings;
- A III 2 Loans to affiliated undertakings;
- A III 3 Participating interests;
- A III 4 Loans to undertakings with which the undertaking is linked by virtue of participating interests;
- B II 2 Amounts owed by affiliated undertakings;
- B II 3 Amounts owed by undertakings with which the undertaking is linked by virtue of participating interests;
- B III 1 Shares in affiliated undertakings.

Under liabilities:

- C 1 Debentures,  
showing convertible debentures separately;



C 2 Payables owed to credit institutions;

C 6 Payables owed to affiliated undertakings;

C 7 Payables owed to undertakings with which the undertaking is linked by virtue of participating interests;

2. may submit the notes, omitting the information called for by section 285 no. 2 and no. 8 (a), no. 12 to the operator of the Federal Gazette.

#### **Section 327a**

##### **Eased requirement for certain publicly traded share capital companies**

Section 325 (4) sentence 1 does not apply to a share capital company insofar as it issues debt instruments within the meaning of section 2 (1) no. 3 of the Securities Trading Act that are admitted by a stock exchange exclusively to trading on an organised market at a minimum denomination of 100,000 euros, or the corresponding amount in another currency as given on the date of issue.

#### **Section 328**

##### **Form, format and content of the documents at disclosure, publication and reproduction**

(1) In disclosing the annual financial statements, of the standalone financial statements pursuant to section 325 (2a), of the consolidated financial statements, of the management report or consolidated management report, or of the declarations within the meaning of section 264 (2) sentence 3, section 289 (1) sentence 5, section 297 (2) sentence 4 or section 315 (1) sentence 5, said financial statements, management reports and declarations are to be reproduced such that they correspond to the regulations governing their drawing-up, unless the eased requirements pursuant to sections 326 and 327 are applied or unless a statutory instrument issued by the Federal Ministry of Justice and Consumer Protection pursuant to subsection (4) enables deviations herefrom. In this context, they are to be complete and accurate. Sentences 1 and 2 apply also to the partial disclosure as well as to the publication or reproduction in some other form based on the articles of incorporation or on the statutes. A share capital company that issues securities (section 2 (1) of the Securities Trading Act (*Wertpapierhandelsgesetz*) as a domestic issuer (section 2 (14) of the Securities Trading Act) and that is not a share capital company within the meaning of section 327a is to disclose:

1. the documents designated in subsection (1) sentence 1 in the single electronic reporting format stipulated by Article 3 of the Commission Delegated Regulation (EU) 2019/815 of 17 December 2018 supplementing Directive 2004/109/EC of the European Parliament and of the Council with regard to regulatory technical standards on the specification of a single electronic reporting format (OJ L 143 of 29 May 2019, p. 1; L 145 of 4 June 2019, p. 85), as amended;

2. the consolidated financial statements with markups as provided for by Articles 4 and 6 of the Commission Delegated Regulation (EU) 2019/815.

(1a) The date of the adoption or approval of the financial statements designated in subsection (1) sentence 1 is to be stated. Where the financial statements were audited by a statutory auditor based on statutory requirements, the full and complete text of the audit report or of the adverse audit report is to be reproduced in each case; where the annual financial statements are disclosed only in part due to eased requirements applying, and where the audit report refers to the complete annual financial statements, a corresponding indication is to be included. In disclosing annual financial statements, standalone financial statements pursuant to section 325 (2a) or consolidated financial statements, it is to be indicated, if applicable, that the disclosure is not being made concurrently with all of the other documents to be disclosed pursuant to section 325.

(2) Where financial statements are not rendered in the form or the format stipulated by subsection (1) in publications and reproductions that are not required by law, the articles of incorporation or the statutes, this is to be indicated in each case by a heading stating that the publication is not one corresponding to the form or format required under law. An audit report may not be attached if the financial statements are not reproduced in the form stipulated by subsection (1). However, where an audit has been performed by a statutory auditor based on statutory requirements, it is to be stated at which summary assessments of the audit result set out in section 322 (2) sentence 1 the statutory auditor has arrived with regard to the financial statements drawn up in the form required by law, and whether the audit report includes an indication pursuant to section 322 (3) sentence 2. Furthermore, it is to be stated whether the documents have been submitted to the operator of the Federal Gazette.

(3) Subsection (1) sentences 1 to 3 apply accordingly to the proposal for the appropriation of the profit / treatment of loss and the resolution adopted concerning such appropriation. Where the documents designated in sentence 1 or the management report or consolidated management report are not disclosed concurrently with the annual financial statements or the consolidated financial statements, it is to be stated in each case at their subsequent disclosure to which financial statements they refer and where such financial statements have been disclosed; this also applies to the subsequent disclosure of the audit report or of the adverse audit report.

(4) The statutory instrument pursuant to section 330 (1) sentences 1, 4 and 5 may permit the operator of the Federal Gazette to deviate from the form of accounts stipulated by section 266 (1) sentence 1.

(5) Subsection (1) sentences 1 to 3 and subsection (1a) sentence 1 apply accordingly to the lodgment of the balance sheet by a micro share capital company (section 326 (2)).

### **Section 329**

#### **Verification and notification duties of the operator of the Federal Gazette**

(1) The operator of the Federal Gazette verifies whether all of the documents to be submitted have been submitted, and whether they have been submitted in due time. The operator of the Commercial register will make available to the operator of the Federal Gazette the data transmitted pursuant to section 8b (3) sentence 2 by the *Land* departments of justice insofar as this is required in order to fulfil the tasks pursuant to sentence 1. The operator of the Federal Gazette is permitted to use the data solely for the purposes set out in sentence 1.

(2) Where the verification gives rise to the assumption that the eased requirements depending on the size of the share capital company or the eased requirement pursuant to section 327a ought not to have been applied, the operator of the Federal Gazette may demand that the share capital company inform it, within a reasonable period, of its turnover (section 277 (1)) and the average number of employees (section 267 (5)), or that it provide information indicating its fulfilment of the criteria stipulated for a share capital company under section 327a. If the share capital company fails to provide such information within the period set, the eased requirements will be considered to have been applied without justification.

(3) In the cases governed by section 325a (1) sentence 5 and by section 340l (2) sentence 6, it may be demanded in an individual case that a translation into German be submitted.

(4) If the verification pursuant to subsection (1) sentence 1 obtains that none or not all of documents to be disclosed have been submitted, then the administrative authority competent in each case for pursuing proceedings for the imposition of coercive fines pursuant to sections 335, 340o and 341o will be notified.

### **Subdivision 5**

#### **Power to make statutory instruments for form sheets and other regulations**

### **Section 330**

(1) The Federal Ministry of Justice and Consumer Protection is authorised to determine, by way of statutory instrument issued in agreement with the Federal Ministry of Finance and the Federal Ministry for Economic Affairs and Energy that is not subject to approval by the

Bundesrat, form sheets to be used by share capital companies, or to issue other regulations governing the classifications used in the annual financial statements or in the consolidated financial statements or governing the content of the notes to the annual financial statements or the notes to the consolidated financial statements, the management report or the consolidated management report in those cases in which the line of business requires that the classifications used in the annual financial statements or in the consolidated financial statements deviate from sections 266 and 275 or that regulations be established in derogation from those of Division 1 and of Subdivisions 1 and 2 of Division 2. The requirements to be met by the documents designated in sentence 1 resulting from the deviating regulations are to be equivalent, as a rule, to the requirements resulting for share capital companies (section 267 (3)) under the provisions of Division 1 and of Subdivisions 1 and 2 of Division 2 as well as under the regulations applicable to the line of business. Requirements extending beyond applicable law may be made only insofar as they are based on legal acts of the Council of the European Union. The statutory instrument pursuant to sentence 1 may also permit deviations from the form of accounts pursuant to section 266 (1) sentence 1. Sentence 4 will apply also in those cases in which a line of business does not require the classifications to deviate from those stipulated by sections 266 and 275.

(2) Subsection (1) applies to the following institutions, subject to the stipulations of sentences 3 and 4 and in each case without regard to their legal form:

1. credit institutions within the meaning of section 1 (1) of the Banking Act insofar as they are not exempted from such application pursuant to section 2 subsections (1), (4) or (5) of said Act;
2. financial services institutions within the meaning of section 1 (1a) of the Banking Act insofar as they are not exempted from such application pursuant to section 2 subsections (6) or (10) of said Act;
3. securities institutions within the meaning of section 2 (1) of the Securities Institutions Act (*Wertpapierinstitutsgesetz* – WpIG) insofar as they are not exempted from such application pursuant to section 3 of said Act;
4. institutions within the meaning of section 1 (3) of the Payment Services Oversight Act (*Zahlungsdienstenaufsichtsgesetz*).

Sentence 1 applies also to field offices of undertakings having their seat in a state other than a member of the European Community and also other than a state party to the Agreement creating the European Economic Area, insofar as the field office is considered a credit institution or a financial institute pursuant to section 53 (1) of the Banking Act. The statutory instrument is not subject to approval by the Bundesrat; it is to be issued in agreement with the Federal Ministry of Finance and in consultation with the Deutsche Bundesbank. The statutory instrument pursuant to sentence 1 may also include more detailed determinations governing the drawing-up of the annual financial statements and of the consolidated financial statements, in the context of the required form sheets for the classifications used in the annual financial statements and in the consolidated financial statements as well as in the interim financial statements pursuant to section 340a (3) and the consolidated interim financial statements pursuant to section 340i (4), insofar as this is required to fulfil the tasks performed by the Federal Financial Supervisory Authority or the Deutsche Bundesbank, in particular in order to receive uniform documents serving to assess the bank transactions entered into by the credit institutions and the financial services institutions and the financial services they have provided, as well as the securities services provided by securities institutions.

(3) Subsection (1) applies to insurance undertakings subject to the stipulations of sentences 3 and 4 without regard to their legal form. Sentence 1 applies also to establishments within the territorial scope of this statute established by insurance undertakings having their seat in some other state where they require permission from the German insurance supervisory

authority in order to pursue the business of direct insurance. The statutory instrument is subject to approval by the Bundesrat and is to be issued in agreement with the Federal Ministry of Finance. The statutory instrument pursuant to sentence 1 may also include more detailed determinations governing the drawing-up of the annual financial statements and of the consolidated financial statements, in the context of the required form sheets for the classifications used in the annual financial statements and in the consolidated financial statements, and may also include regulations regarding the recognition and valuation of the present value of fulfilment cash flows, in particular the approximation methods. The statutory instrument is not subject to approval by the Bundesrat insofar as the instrument serves solely the purpose of permitting deviations pursuant to subsection (1) sentences 4 and 5.

(4) The statutory instrument pursuant to subsection (1), read in conjunction with subsection (3), may determine that insurance undertakings to which Directive 91/674/EEC does not apply, pursuant to Article 2 of said Directive read in conjunction with Articles 4, 7 and 9 as well as Article 10 no. 1 of the Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 335 of 17 December 2009, p. 1), will be exempt from the provisions of Subdivision 2 of Division 4, either entirely or in part, insofar as this is required in order to avoid placing a burden on insurance undertakings that is disproportionate to their size; inasmuch, subsection (1) sentence 2 does not apply. The statutory instrument may grant simplifications to these insurance undertakings that are in keeping with their size also for the classifications used in the annual financial statements and in the consolidated financial statements, for drawing up the notes to the annual financial statements and the management report as well as the notes to the consolidated financial statements and the consolidated management report, as well as for the disclosure.

(5) Subsections (3) and (4) apply accordingly to pension funds (section 236 (1) of the Insurance Industry Supervision Act (*Versicherungsaufsichtsgesetz*)).

#### **Subdivision 6**

#### **Penal provisions and regulations as to administrative fines; Coercive fines**

#### **Title 1**

#### **Penal provisions and regulations as to administrative fines**

#### **Section 331**

#### **Incorrect presentation**

(1) Whoever

1. acting in the capacity of a member of the representative body or of the supervisory board of a share capital company, incorrectly renders or obfuscates the circumstances of the share capital company in the opening balance sheet, in the annual financial statements, in the management report including the non-financial statement, in the separate non-financial report or in the interim financial statements pursuant to section 340a (3),

1a. acting in the capacity of a member of the representative body of a share capital company, discloses, for the purpose of obtaining the exemption pursuant to section 325 (2a) sentence 1 and (2b), standalone financial statements in accordance with the international accounting standards set out in section 315e (1), in which the circumstances of the share capital company have been rendered incorrectly or have been obfuscated,

2. acting in the capacity of a member of the representative body or of the supervisory board of a share capital company, incorrectly renders or obfuscates the circumstances of the group in the consolidated financial statements, in the consolidated management report including the consolidated non-financial statement, in the separate consolidated non-financial report or in the consolidated interim financial statements pursuant to section 340i (4),

3. acting in the capacity of a member of the representative body of a share capital company, discloses, for the purpose of obtaining the exemption pursuant to section 291 (1) and (2) or pursuant to section 292, consolidated financial statements or a consolidated management report, in which the group's circumstances have been rendered incorrectly or have been obfuscated,

3a. (repealed)

4. acting in the capacity of a member of the representative body of a share capital company or of a member of the representative body or of a shareholder authorised to represent one of its subsidiary undertakings (section 290 (1) and (2)) provides incorrect information or incorrectly renders or obfuscates the circumstances of the share capital company, of a subsidiary undertaking or of the group in clarifications or proof to be made available, pursuant to section 320, to a statutory auditor of the share capital company, of an affiliated undertaking or of the group;

will be liable to a term of imprisonment not to exceed three years or to a fine.

(2) Where the perpetrator has acted recklessly in the cases set out in subsection (1) no. 1a or no. 3, the perpetrator will be liable to a term of imprisonment not exceeding one year or a fine.

#### **Section 331a** **Incorrect assurance**

(1) Whoever, acting in contravention of section 264 (2) sentence 3, also read in conjunction with section 325 (2a) sentence 3, in contravention of section 289 (1) sentence 5, also read in conjunction with section 325 (2a) sentence 4, or in contravention of section 297 (2) sentence 4 or of section 315 (1) sentence 5, in each case also read in conjunction with section 315e (1), gives an assurance that is incorrect will be liable to a term of imprisonment not to exceed five years or to a fine.

(2) Where the perpetrator has acted recklessly, the perpetrator will be liable to a term of imprisonment not exceeding two years or a fine.

#### **Section 332** **Breach of reporting obligations**

(1) Whoever, acting in the capacity of statutory auditor or of agent of a statutory auditor, incorrectly reports the results of the audit of annual financial statements, of standalone financial statements pursuant to section 325 (2a), of a management report, of consolidated financial statements, of a consolidated management report of a share capital company or of interim financial statements pursuant to section 340a (3) or of consolidated interim financial statements pursuant to section 340i (4), conceals circumstances of significance in the auditor's additional report (section 321) or issues a substantively incorrect audit report (section 322), will be liable to a term of imprisonment not to exceed three years or to a fine.

(2) Where the perpetrator has acted in return for remuneration or with the intention of enriching himself or herself or some other party, or of causing damage to some other party, the perpetrator will be liable to a term of imprisonment not exceeding five years or a fine.

Likewise, whoever issues a substantively incorrect audit report regarding the annual financial statements, the standalone financial statements pursuant to section 325 (2a) or the consolidated financial statements of a share capital company that is a public-interest entity as defined in section 316a sentence 2 will be liable to punishment.

(3) Where the perpetrator has acted recklessly in the cases set out in subsection (2) sentence 2, the perpetrator will be liable to a term of imprisonment not exceeding two years or a fine.

#### **Section 333** **Breach of confidentiality obligations**

(1) A person who discloses, without having been authorised to do so, a secret of the share capital company, of a subsidiary undertaking (section 290 (1) and (2)), of a jointly managed

undertaking (section 310) or of an associated undertaking (section 311), namely a trade or business secret, of which the person has become apprised in the capacity of statutory auditor or of agent of a statutory auditor in the course of auditing the annual financial statements, standalone financial statements pursuant to section 325 (2a) or the consolidated financial statements will be liable to a term of imprisonment not to exceed one year or to a fine.

(2) Where the perpetrator is acting in return for remuneration or with the intention of enriching himself or herself or some other party, or of causing damage to some other party, the perpetrator will be liable to a term of imprisonment not exceeding two years or to payment of a fine. Likewise, whoever exploits a secret of the type designated in subsection (1), namely a trade or business secret, without having been authorised to do so, of which secret the person has become aware subject to the pre-requisites set out in subsection (1), will be liable to punishment.

(3) The offence will be prosecuted only upon a corresponding petition having been filed by the share capital company.

### **Section 333a**

#### **Breach of duties entailed by statutory audits**

(1) Whoever, acting in the capacity of a member of an audit committee instituted pursuant to section 324 (1) sentence 1

1. commits an act designated in section 334 (2a) and receives a material benefit in return, or has someone promise him or her a material benefit,

2. persists in repeating an act designated in section 334 (2a),

will be liable to a term of imprisonment not to exceed one year or to a fine.

### **Section 334**

#### **Regulations concerning administrative fines**

(1) Whoever, acting in the capacity of a member of the representative body or of the supervisory board of a share capital company, acts in contravention,

1. in drawing up or adopting the annual financial statements, of a stipulation made in

a) section 243 (1) or (2), sections 244, 245, 246, 247, 248, 249 (1) sentence 1 or (2), in section 250 (1) or (2), in section 251 or in section 264 (1a) or (2) concerning the form or content,

b) section 253 (1) sentence 1, 2, 3, 4, 5 or 6, (2) sentence 1, also read in conjunction with sentence 2, (3) sentence 1, 2, 3, 4 or 5, (4) or (5), in section 254 or in section 256a concerning the valuation,

c) section 265 (2), (3), (4) or (6), in sections 266, 268 (3), (4), (5), (6) or (7), in sections 272, 274, 275 or in section 277 concerning the classifications or

d) section 284 or in section 285 concerning the information to be provided on the balance sheet, at the foot of the balance sheet or in the notes,

2. in drawing up the consolidated financial statements, of a stipulation made in

a) section 294 (1) concerning the scope of consolidation,

b) section 297 (1a), (2) or (3) or in section 298 (1) read in conjunction with sections 244, 245, 246, 247, 248, 249 (1) sentence 1 or (2), with section 250 (1) or with section 251 concerning the form or content,

c) section 300 concerning the consolidation principles or the requirement to provide full and complete information,

- d) section 308 (1) sentence 1, read in conjunction with the regulations designated in no. 1 (b), in section 308 (2) or section 308a concerning the valuation,
- e) section 311 (1) sentence 1, read in conjunction with section 312 concerning the treatment of associated undertakings or
- f) section 308 (1) sentence 3, in section 313 or in section 314 concerning the information to be provided in the notes to the consolidated financial statements,

3. in drawing up the management report or in preparing a separate non-financial report, of a stipulation made in sections 289 to 289b (1), sections 289c, 289d, 289e (2), also read in conjunction with section 289b (2) or (3), or section 289f concerning the content of the management report or of the separate non-financial report,

3a. in preparing a corporate governance statement, of a stipulation made in section 289f (4) sentence 3 read in conjunction with sentence 1 and subsection (2) no. 4 concerning the content,

4. in drawing up the consolidated management report or in preparing a separate, consolidated non-financial report, of a stipulation made in sections 315 to 315b (1), or section 315c, also read in conjunction with section 315b (2) or (3) or section 315d concerning the content of the consolidated management report or of the separate, consolidated non-financial report,

5. at disclosure, lodgment, publication or reproduction, of a stipulation made in section 328 concerning the form, format or content, or

6. of a statutory instrument issued on the basis of section 330 (1) sentence 1, insofar as this statutory instrument refers to this regulation as to administrative fines for certain elements constituting an offence,

will be deemed to have committed a regulatory offence. In the cases governed by sentence 1 nos. 3 and 3a, the contravention of a stipulation made in section 289f (2) no. 4, also read in conjunction with subsections (3) or (4), will not be excluded by the failure to cite, whether as a whole or in part, the stipulations or reasonings in accordance with section 76 (4) or section 111 (5) of the Stock Corporation Act or in accordance with section 36 or section 52 (2) of the Limited Liability Companies Act (*Gesetz betreffend die Gesellschaften mit beschränkter Haftung*). In the cases governed by sentence 1 no. 4, the contravention of a stipulation made in section 315d read in conjunction with section 289f (2) no. 4 will not be excluded by the failure to cite, whether as a whole or in part, the stipulations or reasonings in accordance with section 76 (4) or section 111 (5) of the Stock Corporation Act.

(2) A person who issues an audit report pursuant to section 322 (1) relating to the financial statements

1. of a share capital company that is a public-interest entity as defined in section 316a sentence 2 no. 1, or

2. of a share capital company not set out in no. 1,

in spite of the fact that this person may not serve as the statutory auditor as stipulated by section 319 (2) or (3), in each case also read in conjunction with subsection (5), or as stipulated by section 319b (1) sentence 1 or 2, in each case also read in conjunction with subsection (2), or of the fact that the audit firm or the accountancy company for whom the person is pursuing his or her activities may not serve as the statutory auditor as stipulated by section 319 (4) sentence 1 or 2, in each case also read in conjunction with subsection (5), or as stipulated by section 319b (1) sentence 1 or 2, in each case also read in conjunction with subsection (2), will be deemed to have committed a regulatory offence. Likewise, whoever issues an audit report pursuant to section 322 (1) relating to the financial statements of a

share capital company that is a public-interest entity as defined in section 316a sentence 2 no. 1 in spite of the fact

1. that this person or the audit firm for whom the person is pursuing his or her activities, or a member of the network to which the person or the audit firm for whom the person is pursuing his or her activities belongs, acts in contravention of a provision stipulated by Article 5 paragraph (4) subparagraph 1 sentence 1 or paragraph (5) subparagraph 2 sentence 2 of Regulation (EU) No 537/2014 of the European Parliament and of the Council of 16 April 2014 on specific requirements regarding statutory audit of public-interest entities and repealing Commission Decision 2005/909/EC (OJ L 158 of 27 May 2014, p. 77, L 170 of 11 June 2014, p. 66), or

2. that this person or the audit firm for whom the person is pursuing his or her activities may not perform the audit pursuant to Article 17 paragraph (3) of Regulation (EU) No 537/2014,

will be deemed to have committed a regulatory offence. Financial statements within the meaning of sentences 1 and 2 are annual financial statements, standalone financial statements pursuant to section 325 (2a) or group financial statements that are to be audited based on statutory requirements.

(2a) Whoever, acting in the capacity of a member of a share capital company's audit committee instituted pursuant to section 324 (1) sentence 1

1. fails to monitor the independence of the statutory auditor or of the audit firm in the manner stipulated by Article 4 paragraph (3) subparagraph 2, by Article 5 paragraph (4) subparagraph 1 sentence 1 or by Article 6 paragraph (2) of Regulation (EU) No 537/2014,

2. submits a recommendation for the appointment of a statutory auditor or of an audit firm that does not comply with the requirements set out in Article 16 (2) subparagraph 2 or 3 of Regulation (EU) No 537/2014 or that has not been preceded by a selection procedure pursuant to Article 16 (3) subparagraph 1 of Regulation (EU) No 537/2014, or

3. submits to the shareholders a proposal for the appointment of a statutory auditor or an audit firm who does not comply with the requirements set out in Article 16 (5) subparagraph 1 of Regulation (EU) No 537/2014,

will be deemed to have committed a regulatory offence.

(3) In the cases governed by subsection (2) sentence 1 no. 1 and sentence 2, as well as in the cases governed by subsection (2a), the regulatory offence is punishable by a fine of up to 500,000 euros; in the cases governed by subsection (1) and subsection (2) sentence 1 no. 2, by a fine not exceeding 50,000 euros. Where the share capital company is publicly traded within the meaning of section 264d, the maximum fine will be, in the cases governed by subsection (1), the higher of the following amounts:

1. 2 million euros or

2. double the economic benefit derived from the regulatory offence, in which context the economic benefit comprises the profits obtained and losses avoided and may be determined by way of an estimate.

(3a) Where, in the cases governed by subsection (1), a fine is levied pursuant to section 30 of the Act on Regulatory Offences (*Gesetz über Ordnungswidrigkeiten*) against a publicly traded share capital company within the meaning of section 264d, the maximum fine will be the highest of the following amounts:

1. 10 million euros,



2. 5 per cent of the aggregate turnover for the year that the share capital company has achieved in the financial year preceding the ruling issued by the authority or

3. double the economic benefit derived from the regulatory offence, in which context the economic benefit comprises the profits obtained and losses avoided and may be determined by way of an estimate.

In the cases governed by subsection (3) sentence 1 read in conjunction with subsection (2) sentence 1 no. 1 or sentence 2, section 30 (2) sentence 3 of the Act on Regulatory Offences is to be applied.

(3b) The aggregate turnover within the meaning of subsection (3a) sentence 1 no. 2 is the amount of the turnover pursuant to section 277 (1) or the amount of the net turnover in accordance with the domestic laws applicable to the undertaking in conformity with Article 2 no. 5 of Directive 2013/34/EU. Where the share capital company is a parent undertaking or a subsidiary undertaking within the meaning of section 290, the aggregate turnover reported in the consolidated financial statements of the parent undertaking, drawn up for the largest body of undertakings, will be taken as the basis instead of the aggregate turnover of the share capital company. Where the consolidated financial statements for the largest body of undertakings are not drawn up pursuant to the regulations set out in sentence 1, the aggregate turnover is to be identified based on the items of the consolidated financial statements that are comparable to the turnover. Where no annual financial statements or consolidated financial statements are available for the relevant financial year, the annual financial statements or consolidated financial statements for the immediately preceding financial year will be taken as the basis; where no such financial statements are available, either, the aggregate turnover may be determined by way of an estimate.

(4) The administrative authority within the meaning of section 36 (1) sentence 1 of the Act on Regulatory Offences is:

1. in the cases governed by subsection (1), the Federal Financial Supervisory Authority for share capital companies that are publicly traded within the meaning of section 264d,
2. the Federal Office of Justice
  - a) in those cases governed by subsection (1) in which the Federal Financial Supervisory Authority is not the administrative authority in accordance with no. 1, and
  - b) in the cases governed by subsection (2a),
3. in the cases governed by subsection (2), the Auditor Oversight Body with the Federal Office for Economic Affairs and Export Control.

(5) Subsections (1) to (4) do not apply to:

1. credit institutions within the meaning of section 340 (1) sentence 1;
2. financial services institutions within the meaning of section 340 (4) sentence 1;
3. securities institutions within the meaning of section 340 (4a) sentence 1;
4. institutions within the meaning of section 1 (3) of the Payment Services Oversight Act (*Zahlungsdiensteaufsichtsgesetz*);
5. insurance undertakings within the meaning of section 341 (1); and
6. pension funds within the meaning of section 341 (4) sentence 1.

## **Title 2 Coercive fines**

### **Section 335**

#### **Imposition of coercive fines; powers to make statutory instruments**

(1) The Federal Office of Justice will pursue proceedings for the imposition of coercive fines pursuant to subsections (2) to (6) against those members of the representative body of a share capital company who do not comply with

1. section 325 concerning the duty to disclose the annual financial statements, the management report, the consolidated financial statements, the consolidated management report and other accounting documents, or
2. section 325a concerning the duty to disclose the financial reporting documents of the main office;

in the case governed by no. 2, the persons set out in section 13e (2) sentence 5 no. 3, will take the stead, once they have been entered in the Commercial Register, of the members of the representative body of the share capital company. The proceedings for the imposition of coercive fines also may be pursued against the share capital company for which the members of the representative body are to fulfil the duties set out in sentence 1 nos. 1 and 2. The proceedings will not be contravened by the fact that a duty preceding the disclosure has not yet been fulfilled, in particular the duty to draw up the annual financial statements or consolidated financial statements or to award, without undue delay, the audit contract. The coercive fine amounts to a minimum of 2,500 euros and to a maximum of 25,000 euros. The coercive fines collected accrue to the Federal Office of Justice.

(1a) Where the share capital company is publicly traded within the meaning of section 264d, the coercive fine will be the highest of the following amounts:

1. 10 million euros,
2. 5 per cent of the annual aggregate turnover that the share capital company has achieved in the financial year preceding the ruling issued by the authority or
3. double the economic benefit derived from the failure to make the disclosure; the economic benefit comprises the profits obtained and losses avoided and may be determined by way of an estimate.

Where a member of the statutory representative body of the share capital company is warned that a coercive fine may be imposed, the maximum coercive fine will be, in derogation from sentence 1, the higher of the following amounts:

1. 2 million euros or
2. double the benefit derived from the failure to make the disclosure; the economic benefit comprises the profits obtained and losses avoided and may be determined by way of an estimate.

(1b) The aggregate turnover within the meaning of subsection (1a) sentence 1 no. 2 will be defined,

1. in the case of credit institutions, payment institutions, securities institutions and financial services institutions within the meaning of section 340, as the aggregate amount obtained by applying the domestic laws applicable to the respective institution in conformity with Article 27 nos. 1, 3, 4, 6 and 7 or Article 28 nos. B1, B2, B3, B4 and B7 of Council Directive 86/635/EEC of 8 December 1986 on the annual accounts and consolidated accounts of banks and other financial institutions (OJ L 372 of 31 December 1986, p. 1), minus the turnover tax and other taxes directly levied on these earnings,
2. in the case of insurance undertakings, as the aggregate amount obtained by applying the domestic laws applicable to the respective insurance undertaking in conformity with Article 63 of Council Directive 91/674/EEC of 19 December 1991 on the annual accounts and consolidated accounts of insurance undertakings (OJ L 374 of 31

December 1991, p. 7), minus the turnover tax and other taxes directly levied on these earnings,

3. in all other cases, as the turnover pursuant to section 277 (1) or the net turnover obtained by applying the domestic laws applicable to the respective undertaking in conformity with Article 2 no. 5 of Directive 2013/34/EU.

Where the share capital company is a parent undertaking or a subsidiary undertaking within the meaning of section 290, the aggregate turnover reported in the consolidated financial statements of the parent undertaking, drawn up for the largest body of undertakings, will be taken as the basis instead of the aggregate turnover of the share capital company. Where the consolidated financial statements drawn up for the largest body of undertakings have not been drawn up in accordance with the regulations set out in sentence 1, the aggregate turnover is to be identified based on the items of the consolidated financial statements that are comparable to those set out in sentence 1 nos. 1 to 3. Where no annual financial statements or consolidated financial statements are available for the relevant financial year, the annual financial statements or consolidated financial statements for the immediately preceding financial year will be taken as the basis; where no such financial statements are available, either, the aggregate turnover may be determined by way of an estimate.

(1c) Insofar as the Federal Office of Justice is entitled to exercise discretion in determining the amount of the coercive fine, it is also to take into account any violations the affected person has committed earlier.

(1d) The Federal Office of Justice will notify the Federal Financial Supervisory Authority without undue delay of any coercive fine that is imposed pursuant to subsection (1) on a share capital company within the meaning of section 264d or on a member of its representative bodies. Where a complaint is lodged against such an imposition of a coercive fine, the Federal Office of Justice will notify the Federal Financial Supervisory Authority of this fact without undue delay, as well as of the outcome of the complaint proceedings.

(2) Subject to the stipulations of the subsections below, sections 15 to 19, section 40 (1), section 388 (1), section 389 (3), section 390 (2) to (6) of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction (*Gesetz über das Verfahren in Familiensachen und in den Angelegenheiten der freiwilligen Gerichtsbarkeit*) as well as, in all other regards, section 11 nos. 1 and 2, section 12 (1) nos. 1 to 3, (2) and (3), sections 14, 15, section 20 (1) and (3), section 21 (1), sections 23 and 26 of the Administrative Procedure Act (*Verwaltungsverfahrensgesetz*) apply accordingly to the proceedings. The proceedings for the imposition of coercive fines are proceedings serving the administration of justice.

Auditors and certified accountants, tax advisors, agents in tax matters, persons and associations within the meaning of section 3 no. 4 of the Tax Consultancy Act (*Steuerberatungsgesetz*) as well as companies within the meaning of section 3 nos. 2 and 3 of the Tax Consultancy Act, who are acting through persons within the meaning of section 3 no. 1 of the Tax Consultancy Act, are also authorised to represent the parties involved.

(2a) The files, including the case files, pertaining to compulsory enforcement are maintained electronically. Section 110c of the Act on Regulatory Offences applies accordingly to the electronic maintenance of files and to electronic communications; however, sentence 1 of that stipulation of the law

1. does not apply, read in conjunction with sentence 2 of that provision and with section 32b of the Code of Criminal Procedure (*Strafprozessordnung*), to

- a) a warning that a coercive fine may be imposed pursuant to subsection (3) sentence 1,
- b) the decision as to costs pursuant to subsection (3) sentence 2, and
- c) the issuance of interim orders;

2. does not apply, read in conjunction with sections 32d and 32e (3) sentences 1 and 2 of the Code of Criminal Procedure, to the overall proceedings, and furthermore

3. does not apply, nor do its sentences 2 and 3 apply, to the collection pursuant to the Act on the Recovery of Payments Owed to the Judiciary (*Justizbeitreibungsgesetz*).

Sentence 2 applies accordingly also to orders within the meaning of subsections (3) and (4) that may be issued using automated means.

(3) The parties involved designated in subsection (1) sentences 1 and 2 are to be instructed, with a warning being issued that non-compliance will entail a coercive fine in a specified amount, to comply with their statutory obligation within a period of six weeks following receipt of the warning, or to justify their failure to comply with it by filing an opposition against the order. Together with the warning issued to the parties involved regarding the imposition of a coercive fine, the costs of the proceedings are to be imposed on them. The opposition may be restricted such that solely objections against the decision as to costs may be raised.

Lodging an opposition against the warning as to the coercive fine and against the decision as to costs will have no suspensive effect. Where the opposition results in the proceedings being discontinued, the decision as to costs pursuant to sentence 2 concurrently is to be set aside.

(4) If the parties involved fail to comply with the statutory duty no later than six weeks after having received the warning, or have not justified their failure to do so by means of lodging an opposition, then the coercive fine is to be imposed and, concurrently, the earlier order is to be repeated, with a warning being issued that a new coercive fine may be imposed.

Where the parties involved have complied with their statutory duty only after expiry of the six-week deadline, the Federal Office of Justice is to reduce the coercive fine as follows:

1. to an amount of 500 euros if the parties involved have availed themselves of the rights enjoyed by a micro share capital company pursuant to section 326 (2);

2. to an amount of 1,000 euros if a small share capital company within the meaning of section 267 (1) is concerned;

3. to an amount of 2,500 euros if a warning has been issued regarding a higher coercive fine and the pre-requisites set out in nos. 1 and 2 have not been met, or

4. in each case to a lower amount if the parties involved only narrowly have missed the six-week deadline.

In performing such a reduction, only those circumstances are to be taken into account that have occurred prior to the decision taken by the Federal Office of Justice.

(5) Where the parties involved were prevented, through no fault of their own, to lodge the opposition within the six-week period stipulated by subsection (4) or to comply with their statutory duty, the Federal Office of Justice is to grant, upon a corresponding request being filed, the restoration of the *status quo ante*. Any culpable act by a representative is attributable to the person represented. In the event of instructions on available legal remedies having been omitted or having been erroneous, no fault will be considered to have existed. The request for restoration of the *status quo ante* is to be filed in writing with the Federal Office of Justice within two weeks of the impediment having ceased to exist. The facts serving as the reasons for the request are to be demonstrated to the satisfaction of the Federal Office of Justice at the time the request is made or in the proceedings regarding the request. The action that it was failed to take is to be taken subsequently, no later than six weeks after the impediment has ceased to exist. Where, in the course of one year following expiry of the six-week period pursuant to subsection (4), neither a request for restoration of the *status quo ante* has been made nor the action that it was failed to take has been taken, a restoration of the *status quo ante* no longer can be granted. The restoration of the *status quo ante* is unappealable. Where the parties involved have not requested the restoration of the *status quo ante* or where the refusal of the request for restoration of the *status quo ante* has

become finally binding, the parties involved no longer can invoke, by their complaint, their having been prevented through no fault of their own from lodging their opposition within the six-week period or to comply with their statutory obligation.

(5a) (repealed)

(6) Where no indications are available to the Federal Office of Justice in proceedings pursuant to subsections (1) to (5) as concerns the allocation of a company to a size category within the meaning of section 267 (1) to (3) or of section 267a, it may instruct the parties involved designated in subsection (1) sentences 1 and 2 to state the balance sheet total, after deducting a deficit reported under assets (section 268 (3)), the turnover (section 277 (1)) and the number of employees (average for the year) (section 267 (5)) for the relevant financial year and for those financial years required to perform such an allocation to a size category. Where the information pursuant to sentence 1 is not provided, the operative assumption for the further proceedings will be that the eased requirements of sections 326 and 327 cannot be claimed. Sentences 1 and 2 apply accordingly to the consolidated financial statements and the consolidated management report, with the proviso that section 293 takes the place of sections 267, 326 and 327.

(7) By way of providing for the details of the electronic maintenance of files and of electronic communications pursuant to subsection (2a) in the version applicable from 1 January 2018 onwards, the Federal Ministry of Justice and Consumer Protection may determine the following by statutory instrument not requiring the approval by the Bundesrat:

1. allow those files to continue to be maintained in paper form that had already been created in paper form prior to the introduction of the electronic maintenance of files,
2. determine the organisational and technical framework conditions, the latter in keeping with the state of the art, for the electronic maintenance of files, including the requirements of data protection, data security and accessibility that are to be complied with,
3. determine in detail the standards applying to the transmission of electronic files between the Federal Office of Justice and another authority or a court,
4. establish the standards applying to the inspection of electronic files,
5. introduce electronic form sheets and
  - a) determine that the information included in the forms is to be transmitted, either in its entirety or in part, in structured, machine-readable form,
  - b) specify a communications platform on which the forms are to be made available on the Internet to allow them to be used
  - c) determine that an identification of the party using the form may be made, in derogation from subsection (2a) read in conjunction with section 110c of the Act on Regulatory Offences and section 32a (3) of the Code of Criminal Procedure by using the electronic proof of identity pursuant to section 18 of the Act on Identity Cards (*Personalausweisgesetz*), section 12 of the Act on the eID Card (*eID-Karte-Gesetz*) or section 78 (5) of the Residence Act (*Aufenthaltsgesetz*);
6. stipulate requirements as to form and further details for the automated issuance of decisions,
7. allow electronic documents to be submitted, in derogation from subsection (2a) read in conjunction with section 110c of the Act on Regulatory Offences and section 32a of the Code of Criminal Procedure, only from 1 January of the year 2019 or 2020 onwards, and

8. allow the files to continue to be maintained in the electronic form used thus far, up until a certain point in time prior to 1 January 2026.

The Federal Ministry of Justice and Consumer Protection may transfer to the Federal Office of Justice the powers set out in sentence 1, by statutory instrument not requiring the approval by the Bundesrat.

### **Section 335a**

#### **Complaint against the imposition of a coercive fine; complaint on points of law; power to issue statutory instruments**

(1) Unless otherwise provided for in sentence 2 or in the subsections below, a complaint may be lodged in accordance with the provisions of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction against the decision by which the coercive fine is imposed or by which the opposition is rejected or the request for restoration of the *status quo ante* is refused, and also may be lodged against the decision pursuant to section 335 (3) sentence 5. The complaint will have suspensive effect if its subject matter is the imposition of a fine.

(2) The complaint is to be lodged within a period of two weeks; the regional court having jurisdiction at the seat of the Federal Office of Justice decides on the complaint. In order to avoid any significant backlogs of proceedings or in order to balance out an excessive case load, the *Land* government of that *Land* in which the Federal Office of Justice maintains its seat is authorised to transfer by statutory instrument to some other regional court or to further regional courts the power to take the decision on the appellate remedies pursuant to sentence 1. The *Land* government may transfer this power to the *Land* department of justice. Where a commercial division is instituted at the regional court, this division takes the stead of the civil division. Where the civil division takes the decision on the complaint, sections 348 and 348a of the Code of Civil Procedure apply accordingly; the chairperson rules on a complaint pending with the commercial division. The regional court may determine at its equitably exercised discretion that the treasury is to reimburse the parties involved, either fully or in part, for the out-of-court costs necessary in order to bring the appropriate action. Sentence 6 applies accordingly where the Federal Office of Justice grants the relief sought by the complaint. Section 91 (1) sentence 2 and sections 103 to 107 of the Code of Civil Procedure apply accordingly. Section 335 (2) sentence 3 applies.

(3) A complaint on points of law may be lodged against the ruling handed down on the complaint, provided the regional court has admitted it. Unless otherwise provided for in this subsection, the provisions of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction apply accordingly to the complaint on points of law. The higher regional court having jurisdiction for the seat of the regional court decides on the complaint on points of law. The Federal Office of Justice likewise is entitled to file a complaint on points of law. In proceedings before the higher regional court, the parties involved must be represented by a lawyer; this does not apply to the Federal Office of Justice. Subsection (1) sentence 2 and subsection (2) sentences 6 and 8 apply accordingly.

(4) The following regulations apply accordingly to the electronic maintenance of files by the court and the communications with the court pursuant to subsections (1) to (3):

1. section 110a (1) sentence 1 and section 110c of the Act on Regulatory Offences as well as

2. section 110a (1) sentences 2 and 3, (2) sentence 1 and section 134 sentence 1 of the Act on Regulatory Offences, with the proviso that the *Land* government of the *Land* in which the Federal Office of Justice has its seat issues the statutory instrument and can transfer the powers by statutory instrument to the *Land* department of justice.

### **Title 3**

#### **Common provisions for criminal proceedings, proceedings for the imposition of administrative fines and proceedings for the imposition of coercive fines**

### **Section 335b**

#### **Application of the penal provisions and of the regulations as to administrative fines as well as the regulations concerning coercive fines to certain general partnerships and partly limited partnerships**

The penal provisions set out in sections 331 to 333a, the regulation concerning administrative fines set out in section 334 as well as the regulation governing coercive fines set out in section 335 also apply to general partnerships and partly limited partnerships within the meaning of section 264a (1). In this case, the proceedings pursuant to section 335 are to be pursued against the general partners or against the members of the representative bodies of the general partners. They also may be pursued against the general partnership or against the partly limited partnership. Section 335a applies accordingly.

### **Section 335c**

#### **Notifications made to the Auditor Oversight Body**

(1) The Federal Office of Justice transmits to the Auditor Oversight Body with the Federal Office for Economic Affairs and Export Control all decisions as to administrative fines pursuant to section 334 (2a).

(2) In criminal proceedings that have as their subject matter a criminal offence pursuant to sections 332, 333 or 333a, the public prosecutor's office transmits to the Auditor Oversight Body, in the event of public charges having been preferred, the decision concluding the proceedings. Where an appellate remedy has been sought against the decision, reference is to be made in transmitting the decision that an appellate remedy has been sought.

### **Division 3**

#### **Supplementary provisions for registered cooperative societies**

### **Section 336**

(1) The board of management of a cooperative society is to supplement the annual financial statements (section 242) by notes that, together with the balance sheet and the profit and loss account, form a single whole; they also are to draw up a management report. The annual financial statements and the management report are to be drawn up in the course of the first five months of the financial year for the past financial year. Where the cooperative society is publicly traded within the meaning of section 264d and where it does not issue exclusively the debt instruments covered by section 327a, the period stipulated by sentence 2 will amount to four months.

(2) Unless otherwise provided for in the present Division, the following regulations apply accordingly to the annual financial statements and the management report:

1. section 264 (1) sentence 4 half-sentence 1 and (1a) and (2),
2. sections 265 to 289e, to the exception of section 277 (3) sentence 1 and section 285 no. 17,
3. section 289f (4), subject to the stipulations of section 9 (3) and (4) of the Act on Cooperative Societies (*Genossenschaftsgesetz*).

Other regulations called for by the line of business remain unaffected. Cooperative societies meeting the criteria for classification as micro share capital companies pursuant to section 267a (1) (micro cooperative societies) may apply the eased requirements for micro share capital companies, subject to the more detailed stipulations of section 337 (4) and section 338 (4).

(3) Section 330 (1) concerning the issuance of statutory instruments applies accordingly.

### **Section 337**

#### **Regulations concerning the balance sheet**

(1) Instead of the subscribed capital, the amount of the members' cooperative shares is to be shown. In the process, the amount of the cooperative shares is to be stated separately for

those members who have left the cooperative society as per the end of the financial year. Where due contributions to members' shares that are in arrears are shown on the balance sheet as cooperative shares, the corresponding amount is to be reported under assets in the item "Due contributions to members' shares in arrears." Where due contributions that are in arrears are not shown as cooperative shares, an entry is to be made for the amount in the item "Cooperative shares." In both cases, the amount is to be recognised at the nominal value. Any minimum capital determined by the statutes is to be stated separately.

(2) Instead of retained earnings, revenue reserves are to be shown, broken down as follows:

1. legal reserve;
2. other revenue reserves; an entry must be made for the revenue reserve pursuant to section 73 (3) of the Act on Cooperative Societies and the amounts that are to be disbursed from this revenue reserve to members who have left the cooperative society.

(3) In reporting the revenue reserves, the following is to be separately stated on the balance sheet or in the notes:

1. the amounts of the balance sheet profit of the preceding financial year that the general assembly has transferred to the revenue reserves;
2. the amounts of net income for the financial year that are transferred to the revenue reserves;
3. the amounts that are withdrawn for the financial year.

(4) Micro cooperative societies availing themselves of the eased requirement for micro share capital companies pursuant to section 266 (1) sentence 4 are to show the amount of the cooperative shares of the members as well as the legal reserve on the balance sheet in the liability item A Equity capital as follows:

Of this:

Cooperative shares of the members

Legal reserve.

### **Section 338**

#### **Regulations concerning the notes**

(1) The notes also are to provide information about the number of members who have joined or left the cooperative society in the course of the financial year along with the number of members belonging to the cooperative society at the close of the financial year. Furthermore, the aggregate amount by which the cooperative shares as well as the liability amounts of the members have increased or decreased in that year are to be stated, as is the amount of the liability amounts for which all members together are to make payments at the end of the year.

(2) Furthermore, the notes are to state:

1. the name and address of the audit association to which the cooperative society belongs;
2. all members of the board of management and of the supervisory board, even if they have left the cooperative society in the course of the financial year or at a later time, by their family name and at least one full first name; where a chairperson of the supervisory board has been appointed, he or she will be designated as such.

(3) Instead of the information stipulated by section 285 no. 9 regarding the emoluments, advances and loans granted to members of bodies, solely those receivables are to be stated to which the cooperative society is entitled from members of the board of management or supervisory board. The amounts of these receivables may be aggregated into a single sum for each representative body.



(4) Micro cooperative societies are not required to supplement the annual financial statements by notes if they provide, at the foot of the balance sheet,

1. the information specified in sections 251 and 268 (7) and
2. the information specified in subsections (1), (2) no. 1 and (3).

### **Section 339 Disclosure**

(1) The board of management is to electronically submit to the operator of the Federal Gazette, without undue delay after the general assembly resolving on the annual financial statements, but no later than after the twelfth month of the financial year following the balance sheet date has expired, the annual financial statements adopted, the management report, the declarations within the meaning of section 264 (2) sentence 3 and section 289 (1) sentence 5 and the report of the supervisory board. Where section 58 (2) of the Act on Cooperative Societies or Article 10 paragraph (1) of Regulation (EU) No 537/2014 requires that an audit report be issued, this is to be submitted together with the annual financial statements; where the audit association has issued an adverse audit report on the annual financial statements, a corresponding entry must be made on the annual financial statements and the entry must be signed by the audit association. Where the audit of the annual financial statements has not been concluded at the time the documents pursuant to sentence 1 are submitted, the audit report or the adverse audit report is to be submitted without undue delay following the conclusion of the audit. In the case of amendments of the annual financial statements or of the management report following the submission, the amended version likewise is to be submitted.

(2) Section 325 (1) sentence 2, (2), (2a), (4) and (6) as well as sections 326 to 329 apply accordingly. Section 9 (6) sentence 3 applies accordingly to cases in which a micro cooperative society has availed itself of the eased requirement applicable to micro share capital companies pursuant to section 326 (2).

(3) Sections 335 and 335a apply accordingly, with the proviso that the proceedings for the imposition of coercive fines are pursued against the members of the cooperative society's board of management and that such proceedings are to be pursued solely at the request of the audit association of which the cooperative society is a member, or at the request of a member, creditor or employee of the cooperative society. The proceedings for the imposition of coercive fines also may be pursued against the cooperative society on behalf of which the members of the board of management are to fulfil the duties set out in subsection (1).

## **Division 4**

### **Supplementary provisions for undertakings in certain lines of business**

#### **Subdivision 1**

### **Supplementary provisions for credit institutions, financial services institutions, securities institutions, payment institutions and e-money institutions**

#### **Title 1**

### **Scope of application**

#### **Section 340**

(1) This Subdivision applies to credit institutions within the meaning of section 1 (1) of the Banking Act, insofar as they are not precluded from such application pursuant to section 2 (1), (4) or (5) of said Act, as well as to branch offices of undertakings having their seat in a state other than a member state of the European Community and also other than a state party to the Agreement creating the European Economic Area, insofar as the branch office is considered a credit institution pursuant to section 53 (1) of the Banking Act. Section 340l (2) and (3) moreover will apply to branch offices within the meaning of section 53b (1) sentence 1 and (7) of the Banking Act, also read in conjunction with a statutory instrument pursuant to section 53c no. 1 of said Act, should these branch offices conduct banking business within

the meaning of section 1 (1) sentence 2 nos. 1 to 5 and 7 to 12 of said Act. Additional requirements based on regulations that exist due to the legal form or that govern branch offices remain unaffected.

(2) This Subdivision applies by supplementation to undertakings of the nature designated in section 2 (1) nos. 4 and 5 of the Banking Act insofar as they conduct banking business that does not form part of their characteristic business.

(3) This Subdivision does not apply to housing undertakings with a savings facility.

(4) This Subdivision is applicable also to financial services institutions within the meaning of section 1 (1a) of the Banking Act insofar as they are not precluded from such application pursuant to section 2 (6) or (10) of said Act, as well as to branch offices of undertakings having their seat in a state other than a member state of the European Community and also other than a state party to the Agreement creating the European Economic Area, insofar as the branch office is considered a financial services institution pursuant to section 53 (1) of the Banking Act. Section 340c (1) does not apply to financial services institutions and credit institutions insofar as the latter are lead brokers within the meaning of section 27 (1) sentence 1 of the Stock Exchange Act (*Börsengesetz*) and are not CRR credit institutions within the meaning of section 1 (3d) sentence 1 of the Banking Act. Additional requirements based on regulations that exist due to the legal form or that govern branch offices remain unaffected.

(4a) This Subdivision applies also to securities institutions within the meaning of section 2 (1) of the Securities Institutions Act insofar as they are not exempted from such application pursuant to section 3 of said Act. Section 340c (1) is not applicable to securities institutions where they are book-running brokers within the meaning of section 27 (1) sentence 1 of the Stock Exchange Act (*Börsengesetz*).

(5) This Subdivision also applies to institutions within the meaning of section 1 (3) of the Payment Services Oversight Act. Additional requirements based on regulations that exist due to the legal form or that govern branch offices remain unaffected.

## **Title 2**

### **Annual financial statements, management report, interim financial statements**

#### **Section 340a**

##### **Applicable regulations**

(1) Unless otherwise provided for by the provisions of this Subdivision, credit institutions are to apply to their annual financial statements the regulations applicable to large share capital companies of Subdivision 1 of Division 2 even if they are not operated in the legal form of a share capital company. Moreover, credit institutions are to draw up a management report pursuant to the provisions applicable to large share capital companies.

(1a) A credit institution is to supplement its management report by a non-financial statement if it qualifies as a large credit institution by analogous application of section 267 (3) sentence 1 and (4) to (5), and if it employs more than 500 employees (average for the year). Where the non-financial statement constitutes a separate chapter of the management report, the credit institution may refer to the non-financial information included elsewhere in the management report. Section 289b (2) to (4) and sections 289c to 289e apply accordingly.

(1b) A credit institution that is to draw up a corporate governance statement pursuant to subsection (1) read in conjunction with section 289f (1) is to include therein the information pursuant to section 289f (2) no. 6 if it qualifies as a large credit institution by way of section 267 (3) sentence 1 and (4) to (5) being applied accordingly. A credit institution that is a cooperative society is to apply section 289f (4) 289f (4), subject to the stipulations of section 9 (3) and (4) of the Act on Cooperative Societies (*Genossenschaftsgesetz*).

(2) Section 264 (3), sections 264b, 265 (6) and (7), section 267, section 268 (4) sentence 1, (5) sentences 1 and 2, section 276, section 277 (1), (2), (3) sentence 1, section 284 (2) no. 3, section 285 nos. 8 and 12, section 288 do not apply. Instead of section 247 (1), sections 251, 266, 268 (7), section 275, section 284 (3), section 285 nos. 1, 2, 4, 9 (c) and no. 27, the form sheets and other regulations issued by statutory instrument apply. Section 246 (2) does

not apply if deviating regulations are in place. Section 285 no. 31 does not apply; earnings and expenditures arising outside the usual course of business are to be shown in the items “extraordinary earnings” and “extraordinary expenditures.” These items are to be explained in the notes with regard to their amount and their nature insofar as the amounts reported are not immaterial for the assessment of the profit or loss.

(3) Insofar as credit institutions draw up interim financial statements that are to be subjected to an auditor’s review in order to identify interim profits or losses within the meaning of Article 26 (2) of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176 of 27 June 2013, p. 1), the accounting standards applicable to annual financial statements apply to them. The regulations applying to the appointment of the statutory auditor apply accordingly to the auditor’s review. The auditor’s review is to be structured such that, assuming professional due diligence is applied, it can be ruled out that the interim financial statements contradict the accounting standards in material ways. The statutory auditor is to summarise the results obtained by the auditor’s review in a certification. Section 320 and section 323 apply accordingly.

(4) Additionally, credit institutions are to provide the following information in the notes to the annual financial statements:

1. all mandates held in supervisory committees legally required to be instituted of large share capital companies (section 267 (3)) by legal representatives or other employees;
2. all participating interests in large share capital companies comprising more than 5 per cent of the voting rights.

### **Section 340b**

#### **Repurchase agreements**

(1) Repurchase agreements are contracts by which a credit institution or the customer of a credit institution (transferor) transfers assets belonging to them to another credit institution or to a client of that credit institution (transferee) against payment of an amount and in which it is concurrently agreed that the assets must be re-transferred, or may be re-transferred, to the transferor at a later time against payment of the amount received or of some other amount agreed in advance.

(2) Where the transferee enters into obligation to re-transfer the assets at a certain point in time or at a point in time to be determined by the transferor, this is an authentic repurchase agreement.

(3) Where the transferee is solely entitled to re-transfer the assets at a certain point in time or at a point in time to be determined by them, this is an inauthentic repurchase agreement.

(4) In the case of authentic repurchase agreements, the assets transferred are to continue to be shown on the balance sheet of the transferor. The transferor is to state the amount received for the transfer as a liability towards the transferee. Where a higher or lower amount has been agreed for the re-transfer, the difference is to be distributed over the term of the repurchase agreement. Moreover, the transferor is to state in the notes the book value of the assets transferred under the repurchase agreement. The transferee is not permitted to show the assets transferred to the transferee under the repurchase agreement in the balance sheet; he or she is to show on the balance sheet the amount paid for the transfer as a receivable from the transferor. Where a higher or a lower amount has been agreed for the retransfer, the difference is to be distributed over the term of the repurchase agreement.

(5) In the case of inauthentic repurchase agreements, the assets are to be shown not on the balance sheet of the transferor, they are to be shown on the balance sheet of the transferee. The transferor is to state at the foot of the balance sheet the amount agreed for the eventuality of a retransfer.

(6) Forward exchange transactions, financial future transactions and similar transactions as well as the issuance of own debentures for an abridged term are not considered repurchase agreements within the meaning of this regulation.

#### **Section 340c**

##### **Regulations concerning the profit and loss account and the notes**

(1) The difference between all income and expense from transactions with financial instruments in the trading portfolio and from the trade in precious metals, as well as between the appurtenant gains from write-ups and losses from write-downs, is to be shown as income or expense of the trading portfolio. Expenses for the formation of provisions for anticipated losses from transactions designated in sentence 1 and the income from the reversal of these provisions are to be included in the netting calculation.

(2) Expenses for write-downs of participating interests, participating interests held in affiliated undertakings and investment securities treated like fixed assets may be set off against the gains from write-ups of such assets and reported in an income or expense item. The set-off pursuant to sentence 1 may also include the expenses and income from transactions with such assets.

(3) Credit institutions allocating unrealised reserves to their liable equity capital pursuant to section 10 (2b) sentence 1 no. 6 or 7 of the Banking Act in the version applicable until 31 December 2013 are to state in the notes to the balance sheet and to the profit and loss account the amount at which such reserves have been allocated to the liable equity capital.

#### **Section 340d**

##### **Maturity breakdown**

The receivables and liabilities are to be broken down in the notes in keeping with their maturity. The maturity period remaining on the balance sheet date governs the maturity breakdown.

### **Title 3**

#### **Valuation rules**

#### **Section 340e**

##### **Valuation of assets**

(1) Credit institutions are to value participating interests including the participating interests held in affiliated undertakings, concessions, industrial property rights and similar rights and assets as well as licenses to such rights and assets, real property and equivalent rights as well as buildings, including buildings on third-party real estate, plant and machinery, other equipment, factory equipment and furnishings and fixtures as well as construction in progress in accordance with the regulations applying to such fixed assets unless they are not intended to serve business operations on a permanent basis; in such event, they are to be valued pursuant to sentence 2. Other assets, particularly receivables and investment securities, are to be valued in accordance with the regulations applying to the current assets, unless they are intended to serve business operations on a permanent basis; in such event, they are to be valued pursuant to sentence 1. Section 253 (3) sentence 6 applies solely to participating interests and participating interests held in affiliated undertakings within the meaning of sentence 1 as well as to investment securities and receivables within the meaning of sentence 2, that are intended to serve business operations on a permanent basis.

(2) In derogation from section 253 (1) sentence 1, mortgage loans and other receivables may be recognised at their nominal amount insofar as the difference between the nominal amount and the amount paid out or the cost of acquisition is similar in nature to interest. Where the nominal amount exceeds the amount paid out or the cost of acquisition, the difference is to be shown in the accrued and deferred items reported under liabilities; it is to be reversed as scheduled and its respective amount is to be stated separately on the balance sheet or in the notes. Where the nominal amount is lower than the amount paid out

or lower than the cost of acquisition, the difference may be included in the accrued and deferred items reported under assets; it is to be reversed as scheduled and its respective amount is to be stated separately on the balance sheet or in the notes.

(3) Financial instruments in the trading portfolio are to be valued at their fair value minus a deduction for risk. Performing a reclassification into the trading portfolio is impermissible. The same applies to performing a reclassification out of the trading portfolio unless exceptional circumstances, in particular grave impairments of the financial instruments' marketability, lead the credit institution to give up its trading intent. Financial instruments in the trading portfolio subsequently may be included in a combined item for valuation purposes; once the combined item for valuation purposes no longer exists, they are to be reclassified back into the trading portfolio.

(4) In each financial year, an amount is to be allocated to the special item "Fund for general banking risks" pursuant to section 340g on the balance sheet, which amount must correspond to no less than 10 per cent of the net earnings of the trading portfolio and is to be shown separately therein. This item may be reversed only

1. in order to balance out net expenditures of the trading portfolio, as well as
2. in order to balance out a net loss for the year, unless the loss is covered by accumulated profits carried forward from the preceding financial year,
3. in order to balance out accumulated losses carried forward from the preceding financial year, unless the losses are covered by net income for the year, or
4. insofar as it exceeds 50 per cent of the average of the net earnings generated by the trading portfolio over the past five years.

Reversals made pursuant to sentence 2 are to be stated in the notes and an explanation is to be provided.

### **Section 340f**

#### **Provisions for general banking risks**

(1) Credit institutions may recognise receivables from credit institutions and customers, debentures and other fixed-income securities as well as shares of stock and other, non-fixed-income securities insofar as they are not treated like fixed assets and are not part of the trading portfolio, at a lower value than the value stipulated or permitted pursuant to section 253 (1) sentence 1 and (4), insofar as this is deemed necessary when assessed exercising reasonable business judgment in order to hedge against the particular risks inherent to the line of business of the credit institutions. The amount of the contingency provisions formed in this way may not permissibly exceed four per cent of the aggregate value of the assets designated in sentence 1, as computed from their valuation pursuant to section 253 (1) sentence 1 and (4). A lower value that has already been recognised may continue to be used.

(2) (repealed)

(3) The expense and income derived from the application of subsection (1) and from transactions with investment securities designated in subsection (1), as well as losses from write-downs and gains from write-ups of these investment securities may be set off against expense derived from write-downs of receivables, from allocations to provisions for contingent liabilities and credit risks, as well as against the income derived from write-ups of receivables or from their full or partial recoupment after having been written off, and from reversals of provisions for contingent liabilities and credit risks and may be shown on the profit and loss account as an expense item or as an income item.

(4) Information on the formation and reversal of contingency provisions pursuant to subsection (1) as well as on set-offs performed pursuant to subsection (3) is not required to be provided in the annual financial statements, management report, consolidated financial statements or consolidated management report.

### **Section 340g**

#### **Special item for general banking risks**

- (1) Credit institutions may show a special item “Fund for general banking risks” under liabilities on their balance sheet in order to hedge against general banking risks, insofar as this is deemed necessary when assessed exercising reasonable business judgment in order to hedge against the particular risks inherent to the line of business of the credit institutions.
- (2) The allocations to the special item or the income from the reversal of the special item are to be shown separately in the profit and loss account.

### **Title 4**

#### **Currency translation**

### **Section 340h**

#### **Currency translation**

Section 256a applies with the proviso that earnings resulting from currency translation are to be taken into account in the profit and loss account insofar as the assets, debt obligations or forward transactions are separately hedged by assets, debt obligations or other forward transactions in the same currency.

### **Title 5**

#### **Consolidated financial statements, consolidated management report, interim consolidated financial statements**

### **Section 340i**

#### **Reporting requirement**

- (1) Unless otherwise provided for by the provisions of this Subdivision, credit institutions are to draw up, independently of their size and even if they are not operated in the legal form of a share capital company, consolidated financial statements and a consolidated management report in accordance with the provisions of Subdivision 2 of Division 2 governing the consolidated financial statements and consolidated management report. Additional requirements based on regulations that exist due to the legal form remain unaffected.
- (2) Sections 340a to 340g governing annual financial statements and the regulations applying to the legal form and the line of business of the undertakings included in the consolidated financial statements that have their seat in the territorial scope of this statute apply accordingly to the consolidated financial statements unless their nature calls for a deviation, insofar as they apply to large share capital companies. Sections 293, 298 (1), section 314 (1) nos. 1, 3, 6 (c) and 23 do not apply. In the cases governed by section 315e (1), the only regulations set out in subsection (1) that apply are sections 290 to 292 and section 315e; sentences 1 and 2 of this subsection as well as section 340j do not apply. Insofar as section 315e (1) refers to section 314 (1) no. 6 (c), the latter's stead will be taken by section 34 (2) no. 2 read in conjunction with section 37 of the Ordinance on Financial Reporting by Credit Institutions in the version of the publication by notice of 11 December 1998 (Federal Law Gazette I p. 3658), last amended by Article 8 paragraph (13) of the Act of 17 July 2015 (Federal Law Gazette I p. 1245), as amended. In all other regards, the Ordinance on Financial Reporting by Credit Institutions does not apply in the cases governed by section 315e (1).
- (3) Parent undertakings, the sole object of which is to acquire participating interests in subsidiary undertakings and to manage such participating interests and turn them to profit, also will be considered credit institutions within the meaning of this Title if all of said subsidiary undertakings or the majority of them are credit institutions.
- (4) Insofar as credit institutions draw up consolidated interim financial statements that are to be subjected to an auditor's review in order to identify consolidated interim profits or losses within the meaning of Article 26 (2) read in conjunction with Article 11 of Regulation (EU) No 575/2013, the accounting standards applicable to consolidated financial statements apply to the consolidated interim financial statements. The regulations governing the appointment of

the statutory auditor apply accordingly to the auditor's review. The auditor's review is to be structured such that, assuming professional due diligence is applied, it can be ruled out that the interim financial statements contradict the accounting standards in material ways. The statutory auditor is to summarise the results obtained by the auditor's review in a certification. Section 320 and section 323 apply accordingly.

(5) A credit institution that is a parent undertaking (section 290) is to supplement the consolidated management report by a consolidated non-financial statement if the undertakings to be included in the consolidated financial statements fulfil the following criteria:

1. They do not meet the pre-requisites for an exemption stipulated in section 293 (1) sentence 1 no. 1 or 2 based on the undertaking's size, and

2. they employ a total of more than 500 employees (average for the year).

Section 267 (4) to (5), section 298 (2), section 315b (2) to (4) and section 315c apply accordingly. Where the consolidated non-financial statement constitutes a separate chapter of the management report, the credit institution may refer to the non-financial information included elsewhere in the consolidated management report.

(6) A credit institution that is to prepare a consolidated corporate governance statement pursuant to subsection (1) read in conjunction with section 315d is to include in it the information stipulated by section 315d read in conjunction with section 289f (2) no. 6 if the undertakings to be included in the consolidated financial statements do not meet the pre-requisites for an exemption stipulated by section 293 (1) sentence 1 no. 1 or 2.

#### **Section 340j** **Undertakings to be included**

Where a credit institution does not include, pursuant to section 296 (1) no. 3, a subsidiary undertaking in its consolidated financial statements that is a credit institution, and where the temporary possession of shares of stock or shares in this undertaking is the result of a financial assistance operation serving to restructure or save said undertaking, then it is to attach the annual financial statements of this undertaking to its consolidated financial statements and is to provide additional information in the notes to the consolidated financial statements regarding the nature and the conditions of the financial assistance operation.

### **Title 6** **Audit**

#### **Section 340k**

(1) Independently of their size, credit institutions, are to have their annual financial statements and management report as well as their consolidated financial statements and consolidated management report audited, notwithstanding the regulations set out in sections 28 and 29 of the Banking Act, according to the provisions of Subdivision 3 of Division 2 pertaining to the audit; section 319 (1) sentence 2 does not apply. The audit is to be performed no later than the expiry of the fifth month of the financial year following the balance sheet date. The annual financial statements are to be adopted without undue delay following the audit. The provisions of Subdivision 3 of Division 2 apply to credit institutions that are public-interest entities as defined in section 316a sentence 2 no. 1 or 2 only insofar as Regulation (EU) No 537/2014 does not apply.

(2) Where the credit institution is a cooperative society or a profit-making association having legal capacity, the audit is to be performed, in derogation from section 319 (1) sentence 1, by that audit association of which the credit institution is a member, provided that more than half of the managing members of said audit association's board of management are auditors.

Where the audit association has only two members sitting on the board of management, one of them must be an auditor. Section 319 (2) and (3) applies accordingly to the legal representatives of the audit association and to all persons employed by the audit association who have the ability to influence the result of the audit; section 319 (3) sentence 1 no. 2 does

not apply to members of the supervisory body of the audit association provided it is assured that the statutory auditor can perform the audit independently of any instructions issued by the supervisory body. Section 319 (1) sentences 3 and 4 applies accordingly with the proviso that the audit association must have available an excerpt relating to the statutory auditor's registration pursuant to section 40a of the Act on the Profession of Auditors; where it performs the audit pursuant to subsection (1) sentence 1 for the first time, it will have such excerpt available no later than six weeks after the audit has commenced. Where the parent undertaking is a cooperative society, the audit association of which the cooperative society is a member also will be the statutory auditor, subject to the pre-requisites set out in sentences 1 to 4, of the consolidated financial statements and of the consolidated management report. (2a) Where the audit of the annual financial statements of the credit institutions designated in subsection (2) is performed by an audit association, the audit report required by law may be signed only by auditors. The auditors active in the audit association are to perform their audit activity independently, with due diligence and on their own responsibility; they are to maintain confidentiality. In particular where they issue auditor's additional reports, they are to conduct themselves impartially. Persons who are not auditors are not permitted to issue instructions to them regarding their audit activity. The number of the auditor's active in the association must be such that the auditors signing the audit report are able to perform the audit responsibly.

(3) Where the credit institution is a savings bank, the audits stipulated by subsection (1) may be performed, in derogation from section 319 (1) sentence 1, by the audit office of a savings bank association. However, the audit may be performed by the audit office only if the head of the audit office fulfils the pre-requisites of section 319 (1) sentences 1 and 2; section 319 (2), (3) and (5), as well as Article 5 paragraphs (1), (4) subparagraph 1 and (5) of Regulation (EU) No 537/2014 apply accordingly to all persons employed by the savings bank association who have the ability to influence the result of the audit. Article 5 of Regulation (EU) No 537/2014 does not apply to the audit offices. Moreover, it must be ensured that the statutory auditor is able to perform the audit independently of instructions from the bodies of the savings bank association. Unless otherwise provided for by *Land* law, section 319 (1) sentences 3 and 4 apply with the proviso that the audit office must have available an excerpt relating to its registration pursuant to section 40a of the Act on the Profession of Auditors; where it performs the audit pursuant to subsection (1) sentence 1 for the first time, it will have such excerpt available no later than six weeks after the audit has commenced.

(4) Where the credit institution is a savings bank, Article 4 paragraph (3) subparagraph 2 as well as Articles 16, 17 and 19 of Regulation (EU) No 537/2014 do not apply. Article 4 paragraph (3) subparagraph 1 as well as Article 10 paragraph (2) (g) of Regulation (EU) No 537/2014 apply accordingly to all persons employed by the savings bank association who have the ability to influence the result of the audit. Article 4 paragraph (2) and (3) subparagraph 1 as well as Article 10 paragraph (2) (g) of Regulation (EU) No 537/2014 do not apply to the audit offices.

(5) Credit institutions that are public-interest entities as defined in section 316a sentence 2 no. 1 or 2 and that have no supervisory board or administrative body that must meet the pre-requisites set out in section 100 (5) of the Stock Corporation Act are to apply section 324 even if they are not operated in the legal form of a share capital company or of a commercial partnership within the meaning of section 264a (1). This applies to savings banks within the meaning of subsection (3) as well as to other credit institutions under public law governed by *Land* law only insofar as *Land* law does not provide otherwise. Sections 36 (4) and 53 (3) of the Act on Cooperative Societies (*Genossenschaftsgesetz*) remain unaffected. Section 324 (3) sentence 1 does not apply to credit institutions in the legal form of a cooperative society, to savings bank and to other credit institutions under public law governed by *Land* law.

**Title 7**  
**Disclosure**  
**Section 340I**



(1) Credit institutions are to disclose, pursuant to section 325 (2) to (5), sections 328, 329 (1) and (4), the annual financial statements and the management report as well as the consolidated financial statements and the consolidated management report and the other documents designated in section 325. Credit institutions that are not branch offices moreover are to disclose the documents designated in sentence 1 in every other Member State of the European Community and in every other state party to the Agreement creating the European Economic Area in which they have established a branch office. The disclosure pursuant to sentence 2 is governed by the laws of the respective Member State or state party.

(2) Branch offices located within the territorial scope of this statute established by undertakings having their seat in some other state are to disclose, pursuant to section 325 (2) to (5), sections 328, 329 (1), (3) and (4), the documents designated in subsection (1) sentence 1 of their main office, which have been drawn up and audited pursuant to the laws of the state in which the main office has its seat. Undertakings having their seat in a third state within the meaning of section 3 (1) sentence 1 of the Act on the Profession of Auditors, whose securities within the meaning of section 2 (1) of the Securities Trading Act are admitted by a domestic stock exchange to trading on the regulated market, moreover are to disclose a certification from the Chamber of Public Accountants pursuant to section 134 (2a) of the Act on the Profession of Auditors certifying the registration of the statutory auditor or a confirmation from the Chamber of Public Accountants pursuant to section 134 (4) sentence 8 of the Act on the Profession of Auditors confirming the statutory auditor's having been exempted from the registration obligation. Sentence 2 does not apply insofar as exclusively debt instruments within the meaning of section 2 (1) no. 3 of the Securities Trading Act

1. are admitted by a domestic stock exchange to trading on the regulated market at a minimum denomination of 100,000 euros each or in a corresponding amount in another currency or

2. are admitted by a domestic stock exchange to trading on the regulated market at a minimum denomination of 50,000 euros each or in a corresponding amount in another currency, and these debt instruments have been issued prior to 31 December 2010.

Branch offices located within the territorial scope of this statute established by undertakings having their seat in a state that is not a member of the European Community and also not a state party to the Agreement creating the European Economic Area are not required to disclose separate financial reporting documents pursuant to subsection (1) sentence 1 relating to their own business operations if the documents to be disclosed pursuant to the sentences 1 and 2 have been drawn up and audited pursuant to a legal regime brought in conformity with Council Directive 86/635/EEC or if they are equivalent to the documents drawn up pursuant to one of these legal regimes. The documents are to be submitted in German. Insofar as German is not the official language at the seat of the main office, the documents of the main office also may be submitted

1. in English, or

2. as a copy authenticated by the commercial register competent for the main office, or,

3. where no institution exists that is comparable to a commercial register or where that institution is not competent to authenticate documents, as a copy certified by an auditor, together with the declaration that either no institution comparable to a commercial register exists or that the institution is not competent to authenticate documents;

a certified translation into German of the authentication by the commercial register is to be submitted.

(3) Section 339 does not apply to credit institutions that are cooperative societies.

(4) Where a credit institution takes recourse to the reporting option pursuant to section 325 (2a) sentence 1, this calls for section 325 (2a) sentences 3 and 5 to be applied with the following provisos:

1. The provisions of Subdivision 1 of Division 2 of the Book 3 set out in section 325 (2a) sentence 3 apply also to credit institutions that are not operated in the legal form of a share capital company.
2. Section 285 no. 8 (b) does not apply; however, the staff costs for the financial year are to be stated in the notes to the standalone financial statements pursuant to section 325 (2a) in accordance with the classifications pursuant to form sheet 3, in the item “General administrative expenditures” sub-item letter a “Staff costs,” of the Ordinance on Financial Reporting by Credit Institutions in the version of the publication by notice of 11 December 1998 (Federal Law Gazette I p. 3658), as amended, unless this information has been set out separately in the profit and loss account.
3. Instead of section 285 no. 9 (c), section 34 (2) no. 2 of the Ordinance on Financial Reporting by Credit Institutions in the version of the publication by notice of 11 December 1998 (Federal Law Gazette I p. 3658), as amended, applies.
4. The regulation of section 340a (4) additionally applies to the Notes.
5. In all other regards, the provisions of Titles 2 to 4 of this Subdivision as well as of the Ordinance on Financial Reporting by Credit Institutions do not apply.

#### **Title 8**

#### **Penal provisions and regulations as to administrative fines, coercive fines**

#### **Section 340m**

#### **Penal provisions**

(1) The penal provisions of sections 331 to 333 also apply to credit institutions not operated in the legal form of a share capital company, to financial services institutions within the meaning of section 340 (4), to securities institutions within the meaning of section 340 (4a) sentence 1 as well as to institutions within the meaning of section 340 (5). Moreover, section 331 also applies to breaches of duties by

1. the senior manager (section 1 (2) sentence 1 of the Banking Act) of a credit institution not operated in the legal form of a share capital company, or of a financial services institution within the meaning of section 340 (4) sentence 1,
- 1a. the senior manager (section 2 (36) of the Securities Institutions Act) of a securities institution not operated in the legal form of a share capital company within the meaning of section 340 (4a) sentence 1
2. the senior manager (section 1 (8) sentences 1 and 2 of the Payment Services Oversight Act) of an institution not operated in the legal form of a share capital company within the meaning of section 340 (5),
3. the owner of a financial services institution within the meaning of section 340 (4) sentence 1 operated in the legal form of sole trader, or of a securities institution within the meaning of section 340 (4a) sentence 1, and
4. the senior manager within the meaning of section 53 (2) no. 1 of the Banking Act.

(2) Whoever, acting in the capacity of a member of an audit committee instituted pursuant to section 340k (5) sentence 1 read in conjunction with section 324 (1) sentence 1 of a credit institution within the meaning of section 340 (1) sentence 1, of a financial services institution

within the meaning of section 340 (4) sentence 1 or of an institution within the meaning of section 1 (3) of the Payment Services Oversight Act

1. commits an act designated in 340n (2a) and receives a material benefit in return, or has someone promise him or her such a material benefit in return, or

2. persists in repeating an act designated in section 340n (2a),

will be liable to a term of imprisonment not to exceed one year or to a fine.

(3) Section 335c (2) applies accordingly to the cases governed by subsection (1) sentence 1 read in conjunction with section 332 or 333 and to the cases governed by subsection (2).

### **Section 340n Regulations as to administrative fines**

(1) Whoever, acting in the capacity of senior manager within the meaning of section 1 (2) sentence 1 of the Banking Act or of section 53 (2) no. 1 of said Act or as the owner of a financial services institution within the meaning of section 340 (4) sentence 1 operated in the legal form of sole trader, or acting in the capacity of senior manager within the meaning of section 2 (36) of the Securities Institutions Act, or acting as the owner of a securities institution operated in the legal form of sole trader within the meaning of section 340 (4a) sentence 1, or acting in the capacity of senior manager within the meaning of section 1 (8) sentences 1 and 2 of the Payment Services Oversight Act of an institution within the meaning of section 340 (5) or acting in the capacity of a member of the supervisory board of one of the undertakings referenced above, acts in contravention,

1. in drawing up or adopting the annual financial statements or in drawing up the interim financial statements pursuant to section 340a (3), of a stipulation made in

a) section 243 (1) or (2), sections 244, 245, 246 (1) or (2), the latter section read in conjunction with section 340a (2) sentence 3, in section 246 (3) sentence 1, in section 247 (2) or (3), in sections 248, 249 (1) sentence 1 or (2), in section 250 (1) or (2), in section 264 (1a) or (2), in section 340b (4) or (5) or in section 340c (1) concerning the form or content,

b) section 253 (1) sentence 1, 2, 3 or 4, (2) sentence 1, also read in conjunction with sentence 2, (3) sentence 1, 2, 3, 4 or 5, (4) or (5), in sections 254, 256a, 340e (1) sentence 1 or 2, (3) sentence 1, 2, 3 or 4 half-sentence 2, (4) sentence 1 or 2, in section 340f (1) sentence 2 or in section 340g (2) concerning valuation,

c) section 265 (2), (3) or (4), in section 268 (3) or (6), in sections 272, 274 or in section 277 (3) sentence 2 concerning the classification,

d) section 284 (1), (2) no. 1, 2 or 4, (3) or in section 285 nos. 3, 3a, 7, 9 (a) or (b), nos. 10 to 11b, 13 to 15a, 16 to 26, 28 to 33 or no. 34 concerning the information to be provided in the notes,

2. in drawing up the consolidated financial statements or the consolidated interim financial statements pursuant to section 340i (4), of a stipulation made in

a) section 294 (1) concerning the scope of consolidation,

b) section 297 (1a), (2) or (3) or section 340i (2) sentence 1 read in conjunction with one of the provisions made in no. 1 (a) concerning the form or content,

c) section 300 concerning the consolidation principles or the requirement to provide full and complete information,

d) section 308 (1) sentence 1 read in conjunction with the provisions made in no. 1 (b), section 308 (2) or section 308a concerning valuation,

e) section 311 (1) sentence 1 read in conjunction with section 312 concerning the treatment of associated undertakings or

f) section 308 (1) sentence 3, section 313 or section 314 concerning the information to be provided in the notes to the consolidated financial statements,

3. in drawing up the management report or in preparing a separate non-financial report, of a stipulation made in sections 289 or 289a, section 289f, also read in conjunction with section 340a (1b), or section 340a (1a), also read in conjunction with section 289b (2) or (3) or read in conjunction with section 289c, 289d or section 289e (2), concerning the content of the management report or of the separate non-financial report,

4. in drawing up the consolidated management report or in preparing a separate, consolidated non-financial report, of a stipulation made in sections 315 or section 315a, section 315d, also read in conjunction with section 340i (6) or section 340i (5), also read in conjunction with section 315b (2) or (3) or read in conjunction with section 315c concerning the content of the consolidated management report or of the separate consolidated non-financial report,

5. at disclosure, publication or reproduction, of a stipulation made in section 328 concerning the form, format or content or

6. a statutory instrument issued on the basis of section 330 (2) in conjunction with (1) sentence 1 insofar as this statutory instrument refers to this regulation as to administrative fines for certain elements constituting an offence,

will be deemed to have committed a regulatory offence. In the cases governed by sentence 1 no. 3, the contravention of a stipulation made in section 289f (2) no. 4, also read in conjunction with subsections (3) or (4), will not be excluded by the failure to cite, whether as a whole or in part, the stipulations or reasonings in accordance with section 76 (4) or section 111 (5) of the Stock Corporation Act or in accordance with section 36 or section 52 (2) of the Limited Liability Companies Act (*Gesetz betreffend die Gesellschaften mit beschränkter Haftung*), or in accordance with section 9 subsection (3) or (4) of the Act on Cooperative Societies (*Genossenschaftsgesetz*). In the cases governed by sentence 1 no. 4, the contravention of a stipulation made in section 315d read in conjunction with section 289f (2) no. 4 will not be excluded by the failure to cite, whether as a whole or in part, the stipulations or reasonings in accordance with section 76 (4) or section 111 (5) of the Stock Corporation Act.

(2) A person who issues an audit report pursuant to section 322 (1) relating to the financial statements

1. of an institution that is a public-interest entity as defined in section 316a sentence 2 no. 1 or 2, or

2. of an institution not set out in no. 1,

in spite of the fact that this person may not serve as the statutory auditor as stipulated by section 319 (2) or (3), in each case also read in conjunction with subsection (5), or as stipulated by section 319b (1) sentence 1 or 2, in each case also read in conjunction with subsection (2), or that the audit firm or the accountancy company for whom the person is pursuing his or her activities may not serve as the statutory auditor as stipulated by section 319 (4) sentence 1 or 2, in each case also read in conjunction with subsection (5), or as stipulated by section 319b (1) sentence 1 or 2, in each case also read in conjunction with subsection (2), or that the audit association or the audit office for whom the person is pursuing his or her activities may not serve as the statutory auditor as stipulated by section 340k subsection (2) sentences 1 and 2 or subsection (3) sentence 2 first half-sentence, will be deemed to have committed a regulatory offence. Likewise, whoever issues an audit

report pursuant to section 322 (1) relating to the financial statements of an institution that is a public-interest entity as defined in section 316a sentence 2 no. 1 in spite of the fact

1. that this person or the audit firm for whom the person is pursuing his or her activities, or a member of the network to which the person or the audit firm for whom the person is pursuing his or her activities belongs, acts in contravention of a provision stipulated by Article 5 paragraph (4) subparagraph 1 sentence 1 or paragraph (5) subparagraph 2 sentence 2 of Regulation (EU) No 537/2014, or

2. that this person or the audit firm for whom the person is pursuing his or her activities may not perform the audit pursuant to Article 17 paragraph (3) of Regulation (EU) No 537/2014

will be deemed to have committed a regulatory offence. Financial statements within the meaning of sentences 1 and 2 are annual financial statements, standalone financial statements pursuant to section 325 (2a) or group financial statements that are to be audited based on statutory requirements. An institution within the meaning of sentences 1 and 2 is a credit institution within the meaning of section 340 (1) sentence 1, a financial services institution within the meaning of section 340 (4) sentence 1, a securities institution within the meaning of section 340 (4a) sentence 1 or an institution within the meaning of section 1 (3) of the Payment Services Oversight Act.

(2a) Whoever,

1. acting in the capacity of a member of an audit committee instituted pursuant to section 324 (1) sentence 1, also read in conjunction with section 340k (5) sentence 1, by an institution within the meaning of subsection (2) sentence 4 that is not a savings bank

a) fails to monitor the independence of the statutory auditor or of the audit firm in the manner stipulated by Article 4 paragraph (3) subparagraph 2, by Article 5 paragraph (4) subparagraph 1 sentence 1 or by Article 6 paragraph (2) of Regulation (EU) No 537/2014,

b) submits a recommendation for the appointment of a statutory auditor or of an audit firm that does not comply with the requirements set out in Article 16 (2) subparagraph 2 or 3 of Regulation (EU) No 537/2014 or that has not been preceded by a selection procedure pursuant to Article 16 (3) subparagraph 1 of Regulation (EU) No 537/2014, or

c) submits to the shareholders or the body otherwise responsible for appointing the statutory auditor a proposal for the appointment of a statutory auditor or an audit firm who does not comply with the requirements set out in Article 16 (5) subparagraph 1 of Regulation (EU) No 537/2014, or,

2. acting in the capacity of a member of an audit committee instituted pursuant to section 340k (5) read in conjunction with section 324 (1) sentence 1 of an institution within the meaning of subsection (2) sentence 4 that is a savings bank, fails to monitor the independence of the persons set out in section 340k (3) sentence 2 half-sentence 2 in the manner stipulated by Article 5 paragraph (4) subparagraph 1 sentence 1 of Regulation (EU) No 537/2014 read in conjunction with section 340k (3) sentence 2 or by Article 6 paragraph (2) of Regulation (EU) No 537/2014,

will be deemed to have committed a regulatory offence.

(3) In the cases governed by subsection (2) sentence 1 no. 1 and sentence 2, as well as in the cases governed by subsection (2a), the regulatory offence is punishable by a fine of up to 500,000 euros; in the cases governed by subsection (1) and subsection (2) sentence 1 no. 2, by a fine not exceeding 50,000 euros. Where the credit institution is publicly traded within the meaning of section 264d, the maximum fine will be, in the cases governed by subsection (1), the higher of the following amounts

1. 2 million euros or
2. double the economic benefit derived from the regulatory offence, in which context the economic benefit comprises the profits obtained and losses avoided and may be determined by way of an estimate.

(3a) Where, in the cases governed by subsection (1), a fine is levied pursuant to section 30 of the Act on Regulatory Offences against a credit institution that is publicly traded within the meaning of section 264d, the maximum fine will be the highest of the following amounts:

1. 10 million euros or
2. 5 per cent of the aggregate turnover for the year that the credit institution has achieved in the financial year preceding the ruling issued by the authority or
3. double the economic benefit derived from the regulatory offence, in which context the economic benefit comprises the profits obtained and losses avoided and may be determined by way of an estimate.

In the cases governed by subsection (3) sentence 1 read in conjunction with subsection (2) sentence 1 no. 1 or sentence 2, section 30 (2) sentence 3 of the Act on Regulatory Offences is to be applied.

(3b) That total amount is to be taken as the aggregate turnover, instead of the amount of the turnover, that is obtained in accordance with the domestic laws applicable to the credit institution that are in conformity with Article 27 no. 1, 3, 4, 6 and 7 or Article 28 letter B no. 1, 2, 3, 4 and 7 of Council Directive 86/635/EEC of 8 December 1986 on the annual accounts and consolidated accounts of banks and other financial institutions (OJ L 372 of 31 December 1986, p. 1; L 316 of 23 November 1988, p. 51), last amended by Directive 2006/46/EC (OJ L 224 of 16 August 2006, p. 1), minus the turnover tax and other taxes directly levied on these earnings. Where the credit institution is a parent undertaking or a subsidiary undertaking within the meaning of section 290, the respective aggregate turnover reported in the consolidated financial statements of the parent undertaking, drawn up for the largest body of undertakings, will be taken as the basis instead of the aggregate turnover of the credit institution. Where the consolidated financial statements for the largest body of undertakings are not drawn up pursuant to the regulations set out in sentence 1, the aggregate turnover is to be identified based on the items of the consolidated financial statements that are comparable to the items covered by sentence 1. Where no annual financial statements or consolidated financial statements are available for the relevant financial year, the annual financial statements or consolidated financial statements for the immediately preceding financial year will be taken as the basis; where no such financial statements are available, either, the aggregate turnover may be determined by way of an estimate.

(4) The administrative authority within the meaning of section 36 (1) no. 1 of the Act on Regulatory Offences will be, in the cases governed by subsections (1) and (2a), the Federal Financial Supervisory Authority, in the cases governed by subsection (2), the Auditor Oversight Body with the Federal Office for Economic Affairs and Export Control.

(5) The Federal Financial Supervisory Authority transmits to the Auditor Oversight Body with the Federal Office for Economic Affairs and Export Control all decisions as to administrative fines pursuant to subsection (2a).

### **Section 340o** **Imposition of a coercive fine**

Persons who,

1. acting in the capacity of senior manager within the meaning of section 1 (2) sentence 1 of the Banking Act of a credit institution or financial services institution within the meaning of section 340 (4) sentence 1, or in the capacity of senior manager within the meaning of section 2 (36) of the Securities Institutions Act of a securities institution within

the meaning of section 340 (4a) sentence 1, or in the capacity of senior manager within the meaning of section 1 (8) sentences 1 and 2 of the Payment Services Oversight Act of an institution within the meaning of section 340 (5) or acting in the capacity of owner of a financial services institution within the meaning of section 340 (4) sentence 1 operated in the legal form of sole trader, or of a securities institution within the meaning of section 340 (4a) sentence 1, fail to comply with section 340I (1) sentence 1 read in conjunction with section 325 (2) to (5), sections 328, 329 (1) concerning the duty to disclose the annual financial statements, the management report, the consolidated financial statements, the consolidated management report and other accounting documents, or who

2. acting in the capacity of senior manager of branch offices within the meaning of section 53 (1) of the Banking Act fail to comply with section 340I (1) or (2) concerning the disclosure of the accounting documents

are to be urged by the Federal Office of Justice to do so by the imposition of a coercive fine. Sections 335 to 335b apply accordingly.

## **Subdivision 2 Supplementary provisions for insurance undertaking and pension funds**

### **Title 1 Scope of application**

#### **Section 341**

(1) Unless otherwise provided for, this Subdivision applies to undertakings having as their object the operation of insurance business that are not authorities responsible for providing social security (insurance undertakings). This does not apply to those insurance undertakings that, by law, collective agreement or statutes, provide services exclusively to their members or that provide services to persons privileged by law or by statutes or that, as institutions not having legal capacity, cover their expenditures through compulsory contributions, unless they are stock corporations, mutual insurance companies or communal insurance undertakings having legal capacity.

(2) Insurance undertakings within the meaning of subsection (1) also qualify as establishments within the territorial scope of this statute where they have been established by insurance undertakings having their seat in some other state and where they require permission from the German insurance supervisory authority in order to pursue the business of direct insurance. Establishments of insurance undertakings having their seat in a Member State of the European Union or in some other state party to the Agreement creating the European Economic Area that do not require permission from the German insurance supervisory authority in order to pursue the business of direct insurance are to apply the supplementary provisions on the recognition and valuation of assets and debt obligations of Titles 1 to 4 of this Subdivision and of the Ordinance on Financial Reporting by Insurance Undertakings, as amended.

(3) Additional requirements based on regulations that exist due to the legal form or that govern establishments remain unaffected.

(4) The provisions of Titles 1 to 7 of this Subdivision, to the exception of subsection (1) sentence 2, apply accordingly to pension funds (section 236 (1) of the Act on the Supervision of Insurance Enterprises). Section 341d applies with the proviso that capital investments for the account and at the risk of employees and employers are to be valued at fair value, while taking a prudential approach; insofar, sections 341b and 341c do not apply.

### **Title 2 Annual financial statements, management report**

#### **Section 341a Applicable regulations**

(1) Insurance undertakings are to draw up annual financial statements and a management report in accordance with the provisions of Subdivision 1 of Division 2 applicable to large share capital companies within the first four months of the financial year for the past financial year and are to submit them to the statutory auditor for the auditor to perform the audit; the period set out in section 264 (1) sentence 3 does not apply. Where the insurance undertaking is a share capital company within the meaning of section 325 (4) sentence 1 and not concurrently within the meaning of section 327a, the period pursuant to sentence 1 will amount to four months.

(1a) An insurance undertaking is to supplement its management report by a non-financial statement if it qualifies as a large insurance undertaking by analogous application of section 267 (3) sentence 1 and (4) to (5), and if it employs more than 500 employees (average for the year). Where the non-financial statement constitutes a separate chapter of the management report, the insurance undertaking may refer to the non-financial information set out elsewhere in the management report. Section 289b (2) to (4) and sections 289c to 289e apply accordingly.

(1b) An insurance undertaking that is to prepare, pursuant to subsection (1) read in conjunction with section 289f (1), a corporate governance statement is to include in it the information stipulated by section 289f (2) no. 6 if it qualifies as a large insurance undertaking by analogous application of section 267 (3) sentence 1 and (4) to (5).

(2) Section 264 (3), section 265 (6), section 267, section 268 (4) sentence 1, (5) sentences 1 and 2, section 276, section 277 (1) and (2), section 285 no. 8 (a) and section 288 do not apply. Instead of section 247 (1), section 251, section 265 (7), section 266, section 268 (7), section 275, section 284 (3), section 285 no. 4 and 8 (b) as well as section 286 (2), the form sheets and other regulations issued by statutory instrument apply. Section 246 (2) does not apply if deviating regulations are in place. Section 285 no. 3a applies with the proviso that the information is not to be provided for those financial obligations that have arisen in the context of the insurance business. Section 285 no. 31 does not apply; earnings and expenditures arising outside the usual course of business are to be shown in the items “extraordinary earnings” and “extraordinary expenditures.” These items are to be explained in the notes with regard to their amount and their nature insofar as the amounts reported are not immaterial for the assessment of the profit or loss.

(3) The regulations applying to financial reporting by life insurance companies apply accordingly to health insurance undertakings operating the health insurance business exclusively or for the most part in the manner of a life insurance.

(4) Section 152 (2) and (3) as well as sections 170 to 176 of the Stock Corporation Act apply accordingly to insurance undertakings that are not stock corporations, public partly limited partnerships or smaller associations.

(5) In the case of insurance undertakings operating exclusively as a reinsurance or in the case of which the contributions from insurance business assumed for reinsurance purposes exceeds the other contributions, the period set out in subsection (1) sentence 1 half-sentence 1 of four months will be extended to ten months if the financial year is identical to the calendar year; the general meeting or the assembly of the most senior representatives that takes receipt of the annual financial statements or that is to adopt them must, in derogation from section 175 (1) sentence 2 of the Stock Corporation Act, take place no later than 14 months following the end of the past financial year. The four-month period pursuant to subsection (1) sentence 2 will not be extended in the cases governed by sentence 1.

### **Title 3 Valuation rules**

#### **Section 341b Valuation of assets**

(1) Insurance undertakings are to value intangible assets, insofar as they were acquired against consideration, real property and equivalent rights as well as buildings, including buildings on third-party real estate, plant and machinery, other equipment, factory equipment



and furnishings and fixtures, construction in progress and inventories in accordance with the regulations applying to such fixed assets. Sentence 1 applies, subject to the stipulations of subsection (2) and section 341c, also to capital investments insofar as they consist of participating interests, participating interests held in affiliated undertakings, loans to affiliated undertakings or to undertakings linked by virtue of participating interests, registered debentures, mortgage loans and other receivables and rights, other loans and deposits receivable from insurance business assumed for reinsurance purposes. Section 253 (3) sentence 6 applies solely to the assets designated in sentence 2.

(2) Section 253 (1) sentence 1, (4) and (5), section 256, as applicable to current assets, apply to capital investments, insofar as these consist, in the relevant case, of shares of stock, including own shares, shares or shares of stock in investment funds as well as other fixed-income and non-fixed-income securities, unless they are intended to serve business operations on a permanent basis; in such event, they are to be valued in accordance with the regulations applicable to fixed assets.

(3) Section 256 sentence 2 read in conjunction with section 240 (3) concerning the valuation at a fixed value does not apply to real property, buildings or construction in progress.

(4) Contracts entered into by pension funds with life insurance undertakings for purposes of covering their obligations towards pension beneficiaries are to be valued at fair value, while taking a prudential approach; inasmuch, subsections (1) to (3) do not apply.

#### **Section 341c**

##### **Registered bonds, mortgage loans and other receivables**

(1) In derogation from section 253 (1) sentence 1, registered bonds may be recognised at their nominal amount.

(2) Where the nominal amount is higher than the cost of acquisition, the difference is to be shown as a deferred income item under liabilities; it is to be amortised as scheduled and its respective amount is to be stated separately on the balance sheet or in the notes. Where the nominal amount is lower than the cost of acquisition, the difference may be included as a deferred expense item under assets; it is to be amortised as scheduled and its respective amount is to be stated separately on the balance sheet or in the notes.

(3) In the case of mortgage loans and other receivables, the cost of acquisition may be recognised plus or minus the cumulative amortisation taken on the difference between the cost of acquisition and the redemption amount, while applying the effective interest method.

#### **Section 341d**

##### **Investment stock of unit-linked life insurance**

Capital investments entered into for the account and at the risk of holders of life insurance policies, under which the investment risk is borne by the insured party, are to be valued at fair value, while taking a prudential approach; sections 341b and 341c do not apply.

#### **Title 4**

##### **Insurance technical provisions**

#### **Section 341e**

##### **General accounting principles**

(1) Insurance undertakings are to form technical provisions also insofar as this is necessary, when assessed exercising reasonable business judgment, in order to ensure that the obligations arising under insurance policies can be met at all times. In the process, they are to take into account the provisions of supervisory law enacted for the benefit of insured parties concerning the computational bases to be used in calculating the provisions, including the underlying actuarial interest rate to be used therefor, as well as the provisions of supervisory law concerning the allocation of certain gains to said provisions, to the exception of the regulations set out in sections 74 to 87 of the Act on the Supervision of Insurance Enterprises. The provisions are to be valued in accordance with the values

prevailing on the balance sheet date and are not to be discounted pursuant to section 253 (2).

(2) Except for the cases governed by sections 341f to 341h, insurance technical provisions are to be formed in particular

1. for that part of the premiums that represents earnings for a given period after the balance sheet date (provisions for unearned premiums);
2. for performance-related and non-performance related premium refunds, insofar as the use of the provision exclusively for this purpose is assured by law, statutes, by a statement in the business plan or by contractual agreement (provisions for the reimbursement of premiums);
3. for losses that are likely to occur after the balance sheet date from policies concluded up to the end of the financial year (provision for anticipated losses from insurance business).

(3) Insofar as a valuation pursuant to section 252 (1) no. 3 or section 240 (4) is impossible or insofar as the expense entailed by such a valuation would be disproportionate, the provisions may be estimated on the basis of approximation methods if it is to be assumed that they will lead to approximately the same results as individual computations.

#### **Section 341f**

##### **Life assurance provision**

(1) Actuarial provisions are to be formed for liabilities arising under life insurance business and arising under insurance business operated in the manner of life insurance, in the amount of their actuarially computed value, including bonuses already allocated, but to the exception of the bonuses accrued on an interest-bearing basis, after deducting the actuarially computed cash value of future premiums (prospective method). Where it is impossible to identify the value of future liabilities or of future premiums, the computation is to be performed based on the discounted receipts and expenses of the preceding financial years (retrospective method).

(2) In forming the actuarial provisions, interest rate obligations entered into towards insured parties are also to be taken into account insofar as the current or expected returns on the undertaking's assets do not suffice to cover these liabilities.

(3) In health insurance operated in the manner of life insurance, an ageing reserve is to be formed as actuarial provisions; this also includes amounts already allocated to the provisions from the reserve for premium refunds as well as write-ups serving to form vested rights to reduced premiums in later years. In performing the calculation, the provisions of supervisory law concerning the computation of premiums are to be taken into account.

#### **Section 341g**

##### **Provisions for claims outstanding**

(1) Provisions for claims outstanding are to be formed for the liabilities arising from claims that have occurred up to the end of the financial year but have not yet been adjusted. In this context, the total ultimate cost of settling the claims is to be taken into account.

(2) The provisions for claims that have occurred as per the balance sheet date but that have not yet been reported for purposes of the claims inventory, are to be valued as a lump sum. In this context, regard is to be had to the prior experience gained concerning the number of claims reported after the balance sheet date and the expenses they entail.

(3) In the case of health insurance undertakings, the provisions are to be calculated using a statistical approximation method. In the process, the payments made in the first months of the financial year following the balance sheet date for the claims that have occurred up to the balance sheet date are to be used as a basis.

(4) In the case of co-insurance, the amount of the provisions must correspond, in pro-rata terms, to no less than that reserve that the leading insurance undertaking must form under to

the regulations or customary practice prevailing in the country from which that undertaking operates.

(5) Where insurance benefits resulting from a claim are to be paid in the form of an annuity on the basis of a final and unappealable judgment, accord or acknowledgement, the provisions must be computed in accordance with recognised actuarial methods.

#### **Section 341h Equalisation provisions and similar provisions**

(1) Equalisation provisions are to be formed in order to balance out fluctuations in loss ratios in future years, in particular if,

1. according to the experience gained in the branch of insurance involved, significant fluctuations are likely to occur where annual expenses for claims are concerned,
2. the fluctuations are not balanced out in each case by contributions and if
3. the fluctuations are not covered by re-insurance.

(2) In individual cases where, due to the high risk of loss, an income/expense equalisation for risks of equivalent type cannot be performed on the basis of actuarial principles in the financial year, but rather only in a period that remains uncertain as of the balance sheet date, provisions are to be formed and are to be shown on the balance sheet as a “Similar reserve” in the equalisation provisions.

#### **Title 5 Consolidated financial statements, consolidated management report**

##### **Section 341i Drawing up, periods**

(1) Independently of their size, insurance undertakings are to draw up consolidated financial statements and a consolidated management report even if they are not operated in the legal form of a share capital company. Additional requirements based on regulations that exist due to the legal form remain unaffected.

(2) Parent undertakings, the sole or main object of which is to acquire participating interests in subsidiary undertakings and to manage such participating interests and turn them to profit, also will be considered insurance undertakings within the meaning of this Title if all of said subsidiary undertakings or the majority of them are insurance undertakings.

(3) In derogation from section 290 (1), the legal representatives of a parent undertaking are to draw up the consolidated financial statements and the consolidated management report for the past financial year of the group within two months after expiry of the period stipulated for drawing up the last financial statements to be drawn up and included in the consolidated financial statements, but are to do so no later than within twelve months following the cut-off date for the consolidated financial statements, and are to submit them to the statutory auditor of the consolidated financial statements; where the parent undertaking is a share capital company within the meaning of section 325 (4) sentence 1 and not concurrently within the meaning of section 327a, the period set of no longer than twelve months will be replaced by a period of no longer than four months. Section 299 (2) sentence 2 applies with the proviso that the cut-off date for the annual financial statements of an undertaking may not permissibly lie more than six months before the cut-off date for the consolidated financial statements.

(4) In derogation from section 175 (1) sentence 1 of the Stock Corporation Act, the consolidated financial statements and the consolidated management report are to be submitted no later than the next upcoming general meeting to be convened after expiry of the period stipulated for drawing up the consolidated financial statements and consolidated management report that takes receipt of annual financial statements of the parent undertaking or that is to approve them.

### **Section 341j** **Applicable regulations**

(1) The provisions of Subdivision 2 of Division 2 concerning the consolidated financial statements and the consolidated management report and, unless the nature of the consolidated financial statements does not call for any deviations, sections 341a to 341h concerning annual financial statements as well as the regulations applying to the legal form and the line of business of the undertakings included in the consolidated financial statements and having their seat in the territorial scope of this statute apply accordingly to the consolidated financial statements and the consolidated management report, insofar as they apply to large share capital companies. Section 293, section 298 (1) as well as section 314 (1) nos. 3 and 23 do not apply. Section 314 (1) no. 2a applies with the proviso that the information is not to be provided for those financial obligations that have arisen in the context of the insurance business. In the cases governed by section 315a (1), solely sections 290 to 292, 315a apply, in derogation from sentence 1; sentences 2 and 3 of this subsection and subsection (2), section 341i (3) sentence 2 as well as the provisions of the Ordinance on Financial Reporting by Insurance Undertakings of 8 November 1994 (Federal Law Gazette I p. 3378) and of the Ordinance on Financial Reporting by Pension Funds of 25 February 2003 (Federal Law Gazette I p. 246) as amended do not apply.

(2) The application of section 304 (1) is not required if the deliveries or services have been made at standard market terms and have given rise to legal claims of the insured parties.

(3) Section 170 (1) and (3) of the Stock Corporation Act applies accordingly to insurance undertakings that are not stock corporations, public partly limited partnerships or smaller associations.

(4) An insurance undertaking that is a parent undertaking (section 290) is to supplement the consolidated management report by a consolidated non-financial statement if the undertakings to be included in the consolidated financial statements fulfil the following criteria:

1. they do not meet the pre-requisites for an exemption stipulated in section 293 (1) sentence 1 no. 1 or 2 based on the undertaking's size, and
2. they employ a total of more than 500 employees (average for the year).

Section 267 (4) to (5), section 298 (2), section 315b (2) to (4) and section 315c apply accordingly. Where the non-financial statement constitutes a separate chapter of the consolidated management report, the insurance undertaking may refer to the non-financial information set out elsewhere in the consolidated management report.

(5) An insurance undertaking that is to prepare a consolidated corporate governance statement pursuant to subsection (1) read in conjunction with section 315d is to include in it the information stipulated by section 315d read in conjunction with section 289f (2) no. 6 if the undertakings to be included in the consolidated financial statements do not meet the pre-requisites for an exemption stipulated by section 293 (1) sentence 1 no. 1 or 2.

## **Title 6** **Audit**

### **Section 341k**

(1) Independently of their size, insurance undertakings are to have their annual financial statements and management report as well as their consolidated financial statements and consolidated management report audited according to the provisions of Subdivision 3 of Division 2. Section 319 (1) sentence 2 does not apply. Where no audit has been performed, the annual financial statements cannot be adopted. The provisions of Subdivision 3 of Division 2 apply to insurance undertakings that are public-interest entities as defined in section 316a sentence 2 no. 1 or 3 only insofar as Regulation (EU) No 537/2014 does not apply.

(2) In the cases governed by section 321 (1) sentence 3, the statutory auditor is to notify the supervisory authority without undue delay.

(3) Insurance undertakings that are public-interest entities as defined in section 316a sentence 2 no. 1 or 3 and that have no supervisory board or administrative body that must meet the pre-requisites set out in section 100 (5) of the Stock Corporation Act are to apply section 324, even if they are not operated in the legal form of a share capital company. This applies to insurance undertakings under public law governed by *Land* law only insofar as *Land* law does not provide otherwise. Section 324 (3) applies to insurance undertakings even if they are not operated in the legal form of a share capital company.

## **Title 7 Disclosure**

### **Section 341l**

(1) Insurance undertakings are to disclose, pursuant to section 325 (2) to (5), sections 328, 329 (1) and (4), the annual financial statements and the management report as well as the consolidated financial statements and the consolidated management report and the other documents designated in section 325. The insurance undertakings set out in section 341a (5) are to apply section 325 (1), with the proviso that the period for filing the documents with the operator of the Federal Gazette is 15 months, and in the case governed by section 325 (4) sentence 1, four months; section 327a applies.

(2) In derogation from section 325 (3), the legal representatives of a parent undertaking are to electronically submit to the operator of the Federal Gazette, without undue delay following the general meeting or the corresponding assembly of the most senior representatives to whom the consolidated financial statements and the consolidated management report are to be submitted, but no later than expiry of the month following this assembly, the consolidated financial statements along with the audit report or the adverse audit report and the consolidated management report, to the exception of the list of shareholders.

(3) Insofar as subsection (1) sentence 1 refers to section 325 (2a) sentences 3 and 5, the following provisos and supplementary provisions apply:

1. The provisions of Subdivision 1 of Division 2 of Book 3 set out in section 325 (2a) sentence 3 apply also to insurance undertakings that are not being operated in the legal form of a share capital company.
2. Instead of section 285 no. 8 (b), the regulation of section 51 (5) in conjunction with Template 2 of the Ordinance on Financial Reporting by Insurance Undertakings of 8 November 1994 (Federal Law Gazette I p. 3378), as amended, applies.
3. Section 341a (4) applies insofar as it refers to the provisions of sections 170, 171 and 175 of the Stock Corporation Act concerning standalone financial statements pursuant to section 325 (2a) of this statute.
4. In all other regards, the provisions of Titles 2 to 4 of this Subdivision as well as of the Ordinance on Financial Reporting by Insurance Undertakings do not apply.

## **Title 8**

### **Penal provisions and regulations as to administrative fines, coercive fines**

#### **Section 341m**

##### **Penal provisions**

(1) The penal provisions of sections 331 to 333 apply also to insurance undertakings and pension funds not operated in the legal form of a share capital company. Moreover, section 331 applies to any breach of duties by the authorised agent (section 68 (2) of the Act on the Supervision of Insurance Enterprises).

(2) Whoever, acting in the capacity of a member of an audit committee instituted by an insurance undertaking pursuant to section 341k (3) sentence 1 read in conjunction with section 324 (1) sentence 1

1. commits an act designated in section 341n (2a) and receives a material benefit in return, or has someone promise him or her a material benefit in return, or
2. persists in repeating an act designated in section 341n (2a)

will be liable to a term of imprisonment not to exceed one year or to a fine.

(3) Section 335c (2) applies accordingly to the cases governed by subsection (1) sentence 1 read in conjunction with section 332 or 333 and to the cases governed by subsection (2).

### **Section 341n** **Regulations as to administrative fines**

(1) Whoever, acting in the capacity of a member of the representative body or of the supervisory board of an insurance undertaking or of a pension fund or in the capacity of authorised agent (section 68 (2) of the Act on the Supervision of Insurance Enterprises), acts in contravention,

1. in drawing up or adopting the annual financial statements, of a stipulation made in
  - a) section 243 (1) or (2), in sections 244, 245, 246 (1) or (2), the latter read in conjunction with section 341a (2) sentence 3, in section 246 (3) sentence 1, in section 247 (3), in sections 248, 249 (1) sentence 1 or (2), in section 250 (1) or (2), section 264 (1a) or (2), in section 341e (1) or (2) or in sections 341f, 341g or 341h concerning the form or content,
  - b) section 253 (1) sentence 1, 2, 3 or 4, (2) sentence 1, also read in conjunction with sentence 2, (3) sentence 1, 2, 3, 4 or 5, (4), (5), in sections 254, 256a, section 341b (1) sentence 1 or in section 341d concerning the valuation,
  - c) section 265 (2), (3) or (4), in section 268 (3) or (6), in sections 272, 274 or in section 277 (3) sentence 2 concerning the classification,
  - d) sections 284, 285 no. 1, 2 or 3, also read in conjunction with section 341a (2) sentence 4, or in section 285 no. 3a, 7, 9 to 14a, 15a, 16 to 33 or no. 34 concerning the information to be provided in the notes,
2. in drawing up the consolidated financial statements, of a stipulation made in
  - a) section 294 (1) concerning the scope of consolidation,
  - b) section 297 (1a), (2) or (3) or in section 341j (1) sentence 1 read in conjunction with one of the provisions designated in no. 1 (a) concerning the form or content,
  - c) section 300 concerning the consolidation principles or the requirement to provide full and complete information,
  - d) section 308 (1) sentence 1 read in conjunction with the provisions designated in no. 1 (b), in section 308 (2) or section 308a concerning the valuation,
  - e) section 311 (1) sentence 1 read in conjunction with section 312 concerning the treatment of associated undertakings or

f) section 308 (1) sentence 3, in section 313 or in section 314 read in conjunction with section 341j (1) sentence 2 and 3 concerning the information to be provided in the notes to the consolidated financial statements,

3. in drawing up the management report or in preparing a separate non-financial report, of a stipulation made in section 289 or in section 289a, in section 289f, also read in conjunction with section 341a (1b), or in section 341a (1a), also read in conjunction with section 289b (2) or (3) or read in conjunction with sections 289c, 289d or section 289e (2) concerning the content of the management report or of the separate non-financial report,

4. in drawing up the consolidated management report or in preparing a separate, consolidated non-financial report, of a stipulation made in section 315 or in section 315a, in section 315d, also read in conjunction with section 341j (5), or in section 341j (4), also read in conjunction with section 315b (2) or (3) or section 315c concerning the content of the consolidated management report or of the separate, consolidated non-financial report,

5. at disclosure, publication or reproduction, of a stipulation made in section 328 concerning the form, format or content, or

6. of a statutory instrument issued on the basis of section 330 (3) and (4) in conjunction with (1) sentence 1, insofar as this statutory instrument refers to this regulation as to administrative fines for certain elements constituting an offence,

will be deemed to have committed a regulatory offence. In the cases governed by sentence 1 no. 3, the contravention of a stipulation made in section 289f (2) no. 4, also read in conjunction with subsection (4) sentence 1, will not be excluded by the failure to cite, whether as a whole or in part, the stipulations or reasonings in accordance with section 76 (4), also read in conjunction with section 188 (1) sentence 2 of the Insurance Industry Supervision Act (*Versicherungsaufsichtsgesetz*), or in accordance with section 111 (5) of the Stock Corporation Act, also read in conjunction with section 189 (3) sentence 1 of the Insurance Industry Supervision Act. In the cases governed by sentence 1 no. 4, the contravention of a stipulation made in section 315d read in conjunction with section 289f (2) no. 4 will not be excluded by the failure to cite, whether as a whole or in part, the stipulations or reasonings in accordance with section 76 (4) or section 111 (5) of the Stock Corporation Act.

(2) A person who issues an audit report pursuant to section 322 (1) relating to the financial statements

1. of an insurance undertaking that is a public-interest entity as defined in section 316a sentence 2 no. 1 or 3, or

2. of an insurance undertaking not set out in no. 1,

in spite of the fact that this person may not serve as the statutory auditor as stipulated by section 319 (2) or (3), in each case also read in conjunction with subsection (5), or as stipulated by section 319b (1) sentence 1 or 2, in each case also read in conjunction with subsection (2), or that the audit firm or the accountancy company for whom the person is pursuing his or her activities may not serve as the statutory auditor as stipulated by section 319 (4) sentence 1 or 2, in each case also read in conjunction with subsection (5), or as stipulated by section 319b (1) sentence 1 or 2, in each case also read in conjunction with subsection (2), will be deemed to have committed a regulatory offence. Likewise, whoever issues an audit report pursuant to section 322 (1) relating to the financial statements of an insurance undertaking that is a public-interest entity as defined in section 316a sentence 2 no. 1 or 3 in spite of the fact

1. that this person or the audit firm for whom the person is pursuing his or her activities, or a member of the network to which the person or the audit firm for whom the person is pursuing his or her activities belongs, acts in contravention of a provision stipulated by Article 5 paragraph (4) subparagraph 1 sentence 1 or paragraph (5) subparagraph 2 sentence 2 of Regulation (EU) No 537/2014, or

2. that this person or the audit firm for whom the person is pursuing his or her activities may not perform the audit pursuant to Article 17 paragraph (3) of Regulation (EU) No 537/2014

will be deemed to have committed a regulatory offence. Financial statements within the meaning of sentences 1 and 2 are annual financial statements, standalone financial statements pursuant to section 325 (2a) or group financial statements that are to be audited based on statutory requirements.

(2a) Whoever, acting in the capacity of a member of an audit committee instituted by an insurance undertaking pursuant to section 324 (1) sentence 1, also read in conjunction with section 341k (3) sentence 1,

1. fails to monitor the independence of the statutory auditor or of the audit firm in the manner stipulated by Article 4 paragraph (3) subparagraph 2, by Article 5 paragraph (4) subparagraph 1 sentence 1 or by Article 6 paragraph (2) of Regulation (EU) No 537/2014,

2. submits to the administrative or supervisory body a recommendation for the appointment of a statutory auditor or of an audit firm that does not comply with the requirements set out in Article 16 (2) subparagraph 2 or 3 of Regulation (EU) No 537/2014 or that has not been preceded by a selection procedure pursuant to Article 16 (3) subparagraph 1 of Regulation (EU) No 537/2014, or

3. submits to the shareholders or the body otherwise responsible for appointing the statutory auditor a proposal for the appointment of a statutory auditor or an audit firm who does not comply with the requirements set out in Article 16 (5) subparagraph 1 of Regulation (EU) No 537/2014

will be deemed to have committed a regulatory offence.

(3) In the cases governed by subsection (2) sentence 1 no. 1 and sentence 2, as well as in the cases governed by subsection (2a), the regulatory offence is punishable by a fine of up to 500,000 euros; in the cases governed by subsection (1) and subsection (2) sentence 1 no. 2, by a fine not exceeding 50,000 euros. Where the insurance undertaking is publicly traded within the meaning of section 264d, the maximum fine will be, in the cases governed by subsection (1), the higher of the following amounts:

1. 2 million euros or

2. double the economic benefit derived from the regulatory offence, in which context the economic benefit comprises the profits obtained and losses avoided and may be determined by way of an estimate.

(3a) Where, in the cases governed by subsection (1), a fine is levied pursuant to section 30 of the Act on Regulatory Offences against an insurance undertaking that is publicly traded within the meaning of section 264d, the maximum fine will be the highest of the following amounts:

1. 10 million euros or

2. 5 per cent of the aggregate turnover for the year that the insurance undertaking has achieved in the financial year preceding the ruling issued by the authority or



3. double the economic benefit derived from the regulatory offence, in which context the economic benefit comprises the profits obtained and losses avoided and may be determined by way of an estimate.

In the cases governed by subsection (3) sentence 1 read in conjunction with subsection (2) sentence 1 no. 1 or sentence 2, section 30 (2) sentence 3 of the Act on Regulatory Offences is to be applied.

(3b) That total amount is to be taken as the aggregate turnover, instead of the amount of the turnover, that is obtained in accordance with the domestic laws applicable to the insurance undertaking in conformity with Article 63 of Council Directive 91/674/EEC of 19 December 1991 on the annual accounts and consolidated accounts of insurance undertakings (OJ L 374 of 31 December 1991, p. 7), last amended by Directive 2006/46/EC (OJ L 224 of 16 August 2006, p. 1), minus the turnover tax and other taxes directly levied on these earnings. Where the insurance undertaking is a parent undertaking or a subsidiary undertaking within the meaning of section 290, the aggregate turnover reported in the consolidated financial statements of the parent undertaking, drawn up for the largest body of undertakings, will be taken as the basis instead of the aggregate turnover of the insurance undertaking. Where the consolidated financial statements for the largest body of undertakings are not drawn up pursuant to the regulations set out in sentence 1, the aggregate turnover is to be identified based on the items of the consolidated financial statements that are comparable to the items covered by sentence 1. Where no annual financial statements or consolidated financial statements are available for the relevant financial year, the annual financial statements or consolidated financial statements for the immediately preceding financial year will be taken as a basis; where no such financial statements are available, either, the aggregate turnover may be determined by way of an estimate.

(4) The administrative authority within the meaning of section 36 (1) no. 1 of the Act on Regulatory Offences will be, in the cases governed by subsections (1) and (2a), the Federal Financial Supervisory Authority for the insurance undertakings and pension funds subject to its supervision. Where an insurance undertaking and pension fund is subject to supervision by a *Land* authority, this will be competent in the cases governed by subsections (1) and (2a). In the cases governed by subsection (2), the Auditor Oversight Body with the Federal Office for Economic Affairs and Export Control is the competent body.

(5) The administrative authority competent pursuant to subsection (4) sentence 1 and 2 transmits to the Auditor Oversight Body with the Federal Office for Economic Affairs and Export Control all decisions as to administrative fines pursuant to subsection (2a).

#### **Section 341 o Imposition of a coercive fine**

Persons who,

1. acting in the capacity of a member of the representative body of an insurance undertaking or of a pension fund, fail to comply with section 341I read in conjunction with section 325 concerning the duty to disclose the annual financial statements, the management report, the consolidated financial statements, the consolidated management report and other accounting documents, or who,
2. acting in the capacity of authorised agent (section 68 (2) of the Act on the Supervision of Insurance Enterprises), fail to comply with section 341I (1) concerning the disclosure of the accounting documents

are to be urged by the Federal Office of Justice to do so by the imposition of a coercive fine. Sections 335 to 335b apply accordingly.

#### **Section 341 p Application to pension funds of the penal provisions and the regulations concerning administrative fines and coercive fines**

The penal provisions of section 341m (1), the regulation concerning administrative fines set out in section 341n (1) and (2) as well as the regulation on coercive fines set out in section 341o also apply to pension funds within the meaning of section 341 (4) sentence 1.

**Subdivision 3**  
**Supplementary provisions for certain undertakings of the primary industry**

**Title 1**  
**Scope of application; definitions**

**Section 341q**  
**Scope of application**

This Subdivision applies to share capital companies having their seat within Germany that are active in the extractive industries or that pursue logging operations in primary forests if, according to the provisions of Book 3, the provisions of Division 2 applicable to large share capital companies apply to them. Sentence 1 applies accordingly to commercial partnerships within the meaning of section 264a (1).

**Section 341r**  
**Definitions**

The following terms are defined as follows for purposes of this Subdivision:

1. activities in the extractive industries: activities in the fields of exploration, prospecting, discovery, innovation and extraction of minerals, petroleum fields, natural gas fields or other materials in the economic sectors listed in Annex I Section B Division 05 to 08 of Regulation (EC) No 1893/2006 of the European Parliament and of the Council of 20 December 2006 establishing the statistical classification of economic activities NACE Revision 2 and amending Council Regulation (EEC) No 3037/90 as well as certain EC Regulations on specific statistical domains (OJ L 393 of 30 December 2006, p. 1);
2. share capital companies pursuing logging operations in primary forests: share capital companies that are active in the fields listed in Annex I Section A Division 02 Group 02.2 of Regulation (EC) No 1893/2006 in naturally regenerated forests with native species, where there is no clearly visible indication of human activities and the ecological processes are not significantly disturbed;
3. payments: amounts paid, whether in money or in kind, in connection with activities in the extractive industries or in connection with the pursuit of logging operations in primary forests, if they are based on one of the reasons set out below:
  - a) production entitlements,
  - b) taxes levied on the earnings, production or profits of share capital companies, to the exclusion of taxes levied on consumption, turnover taxes, value added taxes, as well as wage taxes for the employees working for the share capital companies and comparable taxes,
  - c) royalties,
  - d) dividends and other distributions of profits from shares in the company,
  - e) signature, discovery and production bonuses,
  - f) licence fees, rental fees and entry fees as well as other considerations for licences or concessions, as well as
  - g) payments for infrastructure improvements;
4. governmental bodies: national, regional or local authorities of a Member State of the European Union, of some other state party to the Agreement creating the

European Economic Area or of a third state, including departments or agencies as well as undertakings controlled by an authority over which one of said authorities can exercise a controlling influence within the meaning of section 290;

5. projects: the combination of operative activities forming the basis for payment liabilities vis-à-vis a governmental body and that are governed by
  - a) a contract, license, lease, concession or similar legal agreement or
  - b) a body of contracts, licenses, leases or concessions, or agreements affiliated with them, with a governmental body that are interconnected in operative and geographical terms and that essentially provide for similar terms;
6. reports on payments to governmental bodies: reports by share capital companies on the payments made to governmental bodies in connection with their activities in the extractive industries or in connection with the pursuit of logging operations in primary forests;
7. consolidated reports on payments to governmental bodies: reports by parent undertakings on payments made to governmental bodies by all consolidated undertakings on a consolidated basis, such payments having been made in connection with their activities in the extractive industries or in connection with the pursuit of logging operations in primary forests;
8. period under report: the financial year of the share capital company or of the parent undertaking that is to draw up the report on payments to governmental bodies or the consolidated report on payments to governmental bodies.

## **Title 2**

### **Report on payments to governmental bodies, consolidated report on payments to governmental bodies and disclosure**

#### **Section 341s**

##### **Duty to draw up the report on payments to governmental bodies; exemptions**

- (1) Share capital companies within the meaning of section 341q are to draw up, on an annual basis, a report on payments to governmental bodies.
- (2) Where the share capital company is included in the consolidated report on payments to governmental bodies drawn up by said share capital company or by some other undertaking having its seat in a Member State of the European Union or in some other state party to the Agreement creating the European Economic Area, it is not required to draw up any report on payments to governmental bodies. In this case, the share capital company is to identify, in the notes to the annual financial statements, the undertaking into the consolidated report on payments to governmental bodies of which it has been included and where such report is available.
- (3) Where the share capital company has drawn up a report in conformity with the laws of a third state, the reporting obligations of which the European Commission has assessed as being equivalent in the procedure stipulated by Article 47 of Directive 2013/34/EU, and has disclosed this report pursuant to section 341w, it is not required to draw up the report on payments to governmental bodies. Section 325a (1) sentence 5 applies accordingly to the disclosure of this report.

#### **Section 341t**

##### **Content of the report on payments to governmental bodies**

- (1) The share capital company is to state, in its report on payments to governmental bodies, which payments it has made to governmental bodies in the period under report in connection with its activities in the extractive industries or in connection with its pursuit of logging operations in primary forests. Other payments may not permissibly be included in the report

on payments to governmental bodies. Where, in a period under report, a share capital company that is under obligation to draw up a report on payments to governmental bodies has not made any payments that must be reported to a governmental body, it is only required to state in its report on payments to governmental bodies for the relevant period under report that it pursued business activities in the extractive industries or in logging operations in primary forests without any payments being made.

(2) The share capital company is to report only on those governmental bodies to which it has made payments directly; this applies also in those cases in which one governmental body collects the payment for several different governmental bodies.

(3) If a governmental body is a shareholder or stockholder of the share capital company and as such is entitled to voting rights, then dividends or shares of the profits that have been paid out must be taken into account only if they

1. were not paid out at the same terms as those governing payments to other shareholders or stockholders holding comparable shares or shares of stock of the same class, or if they

2. were paid instead of production entitlements or royalties.

(4) The share capital company is not required to take into account, in the report on payments to governmental bodies, any payments, whether made as a single payment or as a series of related payments, if they are below 100,000 euros in the period under report. In the case of an existing agreement on regular payments, the total amount of the related regular payments or instalments in the period under report is to be addressed. It is not required to take into account in the report on payments to governmental bodies a governmental body to which an aggregate amount of less than 100,000 euros was paid in the period under report.

(5) Where payments are made in kind, they are to be taken into account based on their value and, if applicable, based on their volume. The report on payments to governmental bodies is to provide an explanation as necessary to explain how their value has been determined.

(6) The disclosure of the payments is to reflect the substance, rather than the form, of the payment or activity concerned. Payments and activities may not be artificially split or aggregated with the aim of avoiding the application of this Subdivision.

#### **Section 341u**

##### **Layout of the report on payments to governmental bodies**

(1) The layout of the report on payments to governmental bodies is to be based on states. The share capital company is to designate, for each state, those governmental bodies to which it has made payments during the period under report. The designation of the governmental body must allow it to be unequivocally identified. As a rule, it suffices to use the official designation of the governmental body and to state, in addition, at which location and in which region of the state the governmental body is domiciled. The share capital company is not required to break down the payments by the raw materials to which they relate.

(2) The share capital company is to provide the following information for each respective governmental body:

1. the aggregate amount of all payments made to that governmental body, and
2. the aggregate amounts, broken down by the grounds for payment designated in section 341r no. 3 (a) to (g); it suffices to use the letter that is relevant pursuant to section 341r no. 3 to designate said grounds for payment.

(3) Where payments were made to a governmental body for more than one project, the following information is to be provided for each project by way of supplementation:

1. an unequivocal designation of the project,

2. the aggregate amount of all payments made to said governmental body with regard to the project and

3. the aggregate amounts, broken down by the grounds for payment designated in section 341r no. 3 (a) to (g), that were paid to said governmental body with regard to the project; it suffices to use the letter that is relevant pursuant to section 341r no. 3 to designate said grounds for payment.

(4) The information pursuant to subsection (3) is not required to be provided for payments serving to perform obligations imposed on the share capital company without having been allocated to a certain project.

#### **Section 341v**

##### **Consolidated report on payments to governmental bodies; exemption**

(1) Share capital companies within the meaning of section 341q that are parent undertakings (section 290) are to draw up, on an annual basis, a consolidated report on payments to governmental bodies. Parent undertakings qualify as undertakings active in the extractive industries or as pursuing logging operations in primary forests also in those cases in which these pre-requisites are met only by one of their subsidiary undertakings.

(2) A parent undertaking is not under obligation to draw up a consolidated report on payments to governmental bodies if it is concurrently the subsidiary undertaking of some other parent undertaking having its seat in a Member State of the European Union or in some other state party to the Agreement creating the European Economic Area.

(3) The consolidated report on payments to governmental bodies is to include the parent undertaking and all subsidiary undertakings, independently of their seat; unless otherwise provided for by the subsections below, the regulations applied to the consolidated financial statements apply accordingly.

(4) Undertakings that do not pursue activities in the extractive industries and that do not pursue logging operations in primary forests are not to be included pursuant to subsection

(3). An undertaking is not required to be included in the consolidated report on payments to governmental bodies if

1. it was not included, pursuant to section 296 (1) no. 1 or 3, in the consolidated financial statements,

2. it was not included, pursuant to section 296 (1) no. 2, in the consolidated financial statements and if it is likewise not possible to obtain the information required to draw up the consolidated report on payments to governmental bodies without incurring disproportionately high costs or suffering inappropriate delays.

(5) Sections 341s to 341u apply accordingly to the consolidated report on payments to governmental bodies. The consolidated report on payments to governmental bodies is to provide consolidated information regarding all payments made to governmental bodies by the undertakings included therein in connection with their activities in the extractive industries or in connection with the pursuit of logging operations in primary forests. The parent undertaking is not required to break down the payments by the raw materials to which they relate.

#### **Section 341w**

##### **Disclosure**

(1) The legal representatives of share capital companies are to electronically submit, on their behalf, the report on payments to governmental bodies, in German, to the operator of the Federal Gazette, and are to do so no later than one year following the balance sheet date; they are to have it published by notice in the Federal Gazette without undue delay following the filing. In the case of a share capital company within the meaning of section 264d, the period will be, in derogation from sentence 1, six months following the balance sheet date; section 327a applies accordingly.

- (2) Subsection (1) applies accordingly to the legal representatives of parent undertakings who are to draw up a consolidated report on payments to governmental bodies.
- (3) Section 325 (1) sentence 2 and (6), section 328 subsection (1) sentences 1 to 3 and subsections (1a) to (4), as well as section 329 subsections (1), (3) and (4) apply accordingly.

### **Title 3**

#### **Regulations as to administrative fines, coercive fines**

##### **Section 341x**

###### **Regulations as to administrative fines**

- (1) Whoever, acting in the capacity of a member of the representative body or of the supervisory board of a share capital company, acts in contravention,
1. in drawing up a report on payments to governmental bodies, of a stipulation made in section 341t (1), (2), (3), (5) or (6) or in section 341u (1), (2) or (3) concerning the content or the layout used in the report on payments to governmental bodies, or
  2. in drawing up a consolidated report on payments to governmental bodies, of a stipulation made in section 341v (4) sentence 1 read in conjunction with section 341t (1), (2), (3), (5) or (6) or read in conjunction with section 341u (1), (2) or (3) concerning the content or the layout used in the consolidated report on payments to governmental bodies,
- will be deemed to have committed a regulatory offence.
- (2) The regulatory offence is punishable by a fine not exceeding 50,000 euros.
- (3) The administrative authority within the meaning of section 36 (1) no. 1 of the Act on Regulatory Offences will be, in the cases governed by subsection (1), the Federal Office of Justice.
- (4) The provisions of subsections (1) to (3) also apply to the members of the statutory representative bodies of commercial partnerships within the meaning of section 341q sentence 2.

##### **Section 341y**

###### **Regulations on coercive fines**

- (1) The Federal Office of Justice will pursue proceedings for the imposition of coercive fines, in analogous application of sections 335 to 335b, against the members of the representative body of a share capital company within the meaning of section 341q or of a parent undertaking within the meaning of section 341v, who fail to comply with section 341w regarding the duty to disclose the report on payments to governmental bodies or the consolidated report on payments to governmental bodies. The proceedings also may be pursued against the share capital company.
- (2) The Federal Office of Justice may demand that a share capital company declare whether it is pursuing, within the meaning of section 341q, activities in the extractive industries or logging operations in primary forests, setting a reasonable period therefor. The reasons for this demand are to be stated. Where the share capital company fails to make such a declaration within the period set, the operative assumption for initiating the proceedings pursuant to subsection (1) will be that the company falls within the scope of application of section 341q. Sentences 1 to 3 apply accordingly if the Federal Office of Justice has cause to assume that the share capital company is a parent undertaking within the meaning of section 341v (1).
- (3) The above subsections apply accordingly to commercial partnerships within the meaning of section 341q sentence 2.

### **Division 5**

#### **Financial reporting committee incorporated under private law; financial reporting advisory council**

## **Section 342**

### **Financial reporting committee incorporated under private law**

(1) The Federal Ministry of Justice and Consumer Protection may recognise by contract a body incorporated under private law and may assign the following tasks to such body:

1. develop recommendations for the application of principles governing group financial reporting,
2. provide consultancy services to the Federal Ministry of Justice and Consumer Protection on legislative proposals for accounting legislation,
3. represent the Federal Republic of Germany in international fora concerned with the standardisation of financial reporting and
4. develop interpretations of international accounting standards within the meaning of section 315e (1).

However, only that body may be recognised that warrants, by its statutes, that the recommendations and interpretations are developed and resolved upon independently and exclusively by accountants in a process that involves interested members of the public. Insofar as undertakings or organisations of accountants are members of such a body, the membership rights may be exercised only by accountants.

(2) Compliance with the principles of proper accounting as regards group financial reporting is assumed insofar as the recommendations made by a body recognised pursuant to subsection (1) sentence 1 have been followed where the Federal Ministry of Justice and Consumer Protection has published by notice such recommendations.

## **Section 342a**

### **Financial reporting advisory council**

(1) Subject to the stipulations of subsection (9), a financial reporting advisory council will be instituted within the Federal Ministry of Justice and Consumer Protection that will have the tasks pursuant to section 342 (1) sentence 1.

(2) The financial reporting advisory council is comprised of

1. one representative of the Federal Ministry of Justice and Consumer Protection, acting as chairperson, as well as one representative each of the Federal Ministry of Finance and of the Federal Ministry for Economic Affairs and Energy,
2. four representatives of undertakings,
3. four representatives of the auditing professions,
4. two representatives of institutions of higher learning.

(3) The Federal Ministry of Justice and Consumer Protection appoints the members of the financial reporting advisory council. As a rule, solely accountants are to be appointed as members.

(4) The members of the financial reporting advisory council are independent and not bound by instructions. They pursue their activities in the advisory council in an honorary capacity.

(5) The Federal Ministry of Justice and Consumer Protection may issue bylaws for the advisory council.

(6) The advisory council may institute specialist committees and task forces for certain fields.

(7) The advisory council, its specialist committees and its task forces have a quorum if at least two thirds of their members are present. When votes are taken, the majority of votes will decide and in the case of ties, the chairperson will have the casting vote.

(8) Section 342 (2) applies accordingly to the recommendations issued by the financial reporting advisory council.

(9) The formation of a financial reporting advisory council pursuant to subsection (1) will not be required insofar as the Federal Ministry of Justice and Consumer Protection recognises a body pursuant to section 342 (1).

**Book 4**  
**Commercial transactions**

**Division 1**  
**General provisions**

**Section 343**

(1) Commercial transactions are all transactions of a merchant that relate to the operation of the merchant's commercial business.  
(2) (repealed)

**Section 344**

(1) Legal transactions undertaken by a merchant are considered, in cases of doubt, to be related to the operation of the merchant's commercial business.  
(2) Promissory notes signed by a merchant are considered to have been signed in the course of the operation of the merchant's commercial business, provided the contrary is not evident from the instrument.

**Section 345**

Insofar as these provisions do not provide otherwise, the provisions concerning commercial transactions apply equally to both parties to a legal transaction that is a commercial transaction for one of the two parties.

**Section 346**

Merchants are to give consideration, in light of the significance and effect of actions and omissions, to prevailing commercial customs and usages.

**Section 347**

(1) Whosoever is obliged vis-à-vis another person, by reason of a transaction that is a commercial transaction for them, to observe a certain standard of care, is to exercise the due care of a prudent merchant.  
(2) The provisions of the Civil Code, pursuant to which the obligor is liable only, in certain cases, for gross negligence or only for such care as they customarily apply to their own affairs, remain unaffected.

**Section 348**

A contractual penalty promised by a merchant in the operation of the merchant's commercial business may not be reduced by reason of the provisions of section 343 of the Civil Code.

**Section 349**

If the suretyship is a commercial transaction for the surety, the surety will not be entitled to raise the defence of unexhausted remedies. The same applies, subject to the pre-requisite set out above, to anyone who is liable as a surety under a credit mandate.

**Section 350**

The requirements as to form set out in section 766 sentences 1 and 2, in section 780, and in section 781 sentences 1 and 2 of the Civil Code do not apply to a suretyship, to a promise to fulfil an obligation or to an acknowledgment of debt, insofar as the suretyship on the part of the surety, or the promise or the acknowledgement on the part of the debtor, is a commercial transaction.

**Section 351**  
**(repealed)**



### **Section 352**

- (1) The amount of statutory interest, to the exception of default interest, is five percent per annum in the case of a transaction being a commercial transaction for both parties. The same applies if interest has been promised in respect of a debt arising from such a commercial transaction without the rate of interest having been specified.
- (2) Where this Code imposes an obligation to pay interest without specifying the interest rate, it is to be understood as five percent per annum.

### **Section 353**

Merchants dealing *inter se* are entitled to demand, in respect of claims arising from transactions that are commercial transactions for both parties, interest as of the due date of the respective claims. Compound interest cannot be demanded by virtue of this provision.

### **Section 354**

- (1) Whosoever, in the conduct of their commercial business, serves as an agent for another party, or provides services to another party, may demand a commission therefor also in the absence of an arrangement, and, where storage is involved, may demand storage fees at the rates usually charged at the location in question.
- (2) For loans, advances, expenses, and other financial outlays, they may charge interest as of the date of performance.

### **Section 354a**

- (1) If the assignment of a monetary claim is excluded by agreement with the debtor pursuant to section 399 of the Civil Code and the legal transaction underlying such claim is a commercial transaction for both parties, or if the obligor is a legal person under public law or a special fund under public law, then the assignment nonetheless will be effective. The debtor may, however, render performance to the previous creditor with discharging effect. Agreements in derogation herefrom are void.
- (2) Subsection (1) does not apply to a claim under a loan agreement where the creditor is a credit institution within the meaning of the Banking Act.

### **Section 355**

- (1) Where a person has a business relationship with a merchant such that the reciprocal claims and payments, plus interest, arising from the relationship are placed on account and balanced at regular intervals by set-off and by determining the resulting surplus in favour of one party or another (revolving account, current account), the person to whom a surplus is due upon clearance of the account may demand interest on the surplus due from the account clearance date, also insofar as interest is included in the account.
- (2) Accounts are cleared once per year, except as otherwise provided.
- (3) In case of doubt, the revolving account may also be terminated at any time during the term of an accounting period, with the effect that the person to whom a surplus is due pursuant to the account may demand payment thereof.

### **Section 356**

- (1) If a claim secured by pledge, suretyship or otherwise is included in the revolving account, then the creditor will not be hindered, by the creditor's acknowledgement of the clearance of the account, from seeking satisfaction from the security to the extent that the credit balance due to the creditor from the revolving account and the claim correspond to each other.
- (2) Where a third party is liable as joint and several debtor for a claim included in the revolving account, the provision of subsection (1) applies accordingly to the assertion of the claim against the third party.

### **Section 357**

If the creditor of one of the parties involved has obtained attachment and transfer of the claim to the amount due to their debtor as surplus from the revolving account, then debit items arising from new transactions subsequent to the attachment cannot be placed into

account against the creditor. Transactions undertaken on the basis of a right existing already prior to the attachment, or on the basis of the third-party debtor's obligation existing already before such time, are not considered to be new transactions within the meaning of this provision.

#### **Section 358**

Performance of commercial transactions may be rendered and demanded only during usual business hours.

#### **Section 359**

(1) If the time agreed upon for performance is spring or autumn or a point in time defined in a similar manner, then in case of doubt the commercial customs prevailing at the place of performance will govern.

(2) Where a period of eight days is agreed upon, it is understood in case of doubt as eight full days.

#### **Section 360**

Where goods defined only by generic characteristics are owed, merchandise of average kind and quality is to be supplied.

#### **Section 361**

In case of doubt, such measure, weight, currency, calculation of time and distances as are applicable at the place where the contract is to be fulfilled are considered to be in conformity with the agreement.

#### **Section 362**

(1) Where a merchant, whose commercial undertaking involves the merchant's serving as an agent for others, receives an offer of contract from someone with whom the merchant has a business relationship concerning such agency services, the merchant will be obliged to reply without undue delay; the merchant's silence will be considered to constitute acceptance of the offer of contract. The same applies if a merchant receives an offer of contract concerning agency services from someone to whom the merchant has proposed to provide services as agent.

(2) Even if the merchant rejects the offer of contract, the merchant is to provisionally protect from damage, at the offeror's expense, the goods sent to the merchant insofar as the merchant is covered for such expenses and insofar as this can be done without detriment to the merchant.

#### **Section 363**

(1) Orders issued to a merchant with respect to the provision of money, securities or other fungible things, without such performance being made conditional upon a consideration, may be transferred by endorsement if they are made out to order. The same applies to certificates of obligation made out to order by a merchant for items of the kind referred to above, without the performance being made conditional upon a consideration.

(2) Furthermore, sea carriers' bills of lading, carriers' consignment bills, warehouse warrants as well as transportation insurance policies may be transferred by endorsement if they are made out to order.

#### **Section 364**

(1) All rights under the endorsed instrument are transferred by endorsement to the endorsee.

(2) The debtor may raise only such defences against the rightful holder of the instrument as concern the validity of the debtor's declaration in the instrument or that result from the content of the instrument or to which the debtor is entitled directly against the holder.

(3) The debtor is obliged to perform only upon delivery of the receipted instrument.

#### **Section 365**

(1) With respect to the form of the endorsement, to the establishment of the holder as the rightful holder, and the examination thereof, as well as with respect to the obligation of the holder to surrender the instrument, the provisions of *Articles 11 to 13, 36, 74 of the Bills of Exchange Act* apply accordingly.

(2) If the instrument is destroyed or lost, then it is to be declared invalid by way of public notice procedure. Where the public notice procedure has been initiated, the party entitled may demand performance from the debtor pursuant to the terms of the instrument, if the party entitled provides security prior to the declaration of invalidity.

Footnote: Section 365 subsection (1) italics: now Article 13, 14 paragraph (2), Article 16 and 40 paragraph (3) sentence 2 of the Bills of Exchange Act 4133-1 pursuant to Article 3 paragraph (1) of the Act of 21 June 1933 I 409

### **Section 366**

(1) Where a merchant sells or pledges, as part of the operation of the merchant's commercial business, moveable property that does not belong to the merchant, the provisions of the Civil Code to the benefit of those whose rights are derived from an unauthorised person apply also in those cases in which the good faith of the acquirer concerns the authority of the seller or pledgor to dispose over the property on behalf of the owner.

(2) If the property is encumbered by the right of a third party, the provisions of the Civil Code to the benefit of those whose rights are derived from an unauthorised person apply also in those cases in which the good faith concerns the authority of the seller or pledgor to dispose over the property without reservation of such third-party right.

(3) With regard to the protection of good faith, the statutory security right of the commission agent, of the carrier or the sea carrier, the forwarder and the warehouse keeper is equivalent to a security right acquired by contract under subsection (1). However, sentence 1 does not apply to the statutory security right in respect of goods that are not the subject of the contract giving rise to the claim to be secured by the security right.

### **Section 367**

(1) Where a bearer instrument that has been stolen from the owner, has been lost or is otherwise missing is sold or pledged to a merchant who carries on a banking or money changing business, the good faith of such merchant is considered to be excluded if, at the time of the sale or pledge, the loss of the instrument had been announced in the Federal Gazette and not more than one year has elapsed since the end of the year in which the announcement was made. In the case of publications before 1 January 2007, the Federal Gazette in paper form takes the stead of the Federal Gazette. Where endorsed in blank, debenture bonds made out to order, as well as registered shares and interim certificates are equivalent to bearer instruments.

(2) The good faith of the acquirer is not excluded by the publication pursuant to subsection (1) if, owing to special circumstances, the acquirer had no knowledge of the publication and this lack of knowledge is not due to gross negligence.

(3) These provisions do not apply to interest coupons, annuity coupons or dividend coupons which fall due no later than the next redemption date following the sale or pledge, to interest-free bearer instruments payable on demand, or to banknotes.

### **Section 368**

(1) In the case of the sale of a pledged item, if the pledge was a commercial transaction on the part of the pledgee and the pledgor, a period of one week will take the stead of the period of one month specified in section 1234 of the Civil Code.

(2) This provision applies accordingly to the statutory security right of the commission agent, of the carrier or sea carrier, of the forwarder and of the warehouse keeper, and applies to the security right of the carrier, of the sea carrier, and of the forwarder even in those cases in which the contract is a commercial transaction only on their part.

### **Section 369**

(1) A merchant has a right of retention, on account of due claims to which the merchant is entitled against another merchant arising from transactions concluded between them that are commercial transactions for both parties, with regard to movable property and securities of the debtor which have come into the merchant's possession, in keeping with the debtor's intention, by reason of commercial transactions, provided that the merchant still has possession of them, particularly where the merchant has the power to dispose over them by means of bills of lading, consignment bills, or warehouse warrants. The right of retention is given also in those cases in which ownership of the item has passed from the debtor to the creditor or has been transferred by a third party on behalf of the debtor to the creditor, but is to be transferred back to the debtor.

(2) The right of retention exists as vis-à-vis a third party to the extent that objections against the debtor's claim to return of the object can be raised against such third party.

(3) The right of retention is excluded if retention of the object conflicts with the instructions given by the debtor before or upon delivery thereof, or with the obligation assumed by the creditor to deal with the object in a certain manner.

(4) The debtor may avert the exercise of the right of retention by providing security. The provision of security by sureties is excluded.

### **Section 370 (repealed)**

### **Section 371**

(1) By virtue of the right of retention, the creditor is entitled to satisfy their claim out of the object so retained. Where a third party has an interest in the object against which the right of retention pursuant to section 369 (2) may be asserted, the creditor has priority with respect to obtaining satisfaction out of the object.

(2) Satisfaction is effected pursuant to the provisions of the Civil Code applicable to security rights. A period of one week takes the stead of the period of one month specified in section 1234 of the Civil Code.

(3) Should satisfaction not take place by way of compulsory enforcement, it will be permissible only after the creditor has obtained an enforceable judgment regarding their right to obtain satisfaction against the owner or, if the object belongs to the creditor, against the debtor; in the latter case, the provisions of the Civil Code that concern the owner in respect of satisfaction apply accordingly to the debtor. In the absence of an enforceable judgment, the sale of the object will not be lawful.

(4) An action for permission to seek satisfaction may be brought at the court in the district of which the creditor is subject to general jurisdiction or in the district of which the creditor's branch is subject to jurisdiction.

### **Section 372**

(1) With regard to satisfaction out of the object retained, the debtor will continue to be considered the owner, to the benefit of the creditor, if the debtor was the owner of the object at the time the creditor acquired possession thereof, unless the creditor knows that the debtor is no longer the owner.

(2) Where a third party acquires ownership after the creditor had acquired possession from the debtor, the third party will be obliged to recognise a final and binding judgment as binding upon them that has been handed down in litigation pursued between the creditor and the debtor over the permission to seek satisfaction, unless the creditor knew at the time of the litigation's pendency that the debtor was no longer the owner.

## **Division 2 Commercial sale of goods**

### **Section 373**

(1) Where the buyer defaults on accepting delivery of the goods, the seller may deposit the goods, at the risk and cost of the buyer, in a public warehouse or in some other secure manner.

(2) Furthermore, the seller is entitled, following a prior warning, to have the goods sold at public auction; if the goods have a stock-exchange or market price, the seller can, following a prior warning, also have the sale effected privately at the current price by a commercial broker officially authorised to effect such sales or by a person authorised to conduct public auctions. Where the goods are perishable and in cases of imminent danger, prior warning will not be required; the same applies if giving a warning is impracticable for other reasons.

(3) Any self-help sale takes place for the account of the delinquent buyer.

(4) The seller and the buyer may place bids at the public auction.

(5) In the event of a public auction, the seller is to inform the buyer, in advance, of the time and place of the auction; the seller is to notify the buyer, without undue delay, of the execution of any kind of sale. In the event of failure to do so, the seller will be obliged to provide compensation for damages. Such notifications may be dispensed with if they are impracticable.

#### **Section 374**

The powers afforded to the seller by the Civil Code in cases in which the buyer is in default of acceptance of delivery are not affected by the provisions of section 373.

#### **Section 375**

(1) If, with respect to the purchase of a moveable object, the right to make more detailed specifications as to form, measure or similar conditions is reserved for the buyer, the buyer will be obliged to provide such reserved specifications.

(2) If the buyer defaults in fulfilling such obligation, then the seller may make such specifications instead of the buyer, or the seller may demand compensation of damages in lieu of performance pursuant to sections 280, 281 of the Civil Code or revoke the contract pursuant to section 323 of the Civil Code. In the former case, the seller must inform the buyer of the specifications made by the seller and at the same time set a reasonable period of time within which the buyer is to make different specifications. Where such specifications are not made by the buyer within the period set, the specifications made by the seller will govern.

#### **Section 376**

(1) Where it is stipulated that performance by one of the parties is to be effected exactly at a stipulated time or within a stipulated period, the other party may revoke the contract if the performance is not effected at such stipulated time or within such stipulated period or, in the event that the debtor is in default, the other party may demand, in lieu of performance of the contract, compensation of damages for non-performance. The other party may only demand performance if they notify the opposing party, immediately after expiry of the time or the period, that they insist on performance.

(2) If damages for non-performance are demanded and the goods have a stock-exchange or market price, the difference between the purchase price and the stock-exchange or market price at the time and place of the performance owed may be demanded.

(3) The proceeds of a sale or purchase effected otherwise may only be taken, in the case of the goods having a stock-exchange or market price, as the basis of a claim for damages if the purchase or sale is effected immediately after expiry of the time or period stipulated for performance. If the sale or purchase is not effected by public auction, then it must be carried out at the current price by a commercial broker officially authorised to effect such sales or purchases or by a person officially authorised to conduct public auctions.

(4) The provision of section 373 (4) applies to a sale by public auction. The obligor is to promptly notify the obligee, without undue delay, of the sale or purchase; in the event of failure to do so, the obligor will be liable to provide compensation for damages.

#### **Section 377**

- (1) Where the purchase is a commercial transaction for both parties, the buyer is to inspect the goods promptly after delivery by the seller, insofar as this is practicable in the ordinary course of business, and is to notify the seller without undue delay if a defect becomes apparent.
- (2) If the buyer fails to notify the seller, then the goods are considered to have been approved, unless the defect is one which was not apparent on inspection.
- (3) Where such a defect becomes apparent later, notification must be made promptly as soon as the discovery is made; otherwise the goods are considered to be approved also considering such defect.
- (4) Timely dispatch of the notification suffices to preserve the buyer's rights.
- (5) If the seller has fraudulently concealed the defect, then the seller cannot rely on these provisions.

#### **Section 378 (repealed)**

#### **Section 379**

- (1) Where the purchase is a commercial transaction for both parties, the buyer will be obliged, if the buyer finds fault with the goods shipped to them from another location, to make arrangements for their interim storage.
- (2) If the goods are perishable and in the case of imminent danger, the buyer may have them sold subject to observance of the provisions of section 373.

#### **Section 380**

- (1) Where the purchase price is calculated according to the weight of the goods, the weight of the packaging (tare weight) is to be deducted, unless otherwise dictated by the contract or the commercial customs prevailing at the place at which the seller is to fulfil the contract.
- (2) Whether and to what extent the tare weight is to be deducted at a specific rate or ratio instead of ascertaining it precisely, and whether and how much allowance of extra weight is to be calculated in favour of the buyer or may be demanded as compensation for damaged or unserviceable parts (tret), is determined by the contract or in accordance with the commercial customs prevailing at the place at which the seller is to fulfil the contract.

#### **Section 381**

- (1) The provisions set forth in this Division for the purchase of goods are also applicable to the purchase of securities.
- (2) They also apply to a contract that has as its object the delivery of movable property that is to be manufactured or produced.

#### **Section 382 (repealed)**

#### **Division 3**

#### **Transactions on a commission basis**

#### **Section 383**

- (1) A commission agent is a person who, on a commercial basis, undertakes to buy or sell goods or securities in their own name for the account of another (the principal).
- (2) The provisions of this Division also apply if the commission agent's enterprise, by reason of its nature or size, does not require a business operation structured in a commercial manner and the business name of the enterprise is not registered in the Commercial Register pursuant to section 2. In this case, the provisions of Division 1 of Book 4, to the exception of sections 348 to 350, also apply with regard to the commission transaction.

#### **Section 384**

(1) The commission agent is obliged to execute the agreed transaction with the due care of a prudent merchant; in doing so, the commission agent is to look after the principal's interests and is to follow their instructions.

(2) The commission agent is to furnish the principal with the required reports and, in particular, is to notify the principal, without undue delay, of the execution of the commission; the commission agent is obliged to render an account of the transaction to the principal and to surrender to the principal whatever the commission agent obtained from carrying out the transaction.

(3) The commission agent is liable to the principal for fulfilment of the transaction if the commission agent fails to provide to the principal the name of the third party with whom the commission agent concluded the transaction concurrently with the notification of the commission having been executed.

#### **Section 385**

(1) Where the commission agent does not act in accordance with the principal's instructions, the commission agent will be obliged to compensate the principal for the damage incurred; the principal need not accept the transaction for their account.

(2) The provisions of section 665 of the Civil Code remain unaffected.

#### **Section 386**

(1) Where the commission agent has sold for less than the price set for the commission agent, or has bought for a higher price than that set for the purchase for the commission agent, the principal must, if they wish to repudiate the transaction as not having been concluded for their account, declare this without undue delay upon receiving the notice as to the transaction having been executed; otherwise, the deviation from the stipulated price are considered to be approved.

(2) If, upon providing notice of the execution of the transaction, the commission agent offers to cover the difference in price, then the principal will not be entitled to repudiate such transaction. The principal's claim to compensation for damage in excess of the difference in price remains unaffected.

#### **Section 387**

(1) If the commission agent concludes the transaction on more favourable terms than those set for the commission agent by the principal, then the resulting benefit will accrue to the principal.

(2) This applies particularly if the price at which the commission agent sells is higher than the lowest price specified by the principal, or if the price at which the commission agent buys does not reach the highest price specified by the principal.

#### **Section 388**

(1) If the goods sent to the commission agent are in a damaged or defective condition apparent at the time of delivery, the commission agent will reserve all rights against the carrier or skipper, will make arrangements to preserve proof of such condition, and will notify the principal thereof without undue delay; should the commission agent fail to do so, the commission agent will be liable for the compensation of damages.

(2) If the goods are perishable or if changes occur in them subsequently which give rise to the concern that they may depreciate, and there is no time to obtain instructions from the principal, or the principal is tardy in issuing such instructions, then the commission agent may cause the goods to be sold subject to the provisions of section 373.

#### **Section 389**

If the principal fails to dispose of the goods, in spite of being obliged to do so given the prevailing circumstances, then the commission agent will have the rights of a seller pursuant to section 373.

#### **Section 390**

(1) The commission agent is responsible for the loss of or damage to goods in their custody, unless such loss or damage is due to circumstances which could not have been averted by exercising the due care of a prudent merchant.

(2) The commission agent is responsible for failure to insure the goods only if they were instructed by the principal to take out such insurance.

#### **Section 391**

Where a purchasing commission is awarded that is a commercial transaction for both parties, the provisions of sections 377 to 379 applicable to the buyer apply accordingly with regard to the principal's duty to inspect the goods and to notify the commission agent of any defects discovered, with regard to the duty of looking after the storage of the rejected goods, and with regard to the sale of the goods in case of their imminent deterioration. The claim of the principal to assignment of the rights to which the commission agent is entitled against the third party from whom the commission agent bought the goods for the account of the principal will not be affected by a late notice of defects.

#### **Section 392**

(1) Claims arising from a transaction concluded by the commission agent may be asserted by the principal against the debtor only after assignment.

(2) However, even if they have not been assigned, such claims are considered to be claims of the principal in the relationship between the principal and the commission agent or the latter's creditors.

#### **Section 393**

(1) If the commission agent makes an advance payment or grants credit to a third party without the principal's consent, the commission agent will be acting at their own risk.

(2) To the extent, however, that commercial customs prevailing at the place of the transaction include the deferral of payment of the purchase price, the commission agent will be authorised to grant such deferral if there are no instructions to the contrary from the principal.

(3) Where the commission agent sells on credit without authorisation, the commission agent will be obliged, as the party liable for the purchase price, to immediately make payment to the principal. If the price would have been lower for a cash sale, then the commission agent will be required to pay only the lower price and, if such lower price is lower than the price set for the commission agent, also the difference pursuant to section 386.

#### **Section 394**

(1) If the commission agent assumes an obligation of a third party with whom the commission agent concludes a transaction for the account of the principal, or if such assumption corresponds to the commercial customs prevailing at the place where the commission agent carries on their business, then the commission agent will be responsible for performance of such obligation.

(2) A commission agent who is responsible for the performance by the third party will be directly liable to the principal for performance on the due date, to the extent that the performance can be demanded under the contractual relationship. The commission agent may demand special remuneration (del credere commission).

#### **Section 395**

A commission agent who undertakes to purchase a bill of exchange will be obliged, if they endorse such a bill of exchange, to endorse it in the customary manner and without reservation.

#### **Section 396**

(1) The commission agent will be entitled to demand the commission when the respective transaction has been executed. If the transaction has not been executed, then the commission agent nevertheless will be entitled to a delivery commission to the extent that



such commission is locally customary; the commission agent will also be entitled to demand commission if the execution of the transaction they concluded does not take place solely because of a reason given in the person of the principal.

(2) The reimbursements payable by the principal for the commission agent's expenditures pursuant to sections 670 and 675 of the Civil Code also include remuneration for the use of storage space and the commission agent's means of transport.

#### **Section 397** **Commission agent's lien**

On account of the expenses incurred in respect of the goods, and on account of the commission, advances and loans given on the goods, and also on account of the bills of exchange signed with respect to the goods, or any other liabilities otherwise entered into, the commission agent is entitled a lien on the commission goods of the principal or of a third party who has consented to the purchase or sale of the goods. The commission agent also is entitled to a lien on the goods of the principal by virtue of all claims that arise from a revolving account of commission transactions. The lien pursuant to sentences 1 and 2 exists, however, only in respect of commission goods that the commission agent has in their possession, or over which they have the right of disposal by means of bills of lading, consignment bills or warehouse warrants.

#### **Section 398**

Commission agents are entitled to satisfy themselves, also in cases in which they are the owner of the commission goods, out of the goods for any claims designated in section 397, in accordance with the statutory provisions applicable to liens.

#### **Section 399**

Commission agents are entitled to satisfy themselves, before the principal or the principal's creditors, regarding any claims designated in section 397 out of the receivables resulting from the transaction executed for the account of the principal.

#### **Section 400**

(1) A commission to buy or sell goods which have a stock-exchange or market price, as well as securities for which a stock-exchange or market price is officially established, may be executed by commission agents such that, unless the principal has instructed otherwise, the commission agents themselves deliver as the seller the goods they are required to buy or take over as buyer the goods they are required to sell.

(2) Where the commission is executed in this manner, the commission agent's duty to render accounts for the conclusion of the purchase or sale will be limited to furnishing proof that, with respect to the price charged, the stock-exchange or market price existing at the time of the execution of the commission was adhered to. The time of performance is considered to be the time at which the commission agent submitted for transmission to the principal the notice of execution.

(3) Where notice of execution of a commission, which was to be performed during the time the stock exchange or market was open, is submitted for transmission after the close of the stock exchange or market, the price charged may not be less favourable for the principal than the price that prevailed at the close of the stock exchange or market.

(4) If a commission is to be performed at a specific rate (opening rate, mean rate, closing rate), the commission agent is entitled and obliged to charge such rate to the principal irrespective of the time at which the notice of execution was submitted for transmission.

(5) In the case of securities and goods for which the stock-exchange or market price is officially established, commission agents may not, where they execute the commission by way of self-dealing, charge the principal a price less favourable than the officially established price.

#### **Section 401**

(1) Also in cases in which commission agents execute the commission by way of self-dealing, they are to charge the principal the more favourable price, if, by the exercise of due care, they were able to execute the commission at a more favourable price than the one resulting under section 400.

(2) If, before the notice of execution is transmitted, the commission agents have, by reason of the commission given to them, concluded a transaction with a third party on the stock exchange or on the market, they will not be permitted to charge the principal a less favourable price than the contractual price.

#### **Section 402**

The provisions of section 400 subsections (2) to (5) and of section 401 cannot be altered to the detriment of the principal by concluding an agreement to that effect.

#### **Section 403**

Commission agents who deliver the goods themselves as the seller or who take over the goods themselves as the buyer are entitled to charge the customary commission and the costs that regularly occur in connection with commission transactions.

#### **Section 404**

The provisions of sections 397 and 398 also apply where the commission is executed by way of self-dealing.

#### **Section 405**

(1) Where commission agents give notice of the commission having been executed and fail to note expressly that they intend to enter into the contract, this is considered a declaration that the execution took place by the transaction being concluded with a third party for the account of the principal.

(2) An agreement between the principal and the commission agent is null and void that stipulates that the declaration as to whether the commission has been executed by way of self-dealing or by conclusion of a transaction with a third party may be made later than on the date of the notice of execution.

(3) Should the principal revoke the commission and should the revocation be served on the commission agent before the notice of execution has been submitted for transmission, the commission agent no longer will be entitled to the right to enter into the contract by way of self-dealing.

#### **Section 406**

(1) The provisions of this Division also apply in cases in which commission agents accept to conclude a transaction, as part of operating their commercial business, of a different type than that designated in section 383 for the account of another, but in their own name. The same applies if merchants who are not a commission agent accept to conclude a transaction, as part of operating their commercial business, in the manner described.

(2) A commission also is considered a purchasing commission and a sales commission within the meaning of the present Division if its object consists of the delivery of a non-fungible object that is to be manufactured using material to be procured by the trader.

### **Division 4**

#### **Freight business**

##### **Subdivision 1**

#### **General provisions**

##### **Section 407**

#### **Contract of carriage**

(1) By virtue of the contract of carriage the carrier is obliged to carry the goods to their destination and there to deliver them to the consignee.

(2) The sender is obliged to pay the agreed freight.

(3) The provisions of this Subdivision apply whenever

1. the goods are to be carried over land, on inland waterways or by aircraft, and
2. the carriage is part of the operation of a commercial enterprise.

If the nature or size of the enterprise is such that it does not require a business operation structured in a commercial manner, and if the name of the enterprise is not registered in the Commercial Register in accordance with section 2, the provisions of Division 1 of Book 4, to the exception of sections 348 to 350, apply to the freight business as a subsidiary source of law.

### **Section 408**

#### **Consignment note. Authorisation to issue statutory instruments**

(1) The carrier may require a consignment note to be issued containing the following particulars:

1. place and date of issuance;
2. name and address of the sender;
3. name and address of the carrier;
4. place and date of taking over of the goods and place designated for delivery;
5. name and address of the consignee and special address, if any, for notification;
6. description in common use of the nature of the goods and the method of packaging, and, in the case of dangerous goods, their description as required by the regulations concerning dangerous goods, or, in the absence of such requirement, their generally recognised description;
7. number of packages and their special marks and numbers;
8. gross weight of the goods or their quantity otherwise expressed;
9. freight owed at delivery and any costs incurred up to the time of delivery, as well as a note concerning payment of the freight;
10. any amount of money to be collected on delivery of the goods;
11. instructions relating to customs and other official formalities;
12. any agreement concerning carriage in an open unsheeted vehicle or on deck.

Other particulars deemed useful by the parties may be entered in the consignment note.

(2) The consignment note is made out in three original copies signed by the sender. The sender may require that the carrier also sign the consignment note. Reproductions of the personal signatures by means of printing or stamp will suffice. One copy is for the sender, one will accompany the goods and one is retained by the carrier.

(3) An electronic record fulfilling the same functions as a consignment note is considered equivalent to the consignment note, provided that the authenticity and integrity of the record are assured at all times (electronic consignment note). The Federal Ministry of Justice and Consumer Protection is authorised to determine, by way of statutory instrument issued in agreement with the Federal Ministry of the Interior, Building and Community and not requiring the approval of the Bundesrat, the details of the issuance, carrying and presentation of an electronic consignment note, as well as the details of the procedure for making subsequent entries in an electronic consignment note.

### **Section 409**

#### **Evidentiary effect of the consignment note**

(1) The consignment note signed by both parties constitutes prima facie evidence of the conclusion of the contract of carriage, the conditions of the contract and the takeover of the goods by the carrier.

(2) A consignment note signed by both parties also gives rise to the presumption that the goods and their packaging appeared to be in good condition when the carrier took them over and that the number of packages, their marks and numbers correspond to the particulars provided in the consignment note. However, the consignment note will not give rise to this presumption if the carrier has entered a reservation in the consignment note, stating grounds therefor; the carrier may give as a reason that the carrier had no reasonable means of checking the accuracy of the statements.

(3) If the gross weight of the goods or their quantity otherwise expressed or the content of the packages have been checked by the carrier and the result of the checks has been entered in a consignment note signed by both parties, the latter will constitute prima facie evidence that the weight, quantity or content corresponds to the particulars provided in the consignment note. The carrier is obliged to check the weight, quantity or contents if the sender so requires and the carrier has reasonable means of checking; carriers are entitled to reimbursement of their expenditures for such checking.

#### **Section 410 Dangerous goods**

(1) If dangerous goods are to be carried, the sender is to inform the carrier, in good time and in text form, of the precise nature of the danger and, if necessary, of the precautionary measures to be taken.

(2) Unless, when taking over the goods, the carrier knew of the nature of the danger or had at least been informed of it, the carrier may

1. unload, store or return dangerous goods or, to the extent necessary, destroy them or render them harmless without becoming liable in damages to the sender, and
2. claim reimbursement from the sender for any expenditures necessarily incurred in carrying out these measures.

#### **Section 411 Packaging. Labelling**

Insofar as the goods, in view of their nature and of the agreed type of transport, require packaging, the sender is to package them in such a way that they are protected against loss and damage and that the carrier suffers no detriment. Where it is intended to hand over the goods for carriage in a container, on a pallet or on some other article of transport used to consolidate cargo units, the sender is to stow and secure the goods, also in or on the article of transport, so as to provide for their safe transport. Furthermore, the sender is to label the goods to the extent necessary to ensure their handling in accordance with the contract.

#### **Section 412 Loading and unloading. Authorisation to issue statutory instruments**

(1) Unless the circumstances or usages indicate otherwise, the sender is to put on board, stow and secure (load) the goods so as to provide for their safe transport as well as unload them. The carrier is to see to it that the loading is consistent with safe operation of the vehicle.

(2) No special fee may be charged for loading and unloading time, the period of which, in the absence of another agreement, is to be reasonable in view of the particular circumstances.

(3) If the carrier waits beyond the loading or unloading time on the basis of a contractual agreement or for reasons outside the sphere of risks to be borne by the carrier, then the carrier will be entitled to appropriate remuneration (demurrage).

(4) The Federal Ministry of Justice and Consumer Protection is authorised to determine by statutory instrument, issued in agreement with the Federal Ministry of Transport and Digital Infrastructure and not requiring the approval of the Bundesrat, the prerequisites applicable to inland navigation for the start and duration of the loading and unloading time as well as the

amount of demurrage, taking into account the nature of the vehicles intended to be used in carriage, as well as the nature and quantity of the goods to be transhipped, the technical means available in transhipping the goods as well as the requirements of rapid transportation.

**Section 413**  
**Accompanying documents**

- (1) The sender is to provide to the carrier all such instruments and such information as may be necessary for official processing prior to the delivery of the goods, in particular for customs clearance.
- (2) The carrier is responsible for any detriment caused by loss of, damage to or incorrect use of instruments given to the carrier, unless the loss, damage or incorrect use was caused by circumstances which the carrier was unable to avoid and the consequences of which the carrier was unable to prevent. However, the carrier's liability will not exceed the amount that would be payable in the event of the goods being lost.

**Section 414**  
**Sender's liability in special cases, irrespective of fault**

- (1) The sender is to compensate, even if the sender is not at fault, the carrier for damage and expenditures caused by
1. insufficient packaging or labelling,
  2. incorrect or incomplete particulars provided in the consignment note,
  3. failure to disclose the dangerous nature of the goods, or
  4. absence, incompleteness or incorrectness of the instruments or the information specified in section 413 (1).
- (2) If conduct on the part of the carrier has contributed to causing the damage or expenditures, the obligation to pay compensation and the extent of the compensation payable will depend upon the extent to which the conduct of the carrier has contributed to the damage and expenditures.
- (3) If the sender is a consumer, the sender is to compensate the carrier for damage and expenditures in accordance with subsections (1) and (2) only insofar as the sender has acted culpably.

**Section 415**  
**Termination by the sender**

- (1) The sender may, at any time, terminate the contract of carriage by notice.
- (2) If the sender terminates the contract, then the carrier may claim either
1. the agreed freight, any demurrage, as well as any expenditures the sender is entitled to have refunded, less any savings occasioned by the termination of the contract or any moneys which the termination of the contract has enabled the sender to earn and which the sender has in fact earned, or which the sender, acting in bad faith, has failed to earn, or
  2. one third of the agreed freight (Fautfracht).

If the termination is based on reasons within the sphere of risks to be borne by the carrier, no claim to Fautfracht based on sentence 1, number 2, will arise; neither will a claim based on sentence 1 number 1 arise in such a case insofar as the carriage is of no interest to the sender.

- (3) If goods already had been loaded prior to the termination, the carrier may take measures at the sender's expense in accordance with section 419 (3) sentences 2 to 4 or may require the sender to unload the goods without delay. The carrier must tolerate the unloading of the goods only insofar as it can be done without prejudice to the carrier's business and without

causing damage to the senders or consignees of other consignments. If the termination is based on reasons falling within the sphere of risks to be borne by the carrier, then the carrier will be obliged, contrary to the sentences 1 and 2, to unload the goods already loaded without delay and at the carrier's own expense.

#### **Section 416**

##### **Right to carriage of part of a consignment**

If only a part of the goods has been loaded, then the sender may require at any time that the carrier begin to carry the part of the goods that has already been loaded. In this case, the carrier will be entitled to the full freight and to demurrage, if any, as well as to reimbursement of any expenditures the carrier may have incurred due to a part of the goods being lacking; however, any freight for goods which the carrier transports with the same vehicle instead of the goods which had not been loaded is to be deducted from the full freight. In addition, the carrier will be entitled to demand further security to the extent that the lack of a part of the goods causes the carrier to lose security for the full freight. If the incompleteness of the load is due to reasons within the sphere of risks to be borne by the carrier, then the carrier will be entitled to the claim under sentences 2 and 3 only to the extent that goods actually are carried.

#### **Section 417**

##### **Carrier's rights if loading time is not complied with**

- (1) If the sender fails to load the goods within the loading time or, where the task of loading is not incumbent on the sender, if the sender fails to make the goods available within the loading time, then the carrier may set a reasonable deadline within which the goods must be loaded or made available.
- (2) If no goods are loaded or made available by the deadline set in accordance with subsection (1), or if it is obvious that no goods will be loaded or made available within the deadline set, the carrier may terminate the contract and assert the claims pursuant to section 415 (2).
- (3) If only a part of the goods has been loaded or made available by the deadline set in accordance with subsection (1), the carrier may begin to carry the part of the goods that has already been loaded and assert the claims pursuant to section 416, sentences 2 and 3.
- (4) The carrier may assert the rights under subsections (2) and (3) also without a deadline being set if the sender refuses, in earnest and in a manner that is conclusive, to load the goods or to make the goods available. Furthermore, the carrier may terminate the contract as provided for under subsection (2) also without setting a deadline if particular circumstances mean that, after having weighed the interests of both parties, continuing the contract would constitute an unreasonable burden on the carrier.
- (5) The carrier will not be entitled to these rights if the reasons for non-compliance with the loading time fall within the sphere of risks to be borne by the carrier.

#### **Section 418**

##### **Subsequent instructions**

- (1) The right of disposal in relation to the goods lies with the sender. In particular, the sender may instruct the carrier to stop the goods in transit or to deliver them to another destination, to another place designated for delivery or to another consignee. The carrier is obliged to comply with such instructions only insofar as this can be done without the risk of prejudice to the carrier's business or damage to the senders or consignees of other consignments. The carrier may claim from the sender reimbursement for expenditures occasioned by the carrier having carried out the instruction, as well as appropriate remuneration; the carrier may require an advance payment as a precondition for carrying out the instruction.
- (2) The sender's right of disposal lapses on the arrival of the goods at the place designated for delivery. Henceforth, the right of disposal under subsection (1) will lie with the consignee. If the consignee exercises this right, then the consignee is to reimburse the carrier for any

additional expenditures and is to remunerate the carrier appropriately; the carrier may require an advance payment as a precondition for carrying out the instruction.

(3) If the consignee, in exercising their right of disposal, has ordered the delivery of the goods to a third person, that person will not be entitled to specify another consignee.

(4) If a consignment note has been issued and signed by both parties, then the sender may exercise their right of disposal only upon presentation of their copy of the consignment note, if the consignment note so prescribes.

(5) If the carrier intends to not comply with an instruction, then the carrier must inform the person who has given it without delay.

(6) If the exercise of the right of disposal has been made dependent on the presentation of the consignment note and if the carrier carries out an instruction without having had the sender's copy of the consignment note presented to them, then the carrier will be liable to the person entitled for any loss or damage caused thereby. The liability is limited to that amount that would be payable in the event of the goods being lost.

### **Section 419**

#### **Obstacles to carriage and delivery**

(1) If it becomes evident following takeover of the goods that the carriage or delivery cannot be performed in accordance with the contract, then the carrier is to ask for instructions from the person who has the right of disposal in relation to the goods in accordance with sections 418 or 446. If the consignee has the right of disposal and if the consignee cannot be located or if the consignee refuses to accept the goods, then the sender will have the right of disposal under sentence 1 if no consignment bill has been made out; the consignment note need not be produced in such a case even if its terms require that this be done when exercising the right of disposal. If instructions have been issued to the carrier and the obstacle is not within the sphere of risks to be borne by the carrier, the carrier may assert claims in accordance with section 418 (1) sentence 4.

(2) If the obstacle to carriage or delivery has arisen after the consignee has, based on the consignee's right of disposal under section 418, issued the instruction that the goods are to be delivered to a third party, the consignee and the third party are considered to be the sender and the consignee, respectively, for the purposes of applying subsection (1).

(3) If the carrier cannot, within a reasonable time, obtain instructions with which the carrier would have to comply according to section 418 (1) sentence 3, the carrier is to take such measures as seem to be in the best interest of the person having the right of disposal. For instance, the carrier may unload the goods and store them, entrust them to a third party for storage for the account of the person having the right of disposal under sections 418 or 446, or return them; if the carrier entrusts the goods to a third party, then the carrier will be liable only for exercising due diligence in choosing the third party. The carrier may also have the goods sold in accordance with section 373 subsections (2) to (4) if they are perishable or if their condition warrants such a measure, or if the costs that would otherwise be incurred are out of proportion to the value of the goods. The carrier may destroy goods that cannot be sold. The carriage is considered to have been terminated once the goods have been unloaded.

(4) The carrier is entitled to reimbursement for any expenditures necessitated by measures taken in accordance with subsection (3), and to reasonable remuneration, unless the obstacle falls within the sphere of risks to be borne by the carrier.

### **Section 420**

#### **Payment. Calculation of freight**

(1) The freight is payable on delivery of the goods. In addition to the freight, the carrier will be entitled to be reimbursed for any expenditures insofar as they were incurred in the interests of the goods and the carrier in all the circumstances was able to reasonably regard them as necessary.

(2) The claim to freight will lapse insofar as carriage is impossible. If the carriage is terminated prematurely due to an obstacle to carriage or delivery, then the carrier will be

entitled to a pro rata part of the freight for the completed part of the carriage if the carriage is of benefit to the sender.

(3) In derogation from subsection (2), the carrier will continue to be entitled to the claim to freight if carriage is impossible for reasons within the sphere of risks to be borne by the sender or for reasons occurring at a time at which the sender is in default on acceptance of delivery. However, the carrier will have to accept a deduction of any savings or any moneys the carrier was able to earn or that the carrier, acting in bad faith, has failed to earn.

(4) If, for reasons within the sphere of risks to be borne by the sender, a delay occurs after the start of carriage and before arrival at the place designated for delivery, then the carrier will be entitled to reasonable remuneration in addition to the freight.

(5) If the freight is agreed by reference to the number, weight or quantity otherwise expressed of the goods, then it will be presumed for the purpose of calculating the freight that the statement in the consignment note or consignment bill relating to this is correct; this presumption will apply even if such statement is accompanied by a reservation justified by the indication that there had been no reasonable means of checking the accuracy of the information.

#### **Section 421**

##### **Rights of consignee. Duty to pay**

(1) After arrival of the goods at the place designated for delivery, the consignee may require the carrier to deliver the goods to the consignee in exchange for the performance of the obligations resulting from the contract of carriage. If the goods have been delivered damaged or late or have been lost, then the consignee may assert in their own name the rights against the carrier resulting from the contract of carriage; the sender remains entitled to assert these rights. It makes no difference in this context whether the consignee or sender is acting in their own interest or in the interest of a third party.

(2) The consignee who asserts their right under subsection (1) sentence 1 is to pay any outstanding freight up to the amount specified in the consignment note. If a consignment note has not been issued or has not been presented to the consignee, or if the amount payable as freight is not evidenced by the consignment note, then the consignee is to pay the freight agreed with the sender provided it is not unreasonable.

(3) Consignees asserting their right under subsection (1) sentence 1 additionally is to pay demurrage or remuneration in accordance with section 420 (4); demurrage for exceeding the loading time and remuneration under section 420 (4) will be payable only if the consignee was informed, when the goods were delivered, of the amount owed.

(4) The sender remains obliged to pay the sums owed under the contract.

#### **Section 422**

##### **Cash on delivery**

(1) If the parties have agreed that the goods are to be delivered to the consignee only on a cash on delivery basis, it is to be presumed that the amount is to be collected in cash or in a form equivalent to cash.

(2) With respect to the creditors of the carrier, the amount received by virtue of the collection is considered to have been transferred to the sender.

(3) If the goods are delivered to the consignee without collection of the cash-on-delivery amount, then the carrier will be liable to the sender for any damage caused, even if the carrier has not acted culpably, the upper limit of the liability, however, being the cash-on-delivery amount.

#### **Section 423**

##### **Delivery period**

The carrier is obliged to deliver the goods within the agreed period or, in the absence of an agreement, within such period as should reasonably be conceded to a diligent carrier, having regard to the circumstances (delivery period).



#### **Section 424 Presumption of loss**

(1) The person entitled to raise a claim may consider the goods lost if delivery has not taken place within the delivery period or within a further period equal in length to the delivery period but no shorter than either twenty days or, in cases involving cross-border carriage, thirty days.

(2) If the person entitled to raise a claim receives compensation for the loss of the goods, that person may, upon receiving the compensation, demand to be informed without delay if the goods should be found.

(3) Within one month of having been notified that the goods have been found, the person entitled to raise a claim may demand that they be delivered to that person, concurrently with their repaying the compensation, where appropriate less the costs that had been part of it. Any obligation to pay the freight and any claims for damages remains unaffected.

(4) If the goods have been found after the compensation has been paid, and if the person entitled to raise a claim has not asked to be informed, or if, having been informed, the person does not demand delivery, then the carrier will have the right of free disposal in relation to the goods.

#### **Section 425**

##### **Liability for loss of or damage to goods and for delay in delivery. Loss sharing**

(1) The carrier is liable for any damage resulting from loss of or damage to the goods occurring during the time between the taking over of the goods and their delivery, or resulting from delay in delivery.

(2) Where conduct on the part of the sender or the consignee, or a particular defective condition of the goods has contributed to the occurrence of the damage, the obligation to pay compensation and the amount of compensation payable depend upon the extent to which such circumstances have contributed to the damage.

#### **Section 426**

##### **Exclusion of liability**

The carrier is relieved of liability insofar as the loss, damage or delay in delivery was caused by circumstances the carrier could not avoid even by exercising the utmost diligence and the consequences of which the carrier was unable to prevent.

#### **Section 427**

##### **Particular grounds for exclusion of liability**

(1) The carrier will be relieved of liability insofar as the loss, damage or delay in delivery was due to one of the following risks:

1. use of an open, unsheeted vehicle or loading on deck, if such a mode of carriage had been agreed or was customary;
2. insufficient packaging by the sender;
3. handling, loading or unloading of the goods by the sender or consignee;
4. nature of the goods which particularly exposes them to damage, especially through breakage, rust, decay, desiccation, leakage or normal wastage;
5. insufficient labelling of packages by the sender;
6. carriage of livestock.

(2) If damage has occurred which, in the circumstances, might have been due to one of the risks specified in subsection (1), then it will be presumed that it has in fact been caused by this risk. This presumption does not apply in the circumstances set out in subsection (1) number 1 if there has been an abnormal loss.

(3) Carriers may avail themselves of subsection (1) number 1 only insofar as the loss, damage or delay in delivery is not the result of the carriers having failed to comply with specific instructions given to them by the sender for the carriage of the goods.

(4) If carriers, by virtue of the contract of carriage, is obliged to protect the goods particularly from the effects of heat, cold, variations in temperature, humidity, vibrations or similar influences, they may avail themselves of subsection (1) number 4 only if they have taken all measures incumbent upon them in the circumstances, in particular in respect to the choice, maintenance and use of specific equipment, and if they have complied with any specific instructions.

(5) Carriers may avail themselves of subsection (1) number 6 only if they have taken all measures incumbent upon them in the circumstances, and if they have complied with any specific instructions.

#### **Section 428**

##### **Responsibility for other persons**

Carriers are responsible for the acts and omissions by the people in their employ to the same extent as for their own acts and omissions, provided the employees act within the scope of their employment. The same applies to the acts and omissions of other persons whose services carriers use for the carriage of the goods.

#### **Section 429**

##### **Compensation based upon value**

(1) Where the carrier is liable to pay compensation for total or partial loss of the goods, such compensation is to be calculated by reference to the value of the goods at the place and time at which they were accepted for carriage.

(2) If the goods have been damaged, the measure of the damages payable is to consist of the difference between the value of the undamaged goods at the place and time of acceptance for carriage and the value that the damaged goods would have had at the place and time of acceptance. The costs necessary in order to reduce and remedy the damage will be considered to be equal to the amount of the difference calculated pursuant to sentence 1.

(3) The value of the goods is to be fixed in accordance with the current market price or, if there is no such price, in accordance with the normal value of goods of the same kind and quality. If the goods were sold immediately prior to their acceptance for carriage, then the purchase price noted in the seller's invoice, minus carriage charges included therein, is to be considered the current market price.

#### **Section 430**

##### **Assessment costs**

In the event of loss of or damage to the goods, the carrier is to bear, in addition to the compensation due in accordance with section 429, the costs of assessing the damage.

#### **Section 431**

##### **Maximum amount of liability**

(1) The compensation payable in accordance with sections 429 and 430 for loss of or damage is limited to an amount of 8.33 units of account for each kilogram of gross weight of the goods.

(2) If the goods consist of several packages (consignment) and if only individual packages have been lost or damaged, the computation in subsection (1) is to be based

1. on the whole consignment, if the whole consignment has lost its value, or
2. on the part of the consignment that has lost its value, if only a part of the consignment has lost its value.

(3) The liability of the carrier for non-compliance with the delivery period is limited to an amount equal to three times the freight.

(4) The unit of account referred to in subsections (1) and (2) is the Special Drawing Right of the International Monetary Fund. The amount is converted into euros according to the value of the euro, in terms of the Special Drawing Right, on the day on which the goods were accepted for carriage, or on the date agreed by the parties. The value of the euro, in terms of the Special Drawing Right, is calculated according to the method of evaluation applied by the International Monetary Fund for its operations and transactions on the day in question.

#### **Section 432**

##### **Compensation for other costs**

If the carrier is liable for loss or damage, then, in addition to the compensation payable in accordance with sections 429 to 431, the carrier is to refund the freight, public levies and other charges occasioned by the carriage of the goods; in cases of damage to the goods, however, the carrier is to do so only in proportion to the amounts referred to in section 429 (2). The carrier is not to reimburse any further damage.

#### **Section 433**

##### **Maximum liability in cases of other pecuniary loss**

If the carrier is liable for the breach of a contractual duty connected with the performance of the carriage of the goods, then the carrier's liability for damages that have not resulted from loss of or damage to the goods or from non-compliance with the delivery period and that do not consist of damage to goods or persons will likewise be limited, namely to three times the amount payable in the event of the goods being lost.

#### **Section 434**

##### **Non-contractual claims**

(1) The exemptions from and limitations on liability provided for in this Subdivision and in the contract of carriage also apply to a non-contractual claim of the sender or of the consignee against the carrier for loss of or damage to the goods, or for delay in delivery.

(2) Carriers may also avail themselves of the defences referred to in subsection (1) against non-contractual claims of third parties for loss of or damage to the goods. The defences may, however, not be invoked if

1. they are based on an agreement that deviates from the provisions made in section 449 (1) sentence 1 to the detriment of the sender;
2. the third party had not consented to the carriage and the carrier was aware, or grossly negligently unaware, that the sender was not entitled to send the goods, or
3. the goods, prior to having been accepted for carriage, had been lost while in the hands of the third party or of a person deriving their right to possession from the third party.

However, sentence 2 number 1 does not apply to any agreement permissible under section 449 concerning the limitation of the compensation to be provided by the carrier for damages resulting from loss of or damage to the goods to an amount lower than the amount provided for by law if this amount is not lower than 2 units of account.

#### **Section 435**

##### **Cessation of the exemptions and limitations**

The exemptions from and limitations on liability provided for in this Subdivision and in the contract of carriage do not apply if the damage resulted from an act or omission by the carrier or by one of the persons referred to in section 428 done with the intent to cause such damage or recklessly and in the knowledge that damage would probably result.

#### **Section 436**

##### **Liability of employees**

If non-contractual claims are asserted against one of the carrier's employees for loss of or damage to the goods or for delay in delivery, such employee may avail himself or herself of

the exemptions and limitations provided for in this Subdivision and in the contract of carriage. This does not apply if the employee has acted with intent to cause such damage or recklessly and in the knowledge that damage would probably result.

**Section 437**  
**Actual carrier**

- (1) Where the carriage is performed completely or partly by a third party (actual carrier), such third party will be liable as if they were the carrier for the damage caused by loss of or damage to the goods or by delay in delivery occurring during the carriage performed by said third party. Any contractual agreement with the sender or consignee under which the carrier extends their liability will affect the actual carrier only if the actual carrier has consented to it in writing.
- (2) Actual carriers may avail themselves of all defences and objections to which the carrier is entitled under the contract of carriage.
- (3) The carrier and the actual carrier are liable jointly and severally.
- (4) If claims are asserted against the people in the employ of the actual carrier, then section 436 applies accordingly to them.

**Section 438**  
**Notice of damage**

- (1) Where the loss of or damage to the goods is apparent and the consignee or sender fails to notify the carrier of the loss or damage on delivery of the goods at the latest, it will be presumed that the goods have been delivered completely and in an undamaged state. The notice must specify the loss or damage sufficiently clearly.
- (2) The presumption referred to in subsection (1) also applies where the loss or damage was not apparent, provided there has been no notice within seven days after delivery.
- (3) Claims for delay in delivery expire if the consignee does not notify the carrier of the delay in delivery within twenty-one days after delivery.
- (4) After delivery any notice of damage is to be given in text form. Dispatch within the applicable notification period is sufficient.
- (5) If loss, damage or delay in delivery is notified on delivery, then it will be sufficient to give notice to the person delivering the goods.

**Section 439**  
**Limitation of actions**

- (1) Claims arising from carriage to which the provisions of this Subdivision apply become statute-barred after a period of one year. In cases of intent, or of fault considered as equivalent to intent in accordance with section 435, the limitation period is three years.
- (2) The limitation period begins running upon midnight of the day on which the goods were delivered. If the goods have not been delivered, the limitation period begins running upon midnight of the day on which the goods ought to have been delivered. In derogation from sentences 1 and 2, the limitation period applicable to claims of recourse begins running upon the day on which the judgment against the recourse claimant becomes final and non-appealable or, if there is no such judgment, upon the day on which the recourse claimant satisfies the claim, unless the recourse debtor was not informed of the damage within three months after the recourse claimant gained knowledge of the damage and of the identity of the recourse debtor.
- (3) The running of the limitation period of a claim against the carrier also will be suspended by a statement in which the sender or consignee asserts a claim for damages until that time at which the carrier refuses to satisfy the claim. The assertion of claims and the refusal to satisfy them must be made in text form. A further statement asserting the same claim for damages will not once again suspend the running of the limitation period.
- (4) The limitation of claims for damages for the loss of or damage to the goods or for delay in delivery may be made easier or more difficult only by an agreement reached after detailed negotiations, whether for one or several similar contracts between the same parties.

#### **Section 440 Carrier's lien**

(1) The carrier is entitled to a lien, for all claims arising from the contract of carriage, on the goods handed over to the carrier for carriage that belong to the sender or to a third party who has consented to the carriage of the goods. The carrier will also have a lien on the goods of the sender for all uncontested claims arising from other carriage, sea carriage, forwarding or warehousing contracts concluded with the sender. The lien according to sentences 1 and 2 extends to the accompanying documents.

(2) The lien persists as long as the carrier has possession of the goods, in particular as long as the carrier has the right of disposal over them by means of a bill of lading, consignment bill or warehouse warrant.

(3) The lien will also persist after delivery if the carrier asserts it by legal action within three days after delivery and the goods are still in the possession of the consignee.

(4) The warning regarding the impending sale of a pledged item as required by section 1234 (1) of the Civil Code and the notifications provided for by sections 1237 and 1241 of the Civil Code are to be addressed to the consignee who is entitled to dispose over it pursuant to sections 418 or 446. If the consignee cannot be traced, or if the consignee refuses to accept delivery of the goods, the warning and notification are to be addressed to the sender.

#### **Section 441 Subsequent carrier**

(1) If, on delivery, the last of several carriers is obliged to collect the money owing to the preceding carriers, the last carrier is to exercise the rights of the preceding carriers, particularly the lien. The lien of each of the preceding carriers persists as long as that of the last carrier.

(2) If a preceding carrier is paid by a subsequent carrier, then the claim and the lien of the former pass to the latter.

(3) Subsections (1) and (2) apply also to claims and rights of a forwarder who has participated in performing the carriage.

#### **Section 442 Ranking order of several liens**

(1) Of several liens that exist over the same goods under sections 397, 440, 464, 475b and 495, that lien among those liens resulting from the dispatch or the carriage of the goods that has come into existence later takes priority over a lien that has come into existence earlier.

(2) These liens take priority over the liens of the commission agent and of the warehouse keeper that have not resulted from the dispatch of the goods, and also over the liens of the forwarder, the carrier and the sea carrier for advance payments.

#### **Section 443 Consignment bill. Authorisation to issue statutory instruments**

(1) The carrier may issue a consignment bill concerning the obligation to deliver the goods, and this should contain the particulars specified in section 408 (1). The consignment bill must be signed by the carrier; a reproduction of the personal signature by means of printing or stamp is sufficient.

(2) If the consignment bill has been made out to order, it should contain the name of the person to whose order the goods are to be delivered. If the name is not stated, the consignment bill are considered to have been made out to the order of the sender.

(3) An electronic record fulfilling the same functions as a consignment bill is considered equivalent to a consignment bill, provided that the authenticity and integrity of the record are assured at all times (electronic consignment bill). The Federal Ministry of Justice and Consumer Protection is authorised to determine, by way of statutory instrument issued in agreement with the Federal Ministry of the Interior, Building and Community and not requiring the approval of the Bundesrat, the details of the issuance, presentation, return and

transfer of an electronic consignment bill, as well as the details of the procedure for making subsequent entries in an electronic consignment bill.

#### **Section 444**

##### **Effect of the consignment bill. Entitlement**

(1) The consignment bill gives rise to the presumption that the carrier has taken over the goods in the condition described in the consignment bill; section 409, subsections (2) and (3) sentence 1 apply accordingly.

(2) The carrier cannot rebut the presumption pursuant to subsection (1) vis-à-vis a consignee who is identified in the consignment bill and to whom the consignment bill has been submitted, unless the consignee was aware, or grossly negligently unaware, at the time the consignment bill was submitted, that the information therein is inaccurate. The same applies in relation to any third party to whom the consignment bill has been transferred. Sentences 1 and 2 do not apply if the party entitled under the consignment bill lays claim to the actual carrier pursuant to section 437 and the consignment bill was issued neither by the actual carrier nor by a party authorised by the actual carrier to sign consignment bills.

(3) The claims by virtue of a contract for the carriage of goods as confirmed in a consignment bill may be asserted only by the person entitled under the consignment bill. It will be presumed that the rightful holder of a consignment bill is also the person entitled under the consignment bill. A party is considered the rightful holder of a consignment bill if the consignment bill is

1. made out to "bearer,"
2. made out to "order" and identifies the holder as the consignee, either directly or through an unbroken chain of endorsements, or
3. made out in the name of the holder.

#### **Section 445**

##### **Delivery in exchange for the consignment bill**

(1) Upon the goods' arrival at the place designated for delivery, the rightful holder of the consignment bill is entitled to demand that the carrier make delivery of the goods. Opting to exercise this right will oblige the rightful holder of the consignment bill to pay freight and any other remuneration pursuant to section 421 subsections (2) and (3).

(2) The carrier is obliged to deliver the goods only in exchange for the return of the consignment bill on which delivery has been certified, and against payment in full of any outstanding amounts owed pursuant to section 421 subsections (2) and (3). However, the carrier may not deliver the goods to the rightful holder of the consignment bill if the carrier is aware, or grossly negligently unaware, that the rightful holder of the consignment bill is not the person entitled by virtue of same.

(3) If the carrier makes delivery of the goods to any other party than the rightful holder of the consignment bill or, in the case referred to in subsection (2) sentence 2, to any other party than the person entitled under the consignment bill, then the carrier will be liable for the resulting damage the person entitled under the consignment bill may suffer. The liability is limited to the amount payable in the event of the goods being lost.

#### **Section 446**

##### **Carrying out instructions**

(1) If a consignment bill has been issued, the right of disposal pursuant to sections 418 and 419 lies solely with the rightful holder of the consignment bill. The carrier may carry out instructions only against presentation of the consignment bill. However, the carrier may not carry out any instructions issued by the rightful holder of the consignment bill if the carrier is aware, or grossly negligently unaware, that the rightful holder of the consignment bill is not the person entitled by virtue of same.

(2) If the carrier carries out instructions without having been presented with the consignment bill, then the carrier will be liable to the person entitled under the consignment bill for any resulting damages the latter may suffer. The liability will be limited to the amount payable in the event of the goods being lost.

#### **Section 447** **Objections**

(1) The carrier may lodge objections against the person entitled under the consignment bill only insofar as they concern the validity of the statements made in the consignment bill, or insofar as they arise from the contents of the bill of lading, or insofar as the carrier is directly entitled to such objections vis-à-vis the person entitled under the consignment bill. An agreement to which the consignment bill merely makes reference is not incorporated into the consignment bill.

(2) If the person entitled under the consignment bill asserts a claim against the actual carrier pursuant to section 437, the actual carrier, too, may raise the objections pursuant to subsection (1).

#### **Section 448** **Title function of the consignment bill**

Provided the carrier is in possession of the goods, the submission of the consignment bill to the consignee identified therein will have the same effect with regard to the acquisition of rights in the goods as would the handing over of the goods themselves. The same applies to a transfer of the consignment bill to third parties.

#### **Section 449** **Contractual modifications regarding liability**

(1) Insofar as the contract of carriage does not relate to the carriage of letters or of similar items, the liability provisions in section 413 (2), section 414, section 418 (6), section 422 (3), sections 425 to 438, section 445 (3) and section 446 (2) may be modified only by an agreement reached after detailed negotiations, whether for one or several similar contracts between the same parties. However, vis-à-vis a consignee who is identified in the consignment bill and to whom the consignment bill has been submitted or vis-à-vis any third party to whom the consignment bill has been transferred, the carrier may not invoke a provision made in the consignment bill that deviates from the rules specified in sentence 1 to the detriment of the person entitled under the consignment bill.

(2) In derogation from subsection (1), the compensation payable by the carrier for loss of or damage to the goods may be restricted also by standard terms of contract to an amount other than that provided for by section 431 subsections (1) and (2) if this amount

1. lies between 2 and 40 units of account and the users of the standard terms of contract make appropriate reference to the fact that such conditions provide for an amount other than that provided for by law, or

2. is less favourable to the user of the standard terms of contract than the amount provided for by section 431 subsections (1) and (2).

Furthermore, contrary to subsection (1), the compensation payable by the sender pursuant to Section 414 may be limited in terms of its amount by standard terms of contract.

(3) If the sender is a consumer, then the provisions made in subsection (1) sentence 1 in no case may be modified by agreement to the sender's detriment, unless the contract of carriage relates to the carriage of letters or of similar items.

(4) If the contract of carriage is subject to foreign law, then subsections (1) to (3) nevertheless apply, provided that according to the contract both the place of taking over of the goods and the place designated for delivery are situated in Germany.

#### **Section 450** **Application of maritime law**

If the contract of carriage calls for carriage of the goods, without transshipment, both on inland waters and by sea, then maritime law on the carriage of goods by sea applies to the contract if

1. a bill of lading has been issued, or if
2. the distance to be covered by sea is the longer.

## **Subdivision 2 Carriage of household goods**

### **Section 451 Removal contract**

If the contract of carriage concerns the carriage of household goods, the provisions of Subdivision 1 apply to the contract unless the following special provisions or applicable international conventions provide otherwise.

#### **Section 451a Duties of the carrier**

- (1) The duties of the carrier include dismantling and reassembling the furniture, as well as the loading and the unloading of the goods being removed.
- (2) If the sender is a consumer, then the duties of the carrier furthermore include carrying out other services related to removal, such as packaging and labelling the goods being removed.

#### **Section 451b Consignment note. Dangerous goods. Accompanying documents. Duties to report and provide information**

- (1) In derogation from section 408, the sender is not obliged to issue a consignment note.
- (2) If dangerous goods are part of the goods being removed, and if the sender is a consumer, then the sender is obliged, in derogation from section 410, only to inform the carrier in general terms of the danger posed by the goods; the information does not have to be provided in any particular form. The carrier is to inform the sender of the duty the latter owes under sentence 1.
- (3) If the sender is a consumer, then the carrier is to inform the sender of the applicable customs requirements and other administrative requirements. However, the carrier is not obliged to enquire into the accuracy or completeness of the instruments and information provided by the sender.

#### **Section 451c (repealed)**

#### **Section 451d Particular grounds for exclusion of liability**

(1) In derogation from section 427, the carrier will be relieved of liability insofar as the loss or damage is due to one of the following risks:

1. carriage of precious metals, jewels, precious stones, money, stamps, coins, securities or documents;
2. insufficient packaging or labelling by the sender;
3. handling, loading or unloading of the goods by the sender;
4. carriage in containers not packed by the carrier;
5. loading or unloading of goods the size or weight of which does not correspond to the space available at the place designated for loading or unloading, provided the carrier had informed the sender in advance of the risk of damage and the sender had insisted on the service being carried out;



6. carriage of livestock or of plants;

7. natural or defective condition of the goods, which particularly exposes them to damage, especially through breakage, failures of function, rust, decay or leakage.

(2) If damage has occurred which, in the circumstances, might have been due to one of the risks specified in subsection (1), then it is presumed that it has in fact been caused by this risk.

(3) Carriers may avail themselves of subsection (1) only if they have taken all the measures incumbent upon them in the circumstances, and have complied with any special instructions.

#### **Section 451e**

##### **Maximum amount of liability**

In derogation from section 431 subsections (1) and (2), the liability of the carrier for loss or damage is limited to an amount of 620 euro per cubic metre of the loading space required for the performance of the contract.

#### **Section 451f**

##### **Notice of damage**

In derogation from section 438 subsections (1) and (2), claims for loss of or damage to the goods will expire

1. if the loss of or damage to the goods was apparent and the carrier was not notified of it on the day after delivery at the latest,

2. if the loss or damage was not apparent and the carrier was not notified of it within fourteen days after delivery.

#### **Section 451g**

##### **Cessation of exemptions and limitations**

If the sender is a consumer, then the carrier or one of the persons referred to in section 428 may not

1. avail themselves of the exemptions from and limitations on liability provided for in sections 451d and 451e, as well as in Subdivision 1, insofar as the carrier, at the time the contract was concluded, failed to inform the sender of the provisions relating to liability and to point out that a more far-reaching liability could be agreed upon or that the goods could be insured,

2. invoke section 451f in conjunction with section 438 insofar as the carriers failed to inform the consignee, at the latest when the goods were delivered, of the required form and the deadline for the notice of damage, as well as of the legal consequences of failure to give notice of the damage.

The information in accordance with sentence 1 number 1 must be given a prominent appearance by a special printing technique.

#### **Section 451h**

##### **Contractual modifications**

(1) If the sender is a consumer, then the provisions contained in this Subdivision governing the liability of the carrier and the sender, as well as the provisions of Subdivision 1 that are applicable to the removal contract, in no case may be modified by agreement to the detriment of the sender.

(2) In cases other than those specified in subsection (1), the provisions specified therein may be modified only by an agreement reached after detailed negotiations, whether for one or several similar contracts between the same parties. (2) However, the compensation payable by the carrier for loss of or damage to the goods may be restricted also by standard terms of contract to an amount other than that provided for by section 451e, if the user of the standard terms of contract makes appropriate reference to the fact that such conditions

provide for an amount other than that provided for by law. Furthermore, the compensation payable by the sender pursuant to section 414 may be limited in terms of its amount by standard terms of contract.

(3) If the removal contract is subject to foreign law, subsections (1) and (2) nevertheless apply, provided that according to the contract the place of taking over the goods and the place designated for delivery are situated in Germany.

### **Subdivision 3 Carriage using various modes of transport**

#### **Section 452**

##### **Contract of carriage involving various modes of transport**

If carriage of the goods is performed by various modes of transport on the basis of a single contract of carriage, and if, had separate contracts been concluded between the parties for each part of the carriage that involved one mode of transport (leg of carriage), at least two of these contracts would have been subject to different legal rules, the provisions of Subdivision 1 apply to the contract, unless the following special provisions or applicable international conventions provide otherwise. This also applies if part of the carriage is performed by sea.

#### **Section 452a**

##### **Known place of damage**

If it has been established that the loss, damage or event causing a delay in delivery occurred on a specific leg of the carriage, then, contrary to the provisions of Subdivision 1, the liability of the carrier will be determined in accordance with the legal provisions that would apply to a contract of carriage covering this leg of carriage. The burden of proof as to the loss, damage or event causing a delay in delivery having occurred on a particular leg of carriage is on the person making the corresponding allegation.

#### **Section 452b**

##### **Notice of damage. Limitation**

(1) Section 438 applies irrespective of whether the place of damage is unknown, is known or becomes known later. The requirements as to form and the time limit prescribed for the notice of damage are considered to have been met also if the corresponding provisions that would have been applicable to a contract of carriage covering the last leg of the carriage have been complied with.

(2) When the limitation period for claims based upon loss, damage or delay in delivery commences running from delivery, the delivery to the consignee will be the relevant point in time. Even if the place at which the damage occurred is known, the claim will become statute-barred in accordance with section 439 at the earliest.

#### **Section 452c**

##### **Removal contract relating to carriage involving various modes of transport**

If the contract of carriage relates to the removal of household goods using various modes of transport, the provisions of Subdivision 2 apply to the contract. Section 452a will apply only insofar as provisions of an international convention binding on the Federal Republic of Germany cover the leg of carriage on which the damage occurred.

#### **Section 452d**

##### **Contractual modifications**

(1) The provision contained in section 452b (2) sentence 1 may be modified only by an agreement reached after detailed negotiations, whether for one or several similar contracts between the same parties. The other provisions of this Subdivision may be modified by contractual agreement only to the extent that the provisions referred to therein permit contractual modifications.

(2) In derogation from subsection (1), however, it may also be agreed by means of standard terms of contract that, in cases in which the place of damage is known (section 452a), liability will be governed by the provisions of Subdivision 1

1. irrespective of on which leg of carriage the damage occurs, or
2. if the damage occurs on a particular leg of carriage specified in the agreement.

(3) Agreements purporting to exclude the application of mandatory provisions of an international convention binding on the Federal Republic of Germany applicable to a leg of carriage are ineffective.

## **Division 5 Forwarding business**

### **Section 453 Forwarding contract**

(1) By virtue of the forwarding contract, the forwarder is obliged to arrange for the dispatch of the goods.

(2) The sender is obliged to pay the agreed remuneration.

(3) The provisions of this Division apply only if dispatching goods is part of the operation of a commercial enterprise. If the nature or size of the enterprise is such that it does not require a commercial business organisation, and if the firm is not registered in the Commercial Register in accordance with section 2, then the provisions of Division 1 of Book 4 additionally will apply to the forwarding business; however, this does not apply to sections 348 to 350.

### **Section 454 Arranging for the dispatch of the goods**

(1) The duty to arrange for the dispatch of the goods includes the organisation of the carriage, in particular

1. determination of the means and route of transport,
2. choice of performing enterprises, conclusion of carriage, warehousing and forwarding contracts required for the dispatch, as well as providing information and giving instructions to the performing enterprises, and
3. securing the sender's claims to compensation.

(2) The duties of the forwarder also include the provision of other agreed services relating to carriage such as insuring and packaging the goods, labelling them and clearing them through customs. However, it is only if the agreement calls for it that the forwarder will be obliged to arrange for the conclusion of contracts for these services.

(3) Forwarders conclude the required contracts in their own name or, if they have been authorised to do so, in the name of the sender.

(4) In fulfilling their obligations, the forwarders will act in the interest of the sender and will carry out the sender's instructions.

### **Section 455 Handling of the goods. Accompanying documents. Duties to report and provide information**

(1) The sender is obliged to package and label the goods as far as necessary and to make available documents as well as to provide all the information the forwarder needs to fulfil their duties. If dangerous goods are to be dispatched, the sender is to inform the forwarder, in good time and in text form, of the precise nature of the danger and, as far as necessary, of the precautionary measures to be taken.

(2) The sender is to compensate, even if the sender is not at fault, the forwarded for damage and expenditures caused by

1. insufficient packaging or labelling,
2. failure to disclose the dangerous nature of the goods, or
3. absence, incompleteness or incorrectness of the instruments or the information required for the official processing of the goods.

Section 414 (2) applies accordingly.

(3) If the sender is a consumer, then the sender will be obliged to compensate the forwarder for damage and expenditures in accordance with subsection (2) only insofar as the sender has acted culpably.

#### **Section 456**

##### **Due date for payment of remuneration**

The remuneration is payable once the goods have been handed over to the carrier or the sea carrier.

#### **Section 457**

##### **Claims of the sender**

The sender may assert claims under a contract the forwarder has concluded in their own name for the account of the sender only once the claim have been assigned. However, in the relationship to the creditors of the forwarder, such claims, as well as their proceeds, are considered to have been assigned to the sender.

#### **Section 458**

##### **Forwarder acting as carrier (Selbsteintritt)**

Forwarders are entitled to perform the carriage of the goods themselves. If they exercise this right, they will have, as far as the carriage is concerned, the rights and duties of a carrier or sea carrier. In this case, the forwarders may charge the usual freight in addition to the remuneration for their services as a forwarder.

#### **Section 459**

##### **Forwarding at fixed costs**

If a fixed sum is agreed as remuneration that includes the costs of carriage, then the forwarder will have, as far as the carriage is concerned, the rights and duties of a carrier or sea carrier. In this case, the forwarder may claim compensation for their expenditures only to the extent that this is customary.

#### **Section 460**

##### **Collective consignment (Sammelladung)**

(1) The forwarder is entitled to arrange for the dispatch of the goods together with those of another sender on the basis of a contract for a collective consignment concluded for the forwarder's own account.

(2) If the forwarder exercises this right, then the forwarder will have, as far as the carriage as a collective consignment is concerned, the rights and duties of a carrier or sea carrier. In this case, the forwarder may claim such remuneration as is reasonable in the circumstances, not exceeding, however, the freight usually payable for carriage of the goods if separate.

#### **Section 461**

##### **Liability of the forwarder**

(1) The forwarder is liable for any damage resulting from loss of or damage to goods in the forwarder's custody. Sections 426, 427, 429, 430, 431 subsections (1), (2) and (4), as well as sections 432 and 434 to 436 apply accordingly.

(2) The forwarder is liable for damage not due to loss of or damage to the goods in the forwarder's custody if the forwarder has acted in breach of a duty owed under section 454. The forwarder is relieved of such liability if the damage could not have been avoided by exercising the due care of a prudent merchant.

(3) Where conduct on the part of the sender or a particular defective condition of the goods has contributed to the occurrence of the damage, the obligation to pay compensation and the amount of compensation payable will depend upon the extent to which such circumstances have contributed to the damage.

#### **Section 462**

##### **Responsibility for other persons**

Forwarders are responsible for the acts and omissions by the people in their employ to the same extent as for their own acts and omissions, provided the employees act within the scope of their employment. The same applies to the acts and omissions by other persons whose services the forwarders use to fulfil their duty to arrange for the dispatch of the goods.

#### **Section 463**

##### **Limitation of actions**

Section 439 applies accordingly to the limitation of claims based on a service that is subject to the provisions of this Division.

#### **Section 464**

##### **Forwarder's lien**

The forwarder is entitled to a lien, for all claims founded on the forwarding contract, on the goods handed over to the forwarder for dispatch which belong to the sender or to a third party who has consented to the dispatch of the goods. The forwarder also is entitled to a lien on the goods of the sender for all uncontested claims arising from other carriage, sea carriage, forwarding or warehousing contracts concluded with the sender. Section 440 subsection (1) sentence 3 and subsections (2) to (4) apply accordingly.

#### **Section 465**

##### **Subsequent forwarder**

- (1) If, in addition to the carrier, a forwarder is involved in the carriage and if the latter has to deliver the goods, then section 441 (1) applies to the forwarder accordingly.
- (2) If a preceding carrier or forwarder is paid by a subsequent forwarder, then the claim and the lien of the former will pass to the latter.

#### **Section 466**

##### **Contractual modifications regarding liability**

- (1) Insofar as the forwarding contract does not relate to the dispatch of letters or of similar items, the liability provisions in section 455 subsections (2) and (3), section 461 (1), and sections 462 and 463 may be modified only by an agreement reached after detailed negotiations, whether for one or several similar contracts between the same parties.
- (2) In derogation from subsection (1), the compensation payable by the forwarder for loss of or damage to the goods may be limited also by standard terms of contract to an amount other than that provided for by section 431 subsections (1) and (2) if this amount

1. lies between 2 and 40 units of account and the user of the standard terms of contract makes appropriate reference to the fact that such conditions provide for an amount other than that provided for by law, or
2. is less favourable to the user of the standard terms of contract than the amount provided for by section 431 subsections (1) and (2).

Furthermore, the compensation payable by the sender pursuant to section 455 (2) or (3) may be limited in terms of its amount by standard terms of contract.

(3) Section 458 sentence, section 459 sentence 1 and section 460 (2) sentence 1 may be modified by contractual agreement only to the extent that the provisions referred to therein permit modifying agreements.

(4) If the sender is a consumer, then the provisions specified in subsection (1) in no case may be modified by agreement to the sender's detriment, unless the forwarding contract relates to the carriage of letters or of similar items.

(5) If the forwarding contract is subject to foreign law, subsections (1) to (4) nevertheless apply, provided that according to the contract both the place of taking over of the goods and the place designated for delivery are situated in Germany.

## **Division 6 Warehousing business**

### **Section 467 Warehousing contract**

(1) By virtue of the warehousing contract, the warehouse keeper is obliged to store the goods and to keep them in safe custody.

(2) The depositor is obliged to pay the agreed remuneration.

(3) The provisions of this Division apply only if the storing and safekeeping is part of the operation of a commercial enterprise. If the nature or size of the enterprise is such that it does not require a commercial business organisation, and if the firm is not registered in the Commercial Register in accordance with section 2, the provisions of Division 1 of Book 4 additionally apply to the warehousing business; this does not, however, apply to sections 348 to 350.

### **Section 468**

#### **Handling of the goods. Accompanying documents. Duties to report and provide information**

(1) If dangerous goods are to be stored, the depositor is to inform the warehouse keeper, in good time and in text form, of the precise nature of the danger and, as far as necessary, of the precautionary measures to be taken. Furthermore, the depositor is to package and label the goods as far as necessary, and is to make available instruments and provide all the information the warehouse keeper needs to fulfil their duties.

(2) If the depositor is a consumer, then in derogation from subsection (1)

1. the warehouse keeper will be obliged to package and label the goods as far as necessary,

2. the depositor only will be obliged to inform the warehouse keeper in general terms of the danger posed by the goods; the information does not have to be provided in any particular form.

In such case, the warehouse keeper is to inform the depositor of the latter's duty under sentence 1 number 2 and of the administrative provisions to be observed by the depositor concerning the official handling of the goods.

(3) Even if the depositor is not at fault, the depositor is to compensate the warehouse keeper for damage and expenditures caused by

1. insufficient packaging or labelling,

2. failure to disclose the dangerous nature of the goods, or

3. absence, incompleteness or incorrectness of the instruments or the information specified in section 413 (1).

Section 414 (2) applies accordingly.

(4) If the depositor is a consumer, then the depositor will be obliged to compensate the warehouse keeper for damage and expenditures in accordance with subsection (3) only insofar as the depositor has acted culpably.

### **Section 469 Collective storage**

- (1) The warehouse keeper may only mingle fungible goods with goods of the same kind and quality if the depositors concerned expressly consent to this.
- (2) Where the warehouse keeper is entitled to mingle goods, the owners of the stored goods will be fractional co-owners once the goods have been stored.
- (3) The warehouse keeper may deliver to each depositor the portion due to that depositor without having to seek the approval of the other depositors concerned.

**Section 470**  
**Receipt of the goods**

If the goods sent to the warehouse keeper are in a damaged or defective condition apparent at the time of receipt, the warehouse keeper is to take steps to secure the depositor's claims for compensation and is to inform the depositor without delay.

**Section 471**  
**Preservation of the goods**

- (1) The warehouse keeper is to allow the depositor, during business hours, to inspect the goods, take samples and carry out the acts necessary for their preservation. However, warehouse keepers are entitled, and in cases of collective storage also obliged, to themselves carry out the work necessary for the preservation of the goods.
- (2) If, after the goods have been received, their condition has changed in a manner that is likely to lead to their being lost or damaged or to causing damage to the warehouse keeper, or if such a change is likely, the warehouse keeper is to inform the depositor of this fact without undue delay or, if a warehouse warrant has been issued, the last rightful holder of the warehouse warrant known to the warehouse keeper, and is to seek their instructions. If the warehouse keeper cannot obtain instructions within a reasonable period, the warehouse keeper is to take such measures as seem to be appropriate. In particular, the warehouse keeper may have the goods sold in accordance with section 373; if the warehouse keeper exercises this power and if a warehouse warrant has been issued, the warehouse keeper is to address the threat of sale provided for by section 373 (3), and the notifications provided for by subsection (5) of the same provisions, to the last rightful holder of the warrant known to the warehouse keeper.

**Section 472**  
**Insurance. Storage with a third party**

- (1) The warehouse keeper is obliged to insure the goods at the request of the depositor. If the depositor is a consumer, the warehouse keeper is to indicate to the depositor the possibility of insuring the goods.
- (2) The warehouse keeper is entitled to store the goods with a third party only if the depositor expressly has given permission to do so.

**Section 473**  
**Duration of storage**

- (1) The depositor may demand delivery of the goods at any time. However, if the warehousing contract was concluded for an indefinite period, the depositor may only terminate the contract by giving one month's notice, unless there is an important reason entitling the depositor to terminate the contract without notice.
- (2) The warehouse keeper may demand that the goods be taken back upon expiry of the agreed storage time or, if the storage was for an indefinite period, upon termination of the contract observing a period of notice of one month. If an important reason exists, the warehouse keeper may demand that the goods be taken back even prior to the expiry of the storage time and without notice.
- (3) If a warehouse warrant has been issued, the notice of termination and the demand that the goods be taken back are to be addressed to the last rightful holder of the warehouse warrant known to the warehouse keeper.

#### **Section 474**

##### **Reimbursement of expenditures**

The warehouse keeper is entitled to reimbursement of expenditures incurred on account of the goods, insofar as it was reasonable in the circumstances for the warehouse keeper to regard them as necessary.

#### **Section 475**

##### **Liability for loss or damage**

The warehouse keeper is liable for any damage resulting from loss of or damage to the goods occurring during the time between receipt of the goods for storage and their delivery, unless the damage could not have been avoided by exercising the due care of a prudent merchant. This applies even if the warehouse keeper stores the goods with a third party in accordance with section 472 (2).

#### **Section 475a**

##### **Limitation of actions**

Section 439 applies accordingly to the limitation of claims based on warehousing that is subject to the provisions of this Division. In the case of total loss, the limitation period will start to run at midnight of the day on which the warehouse keeper reports the loss to the depositor or, if a warehouse warrant has been issued, to the last rightful holder of the warehouse warrant known to the warehouse keeper.

#### **Section 475b**

##### **Warehouse keeper's lien**

- (1) The warehouse keeper is entitled to a lien, for all claims founded on the warehousing contract, on the goods handed over to the warehouse keeper for storage which belong to the depositor or to a third party who has consented to the storage. The warehouse keeper also is entitled to a lien on the goods of the depositor for all uncontested claims arising from other warehousing, carriage, sea carriage or forwarding contracts concluded with the depositor. The lien also extends to claims under an insurance policy and to accompanying documents.
- (2) If a warehouse warrant made out to order has been transferred by endorsement, then the lien will exist in relation to the rightful holder only in respect of the remuneration and expenditures which are evident from the warehouse warrant or of which the warehouse keeper was aware or grossly negligently unaware on acquiring the warrant.
- (3) The lien will persist as long as the warehouse keeper has possession of the goods, in particular as long as the warehouse keeper has the right of disposal over them by means of a bill of lading, consignment bill or warehouse warrant.

#### **Section 475c**

##### **Warehouse warrant. Authorisation to issue statutory instruments**

(1) Having received the goods, the warehouse keeper may issue a warehouse warrant (Lagerschein) concerning the obligation to deliver the goods, which is to set out the following particulars:

1. place and date of issuance of the warehouse warrant;
2. name and address of the depositor;
3. name and address of the warehouse keeper;
4. place and date of storage;
5. description in common use of the nature of the goods and the method of packaging, and, in the case of dangerous goods, their description as required by the regulations concerning dangerous goods, or, in the absence of such requirement, their generally recognised description;
6. number of packages and their special marks and numbers;



7. gross weight of the goods or their quantity otherwise expressed;
  8. in the case of collective storage, a note to this effect.
- (2) Further particulars deemed useful by the warehouse keeper may be entered in the warehouse warrant.
- (3) The warehouse warrant is to be signed by the warehouse keeper. A reproduction of the personal signature by means of printing or stamp is sufficient.
- (4) An electronic record fulfilling the same functions as a warehouse warrant is considered equivalent to a warehouse warrant, provided that the authenticity and integrity of the record are assured at all times (electronic warehouse warrant). The Federal Ministry of Justice and Consumer Protection is authorised to determine, by way of statutory instrument issued in agreement with the Federal Ministry of the Interior, Building and Community and not requiring the approval of the Bundesrat, the details of the issuance, presentation, return and transfer of an electronic warehouse warrant, as well as the details of the procedure for making subsequent entries in an electronic warehouse warrant.

#### **Section 475d**

##### **Effect of the warehouse warrant. Entitlement**

- (1) The warehouse warrant gives rise to the presumption that the goods and their packaging have been taken over as described in the warrant in respect of their apparent condition and as regards the number of packages and their special marks and numbers. If the gross weight of the goods or their quantity otherwise expressed or their content has been checked by the warehouse keeper and the result of the inspection has been entered in the warehouse warrant, then the latter constitutes evidence that the weight, quantity or content corresponds to the statement in the warehouse warrant.
- (2) If the warehouse warrant is submitted to a person identified therein as a party entitled to receive the goods, the warehouse keeper cannot rebut the presumption pursuant to subsection (1) vis-à-vis the person, unless such person was aware, or grossly negligently unaware, at the time the warehouse warrant was submitted, that the information therein is inaccurate. The same applies in relation to any third party to whom the warehouse warrant is transferred.
- (3) The claims by virtue of a warehousing contract as confirmed in a warehouse warrant may be asserted only by the person entitled under the warehouse warrant. It will be presumed that the rightful holder of a warehouse warrant is also the person entitled under the warehouse warrant. A party is considered the rightful holder of a warehouse warrant if the warehouse warrant is
1. made out to "bearer",
  2. made out to "order" and identifies the holder as the person entitled to receive the goods, either directly or through an unbroken chain of endorsements, or
  3. made out in the name of the holder.

#### **Section 475e**

##### **Delivery in exchange for the warehouse warrant**

- (1) The rightful holder of the warehouse warrant is entitled to demand that the warehouse keeper make delivery of the goods.
- (2) If a warehouse warrant has been issued, then the warehouse keeper will be obliged to deliver the goods only in exchange for the return of the warehouse warrant on which delivery has been certified. The warehouse keeper is not obliged to enquire into the authenticity of the endorsements. However, the warehouse keeper may not deliver the goods to the rightful holder of the warehouse warrant if the warehouse keeper is aware, or grossly negligently unaware, that the rightful holder of the warehouse warrant is not the person entitled by virtue of same.

(3) The delivery of only part of the goods is effected in exchange for a deduction note being entered on the warehouse warrant. The note is to be signed by the warehouse keeper.

(4) The warehouse keeper is liable to the person entitled under the warehouse warrant for any damage occasioned by delivering the goods without having the warehouse warrant returned to them or without entering a deduction note.

#### **Section 475f** **Objections**

The warehouse keeper may lodge objections against the person entitled under the warehouse warrant only insofar as they concern the validity of the statements made in the warehouse warrant, or insofar as they arise from the contents of the warehouse warrant, or insofar as the warehouse keeper is directly entitled to such objections vis-à-vis the person entitled under the warehouse warrant. An agreement to which the warehouse warrant merely makes reference is not incorporated into the warehouse warrant.

#### **Section 475g** **Title function of the warehouse warrant**

Provided the warehouse keeper is in possession of the goods, the submission of the warehouse warrant to the person identified therein as the party entitled to receive the goods will have the same effect with regard to the acquisition of rights in the goods as would the handing over of the goods themselves. The same applies to a transfer of the warehouse warrant to third parties.

#### **Section 475h** **Contractual modifications**

If the depositor is a consumer, then sections 475a and 475e (4) may not be modified by agreement to the detriment of the depositor.

### **Book 5** **Maritime trade**

#### **Chapter 1** **Persons involved in shipping**

#### **Section 476** **Reeder**

*Reeder* means the owner of a ship who operates it in order to pursue marine navigation as a gainful economic activity.

#### **Section 477** **Ausrüster**

(1) *Ausrüster* means the person operating a ship owned by another person in order to pursue marine navigation as a gainful economic activity.

(2) In its relationship to third parties, the *Ausrüster* is deemed to be the *Reeder*.

(3) Where a third party asserts a claim against a person owning a ship in the latter's capacity as *Reeder*, the person owning the ship may only use the defence that it is the *Ausrüster*, and not the person owning the ship, who is operating the ship to pursue marine navigation as a gainful economic activity, provided the person owning the ship informs the third party of the name and address of the *Ausrüster* immediately after the claim is asserted.

#### **Section 478** **Ship's company**

The ship's company consists of the master, the officers, the crew as well as all other persons involved in the operation of the ship who have been hired by the *Reeder* or by the *Ausrüster*, or who have been put at the disposal of the *Reeder* or *Ausrüster* by a third party for the

purpose of performing work in the context of the ship's operation, and who are subject to the orders of the master.

#### **Section 479**

##### **Rights of the master; ship's log**

(1) The master is authorised to pursue all business and enter into all legal transactions on behalf of the *Reeder* such as are usually entailed by the operation of the ship. This authorisation also extends to the conclusion of contracts of carriage and to the issuance of bills of lading. A third party must accept as binding on it any restrictions on this authorisation only if it knew or ought to have known of such restrictions.

(2) Where a logbook is to be kept for the ship, the master must record all accidents occurring during the voyage and that concern the ship, the cargo it is carrying, or any persons, or that may otherwise result in any pecuniary prejudice. The description of each accident must also identify the means used to avert such prejudice or to mitigate it. The parties affected by the accident may demand a copy of the entries made in the logbook regarding the accident, and may also demand that such copy be certified.

#### **Section 480**

##### **Responsibility of the Reeder for the ship's company and pilots**

Where a member of the ship's company or a pilot on board the ship, while carrying out his duty, incurs liability in relation to a third party for damages, the *Reeder* shall likewise be liable for said damages. However, the liability of the *Reeder* vis-à-vis a cargo interest for any damages resulting from the loss of or physical damage to the goods carried by the ship solely shall be such as if it had been the carrier; section 509 shall apply *mutatis mutandis*.

### **Chapter 2**

#### **Transport contracts**

##### **Subchapter 1**

#### **Contracts for the carriage of goods by sea**

##### **Title 1**

#### **Contract for the carriage of general cargo**

##### **Subtitle 1**

#### **General regulations**

#### **Section 481**

##### **Primary duties; scope of application**

(1) By virtue of the contract for the carriage of general cargo, the carrier is obliged to carry the goods, by sea and by ship, to their destination and there to deliver them to the consignee.

(2) The shipper is obliged to pay the agreed freight.

(3) The provisions of the present Title shall apply whenever the carriage is part of the operations of a commercial enterprise. If the nature or size of the enterprise is such that it does not require a commercial business organisation, and if the business name of the enterprise has not been entered in the Commercial Register in accordance with section 2, then the provisions set out in Chapter 1 of Book 4 shall apply as a subsidiary source of law to the contract for the carriage of general cargo; however, this shall not apply to the provisions under sections 348 through 350.

#### **Section 482**

##### **General information regarding the goods**

(1) Prior to delivery of the goods to the carrier, the shipper shall provide to the carrier the information on the goods that is required for carriage of same. Specifically, the shipper shall furnish information in *text form* regarding the quantity, number, or weight of the goods, as well as the leading marks and the nature of the goods.

(2) Where a third party named by the shipper delivers the goods to the carrier for carriage, the carrier may demand that such third party provide it with the information set out in the second sentence of subsection (1).

### **Section 483** **Dangerous goods**

(1) Where dangerous goods are to be carried, the shipper and the third party referred to in section 482 (2) shall, in a timely manner and in *text form*, inform the carrier of the precise nature of the danger and, if necessary, of any precautionary measures to be taken.

(2) If the carrier, the master or the ship's agent neither knew of the nature of the danger when taking over the goods, nor at least had been informed of it, then the carrier may unload, store, or return dangerous goods or, to the extent necessary, destroy them or render them harmless without thereby becoming liable in damages to the shipper. If the carrier, the master or the ship's agent knew of the nature of the danger when the goods were received for carriage, or if they had at least been informed of it, then the carrier may only implement the measures set out in the first sentence hereof without becoming liable to the shipper if the dangerous goods were likely to become a danger to the ship or its cargo, and such danger was not due to the carrier's fault or neglect.

(3) The carrier may claim reimbursement from the shipper and the third party referred to in section 482 (2), should the latter have made incorrect or incomplete statements when handing over the goods for carriage, for any expenditures incurred by the carrier when taking the measures set out in the first sentence of subsection (2).

### **Section 484** **Packing; leading marks**

Insofar as the goods, given their nature and the type of carriage agreed, require packaging, the shipper shall package them such that they are protected against loss and physical damage and that the carrier suffers no detriment. Where the goods are to be delivered for carriage in or on a container, a pallet, or any other article of transport used to consolidate cargo units, the shipper must properly and carefully stow and secure the goods, also in or on the article of transport, in such a way that they will not cause harm to persons or property. Furthermore, the shipper shall mark the goods insofar as their contractually agreed handling so requires.

### **Section 485** **Seaworthiness and cargoworthiness**

The carrier must ensure that the ship is in seaworthy condition and properly furnished, equipped, manned, and sufficiently supplied (seaworthiness); the carrier must also ensure that the holds, including the refrigerating and cooling chambers, as well as all other parts of the ship within which or on which goods are loaded, are fit for the reception, carriage, and preservation of the goods (cargoworthiness).

### **Section 486** **Handover of the goods for carriage; loading; reloading; discharge**

(1) The shipper must effect the delivery of the goods to the carrier for carriage (handover) within the time contractually agreed therefor. The carrier must issue to the party handing over the goods for carriage a written confirmation of receipt upon the latter's demand. Such confirmation of receipt may also be issued as part of a bill of lading or of a sea waybill.

(2) Unless the circumstances or customary standards require otherwise, the carrier must load the goods on board the ship, stow them there and secure them (loading and stowing), and must also discharge the goods from the ship.

(3) Where the goods are stored in a container, the carrier is authorised to reload the container.

(4) Unless the shipper has granted its consent, the carrier may not load the goods on deck. Where a bill of lading is issued, the consent of the *Ablader* (section 513 (2)) shall be

required. However, the goods may be loaded on deck also without such consent, provided they are placed in or on an article of transport suitable for on-deck carriage, and also provided that the deck has been properly fitted out to carry such an article of transport.

#### **Section 487**

##### **Accompanying documents**

(1) The shipper shall provide to the carrier such documents and such information that may be necessary for official processing prior to delivery of the goods, in particular for customs clearance.

(2) The carrier shall be liable for any detriment caused by the loss of, physical damage to, or incorrect use of the documents entrusted to the carrier, unless such detriment could not have been avoided by a prudent carrier exercising due care. The liability of the carrier shall be limited to the amount which would have been payable if the goods had been lost. Any agreement expanding or further restricting this liability shall be effective only if it is negotiated in detail, even if it is for a number of similar contracts between the same parties. However, any provision in the bill of lading further reducing the liability shall be ineffective with respect to third parties.

#### **Section 488**

##### **Liability of the shipper and of third parties**

(1) The shipper shall compensate the carrier for damages and expenditures caused by any of the following:

1. The inaccuracy or incompleteness of the required information regarding the goods;
2. The failure to disclose the goods' dangerous nature to the carrier;
3. The insufficient packing or marking of the goods; or
4. The lack, incompleteness or inaccuracy of the documents or information stipulated in section 487 (1).

However, the shipper shall be released from liability if it is not responsible for the breach of duties.

(2) If the third party mentioned in Section 482 (2) provides incorrect or incomplete information when handing over the goods for carriage, or if it fails to disclose the goods' dangerous nature to the carrier, then the carrier may also demand compensation from said third party for the damages the carrier has suffered and the expenditures it has incurred as a result. This shall not apply if the third party is not responsible for the breach of duties.

(3) Where a bill of lading is issued, the shipper and the *Ablader* (Section 513 (2)) shall compensate the carrier, even if they are not at fault, for the damages the carrier has suffered and the expenditures it has incurred as a result of:

1. The inaccuracy or incompleteness of any information in the bill of lading provided pursuant to Section 515 (1) number 8 as regards the goods' quantity, number or weight, or as regards the leading marks used for identification, or
2. The failure to disclose the goods' dangerous nature to the carrier.

However, the shipper and the *Ablader* shall each be liable to the carrier only for the damages and expenditures resulting from the respective inaccurate or incomplete information that either of them provided.

(4) Where conduct on the part of the carrier contributed to the damages suffered or expenditures incurred, then the obligation pursuant to subsection (3) of the shipper and of the *Ablader* to compensate the carrier, as well as the extent of such compensation, shall depend on the extent to which such conduct has contributed to the damages and expenditures.

(5) Any agreement excluding the liability pursuant to subsections (1), (2), or (3) shall be effective only if it is negotiated in detail, even if it is for a number of similar contracts between the same parties. In derogation from the first sentence, the compensation of damages to be provided by the shipper or the *Ablader* may be limited, in terms of its amount, also by preworded terms of contract.

#### **Section 489**

##### **Termination by the shipper**

(1) The shipper may terminate the contract for the carriage of general cargo at any time.

(2) If the shipper so terminates the contract, the carrier may claim either:

1. The agreed freight, as well as any expenditures that the carrier is entitled to have refunded, after setting off any expenses it saved as a result of the termination of the contract, or anything it acquired or failed, in bad faith, to acquire; or

2. Payment of one third of the freight agreed (dead freight, *Fautfracht*).

Where the termination is based on reasons within the sphere of risks to be borne by the carrier, no claim to payment of *Fautfracht* pursuant to the first sentence number 2 shall arise; in such event, the entitlement pursuant to the first sentence number 1 shall likewise not be applicable insofar as the carriage is of no interest to the shipper.

(3) If goods have already been loaded and stowed prior to the termination, the carrier shall be entitled to take, at the shipper's cost, the measures set out in section 492 (3) second through fourth sentences. Where the termination is based on grounds within the sphere of risks to be borne by the carrier, the carrier must bear the costs, notwithstanding the first sentence.

#### **Section 490**

##### **Carrier's rights if the goods are not handed over for carriage in due time**

(1) Should the shipper fail to have the goods handed over for carriage within the time contractually agreed therefor, or should it fail to do so completely, the carrier may set a reasonable deadline within which the goods are to be handed over.

(2) If the goods have not been handed over for carriage by the deadline set pursuant to subsection (1), or if it is obvious that the goods will not be handed over for carriage within the deadline set, then the carrier may terminate the contract and assert the claims pursuant to section 489 (2).

(3) If only a part of the goods has been handed over for carriage by the deadline set pursuant to subsection (1), then the carrier shall be entitled to carry that part of the goods that has already been loaded and stowed; in this case, the carrier is entitled to the full freight as well as compensation for any expenditures incurred because of the incompleteness of the consignment. However, any freight for goods which the carrier transports on the same ship in place of the goods which had not been loaded and stowed shall be deducted from the full freight. In addition, the carrier is entitled to demand further security to the extent that the incompleteness of the consignment causes it to lose security for the full freight.

(4) The carrier may exercise the rights set out in subsection (2) or (3) also without setting a deadline if the shipper or the third party mentioned in section 482 (2) refuses to hand over the goods for carriage, such refusal being made in earnest and being conclusive.

Furthermore, it may also terminate the contract pursuant to subsection (2) without setting a deadline if unusual circumstances dictate that, after balancing out the respective interests of the parties, it cannot be reasonably expected of the carrier to continue the contractual relationship.

(5) If the failure to hand over the goods in due time occurred for reasons within the sphere of risks to be borne by the carrier, the carrier shall not be entitled to the above rights.

#### **Section 491**

##### **Subsequent instructions**

(1) Unless otherwise provided for by section 520 (1), the right of disposal in relation to the goods is vested in the shipper. Specifically, it may instruct the carrier to stop the goods in transit or to deliver them to another destination, or that it deliver them to a different discharging wharf or to another consignee. The carrier is obliged to comply with such instructions only insofar as this can be done without the risk of prejudice to its business, or damage to the shippers or consignees of other shipments. The carrier may claim from the shipper reimbursement for the expenditures occasioned by the carrier's having carried out the instruction, and may also demand reasonable remuneration; the carrier may require an advance payment as a precondition to carrying out the instruction.

(2) The shipper's right of disposal shall expire following the goods' arrival at the discharging wharf. Henceforth, the right of disposal pursuant to subsection (1) shall lie with the consignee. Should the consignee exercise this right, it shall reimburse the carrier for the resulting expenditures the latter must incur, while also paying reasonable remuneration; the carrier may require an advance payment as a precondition to carrying out the instruction.

(3) If as a sea waybill has been issued, the shipper may exercise its right of disposal only upon the executed copy of the sea waybill intended for the shipper being presented, provided that the stipulations of same so prescribe.

(4) Should the carrier intend not to comply with any instructions issued to it, then it shall notify the party issuing such instructions of its refusal to do so, and must do so without delay.

(5) If the exercise of the right of disposal has been made dependent upon the presentation of a sea waybill, but the carrier carries out instructions without having had an executed copy of the sea waybill presented to it, then the carrier shall be liable to compensate the rightholder for any loss or damage caused thereby. This liability shall not exceed the amount which would have been payable if the goods had been lost. Any arrangement expanding or further restricting the liability shall be effective only if it is negotiated in detail, whether for one or several similar contracts between the same parties.

## **Section 492**

### **Obstacles to carriage and delivery**

(1) If it becomes evident, after the goods have been taken over, that the goods' carriage or delivery cannot be performed in accordance with the contract, the carrier shall ask for instructions from the party who has the right of disposal in relation to the goods pursuant to section 491 or section 520. If that party is the consignee, and if the consignee cannot be located or refuses to accept the goods, the shipper shall have the right of disposal pursuant to the first sentence, provided no bill of lading has been issued; the sea waybill need not be produced in such a case even if its terms require that this be done when exercising the right of disposal. If instructions have been issued to the carrier and the obstacle is not within the sphere of risks to be borne by the carrier, the carrier may assert claims pursuant to section 491 (1) fourth sentence.

(2) If the obstacle to carriage or delivery has arisen after the consignee has issued instructions, based on its right of disposal pursuant to section 491, that the goods are to be delivered to a third party, the consignee and the third party shall be deemed to be the shipper and the consignee respectively for the purposes of applying subsection (1).

(3) If the carrier is unable to obtain instructions, within a reasonable period of time, with which it would have had to comply pursuant to section 491 (1) third sentence, it shall take such measures as seem to be in the best interest of the party having the right of disposal. For instance, the carrier may discharge the goods from the ship and store them, it may entrust them to a third party for storage for the account of the party having the right of disposal pursuant to section 491 or section 520, or it may return them; should the carrier entrust a third party with the goods, it shall be liable only for exercising due diligence in choosing such third party. The carrier may also have the goods sold pursuant to section 373 subsections (2) through (4) if they are perishable or if their condition warrants such a measure, or if the costs to be incurred otherwise are out of proportion to the goods' value.

The carrier may destroy goods that cannot be sold. The carriage is deemed to have been terminated once the goods have been discharged from the ship.

(4) The carrier is entitled to reimbursement of the expenditures necessitated by the measures taken pursuant to subsection (3), and to reasonable remuneration, unless the obstacle falls within the sphere of risks to be borne by the carrier.

### **Section 493**

#### **Payment; calculation of freight**

(1) The freight shall be payable on delivery of the goods. In addition to the freight, the carrier is entitled to be reimbursed for its expenditures insofar as these were incurred in the interests of the goods and the carrier could reasonably regard them as necessary in the circumstances.

(2) The entitlement to freight shall cease should it be impossible to perform the carriage. If the carriage is terminated prematurely due to an obstacle to carriage or delivery, the carrier shall be entitled to a pro-rata share of the freight for the completed part of the carriage, provided said partial carriage was of interest to the shipper.

(3) Notwithstanding subsection (2), the carrier shall continue to be entitled to payment of freight if the carriage becomes impossible for reasons with the sphere of risk to be borne by the shipper, or for reasons arising at a point in time at which the shipper is defaulting on acceptance. However, the carrier must accept that any savings, or any monies it has earned, or has failed, in bad faith, to earn, are set off from this amount.

(4) If, for reasons within the sphere of risks to be borne by the shipper, delay occurs after the start of carriage and prior to arrival at the discharging wharf, then the carrier shall be entitled to reasonable remuneration in addition to the freight.

(5) If the freight is agreed by reference to the number, weight or quantity otherwise expressed of the goods, it shall be presumed for the purpose of calculating the freight that the statement in the sea waybill or bill of lading made in this regard is correct; this presumption shall apply even if such statement is accompanied by a reservation justified by the indication that there had been no reasonable means of checking the accuracy of the information.

### **Section 494**

#### **Rights of consignee; duty to pay**

(1) After arrival of the goods at the discharging wharf, the consignee may require the carrier to deliver the goods to it in exchange for the performance of the obligations under the contract for the carriage of general cargo. If the goods have been delivered damaged or late or have been lost, the consignee may assert, in its own name, the rights against the carrier under the contract for the carriage of general cargo; the shipper remains entitled to assert these claims. It makes no difference in this context whether the consignee or the shipper is acting in its own interest or in the interest of another party.

(2) The consignee asserting its right pursuant to subsection (1) first sentence must pay the freight up to the amount specified in the accompanying document. Where no accompanying document has been issued, or no accompanying document has been presented to the consignee, or where the amount payable as freight is not evidenced by the accompanying document, the consignee is to pay the freight agreed with the shipper, provided it is not unreasonable.

(3) Furthermore, the consignee asserting its right pursuant to subsection (1) first sentence is to pay remuneration pursuant to section 493 (4), provided that the consignee was notified of the amount owed at delivery of the goods.

(4) The shipper remains under obligation to pay the sums owed under the contract.

### **Section 495**

#### **Carrier's lien**

(1) For all of its claims under a contract for the carriage of general cargo, the carrier shall have a lien on the goods delivered to it for carriage, whether they belong to the shipper, the



*Ablader*, or a third party that has consented to the carriage of the goods. The carrier shall also have a lien on the goods of the shipper for all undisputed claims under other contracts concluded with the shipper regarding marine freight, freight, forwarding, and storage. The lien extends to the accompanying documents.

(2) The lien shall persist for as long as the carrier has possession of the goods, and specifically for as long as it has the right of disposal over them by means of a bill of lading, consignment bill, or warehouse warrant.

(3) The lien shall persist even after delivery, provided the carrier asserts the lien by legal action within ten (10) days after delivery, and provided the goods are still in the consignee's possession.

(4) The warning regarding the impending sale of a pledged item provided for by section 1234 (1) of the Civil Code (*Bürgerliches Gesetzbuch*, BGB), as well as the notifications stipulated by sections 1237 and 1241 of the Civil Code, are to be addressed to the consignee, who holds the right of disposal pursuant to section 491 or section 520. If the consignee cannot be traced, or if the consignee refuses to accept the goods, then the warning and the notifications are to be addressed to the shipper.

#### **Section 496**

##### **Subsequent carrier**

(1) Where carriage is provided by several carriers and where it is incumbent on the last of them to collect, at delivery, the payments owing to the preceding carriers, the last carrier is to exercise the rights of the preceding carriers, particularly the lien. The lien of each preceding carrier shall persist for as long as the lien of the last carrier is in force.

(2) If a preceding carrier is paid by a subsequent carrier, the claim and the lien of the former shall devolve to the latter.

(3) Subsections (1) and (2) shall also apply to the claims and rights of any forwarder who has participated in performing the carriage.

#### **Section 497**

##### **Ranking order of several liens**

Should several liens covering the same goods arise pursuant to sections 397, 440, 464, 475b and 495, the ranking of these liens as between themselves shall be determined pursuant to section 442.

#### **Subtitle 2**

##### **Liability for loss of or physical damage to the goods**

#### **Section 498**

##### **Grounds for liability**

(1) The carrier shall be liable for any damage resulting from the loss of or physical damage to the goods occurring between the time the goods are taken over and their delivery.

(2) The carrier shall be released from liability pursuant to subsection (1) insofar as the loss of or physical damage to the goods was due to circumstances which could not have been avoided by a prudent carrier exercising due care. If the goods were carried by a ship that was not in seaworthy or cargoworthy condition, and if the facts of the case indicate a likelihood that the goods were lost or physically damaged due to the ship's lack of seaworthiness or cargoworthiness, then the carrier shall be released from liability pursuant to subsection (1) only if the carrier can prove that the lack of seaworthiness or cargoworthiness could not have been discovered prior to commencement of the journey by a prudent carrier exercising due care.

(3) If the damaged party contributed to the occurrence of the damage, due to its fault or neglect, then the obligation to pay compensation and the amount of the compensation payable shall depend on the circumstances, and specifically on the extent to which the damages were caused primarily by one or the other party.

## **Section 499**

### **Particular grounds for exclusion of liability**

(1) The carrier shall be relieved of liability insofar as the loss of or physical damage to the goods was caused by any of the following circumstances:

1. Perils, dangers, and accidents of the sea or other navigable waters;
2. War or hostilities, social unrest, acts by public enemies, or measures taken by sovereigns, as well as quarantine restrictions;
3. Seizure by a court;
4. Strikes, lockouts, or other restraints of labour;
5. Acts or omissions by the shipper or the *Ablader*, specifically insufficiency of packing or improper marking of the cargo units by the shipper or the *Ablader*;
6. Inherent features or characteristics of certain goods that make them particularly susceptible to damage, particularly through breakage, rust, internal spoiling, drying, leakage, or normal wastage in bulk or weight;
7. The carriage of live animals;
8. Measures serving to save human life at sea;
9. Salvage measures at sea.

The first sentence shall not apply insofar as the damage could have been avoided by a prudent carrier exercising due care.

(2) If damage has occurred which, given the circumstances, might have been due to one of the risks set out in subsection (1) first sentence, then the presumption shall be that the corresponding damages have in fact been caused by this risk. The first sentence shall not apply if the goods were carried by a ship that was not seaworthy or not cargoworthy.

(3) If the carrier, by virtue of the contract for carriage of general cargo, is under obligation to protect the goods particularly from the effects of heat, cold, variations in temperature, humidity, vibrations or similar effects, then the carrier may avail itself of the defences set out in subsection (1) first sentence number 6 only if it has taken all of the measures incumbent upon it in light of the circumstances, in particular in respect of the choice, maintenance, and use of specific equipment, and only if it has complied with any special instructions that may have been issued.

(4) The carrier may avail itself of the defences set out in subsection (1) first sentence number 7 only if it has taken all of the measures incumbent upon it in the circumstances, and if it has complied with any specific instructions that may have been issued.

## **Section 500**

### **Inadmissible loading and stowing of goods on deck**

If the carrier has loaded and stowed goods on deck without having obtained the consent required from the shipper or from the *Ablader* pursuant to section 486 (4), the carrier shall be liable for any damages arising from the goods' loss or physical damage as a result of so being loaded and stowed on deck, even if the damages occurred without the direct fault or neglect of the carrier. Where the circumstances set out in the first sentence are given, the presumption shall be that the goods' loss or physical damage is attributable to the fact that they were loaded and stowed on deck.

## **Section 501**

### **Responsibility for other persons**

The carrier must assume responsibility for any fault or neglect on the part of its servants and of the ship's company to the same extent as if the fault or neglect in question were its own.

The same shall apply to fault or neglect on the part of other persons whose services it is using for the carriage of goods.

#### **Section 502**

##### **Compensation based upon value**

(1) Insofar as the carrier is liable to pay compensation for the total or partial loss of goods pursuant to the provisions of the present Subtitle, such compensation shall be calculated by reference to the value that the goods would have had if they had been delivered in due time at the destination contractually agreed.

(2) Insofar as the carrier is liable to pay compensation for the physical damage to the goods pursuant to the provisions of the present Subtitle, the measure of the damages payable shall be the difference between the value of the damaged goods at the place and time of delivery and the value the goods would have had at the place and time of delivery had they not been physically damaged. The costs necessary in order to mitigate or remedy the damage are considered to be equal to the amount of the difference determined in accordance with the first sentence.

(3) The value of the goods shall be fixed in accordance with their current market price, or, if there is no such price, in accordance with the normal market value of goods of the same kind and having the same characteristics. If the goods were sold immediately prior to being taken over for carriage, the purchase price noted in the seller's invoice, including the costs of carriage factored into said price, shall be considered to be the current market price.

(4) The amount to be compensated pursuant to the subsections above is to be offset by the amount saved in customs duties and other costs as a result of the loss or physical damage, or by the amount that was saved due to a loss of cargo.

#### **Section 503**

##### **Assessment costs**

In the event of loss of or damage to the goods, the carrier shall bear the costs of assessing the damage; this shall be in addition to the compensation payable pursuant to section 502.

#### **Section 504**

##### **Limit of liability in the event the goods are damaged**

(1) The compensation payable for loss or physical damage pursuant to sections 502 and 503 shall be limited to the amount of 666.67 units of account per package or per unit, or to the amount of 2 units of account per kilogram of the goods' gross weight, whichever amount is higher. If a container, pallet or any other article of transport is used to consolidate cargo units, then each package and each unit listed in an accompanying document as being contained in a given article of transport shall be deemed to be a "package" or "unit" within the meaning of the first sentence. Inasmuch as the accompanying document does not provide this information, the given article of transport shall be deemed to be a package or unit.

(2) If the goods consist of several cargo units (cargo) and only individual cargo units have been lost or physically damaged, then the limitation pursuant to subsection (1) shall be calculated on the basis:

1. Of the entire cargo if the entire cargo has depreciated in value; or
2. Of the part of the cargo that has depreciated in value, if only a part of the cargo has depreciated in value.

#### **Section 505**

##### **Unit of account**

The unit of account referred to under the present Subtitle shall be the Special Drawing Right (SDR) of the International Monetary Fund. Each amount shall be converted into euros using the exchange rate between the euro and the Special Drawing Right on the date of delivery of the goods, or on the date agreed by the parties. The value of the euro, in terms of the

Special Drawing Right, is to be determined using the calculation that the International Monetary Fund applies for its operations and transactions on the day in question.

**Section 506**  
**Non-contractual claims**

(1) The exemptions from and limitations on liability provided for under the present Subtitle and under a contract for the carriage of general cargo shall also apply to any non-contractual claims that the shipper or the consignee may have against the carrier for loss of or physical damage to the goods.

(2) The carrier may also lodge the objections pursuant to subsection (1) against any non-contractual claims that third parties may assert for loss of or physical damage to the goods. However, these objections may not be lodged if any of the following situations apply:

1. They are made with regard to an agreement that deviates from the regulations stipulated by the present Subtitle to the detriment of the shipper;
2. The third party had not consented to carriage of the goods, and the carrier was aware that the shipper did not have the authority to send the goods, or was unaware of this due to its own gross negligence; or
3. The goods, prior to being taken over for carriage, had been lost while in the possession of the third party, or by a person deriving its right to possession from said third party.

The second sentence, number 1, shall not be applicable, however, to any arrangement permissibly made under section 512 (2) number 1 regarding the carrier's liability for a damage caused in the course of steering or otherwise operating the ship, or caused by fire or explosion on board the ship.

**Section 507**  
**Conduct barring exemptions from liability and limitations of liability**

The exemptions from and limitations of liability provided for under the present Subtitle and under a contract for the carriage of general cargo shall not apply in the following cases:

1. The damages were caused by an act or omission of the carrier, done with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result; or
2. The carrier had agreed with the shipper or the *Ablader* that the goods were to be carried below deck, whereas the damages resulted from the goods having been loaded and stowed on deck.

**Section 508**  
**Liability of servants and of the ship's company**

(1) If non-contractual claims are asserted for loss of or physical damage to the goods against one of the carrier's servants, that servant, too, may avail himself of the exemptions from liability and limitations of liability provided for under the present Subtitle and under the contract for the carriage of general cargo. The same shall apply if the claims are asserted against a member of the ship's company.

(2) Recourse to the releases and limitations of liability pursuant to subsection (1) shall be ruled out if the debtor has acted intentionally or recklessly and with knowledge that such damage would probably result.

(3) If both the carrier and one of the persons mentioned in subsection (1) are responsible, due to fault or neglect, for the loss of or physical damage to the goods, they shall be liable jointly and severally.

**Section 509**  
**Actual carrier**

(1) Where the carriage is performed, in whole or in part, by a third party who is not the carrier, then that third party (actual carrier) shall be liable, in the same way as the carrier, for any damages resulting from the loss of or physical damage to the goods during the carriage performed by it.

(2) Any contractual arrangements with the shipper or the consignee whereby the carrier expands its own liability shall affect the actual carrier only if the actual carrier has agreed to them in writing.

(3) The actual carrier may lodge all objections and avail itself of all defences to which the carrier is entitled under the contract for the carriage of general cargo.

(4) The carrier and the actual carrier shall be liable jointly and severally.

(5) If a claim is asserted against a servant of the actual carrier or against a member of the ship's company, then Section 508 is to be applied *mutatis mutandis*.

#### **Section 510** **Notice of damage**

(1) If any loss of or physical damage to the goods is externally apparent and the consignee or the shipper fails to notify the carrier of said loss or physical damage on delivery of the goods, at the latest, then the presumption shall be that the goods were delivered in their entirety and in undamaged condition. The notice must describe the loss or physical damage in sufficiently clear terms.

(2) The presumption pursuant to subsection (1) shall also apply if the loss or physical damage was not externally apparent and no notice was filed within three (3) days of delivery.

(3) The notice of damage must be filed in text form (a readable statement that is permanently valid without a signature having been applied). Timely dispatch of the notice shall suffice in order to comply with the corresponding deadline.

(4) If notice of the loss or physical damage is made upon delivery, it shall suffice for such notice to be given to the party delivering the goods.

#### **Section 511** **Presumption of loss**

(1) The person entitled to raise a claim may consider the goods lost if delivery has not taken place within a period that is twice as long as the agreed delivery period, but not shorter than thirty (30) days or, in cases involving cross-border carriage, within a period of sixty (60) days. The first sentence shall not apply if the carrier is relieved from its obligation to deliver the goods due to a right of retention or lien, or if a lien has been placed on the goods for a contribution owed to the general average, thereby preventing delivery of the goods.

(2) If the person entitled to raise a claim receives compensation for the loss of goods, the person entitled to raise a claim may demand, upon receiving such compensation, to be notified immediately in the event the goods are found.

(3) Within one (1) month of having been notified of the goods' having been found, the person entitled to raise a claim may demand that the goods be delivered to it concurrently with its repaying the compensation, where appropriate less any costs that may have been a part of the compensation. Any obligation to pay the freight and any claims to compensation of damages shall remain unaffected.

(4) If the goods have been found after the compensation has been paid and the person entitled to raise a claim has not asked to be informed of such event, or if, having been informed, the person entitled to raise a claim does not assert its claim to delivery of the goods, then the carrier has the right of free disposal in relation to the goods.

#### **Section 512** **Divergent arrangements**

(1) The arrangements made may diverge from the provisions of the present Subtitle only if their particulars have been negotiated individually; this shall also apply where such arrangements are agreed for a plurality of similar contracts between the same contracting parties.

(2) Notwithstanding the provisions under subsection (1), however, the pre-worded terms of contract may stipulate the following:

1. That the carrier is not responsible for any fault or neglect on the part of its servants or of the ship's company, insofar as the corresponding damage was caused in the course of steering or otherwise operating the ship, but not in the course of implementing measures taken predominantly for the benefit of the cargo, or was caused by fire or explosion on board the ship.
2. That the liability of the carrier for loss or physical damage will be limited to higher amounts than those set out in Section 504.

### **Subtitle 3 Accompanying documents**

#### **Section 513**

##### **Entitlement to issuance of a bill of lading**

(1) Unless otherwise agreed in the contract for the carriage of general cargo, the carrier must issue to the *Ablader*, at the latter's request, an order bill of lading that – at the choice of the *Ablader* – is made out "To Order" of the *Ablader*, "To Order" of the consignee, or simply "To Order" (blank); in the last case, this shall be deemed to mean "To Order" of the *Ablader*. The master as well as any other party authorised to sign bills of lading on behalf of the *Reeder* shall be entitled to issue the bill of lading on behalf of the carrier.

(2) The "*Ablader*" shall be defined as the party which delivers the goods to the carrier for carriage and which has been designated as *Ablader* by the shipper so as to be recorded as such in the bill of lading. If a party other than the *Ablader* delivers the goods for carriage, or if no party has been designated as *Ablader*, then the shipper shall be deemed to be the *Ablader*.

#### **Section 514**

##### **"On-board" bill of lading; "received-for-shipment" bill of lading**

(1) The bill of lading shall be issued once the carrier has taken over the goods. By virtue of the bill of lading, the carrier confirms receipt of the goods and enters into obligation to carry them to their destination and to deliver them to the person entitled by virtue of the bill of lading against return of said bill of lading.

(2) Once the goods have been taken on board, the carrier shall issue a bill of lading specifying when and by which ship the goods were taken on board ("on-board" bill of lading). If a bill of lading already has been issued before the goods are taken on board ("received-for-shipment" bill of lading), then the *Ablader* may require the carrier to add a notation specifying when and by which ship the goods were taken on board as soon as this has occurred ("shipped-on-board" notice).

(3) The bill of lading is to be issued in as many original, executed copies as the *Ablader* requests.

#### **Section 515**

##### **Contents of the bill of lading**

(1) The bill of lading must include the following information:

1. Place and date of issuance;
2. Name and address of the *Ablader*;
3. Name of the ship;
4. Name and address of the carrier;
5. Port of loading and destination;

6. Name and address of the consignee and special address, if any, for notification;
7. Nature of the goods along with their externally apparent condition and characteristic features;
8. Quantity, number or weight of the goods and their permanent, legible leading marks;
9. Freight owed at delivery, costs incurred up to the time of delivery as well as a note concerning payment of the freight;
10. Number of original, executed copies.

(2) At the *Ablader's* request, the information to be provided pursuant to subsection (1) numbers 7 and 8 must be recorded as the *Ablader* had provided it to the carrier prior to taking over the goods, in text form (a readable statement that is permanently valid without a signature having been applied).

### **Section 516**

#### **Bill of lading format; authorisation to issue statutory instruments**

- (1) The carrier must sign the bill of lading; reproductions of the personal signatures by means of printing or stamp shall be sufficient.
- (2) An electronic record having the same functions as a bill of lading shall be deemed equivalent to a bill of lading, provided that the authenticity and integrity of the record are assured (electronic bill of lading).
- (3) The Federal Ministry of Justice and Consumer Protection is hereby empowered to determine by regulation, issued in agreement with the Federal Ministry of the Interior, Building and Community and not requiring the consent of the Federal Council (*Bundesrat*), the details of issuing, presenting, returning and transmitting an electronic bill of lading, as well as the particulars of the process of posting retroactive entries to an electronic bill of lading.

### **Section 517**

#### **Evidentiary effect of the bill of lading**

- (1) A bill of lading shall give rise to the presumption that the carrier has taken over the goods in the state described pursuant to section 515 subsection (1) numbers 7 and 8. If the description given therein refers to the contents of a closed article of transport, then the bill of lading shall establish the presumption set out in the first sentence only if the carrier has inspected the contents and the results of said inspection have been recorded in the bill of lading. If the bill of lading does not provide any information regarding the goods' condition or characteristic features as externally apparent, then the bill of lading shall establish the presumption that the externally apparent condition and characteristic features of the goods were satisfactory at the time the carrier took them over.
- (2) The bill of lading shall not give rise to the presumption pursuant to subsection (1) insofar as the carrier has entered a reservation in the bill of lading. Such reservation must indicate the following:

1. The condition of the goods upon being taken over by the carrier, or the goods' characteristic features at the time they were taken over;
2. Which information furnished in the bill of lading is incorrect, and what the correct information should be;
3. The carrier's justification for assuming that the information is incorrect;
4. Why the carrier had no sufficient opportunity to verify the information furnished.

### **Section 518**

#### **Position of Reeder when carrier data are inadequate**

If a bill of lading issued by the master or by any other party authorised to sign bills of lading on behalf of the *Reeder* does not identify the carrier, or if said bill of lading identifies a person as a carrier who is in fact not the carrier, then the rights and duties under the bill of lading shall devolve onto the *Reeder* instead of the carrier.

#### **Section 519**

##### **Entitlement under the bill of lading; legitimation**

The claims by virtue of a contract for the carriage of goods by sea as confirmed in a bill of lading may be asserted only by the person entitled by virtue of the bill of lading. The presumption shall be that the rightful holder of a bill of lading is also the person entitled by virtue of the bill of lading. A party shall be deemed the rightful holder of a bill of lading if the bill of lading in question meets any one of the following criteria:

1. It is made out to "To Bearer";
2. It is made out "To Order" and identifies the holder as the consignee, either directly or through an unbroken chain of endorsements; or
3. It is made out in the name of the holder.

#### **Section 520**

##### **Carrying out instructions**

(1) If a bill of lading has been issued, then solely its rightful holder shall be entitled to the right of disposal pursuant to sections 491 and 492. The carrier may carry out instructions only against presentation of all the executed copies of the bill of lading. However, the carrier may not carry out any instructions issued by the legitimate holder of the bill of lading if the carrier is aware, or grossly negligently unaware, that the rightful holder of the bill of lading is not the person entitled by virtue of same.

(2) If the carrier carries out instructions without having been presented with all executed copies of the bill of lading, the carrier shall be liable to the person entitled by virtue of the bill of lading for any resulting damages the latter may suffer. The liability shall not exceed the amount which would have been payable if the goods had been lost.

#### **Section 521**

##### **Delivery in exchange for the bill of lading**

(1) Upon the goods' arrival at the discharging wharf, the rightful holder of the bill of lading shall be entitled to demand that the carrier make delivery of the goods. Opting to exercise this right shall oblige the rightful holder of the bill of lading to pay freight and any other remuneration pursuant to section 494 subsections (2) and (3).

(2) The carrier shall be obliged to deliver the goods only in exchange for a bill of lading in which delivery has been confirmed, and against payment in full of any outstanding amounts owed pursuant to section 494 subsections (2) and (3). However, the carrier may not deliver the goods to the rightful holder of the bill of lading if the carrier is aware, or grossly negligently unaware, that the rightful holder of the bill of lading is not also the person entitled by virtue of same.

(3) If several executed copies of the bill of lading have been made, then the goods are to be delivered to a rightful holder of even just one executed copy of the bill of lading. Should several rightful holders claim the goods, the carrier must deposit the goods in a public warehouse or in some other form of safe storage and must accordingly inform the holders who have come forward, while citing the reasons for proceeding in this manner. In this case, the carrier may have the goods sold off pursuant to section 373 subsections (2) through (4), provided the goods are if they are perishable or if their condition warrants such a measure, or if the costs foreseeably to be incurred otherwise are out of proportion to the goods' value.

(4) If the carrier makes delivery of the goods to any other party than the rightful holder of the bill of lading or, assuming the situation set out in subsection (2) second sentence, to any other party than the person entitled by virtue of the bill of lading, then the carrier shall be



liable for the resulting damages the person entitled by virtue of the bill of lading may suffer. The liability shall not exceed the amount which would have been payable if the goods had been lost.

#### **Section 522 Objections**

- (1) The carrier may lodge objections against the person entitled by virtue of the bill of lading only insofar as they concern the validity of the statements made in the bill of lading, or insofar as they arise from the contents of the bill of lading, or insofar as the carrier is directly entitled to such objections vis-à-vis the person entitled by virtue of the bill of lading. An agreement to which the bill of lading merely makes reference is not incorporated into the bill of lading.
- (2) The carrier cannot rebut the presumptions pursuant to section 517 vis-à-vis a consignee, who is identified in the bill of lading and to whom the bill of lading has been transferred, unless the consignee was aware, or grossly negligently unaware, at the time the bill of lading was transferred, that the information therein is inaccurate. The same shall apply in relation to any third party to whom the bill of lading was transferred.
- (3) If the person entitled by virtue of the bill of lading asserts a claim against the actual carrier pursuant to section 509, then the actual carrier, too, may raise the objections pursuant to subsection (1). Notwithstanding the provisions under subsection (2), moreover, the actual carrier may rebut the presumptions pursuant to section 517 if the bill of lading was issued neither by the actual carrier, nor by a party whom the actual carrier authorised to sign bills of lading.

#### **Section 523 Liability for inaccurate information in the bill of lading**

- (1) The carrier shall be liable for resulting damages that the person entitled by virtue of a bill of lading may suffer due to a failure to set out the information and reservations in the bill of lading required by section 515 and section 517 (2), or due to the inaccuracy of the information and reservations provided in the bill of lading. This shall specifically apply if the goods' externally apparent condition was not satisfactory at the time of their being taken over by the carrier, and if the bill of lading includes neither any information in this regard pursuant to section 515 (1) number 7, nor any reservation pursuant to section 517 (2). However, the liability pursuant to the first and second sentences shall not apply unless the carrier knew – or should have known, had it exercised the due care of a prudent carrier – that the information was missing or was inaccurate or incomplete.
- (2) If an “on-board” bill of lading is issued before the carrier has taken over the goods, or if a “shipped-on-board” notice is included in a “received-for-shipment” bill of lading prior to the goods being loaded on board the ship, then the carrier shall be liable for resulting damages that the person entitled by virtue of the bill of lading may suffer, even if they occur without the fault or neglect of the carrier.
- (3) If a bill of lading issued by the master or by any other party authorised to sign bills of lading on behalf of the *Reeder* does not accurately state the name of the carrier, then the *Reeder*, too, shall be liable for resulting damages that the person entitled by virtue of the bill of lading may suffer due to the inaccuracy. The liability set forth in the first sentence shall not apply unless the issuer knew – or should have known, had it exercised the due care of a prudent carrier – that the name of the carrier was either missing or inaccurately stated.
- (4) The liability pursuant to subsections (1) through (3) shall not exceed the amount which would have been payable if the goods had been lost.

#### **Section 524 Transfer effected by the bill of lading (“effect of tradition”)**

Provided the carrier is in possession of the goods, the transfer of a bill of lading to the consignee identified therein shall have the same effects, in terms of the acquisition of rights

to the goods, as does the delivery of the goods for carriage. The same shall apply to a transfer of the bill of lading to third parties.

#### **Section 525**

##### **Divergent provision made in the bill of lading**

A provision made in the bill of lading that diverges from the regulations on liability set out in sections 498 through 511 or in section 520 (2), section 521 (4) or section 523 shall be effective only if the pre-requisites of section 512 have been met.. The carrier may not rely, however, on any provision set out in the bill of lading which diverges from the regulations on liability cited in the first sentence to the detriment of the party entitled under the bill of lading vis-à-vis a recipient identified in the bill of lading to whom the bill of lading was transferred, nor may it do so vis-à-vis a third party to whom the bill of lading was assigned. The second sentence shall not apply to any provision made pursuant to section 512 (2) number 1.

#### **Section 526**

##### **Sea waybill; authorisation to issue statutory instruments**

(1) Unless it has issued a bill of lading, the carrier may issue a sea waybill. Section 515 is to be applied *mutatis mutandis* to the content of the sea waybill, subject to the proviso that the shipper takes the stead of the *Ablader*.

(2) In the absence of proof to the contrary, the sea waybill shall serve as *prima facie* evidence of the conclusion of the contract for the carriage of general cargo; it shall also serve as *prima facie* evidence of the contract's contents, as well as of the fact that the carrier has taken over the goods. Section 517 shall apply *mutatis mutandis*.

(3) The sea waybill must be signed by the carrier; a reproduction of the personal signature by means of printing or stamp shall be sufficient.

(4) An electronic record having the same functions as the sea waybill shall be deemed equivalent to the sea waybill, provided that the authenticity and integrity of the record are assured (electronic sea waybill). The Federal Ministry of Justice and Consumer Protection is hereby empowered to determine by regulation, issued in agreement with the Federal Ministry of the Interior, Building and Community and not requiring the consent of the Federal Council (*Bundesrat*), the details of issuing, presenting, returning and transmitting an electronic sea waybill, as well as the particulars of the process of posting retroactive entries to an electronic sea waybill.

### **Title 2**

#### **Voyage charter contract**

##### **Section 527**

##### **Voyage charter contract**

(1) By virtue of the voyage charter contract the carrier is obliged to carry the goods to the destination, in one or more specified voyages by sea, using either the entirety of a specified ship, a proportion of a specified ship, or a specifically designated space within such ship, and to deliver the goods to the consignee. Each of the parties may demand that the voyage charter contract be recorded in writing.

(2) Sections 481 through 511 and sections 513 through 525 are to be applied *mutatis mutandis* to the voyage charter contract unless otherwise provided for by sections 528 through 535.

##### **Section 528**

##### **Port of loading; loading wharf**

(1) In order to load and stow the goods on board, the carrier must berth the ship at the loading wharf designated in the voyage charter contract or at the loading wharf to be designated by the shipper following conclusion of the voyage charter contract.

(2) If no port of loading or loading wharf has been designated in the voyage charter contract and the shipper is to designate the port of loading or loading wharf following conclusion of

the voyage charter contract, then the shipper must exercise due care in choosing a secure port of loading or loading wharf.

### **Section 529**

#### **Notice of readiness for loading**

- (1) As soon as the ship berthed at the loading wharf is ready for the goods to be loaded and stowed on board, the carrier must notify the shipper of readiness for loading. Insofar as the shipper has yet to designate the loading wharf, the carrier may already give notice of readiness for loading once the ship has reached the port of loading.
- (2) The notice of readiness for loading must be given during the office hours customarily kept at the loading wharf. If notice of readiness for loading is given outside of the office hours customary for the location of the loading wharf, then said notice shall be deemed to have been received at the start of the next office hour customary for the location.

### **Section 530**

#### **Loading time; laytime on demurrage**

- (1) Loading time shall begin on the day following the day of notice.
- (2) Unless otherwise agreed, no separate remuneration may be demanded for loading time.
- (3) If the carrier waits beyond the loading time on the basis of a contractual agreement between the parties or for reasons outside of the sphere of risks to be borne by it (laytime on demurrage), the carrier shall be entitled to reasonable remuneration (demurrage). If, following the ship's arrival at the discharging wharf, the consignee asserts its right pursuant to section 494 (1) first sentence, then the consignee, too, shall owe demurrage, provided that, upon delivery of the goods, the consignee was informed of the amount owed.
- (4) Absent an agreement to any other effect, the loading time and the laytime on demurrage must correspond to a period that is reasonable under the circumstances. In calculating the loading time and the laytime on demurrage, days shall be counted in unbroken sequence, while including Sundays and holidays. Periods during which it is impossible to load and stow the goods on board the ship for reasons within the sphere of risks to be borne by the carrier shall not be included in the computation.

### **Section 531**

#### **Loading and stowing goods**

- (1) Unless otherwise required under the given circumstances or under customary standards, the shipper shall be responsible for loading and stowing the goods. The carrier's responsibility for ensuring the seaworthiness of the ship loaded with the goods shall remain unaffected.
- (2) The carrier shall not be authorised to reload the goods.

### **Section 532**

#### **Termination by the shipper**

- (1) The shipper may terminate the voyage charter contract at any time.
- (2) Should the shipper terminate the contract, then the carrier, insofar as it is asserting a claim pursuant to section 489 (2) first sentence number 1, may demand any demurrage that may have accrued.

### **Section 533**

#### **Partial carriage**

- (1) The shipper shall be entitled to demand at any time that the carrier carry only a part of the goods. If the shipper exercises this right, the carrier shall be entitled to the full freight, to any demurrage that may have accrued, as well as to compensation for any expenditures incurred because of the incompleteness of the consignment. If the voyage charter contract entitles the carrier to use the same ship to carry other goods in place of the cargo units that have not been loaded and stowed on board, and if the carrier exercises said right, then the freight for the carriage of these other goods shall be deducted from the full freight. Insofar as the carrier is deprived of security for the full freight due to the incompleteness of the

consignment, it may demand that other security be provided. If the reasons for which the complete cargo is not carried are within the sphere of risks to be borne by the carrier, then the carrier shall be entitled to a claim pursuant to the second through fourth sentences only insofar as goods are in fact being carried.

(2) If the shipper fails to load and stow all or part of the goods within the loading time plus any agreed laytime on demurrage, or – in cases in which the shipper is not responsible for loading and stowing the goods – if all or part of the goods are not handed over for carriage within this time, then the carrier may set a reasonable deadline for the shipper in which to load and stow the goods, or to hand them over for carriage. If by the expiry of the deadline, only a part of the goods has been loaded and stowed, or handed over for carriage, the carrier may carry the cargo units already loaded and stowed or handed over, and may assert the claims pursuant to subsection (1) second through fourth sentences. Section 490 subsection (4) shall apply *mutatis mutandis*.

#### **Section 534**

##### **Termination by the carrier**

(1) If the shipper fails to load and stow any goods whatsoever within the loading time plus any agreed laytime on demurrage, or – in instances in which the shipper is not responsible for loading and stowing the goods – if no goods are handed over for carriage within this time, then the carrier may terminate the contract pursuant to section 490 and may assert the claims pursuant to section 489 (2) in conjunction with section 532 (2).

(2) The carrier may terminate the contract already prior to expiry of the loading time plus any agreed laytime on demurrage in accordance with the stipulations of section 490 if it is obvious that the goods will not be loaded and stowed or handed over for carriage.

#### **Section 535**

##### **Discharge from the ship**

(1) The provisions of sections 528 through 531 governing the port of loading and loading wharf, the notice of readiness for loading, the loading time, and the loading and stowing of goods on board are to be applied *mutatis mutandis* to the port of discharge and discharging wharf, to the notice of readiness for discharge, to the discharging time, and to the discharge of goods from the ship. However, notwithstanding the provisions under section 530 (3) second sentence, the consignee shall owe demurrage for any exceedance of the discharging time, even if, upon delivery of the goods, the consignee was not informed of the amount owed.

(2) If the consignee is not known to the carrier, then the notice of readiness for discharge must be given by public notice in the form customary for the location where the goods are to be discharged from the ship.

#### **Subchapter 2**

##### **Contracts for the carriage of passengers and their luggage**

#### **Section 536**

##### **Scope of application**

(1) If, in the course of the carriage of passengers and their luggage by sea, damages arise from the death of or personal injury to a passenger, or from the loss of, physical damage to or delayed re-delivery of luggage, then the carrier and the actual carrier shall be liable pursuant to the provisions of the present Subchapter. The right to assert a limitation of liability pursuant to sections 611 through 617 or sections 4 through 5m of the Inland Waterways Act (*Binnenschiffahrtsgesetz*) shall remain unaffected.

(2) The stipulations set out in the present Subchapter shall not apply insofar as the following provisions govern:

1. Self-executing provisions of the European Union as amended, specifically Regulation (EC) No 392/2009 of the European Parliament and of the Council of 23 April

2009 on the liability of carriers of passengers by sea in the event of accidents (OJ L 131 of 28 May 2009, p. 24), or

2. Self-executing provisions in international instruments.

Furthermore, the liability-related provisions in the present Subchapter shall not apply if the damage is caused by a nuclear incident originating in a nuclear facility and the operator of said facility is liable for such damage pursuant to the regulations of the Convention of 29 July 1960 on Third Party Liability in the Field of Nuclear Energy in the version promulgated on 5 February 1976 (Federal Law Gazette (*Bundesgesetzblatt*) 1976 II p. 310, citation on p. 311) and the Protocol of 16 November 1982 (Federal Law Gazette (*Bundesgesetzblatt*) 1985 II p. 690) or of the Atomic Energy Act (*Atomgesetz*).

### **Section 537** **Definitions**

The following definitions shall apply for the terms used in the present Subchapter:

1. "Carrier" means a person by whom a contract of carriage by sea of a passenger (contract for the carriage of passengers) has been concluded;
2. "Passenger" means:
  - a) A person carried under a contract for the carriage of passengers; or
  - b) A person who, with the consent of the carrier, is accompanying a vehicle or live animals that are being carried under a contract for the carriage of goods by sea;
3. "Luggage" means any article being carried under a contract for the carriage of passengers, with the exception of live animals;
4. "Cabin luggage" means the luggage that the passenger has in his cabin or that is otherwise in his possession; "cabin luggage" shall include luggage that the passenger has in or on his vehicle;
5. "Shipping incident" means a shipwreck, the capsizing, collision, or stranding of the ship, an explosion or fire in the ship, or a defect in the ship;
6. "Defect in the ship" means any malfunction, failure, or non-compliance with applicable safety regulations in respect of any part of the ship or its equipment when used for any of the following:
  - a) Escape, evacuation, embarkation or disembarkation of passengers;
  - b) The propulsion, steering, safe navigation, mooring or anchoring, arriving at or leaving berth or anchorage, or damage control after flooding; or
  - c) The launching of life-saving appliances.

### **Section 538** **Liability of the carrier for personal injuries**

- (1) The carrier shall be liable for the damage suffered as a result of the death of or personal injury to a passenger if the incident that caused the damage so suffered occurred in the course of the carriage and was due to the fault or neglect of the carrier. If the incident causing the damage was a shipping incident, the carrier's fault or neglect shall be presumed.
- (2) In derogation from subsection (1), the carrier shall be liable, even if the incident occurred without the fault or neglect of the carrier, for the damage suffered as a result of the death of or personal injury to a passenger if the incident that caused the damage so suffered occurred in the course of the carriage and insofar as the damage is not in excess of 250,000 units of account. However, the carrier shall be released from such liability if:

1. The incident occurred due to acts of public enemies, an act of war, a civil war, civil unrest, or an exceptional and unavoidable natural disaster that was impossible to avert; or
2. The incident's sole cause was an act or omission by a third party, done with the intention of causing the incident.

(3) The term "carriage" as used in subsections (1) and (2) covers the following:

1. The period in which the passenger is on board the ship, including the period in which he is embarking or disembarking; and
2. The period in which the passenger is transported by water from land to the ship or vice versa, insofar as the costs of this transport are included in the fare, or insofar as the vessel used for this auxiliary transport has been put at the disposal of the passenger by the carrier.

The term does not cover the period which the passenger spends in a marine terminal or station, on a quay or in any other port installation.

#### **Section 539**

##### **Liability of the carrier for physical damage to luggage and damages resulting from delays in the re-delivery of luggage**

(1) The carrier shall be liable for the damage resulting from the loss of cabin luggage or luggage, or physical damage to same, if the incident that caused the damage so suffered occurred in the course of the carriage and was due to the fault or neglect of the carrier. If the loss of or physical damage to cabin luggage is caused by a shipping incident, or if other luggage is lost or physically damaged, then the carrier's fault or neglect shall be presumed.

(2) The liability of the carrier pursuant to subsection (1) shall also extend to damages resulting from the luggage not having been re-delivered to the passenger within a reasonable time after the arrival of the ship on which the luggage has been or should have been carried. However, such liability shall be ruled out if the delay in re-delivery of the luggage is attributable to labour disputes.

(3) Notwithstanding the provisions of subsections (1) and (2), the carrier shall not be liable for damages resulting from the loss of, or physical damage to, monies, negotiable securities, gold, silver, gemstones, jewellery, works of art, or other valuables, or for damages resulting from the delayed re-delivery of such valuables, unless they had been deposited with the carrier for safe-keeping.

(4) The term "carriage" in the sense as used in subsection (1) shall cover the following periods:

1. For cabin luggage, excepting luggage that the passenger has in or on the vehicle:
  - a) The period during which the cabin luggage is on board the ship, including the period in which the cabin luggage is transported onto or off the ship;
  - b) The period during which the cabin luggage is transported by water from land to the ship or vice-versa, insofar as the cost of such transport is included in the fare or if the vessel used for this auxiliary transport has been put at the disposal of the passenger by the carrier; and
  - c) The period which the passenger spends in a marine terminal or station or on a quay or in or on any other port installation, insofar as the cabin luggage has been taken over by the carrier or its servants or agents, and has not yet been returned to the passenger;

2. For luggage other than the cabin luggage referred to in number 1: the period between the luggage's having been taken over by the carrier on shore or on board and the time of its re-delivery.

#### **Section 540**

##### **Responsibility for other persons**

The carrier must assume responsibility for the fault or neglect of its servants and that of the ship's company to the same extent as if the fault or neglect in question were its own, provided that its servants and the ship's company were acting within the scope of their employment. This shall likewise apply to any fault or neglect on the part of any other person of whose services the carrier avails itself in performing the carriage.

#### **Section 541**

##### **Limit of liability for personal injury**

(1) The liability of the carrier for the death of or physical injury to a passenger shall in no case exceed 400,000 units of account per passenger per loss event. Where damages are awarded in the form of periodical income payments, the equivalent capital value of those payments shall not exceed the said limit.

(2) In derogation from subsection (1), the liability of the carrier shall be limited to the amount of 250,000 units of account per passenger per loss event, if the death or physical injury was due to any of the circumstances set out below:

1. War, civil war, revolution, rebellion, insurrection, or civil strife arising therefrom, or hostile acts by or against a belligerent power;
2. Seizure, attachment, arrest, restraint of disposition, or detainment, as well as the consequences thereof, or any attempt thereat;
3. Derelict mines, torpedoes, bombs or other derelict weapons of war;
4. Attacks carried out by terrorists or by persons acting on malice or for political motives, as well as any action taken to prevent or counter such attacks;
5. Forfeiture and expropriation.

(3) If more than one passenger loses his life or suffers physical injury in a situation covered by subsection (2), then the liability amount of 250,000 units of account per passenger per loss event set out in subsection (2) shall be replaced by a liability amount of 340 million units of account per ship per loss event, where the latter amount is lower and can be distributed pro-rata amongst the injured parties, in proportion to their relative claims, as a single, non-recurring payment or as several partial payments.

#### **Section 542**

##### **Limit of liability for physical damage to luggage and damages due to delays in the re-delivery of luggage**

(1) Unless otherwise provided for in subsection (2), the liability of the carrier for the loss of, physical damage to, or delayed re-delivery of cabin luggage shall be limited to the amount of 2,250 units of account per passenger, per carriage.

(2) The liability of the carrier for loss of, physical damage to or delayed re-delivery of vehicles, including the luggage in or on the vehicle, shall be limited to the amount of 12,700 units of account per vehicle, per carriage.

(3) The liability of the carrier for loss of, physical damage to or delayed re-delivery of all other luggage items besides those named in subsections (1) and (2) shall be limited to the amount of 3,375 units of account per passenger, per carriage.

(4) Unless valuables deposited with the carrier for safe-keeping are involved, the carrier and the passenger may agree that the carrier will be released from providing compensation for a portion of the damage. However, this portion may not exceed the amount of 330 units of

account insofar as physical damage to a vehicle is involved, or 149 units of account insofar as the loss of, physical damage to or delayed re-delivery of other luggage items is involved. (5) Notwithstanding the provisions of subsections (1) through (4), the carrier must compensate passengers with reduced mobility in the event of loss of, or damage to, mobility equipment or other specific equipment, by paying the replacement value of the equipment concerned or, where applicable, the costs relating to repairs.

#### **Section 543**

##### **Interest and costs of court proceedings**

Any interest charges and costs of court proceedings must be reimbursed above and beyond the limits of liability set out in sections 538, 541 and 54

#### **Section 544**

##### **Unit of account**

The “unit of account” referred to in sections 538, 541 and 542 is the Special Drawing Right as defined by the International Monetary Fund. The relevant amount shall be converted into euros based on the exchange rate between the euro and the Special Drawing Right on the date of the judgment or the date agreed upon by the parties. The exchange rate between the euro and the Special Drawing Right shall be calculated in accordance with the method of valuation applied by the International Monetary Fund in effect on the date in question for its operations and transactions.

#### **Section 545**

##### **Conduct barring limitation of liability**

The carrier shall not be entitled to the benefit of the limits of liability set out in sections 541 and 542 and provided for in the contract for the carriage of passengers and their luggage insofar as the damage suffered resulted from an act or omission of the carrier, done with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

#### **Section 546**

##### **Actual carrier**

(1) If the whole or a part of the carriage is performed by a third party who is not the carrier, that third party (actual carrier) shall be liable, just as though it were the carrier, for the damage caused by the death of or physical injury to a passenger, or by the loss of, physical damage to or delayed re-delivery of passenger luggage occurring in the course of the carriage as performed by the actual carrier. Any contractual arrangements whereby the carrier expands its own liability shall affect the actual carrier only if the actual carrier has agreed to them in writing.

(2) The actual carrier may lodge any and all objections and defences to which the carrier is entitled under the contract for the carriage of passengers and their luggage.

(3) The carrier and the actual carrier shall be liable jointly and severally.

#### **Section 547**

##### **Liability of the carrier’s servants and of the ship’s company**

(1) If a claim is asserted against one of the carrier’s or actual carrier’s servants for the death of or personal injury to a passenger, or for the loss of, physical damage to or delayed re-delivery of passenger luggage, such servant as well shall be entitled to avail himself of the defences and limitations of liability applicable to the carrier or actual carrier, provided the servant was acting within the scope of his employment. The same shall apply if such a claim is asserted against a member of the ship’s company.

(2) Recourse to the limitations of liability pursuant to subsection (1) shall be ruled out if the liable party has acted intentionally or recklessly and with knowledge that such damage would probably result.



(3) If the carrier or actual carrier shares joint responsibility for causing the damage with one of the persons mentioned in subsection (1), then said parties shall be liable jointly and severally.

**Section 548**  
**Concurrent claims**

Claims in respect of the death of or personal injury to a passenger, or for the loss of, physical damage to, or delayed re-delivery of luggage may be asserted against the carrier or actual carrier only on the basis of the provisions of the present Subchapter.

**Section 549**  
**Notice of damage**

(1) Should a passenger fail to notify the carrier in due time that the passenger's luggage has been physically damaged or lost, he shall be presumed to have received the luggage undamaged. The notice need not be given, however, if the condition of the luggage has at the time of its receipt been the subject of joint survey or inspection.

(2) The notice shall be deemed timely if given within the following deadlines:

1. In the case of externally apparent physical damage to cabin luggage: the time of disembarkation;
2. In the case of externally apparent physical damage to luggage other than cabin luggage: the time of the luggage's re-delivery to the passenger;
3. In the case of physical damage to luggage that is not externally apparent, or for lost luggage: fifteen (15) days after disembarkation or re-delivery of the luggage, or after the date on which the luggage should have been re-delivered to the passenger.

(3) Notice of physical damage must be given in text form (a readable statement that is permanently valid without a signature having been applied). Timely dispatch of the notice shall suffice for purposes of compliance with the respective deadline.

**Section 550**  
**Lapse of claims to compensation of damages**

A claim for compensation of damages in respect of the death of or personal injury to a passenger, or in respect of the loss of, physical damage to, or delayed re-delivery of luggage shall lapse unless it is asserted before a court of law within one of the periods set out below:

1. Three (3) years from the date on which the claimant becomes aware of the death or personal injury, or of the loss of, physical damage to, or delayed re-delivery of luggage, or from the date on which the claimant should have become aware under normal circumstances; or
2. Five (5) years from the date of disembarkation or from the date when disembarkation should have taken place, whichever is later.

**Section 551**  
**Divergent agreements**

Unless otherwise provided for in section 542 (4), any agreement which rules out or limits liability for the death of or personal injury to a passenger, or for the loss of, physical damage to or delayed re-delivery of passenger luggage, shall be invalid insofar as it was made prior to the event that caused the death of or personal injury to a passenger or the loss of, physical damage to or delayed re-delivery of passenger luggage.

**Section 552**  
**Carrier's lien**

- (1) To secure its claim to the fare, the carrier shall have a lien on the passenger's luggage.
- (2) The lien shall continue in force only as long as the luggage is retained or deposited.

### **Chapter 3 Charter contracts for ships**

#### **Subchapter 1 Chartering a ship**

##### **Section 553 Bareboat charter contract**

(1) A bareboat charter contract obliges the owner to let a certain sea-going ship without company to the charterer, and to allow the charterer the use of this ship during the charter period.

(2) The charterer shall be obliged to pay the charter rate agreed. Unless otherwise agreed, the charter rate is to be paid in advance on a fortnightly basis.

(3) The provisions of the present Subchapter shall apply insofar as the charterer concludes the charter party for the purposes of operating the ship to pursue marine navigation as a gainful economic activity. If the charterer does not carry on a trade in the sense as defined by section 1 (2), and if the charterer's business name has not been entered in the Commercial Register pursuant to section 2, then the provisions set out in Chapter 1 of Book 4 shall apply as a subsidiary source of law to the bareboat charter contract; this shall not apply to the provisions of sections 348 through 350, however.

##### **Section 554 Turning over and returning the ship; maintenance**

(1) The owner must turn the ship over to the charterer at the time and location agreed, in a condition suitable for the contractually agreed use.

(2) For the duration of the charter period, the charterer must maintain the ship in a condition suitable for the contractually agreed use. Upon the charter relationship ending, the charterer must return the ship in the same condition, with due account being taken of the wear and tear resulting from use in accordance with the terms of contract.

##### **Section 555 Safeguarding the owner's rights**

The charterer must safeguard the rights of the owner vis-à-vis third parties.

##### **Section 556 Termination**

A charter relationship entered into for an indefinite period of time may be terminated at the latest effective midnight of any given Saturday by giving one week's notice by the first workday of the preceding week. If the charter contract calls for charter rate to be paid monthly or at longer intervals, then it shall be possible to terminate the charter party in accordance with normal procedure giving notice of three months to the end of a calendar quarter.

#### **Subchapter 2 Time charter**

##### **Section 557 Time charter contract**

(1) A time charter contract obliges the owner to let a certain sea-going ship and its company to the time charterer, for its use, for a certain period of time, and to carry goods or passengers on this ship or to render other services as may have been agreed.

(2) The time charterer is under obligation to pay the hire agreed.

(3) The provisions of the present Subchapter shall apply if the time charterer concludes the time charter contract for purposes of operating the ship to pursue marine navigation as a gainful economic activity. If the time charterer does not carry on a trade in the sense as defined by section 1 (2), and if the time charterer's business name has not been entered in the Commercial Register pursuant to section 2, then the provisions set out in Chapter 1 of

Book 4 shall apply as a subsidiary source of law to the time charter contract; this shall not apply to the provisions under sections 348 through 350, however.

**Section 558**  
**Time charter party**

Each of the parties to the time charter agreement may demand that the agreement be recorded in writing (time charter party).

**Section 559**  
**Provision of the ship**

(1) The ship must be put at the disposal of the time charterer at the time and location agreed, in a condition suitable for the contractually agreed use.

(2) If it has been agreed that the ship is to be made available at a certain date or within a certain period, then the time charterer may rescind the charter contract, without setting any deadline, if the charter contract is not complied with, or if it becomes obvious that it will not be complied with.

**Section 560**  
**Maintenance of the ship in contractually agreed condition**

For the duration of the time charter contract, the owner must maintain the ship in a condition suitable for the contractually agreed use. In particular, the owner must ensure that the ship is seaworthy and, insofar as the ship is to be used to carry goods, that it is also in cargoworthy condition.

**Section 561**  
**Use of the ship**

(1) The time charterer shall determine the use of the ship. Insofar as the time charterer instructs the owner to navigate to a specific harbour or berth, it shall be incumbent on the time charterer to exercise due care in choosing a safe harbour or berth.

(2) The owner shall be responsible for steering and otherwise operating the ship.

(3) The time charterer shall have the right to charter out the ship to third parties.

**Section 562**  
**Notification obligations**

The owner and the time charterer must notify each other of any and all significant circumstances concerning the ship and the voyage.

**Section 563**  
**Loading and discharge of goods**

(1) If the ship is to be used to carry goods, the time charterer shall be responsible for loading and stowing the goods on board and also for discharging them from the ship.

(2) The owner must ensure that loading and stowing the goods on board the ship does not impair its seaworthiness.

**Section 564**  
**Costs of operating the ship**

(1) The owner is to bear the fixed cost of operating the ship, specifically the costs of its company, equipment, maintenance, and insurance.

(2) The time charterer is to bear the variable cost of operating the ship, specifically port charges, pilotage charges, tug assistance charges, and the premiums for insurance of the ship providing a greater scope of cover. Furthermore, the time charterer is to procure the fuel required for operating the ship; such fuel must be of commercial quality.

**Section 565**  
**Hire**

(1) Absent an agreement otherwise, the hire is to be paid in advance on a fortnightly basis.

(2) The obligation to pay the hire shall not apply to any periods in which the ship is unavailable to the time charterer for the contractually agreed use due to deficiencies or other circumstances within the sphere of risks to be borne by the owner. If the ship cannot be used to the full extent contractually agreed, a reasonably reduced hire shall be payable.

**Section 566**  
**Owner's lien**

(1) To secure its amounts receivable under the time charter contract, the owner shall have a lien on the property on board the ship, including the fuel, insofar as such property is owned by the time charterer. The provisions governing the acquisition of ownership in good faith under Sections 932, 934 and 935 of the Civil Code (*Bürgerliches Gesetzbuch*, BGB) shall not apply.

(2) To further secure its amounts receivable under the time charter contract, the owner shall also have a lien on the time charterer's amounts receivable under the freight and sub-time charter contracts which the latter has concluded and intends to fulfil using the ship. Once the debtor of an amount receivable owed to the time charterer becomes aware of the owner's lien, the debtor may make payment only to the owner. However, the debtor shall be entitled to deposit the amount in question until such time as the charterer notifies it of the lien.

(3) Notwithstanding the provisions under subsections (1) and (2), the owner shall have no lien to secure any future claims to compensation, nor shall the owner have any lien to secure any hire receivable but not yet due for payment.

**Section 567**  
**Breach of duties**

Unless stipulated otherwise in the present Subchapter, the legal consequences of a party's breach of its duties under a time charter contract shall be determined by the general provisions governing obligations made in the Civil Code (*Bürgerliches Gesetzbuch*, BGB).

**Section 568**  
**Right of retention**

The owner may refuse performance of its obligations, including the loading and stowing of goods on board and the issuance of bills of lading, for as long as the charterer is in default with regard to a hire amount that is due and payable.

**Section 569**  
**Return of the ship**

(1) Upon the contractual relationship ending, the time charterer must return the ship at the location agreed.

(2) If the contractual relationship ends due to its being terminated without notice, then, in derogation from subsection (1), the time charterer must return the ship at whatever location it happens to be once the termination takes effect. However, the party responsible, by its fault or neglect, for causing the agreement to be terminated without notice must compensate the other party for any damages resulting from premature termination of the contractual relationship.

**Chapter 4**  
**Ship's emergencies**

**Subchapter 1**  
**Collision of ship**

**Section 570**  
**Obligation to compensate for damages**

Where a collision occurs between sea-going ships, the *Reeder* of the ship causing the collision shall be liable for the damage caused to the other ship and to the persons and property located on board on either or both of the ships. However, such obligation to

compensate for damages shall arise only if fault or neglect is attributable to the *Reeder* of the ship causing the collision, or to one of the persons referred to in section 480.

**Section 571**  
**Contributory fault**

(1) If the *Reeder* of several ships involved in a collision are obligated to compensate for damages, the scope of compensation that a given *Reeder* must pay shall be determined by the degree of the fault or neglect of that *Reeder* in proportion to the fault or neglect of the other *Reeder*. If it is not possible to determine the degree of the respective faults or neglects, then the liability of all *Reeder* concerned shall be apportioned equally.

(2) In derogation from subsection (1), the *Reeder* of several ships involved in a collision shall be liable jointly and severally for damages caused by death of or personal injury to a person on board. In their relation *inter se*, the scope of the compensation to be paid by each *Reeder* shall be determined in accordance with subsection (1).

**Section 572**  
**Damage without collision**

If a ship, either by the execution or non-execution of a manoeuvre, or by the non-observance of a navigation rule, causes damage to another ship, or to the persons or property on board that ship, without a collision taking place, then sections 570 and 571 shall be applied *mutatis mutandis*.

**Section 573**  
**Involvement of an inland waterway vessel**

The provisions of the present Subchapter are to be applied *mutatis mutandis* if an inland waterway vessel is involved in the accident.

**Subchapter 2**  
**Salvage**

**Section 574**  
**Duties of the salvor and of other persons**

(1) A “salvor” shall be defined as a party that goes to the aid of the following ships or other property:

1. A sea-going ship or inland waterway vessel or other property that is in danger at sea;
2. A sea-going ship that is in distress in inland waters; or
3. An inland waterway vessel or other property that is in danger in inland waters, insofar as the assistance is provided from a sea-going ship.

(2) The term “ship” as used in subsection (1) shall also cover floating equipment or a floating structure. The term “property” as used in subsection (1) shall also cover a jeopardised claim to freight. However, the following shall not be deemed a ship or other property within the meaning of subsection (1):

1. An object attached permanently and intentionally to the shoreline;
2. A fixed or floating platform, or a mobile offshore drilling rig, such platform or rig being engaged on site in the exploration, exploitation or production of sea-bed mineral resources.

(3) The salvor shall owe the following duties to the owner of the ship or other property to which it renders assistance: to carry out the operations with due care; to seek assistance from other salvors whenever circumstances reasonably require; and to accept the intervention of other salvors when reasonably requested to do so by the skipper, master or owner of the ship in distress, or by the owner of the other property in danger.

(4) The owner and the skipper or master of a ship in distress, as well as the owner of the other property in danger shall owe a duty to the salvor to co-operate in every regard with the salvor during the course of the salvage measures. Once the ship or other asset has been brought to a place of safety, the persons listed in the first sentence shall be obliged to accept re-delivery of the ship or of the other property upon being reasonably requested to do so by the salvor.

#### **Section 575**

##### **Prevention or minimisation of damages to the environment**

(1) The salvor shall owe a duty to the owner of the ship or of the other property in danger which it is assisting to exercise due care in performing the salvage measures so as to prevent or minimise damage to the environment. The owner and the skipper or master of the ship in distress, as well as the owner of the other property in danger, in turn shall owe the same duty to the salvor. Any arrangement made in derogation herefrom shall be null and void.

(2) The term “damage to the environment” shall be defined as substantial physical damage to human health or to marine life or resources in coastal or inland waters or areas adjacent thereto, caused by pollution, contamination, fire, explosion, or similar major incidents.

#### **Section 576**

##### **Right to a reward**

(1) Insofar as salvage measures prove successful, the salvor shall be entitled to receive payment of a salvage reward. This claim shall arise notwithstanding that the salvaged ship and the ship undertaking the salvage measures belong to the same owner.

(2) The salvage reward shall also comprise reimbursement of expenses incurred in the salvage measure. The following shall not be included in the salvage reward: any costs and fees charged by government authorities; any customs duties and other duties payable; the costs of warehousing, preserving, appraising, and selling the salvaged property (costs of salvage).

(3) The owner of the salvaged ship as well as the owner of the other salvaged property shall be obliged to pay the salvage reward and the costs of salvage, the pro-rata contribution of each being determined by the value of the ship in proportion to that of the other property.

#### **Section 577**

##### **Amount of the salvage reward**

(1) Unless the parties already fixed the amount of the salvage reward beforehand, they shall set it at a level that encourages future salvage measures. In so doing, they must allow for the following criteria, without regard to the order in which they are presented below:

1. The salvaged value of the ship and of any other salvaged assets;
2. The skill and efforts of the salvor in preventing or minimising damage to the environment (Section 575 (2));
3. The measure of success obtained by the salvor;
4. The nature and degree of the danger;
5. The skill and efforts of the salvor in salvaging the ship, other property and human life;
6. The time, expenses, and losses incurred by the salvor;
7. The potential liability and other risks to which the salvor or its equipment was exposed;
8. The promptness of the services rendered;

9. The availability and deployment of vessels or other equipment intended for the salvage measures;

10. The state of readiness and efficiency of the salvor's equipment along with its value.

(2) The salvage reward, exclusive of any interest, costs of salvage, or recoverable legal costs, shall not exceed the salvaged value of the vessel and of the other salvaged property.

#### **Section 578** **Special compensation**

(1) If the salvor has carried out salvage measures for a ship that poses a danger to the environment, either by itself or by virtue of its cargo, then the salvor shall be entitled to demand special compensation from the owner of that ship in excess of the salvage reward to which the salvor is entitled. The claim to such special compensation shall also arise notwithstanding that the salvaged ship and the ship undertaking the salvage measures belong to the same owner.

(2) The amount of the special compensation shall correspond to the expenses incurred by the salvor. The term "expenses" as used in the first sentence shall cover all expenditures reasonably incurred by the salvor in the salvage measures as well as a fair rate for any equipment and personnel verifiably and reasonably deployed in the salvage measures. In determining the reasonableness of the amount to be assessed for equipment and personnel, the criteria listed in section 577 (1) second sentence number 8 through 10 must be considered.

(3) Insofar as the salvor's salvage measures have prevented or minimised damage to the environment (section 575 (2)), the special compensation payable pursuant to subsection (2) may be increased by up to 30 percent. Notwithstanding the first sentence, the special compensation payable may be increased by up to 100 percent if this is deemed fair and equitable in consideration of the criteria listed in section 577 (1) second sentence.

#### **Section 579** **Exclusion of a claim to remuneration**

(1) The salvor may not claim any remuneration for salvage measures under the present Subchapter if the measures taken do not extend above and beyond what could be reasonably considered to be the due and proper fulfilment of a contract concluded prior to occurrence of the peril.

(2) Furthermore, the salvor may not claim any remuneration under the present Subchapter if it performed the salvage measures notwithstanding the express and reasonable prohibition of the owner, skipper or master of the ship, or of the owner of some other property in danger that is not and was not on board the ship.

#### **Section 580** **Salvor's misconduct**

(1) A salvor may be deprived of all or part of the salvage reward to the extent that the salvage measures were rendered necessary or more difficult due to fault or neglect on the part of the salvor, or if the salvor has engaged in fraud or otherwise acted in bad faith.

(2) A salvor may be deprived of all or part of the special compensation if one of the reasons set out in subsection (1) is given, or if the salvor was negligent and thereby failed to prevent or minimise damage to the environment (section 575 (2)).

#### **Section 581** **Claim to apportionment**

(1) If a ship or its cargo is salvaged, in whole or in part, by another ship, then the salvage reward or special compensation shall be apportioned between the following: the ship's owner or the *Reeder*; the skipper or master; and the other persons in the service of the other ship; in the process, the ship's owner or the *Reeder* must be compensated for the damages the ship has suffered and must be reimbursed for expenses incurred, while the rest is to

apportioned such that the ship's owner or the *Reeder* is paid two thirds, while the skipper or master and the other persons in the service of the ship each receive one sixth.

(2) The amount payable to the ship's company, not including the skipper or master, shall be apportioned to the members thereof while making special allowance for each member's personal skills and effort made. The skipper or master shall distribute the amount based on a disbursement scheme. This shall set out the portion to which each party is entitled. The ship's company is to be informed of the disbursement scheme prior to the end of the voyage.

(3) Any agreements diverging from the provisions of subsections (1) and (2) to the detriment of the ship's skipper or master or of the other persons in the service of the ship shall be null and void

(4) Subsections (1) through (3) shall be not applicable if the salvage measures are undertaken from a naval rescue and salvage ship or a salvage tug.

#### **Section 582** **Plurality of salvors**

(1) If several salvors cooperate in the performance of salvage measures, then each of the salvors may demand only a share of the salvage reward. Section 577 (1) shall be applied *mutatis mutandis* in determining the salvors' pro-rata shares in the salvage reward; section 581 shall remain unaffected.

(2) In derogation from subsection (1), a salvor may demand the full amount of a salvage reward if the salvor accepted the intervention of the other salvors at the request of the owner of the ship in distress or other property in danger, and if said request later proves to have been unreasonable.

#### **Section 583** **Saving human life**

(1) No remuneration shall be due from persons whose lives have been saved, neither as a salvage reward nor as special compensation.

(2) In derogation from subsection (1), any person who has taken action to save human life during salvage measures may demand a fair share of the salvage reward payable to the salvor pursuant to the present Subchapter in return for the salvor's salvaging of the ship or other property, or for his prevention or mitigation of damage to the environment (section 575 (2)). Where the salvor is not entitled to any salvage reward, or only a reduced amount, due to the reasons set out in section 580, thereby reducing the amount recoverable by a party claiming a fair share of the salvage reward, then that person may recover the lost portion of his fair share of the reward directly from the owners of the salvaged ship and of the other salvaged property; section 576 (3) shall apply *mutatis mutandis*.

#### **Section 584**

##### **Conclusion of a salvage contract and retroactive review of its content by a court**

(1) Both the owner and the skipper/master of a ship in distress shall have the authority to conclude contracts for salvage measures on behalf of the owners of property on board the ship. Moreover, the skipper or master of said ship shall have the authority to conclude such contracts on behalf of the owner of the ship.

(2) The salvage contract or any terms thereof may be annulled or modified by a court ruling in response to a petition, provided one of the following applies:

1. The contract was entered into as a result of undue influence or under the influence of danger, and the contract's terms are inequitable; or
2. The payment provided under the contract is excessively large or small in view of the services actually rendered.

#### **Section 585** **Lien, right of retention**



(1) Pursuant to section 596 (1) number 4, the creditor of a claim to a salvage reward, to special compensation, or to reimbursement of the costs of salvage shall enjoy, for purposes of its claim, the same rights as a maritime lienor of the salvaged ship.

(2) The creditor shall also have a lien on other salvaged assets in order to secure its claim to a salvage reward or to reimbursement of the costs of salvage; if the creditor is the sole possessor of the property, it shall also have a right of retention.

(3) The creditor shall be barred from enforcing the lien or exercising the right of retention granted pursuant to subsections (1) or (2) in any of the following situations:

1. When satisfactory security for the creditor's claim, including interest and costs, has been duly tendered or provided;

2. In cases in which the salvaged ship or other salvaged property is owned by a State or, in the case of a ship, in cases in which it is operated by a State, and if the ship or other property serves non-commercial purposes and, at the time of salvage measures, is entitled to sovereign immunity under generally recognized principles of international law;

3. If the salvaged cargo is a humanitarian cargo donated by a State, provided such State has agreed to defray the cost of salvage services for such cargo.

#### **Section 586**

##### **Ranking order of several liens**

(1) Liens on property salvaged pursuant to section 585 (2) shall take priority over all other liens affecting the property, even if such liens may have accrued earlier.

(2) If several liens pursuant to section 585 (2) encumber a property, then a lien for a claim accruing later shall take priority over a lien for a claim accruing earlier; any liens for claims accruing simultaneously shall rank *pari passu* as between themselves; section 603 (3) shall apply *mutatis mutandis*. The same rule for determining the order of priority shall apply when the same event gives rise to both a lien pursuant to section 585 (2) as well as to a lien on a claim for contribution in general average pursuant to section 594 (1).

(3) Liens on any property salvaged pursuant to section 585 (2) shall be extinguished one (1) year after the corresponding claim arose; section 600 (2) shall apply *mutatis mutandis*.

(4) The creditor of a lien pursuant to section 585 (2) shall be satisfied from the salvaged property pursuant to the regulations governing compulsory enforcement. Insofar as the corresponding property is yet to be surrendered, legal action is to be directed against the skipper or master; any ruling handed down against the skipper or master shall also take effect against the owner.

#### **Section 587**

##### **Provision of security**

(1) The salvor may demand that the debtor provide satisfactory security for the salvor's claim to a salvage reward or to special compensation, including interest and costs. The first sentence shall not apply, however, if the salvage measures were performed for a ship that is owned or operated by a State, that serves non-commercial purposes and that, at the time of the salvage measures, enjoys sovereign immunity under generally recognized principles of international law.

(2) Without prejudice to subsection (1), the owner of the salvaged ship shall use its best endeavours to ensure that the owners of the cargo provide satisfactory security for the claims against them, including interest and costs, before the cargo is released.

(3) Unless the salvor gives its express consent, the salvaged ship and other property may not be removed from the port or place at which they first arrive upon completion of the salvage measures until such time as the salvor's claims have been satisfied or until satisfactory security has been provided for the salvor's claim.

(4) If the skipper or master delivers salvaged cargo to be removed in contravention of subsection (3), he shall be liable for the damages that he has culpably caused the salvor.

This shall also apply if the skipper acted on the instructions of the ship's owner, or if the master acted on the instructions of the *Reeder*.

### **Subchapter 3 General average**

#### **Section 588**

##### **Preservation from common peril**

(1) If the ship, the fuel, the cargo or several of these items are intentionally damaged or voluntarily sacrificed upon the master's orders in order to preserve the ship, its company, and cargo from common peril, or if any expenditures are incurred to this end upon the master's orders (general average), the resulting damages and expenditures shall be borne jointly by the parties involved.

(2) A "party to the adventure" shall be defined as a party who, at the time of the general average act, is the owner of the ship or owner of the fuel, or who bears the risk of loss with regard to a cargo unit or freight claim associated with the shipment.

#### **Section 589**

##### **Fault or neglect of a party to the adventure or of a third party**

(1) The regulations on the general average shall remain applicable even in a case where the imminent peril is caused due to the fault or neglect of a party to the adventure or of a third party. However, the party to the adventure culpable of such fault or neglect may not demand any average in respect of the damage it has suffered.

(2) If the imminent peril occurred due to the fault or neglect of a party to the adventure, that party shall be obliged to compensate the contributing interests for the damages they have suffered as a result of having to jointly bear the damages and having to jointly incur the expenditures for saving the ship from common danger.

#### **Section 590**

##### **Assessment of the average**

(1) The average for the voluntary sacrifice of the ship, its accessories, the fuel, and the cargo units forming part of the cargo shall be assessed based on the current market value that these property items would have had at termination of the voyage.

(2) The average for the physical damage of the property items set out in subsection (1) shall be assessed based on the difference between the current market value of the property at termination of the voyage, and the current market value the property would have had if sold in undamaged condition at termination of the voyage. If property has been repaired following the general average act, the presumption shall be that the costs expended for the repair of the property correspond to their depreciation.

(3) The average for the loss of a claim to freight shall correspond to the amount that is not owed to the carrier as a result of the general average.

(4) If the property voluntarily sacrificed or damaged was the subject of a sale and purchase agreement immediately prior to commencement of the voyage, the presumption shall be that the purchase price itemised in the seller's invoice corresponds to that property's current market value.

#### **Section 591**

##### **Contribution in general average**

(1) All parties to the adventure, excluding the ship's company and the passengers, must contribute to the average.

(2) The contribution in general average shall correspond to the value of the property items that were subject to common danger. The value of the ship, of the fuel and of the cargo units forming part of the cargo shall be determined based on the current market value of said items at the termination of the voyage, plus any average payable for physical damage or voluntary sacrifice of property covered by the general average. The value of a claim to freight shall be determined based on the gross amount of freight owed at the termination of the

voyage, plus any average payable for loss of the claim to freight due to measures taken in the general average act.

#### **Section 592**

##### **General average disbursements**

(1) The amount of the average that a party to the adventure may claim for the voluntary sacrifice or physical damage of any property attributable to said party pursuant to section 588 (2), as well as the amount of the contribution that a party to the adventure must pay, shall be determined based on the proportion between the entire average owed to all parties to the adventure on the one hand, and the total contributions owed by all parties to the adventure on the other. If a pro-rated depreciation determined pursuant to section 590 is higher than the share calculated in accordance with the first sentence, then the party to the adventure affected by the depreciation shall receive a general average disbursement equivalent to the difference. If a pro-rated depreciation determined pursuant to section 590 is lower than the share calculated in accordance with the first sentence, then the party to the adventure affected by the depreciation shall pay a contribution equivalent to the difference.

(2) However, each contributing interest shall be liable only up to the value of the salvaged property that is attributable to that contributing interest pursuant to section 588 (2).

#### **Section 593**

##### **Rights of maritime lienors**

Pursuant to section 596 (1) number 4, the parties entitled to general average disbursements shall have the rights of a maritime lienor of the ship in order to secure their claims to contribution in general average against the owner of the ship and against the creditor of the freight.

#### **Section 594**

##### **Lien of the parties entitled to a general average disbursement; prohibition of delivery**

(1) To secure their claims to a general average disbursement, the parties entitled to such disbursements shall have a lien on the fuel and cargo of the contributing interests.

(2) Said lien shall take priority over all other liens on such property items, even if they arose earlier. If a given property item is subject to several liens pursuant to subsection (1), or if the property is also subject to a lien pursuant to section 585 (2), then the lien for a claim arising later shall take priority over the lien for a claim arising earlier. Any liens for claims arising simultaneously shall rank *pari passu* as between themselves. Section 603 subsection (3) shall apply *mutatis mutandis*.

(3) Liens pursuant to subsection (1) shall be extinguished one (1) year from the time when the claim secured thereby arose; section 600 (2) shall apply *mutatis mutandis*.

(4) The *Reeder* shall exercise liens on behalf of the parties entitled to a general average disbursement. Section 368 and section 495 (4) shall be applied *mutatis mutandis* to the enforcement of liens on the cargo.

(5) The master shall be prohibited from delivering property encumbered by liens pursuant to subsection (1) before the corresponding contributions have been adjusted or secured. If, contrary to the first sentence, the master in fact delivers the property, he shall be liable for the damages that he caused, by his fault or neglect, to the parties entitled to a general average disbursement. This shall apply even if the master acted on the instructions of the *Reeder*.

#### **Section 595**

##### **Settlement of the average**

(1) Each party to the adventure shall have the right to initiate settlement of the average at the destination or, insofar as this is not reached, at the harbour where the voyage ends. If the fuel or cargo was damaged or sacrificed intentionally, the *Reeder* shall be obliged to promptly initiate settlement of the average at the location set out in the first sentence; any

failure to do so shall make the *Reeder* liable to the parties to the adventure for the resulting damages.

(2) The average is to be settled by a licensed appraiser, or by an expert person separately appointed by the court (average adjuster).

(3) Each party to the adventure must provide the average adjuster with all documents in its possession that may be required to settle the average.

## **Chapter 5 Maritime lienor**

### **Section 596 Secured claims**

(1) Creditors of any of the following claims shall have the rights of a maritime lienor:

1. Wages due to the master and the other persons making up the ship's company in respect of their employment on the vessel;
2. Public charges such as vessel dues; port, canal and other waterway dues; and pilotage dues;
3. Claims to compensation of damages in respect of loss of life or personal injury, as well as for the loss of or physical damage to property, occurring in direct connection with the operation of the ship; however, those claims in respect of the loss of or physical damage to property shall be ruled out that are based on a contract or that could be derived from a contract;
4. Claims to a salvage reward, to special compensation, and to the costs of salvage; claims against the owner of the ship and against the creditor of the freight for contribution in general average; claims for wreck removal;
5. Claims of the social security authorities against the *Reeder*, including unemployment insurance claims.

(2) Subsection (1) number 3 shall not be applied to claims that are the result of the radioactive properties, or a combination of radioactive properties with toxic, explosive or other hazardous properties, of nuclear fuel or of radioactive product or waste.

### **Section 597 Lien held by maritime lienors**

(1) To secure their claims, maritime lienors shall have a statutory lien on the ship. Said lien may be asserted against any party in possession of the ship.

(2) The ship shall be liable also for the statutory interest accruing to the claims, as well as for the costs of bringing an action to obtain satisfaction of the creditors from the ship.

### **Section 598 Object of the lien held by the maritime lienors**

(1) The lien held by maritime lienors shall cover the ship's accessories, excepting those items forming part of the ship's accessories that did not become the property of the owner of the ship.

(2) The lien shall also cover any claim to compensation which the *Reeder* may have against a third party for loss of or physical damage to the ship. The same shall apply to the average to be disbursed for damages to the ship, assuming a general average is performed.

(3) The lien shall not extend to cover any claims to benefits under an insurance policy taken out for the ship by the *Reeder*.

### **Section 599 Lapse of the claim**

If a claim secured by a lien held by a maritime lienor lapses, the associated lien shall lapse as well.

**Section 600**  
**Lapse by passage of time**

- (1) The lien held by a maritime lienor shall lapse one year after the associated claim has arisen.
- (2) The lien shall not lapse should the creditor obtain the seizure of the ship due to the lien within the limitation period set out in subsection (1), provided that the ship is subsequently sold by way of compulsory enforcement before the seizure in favour of said creditor has been lifted. The same shall apply to the lien held by a creditor who accedes to the compulsory enforcement proceedings in order to realise its lien, and does so within the above-referenced limitation period.
- (3) Any period during which a creditor is prevented by law from satisfying its claims out of the ship shall not be included in calculating the limitation period. Any suspension, extension, or re-commencement of the limitation period for other reasons shall be ruled out.

**Section 601**  
**Satisfaction of the maritime lienor**

- (1) The maritime lienor shall be satisfied out of the ship in accordance with the regulations governing compulsory enforcement.
- (2) An action to obtain the toleration of compulsory enforcement may be brought against the owner of the ship and against its operator. Any ruling handed down against the operator shall also be effective against the owner.
- (3) In favour of a maritime lienor, any party that has been entered as owner in the register of ships shall be deemed to be a ship's owner. This shall not affect the right of an owner not entered in the register of ships to assert those objections against the lien to which it is entitled.

**Section 602**  
**Precedence of the liens held by maritime lienors**

Liens held by maritime lienors shall take priority over all other liens on the ship. They shall also take priority insofar as dutiable and taxable property is to serve as collateral for public charges pursuant to statutory regulations.

**Section 603**  
**General ranking of liens held by maritime lienors**

- (1) The liens held by maritime lienors shall rank amongst each other in the order in which the corresponding claims are listed in section 596.
- (2) However, liens for the claims listed in section 596 (1) number 4 shall take priority over liens for any earlier claim on the part of any other maritime lienors.
- (3) Any claims for contribution in general average shall be deemed to have accrued on the date on which the general average act was performed; claims to a salvage reward, to special compensation, and to compensation of the costs of salvage shall be deemed to have accrued on the date on which the salvage measures were terminated; claims for the removal of the wreck shall be deemed to have accrued at the time such removal of the wreck is completed.

**Section 604**  
**Ranking order of liens listed under the same number**

- (1) Liens for the claims listed in section 596 (1) numbers 1 through 3 and number 5 shall rank *pari passu* as between themselves insofar as they are listed under the same number, irrespective of the time at which they arose.
- (2) Liens for the personal-injury claims listed in section 596 (1) number 3 shall take priority over liens for property-damage claims listed under the same number.

(3) With regard to liens for the claims listed in section 596 (1) number 4, the lien for a claim that arose later shall take priority over the lien for a claim that arose earlier. Liens for claims that arose at the same point in time shall rank *pari passu* as between themselves.

## **Chapter 6** **Statutory limitation period**

### **Section 605** **One-year statutory limitation period**

The following claims shall become time-barred after one year:

1. Claims under a contract for the carriage of goods by sea and under a bill of lading;
2. Claims under charter contracts;
3. Claims to contribution in general average;
4. Claims to which the *Reeders* are entitled amongst each other pursuant to section 571 (2).

### **Section 606** **Two-year statutory limitation period**

The following claims shall become time-barred after two years:

1. Claims to compensation of damages for death of or personal injury to a passenger, or for the loss of, physical damage to, or delayed re-delivery of luggage, insofar as such claims are subject to the regulations set out in this Book;
2. Claims to compensation of damages resulting from the collision of ships or from one of the incidents set out under Section 572;
3. Claims to a salvage reward, to special compensation, and to the compensation of the costs of salvage;
4. Claims for the removal of a wreck.

### **Section 607** **Commencement of statutory limitation periods**

(1) The limitation period for the claims set out in section 605 number 1 shall commence on the date the goods are delivered or, failing such delivery, on the date the goods should have been delivered. If the claims arise from a voyage charter contract, the commencement of the limitation period shall be determined based on the date on which goods were delivered at the end of the last voyage, or based on the date they should have been delivered.

(2) In derogation from subsection (1), the limitation period for recourse claims of an obligor of a claim set out in Section 605 number 1 shall commence on the day on which the judgment against the recourse claimant becomes final and non-reviewable or, should no legally final and non-reviewable judgment exist, on the day on which the recourse claimant has satisfied the claim. The first sentence shall not apply if the recourse debtor was not informed of the damage within three months after the recourse claimant became aware of the damage and of the recourse debtor's identity.

(3) The limitation period for the claims under charter contracts set out in section 605 number 2 shall commence at the end of the year in which the claim arises. Subsection (2) shall be applied *mutatis mutandis* to the limitation of the recourse rights enjoyed by a debtor of a claim arising from a time charter contract.

(4) The limitation period for the claims set out in Section 605 numbers 3 and 4 shall commence at the end of the year in which the claim arose.

(5) The limitation period for the claims to compensation of damages set out in Section 606 number 1 shall commence as follows:

1. For claims in respect of the personal injury of a passenger, from the date of disembarkation;
2. For claims in respect of the death of a passenger: from the date when disembarkation should have taken place or, if the passenger died after disembarking, from the day of the passenger's death, but in no case later than one year after the passenger's disembarkation;
3. For claims in respect of the loss of, physical damage to or delayed re-delivery of the luggage, from the date of disembarkation or from the date on which the passenger should have disembarked, whichever is later.

(6) The limitation period for claims to compensation of damages resulting from a collision of ships as set out under section 606 number 2 or resulting from an incident covered by section 572 shall commence at the time of the incident causing the damage.

(7) The limitation period for the claims set out in section 606 numbers 3 and 4 shall commence upon completion of the salvage measures or wreck removal efforts. Subsection (2) shall be applied *mutatis mutandis* to the limitation of the recourse rights enjoyed by a debtor of such claims.

#### **Section 608**

##### **Extension of the limitation period**

The limitation period of the claims set out in sections 605 and 606 may also be extended by the creditor's declaration asserting the creditor's claims to compensation; such an extension shall run for as long as the debtor refuses to satisfy the claim. Both the assertion of claims and the refusal to satisfy the same must be made in text form (a readable statement that is permanently valid without a signature having been applied). Any further declaration concerning the same claim to compensation shall not result in an additional extension of the limitation period.

#### **Section 609**

##### **Arrangements as to the limitation period**

(1) The limitation of claims to compensation of damages under a contract for the carriage of general cargo or under a bill of lading for the loss of or physical damage to the goods may be eased or impeded only by an agreement reached after detailed negotiations, whether for one or several similar contracts between the same parties. However, any provision in the bill of lading easing the limitation of claims to compensation of damages shall be invalid *vis-à-vis* third parties.

(2) The limitation of claims resulting from personal injuries to persons, physical damage, or delayed re-delivery of luggage as set out in section 606 number 1 may be extended only by a declaration on the part of the carrier or by an agreement between the parties made after the grounds on which the claim is based have arisen. Both the declaration and the agreement must be made in writing. Any easing of the limitation, specifically a reduction in the limitation period, shall not be admissible.

#### **Section 610**

##### **Concurrent claims**

If contractual claims to the compensation of damages that are subject to the regulations of the present Chapter are found to compete with concurrent, non-contractual claims to the compensation of damages, then the regulations of the present Chapter shall also apply to said non-contractual claims.

### **Chapter 7**

#### **General limitation of liability**

## **Section 611**

### **Convention as to the limitation of liability**

(1) The liability for maritime claims may be limited pursuant to the Convention on Limitation of Liability for Maritime Claims of 19 November 1976 (published in the Federal Law Gazette (*Bundesgesetzblatt*) 1986 II p. 786), as amended by the protocol of 2 May 1996 (Federal Law Gazette 2000 II p. 790), in the version respectively valid for the Federal Republic of Germany (Convention on Limitation of Liability for Maritime Claims). This shall also apply to liability for bunker-oil pollution damage in accordance with the International Convention of 2001 on Civil Liability for Bunker Oil Pollution Damage (Federal Law Gazette 2006 II p. 578) (Bunkers Convention).

(2) According to the provisions of the 1992 International Convention on Civil Liability for Oil Pollution Damage (Federal Law Gazette 1994 II p. 1150, citation on p. 1152) (International Convention on Civil Liability for Oil Pollution Damage, 1992), the liability for claims covered by this Convention may be limited.

(3) Where claims to the compensation of "pollution damage" in the sense as defined in Article I number 6 of the International Convention on Civil Liability for Oil Pollution Damage, 1992 are asserted, and the International Convention on Civil Liability for Oil Pollution Damage, 1992 is not applicable, the persons designated in Article 1 of the Convention on Limitation of Liability for Maritime Claims may limit their liability for such claims by correspondingly applying the provisions of the Convention on Limitation of Liability for Maritime Claims. If one and the same incident gives rise to claims of the type set out in the first sentence as well as to claims for which liability may be limited pursuant to subsection (1), then the limits of liability under the Convention on Limitation of Liability for Maritime Claims shall apply, respectively, to the entirety of the claims set out in the first sentence, as well as to the entirety of the claims for which liability may be limited pursuant to subsection (1).

(4) Liability may not be limited for the following:

1. Claims designated in Article 3 letter e) of the Convention on Limitation of Liability for Maritime Claims, provided the contract of service is subject to German law;
2. Claims to compensation of costs incurred in bringing or defending against a legal action.

(5) Where the Convention on Limitation of Liability for Maritime Claims and in the International Convention on Civil Liability for Oil Pollution Damage, 1992 are silent, sections 612 through 617 shall apply.

## **Section 612**

### **Limitation of liability for claims arising from the removal of a wreck**

(1) The Convention on Limitation of Liability for Maritime Claims (section 611 (1) first sentence) shall apply to the claims set out below, with the proviso that such claims shall be subject to a separate limit of liability irrespective of their legal basis:

1. Claims in respect of the reimbursement of the costs of the raising, removal, destruction, or the rendering harmless of a ship which is sunk, wrecked, stranded, or abandoned, including anything that is or has been on board such ship, and
2. Claims in respect of reimbursement of the costs of the removal, destruction, or the rendering harmless of the cargo of the ship.

The claims set out in the first sentence shall not be subject, however, to the limitation of liability insofar as they concern remuneration contractually agreed with the responsible party.

(2) The limit of liability pursuant to subsection (1) shall be calculated in accordance with Article 6 paragraph (1) letter b) of the Convention on Limitation of Liability for Maritime Claims. The limit of liability shall apply to the entirety of the claims designated in subsection (1), insofar as such claims derive from the same incident and arise against persons who



belong to the groups of persons listed in Article 9 paragraph (1) letter a), b), or c) of the Convention on Limitation of Liability for Maritime Claims. Said limit of liability may only be applied to satisfy the claims specified in subsection (1); Article 6 paragraphs (2) and (3) of the Convention on Limitation of Liability for Maritime Claims shall not be applicable.

### **Section 613**

#### **Limitation of liability for small ships**

Insofar as a ship has a tonnage of no more than 250 tons, the limit of liability to be calculated in accordance with Article 6 paragraph (1) letter b) of the Convention on Limitation of Liability for Maritime Claims (section 611 (1) first sentence) shall be assessed at half of the limit of liability applicable to ships with a tonnage of 2,000 tons.

### **Section 614**

#### **Limitation of liability for damages to harbours and waterways**

Without prejudice to the right set out in Article 6 (2) of the Convention on Limitation of Liability for Maritime Claims (section 611 (1) first sentence) with regard to claims for loss of life or personal injury, any claims in respect of physical damage to harbour works, basins and waterways and to aids to navigation shall take priority over other claims under Article 6 (1) letter b) of the Convention on Limitation of Liability for Maritime Claims.

### **Section 615**

#### **Limitation of the pilot's liability**

(1) The limits of liability set out in Article 6 (1) letter a) and letter b) of the Convention on Limitation of Liability for Maritime Claims (section 611 subsection (1) first sentence) shall apply to claims against a pilot working on board the ship, with the proviso that, if the tonnage of the piloted ship is in excess of 2,000 tons, the pilot may limit his liability to the amount derived under an assumed tonnage of 2,000 tons.

(2) The limit of liability set out in Article 7 (1) of the Convention on Limitation of Liability for Maritime Claims shall apply to claims against a pilot working on board the ship, with the proviso that, if the ship's certificate of registry permits the carriage of more than twelve (12) passengers, the pilot may limit his liability to the amount derived under the assumption that only twelve (12) passengers were being carried.

(3) The constitution and distribution of a fund containing the amounts to be calculated pursuant to subsections (1) or (2), as well as the effects of constituting such a fund, shall be governed by those provisions of Article 11 of the Convention on Limitation of Liability for Maritime Claims which relate to the constitution and distribution of a fund and the effects of constituting a fund. However, Article 11 (3) of the Convention on Limitation of Liability for Maritime Claims shall not be applicable if the tonnage of a piloted ship is in excess of 2,000 tons, as per subsection (1), or if the ship is licensed to carry more than twelve (12) passengers pursuant to its certificate of registry, as per subsection (2).

(4) A pilot who is not working on board the piloted ship may limit his liability for the claims set out in Article 2 of the Convention on Limitation of Liability for Maritime Claims by correspondingly applying section 611 subsections (1), (3), and (4), as well as sections 612 through 614 and section 617, subject to the proviso that a special limit of liability shall apply for these claims; this shall be calculated pursuant to subsection (1) or (2) and shall be available exclusively to satisfy claims against the pilot.

### **Section 616**

#### **Conduct barring limitation of liability**

(1) Where the person liable is a legal entity or a commercial partnership, it shall not be entitled to the benefit of the limitation of liability if both of the following apply:

1. The damage is attributable to an act or omission by a member of the body authorised to represent such entity or partnership, or by a shareholder authorised to represent it, and

2. The limitation of liability pursuant to Article 4 of the Convention on Limitation of Liability for Maritime Claims (section 611 (1) first sentence) or pursuant to Article V (2) of the International Convention on Civil Liability for Oil Pollution Damage, 1992 (section 611 subsection (2)) is ruled out as a result of such act or omission.

The same shall apply if the debtor is a partner of a *Reederei* and the damage is attributable to an act or omission of the correspondent ship-owner manager representing the other ship owners.

(2) Where the person liable is a commercial partnership, each shareholder may limit his personal liability with regard to any claim for which the partnership is also entitled to limit its liability.

#### **Section 617**

##### **Procedure for limiting liability**

(1) The constitution and distribution of a fund within the meaning of Article 11 of the Convention on Limitation of Liability for Maritime Claims (section 611 (1) first sentence) or within the meaning of Article V (3) of the International Convention on Civil Liability for Oil Pollution Damage, 1992 (section 611 subsection (2)) shall be governed by the regulations of the Maritime Distribution Statute (*Schiffahrtsrechtliche Verteilungsordnung*).

(2) The limitation of liability pursuant to the Convention on Limitation of Liability for Maritime Claims may also be asserted in the event that no fund is constituted within the meaning of Article 11 of the Convention on Limitation of Liability for Maritime Claims. Section 305a of the Code of Civil Procedure (*Zivilprozessordnung*) shall remain unaffected.

#### **Chapter 8**

##### **Procedural Rules**

#### **Section 618**

##### **Injunction by a salvor**

Upon a salvor (section 574 (1)) filing a corresponding petition, the court responsible for hearing the main action may, at its equitable discretion and in due consideration of the facts of the case, issue an injunction obligating the debtor of a claim to a salvage reward or special compensation to make a fair and reasonable interim payment to the salvor; at the same time, the court may also stipulate the terms of such performance. Such an injunction may be issued even if the pre-requisites stipulated in sections 935 and 940 of the Code of Civil Procedure have not been met.

#### **Section 619**

##### **Service of documents to the master or skipper of a ship**

Notice of legal action by a maritime lienor to obtain toleration of compulsory enforcement against a ship, or a ruling or court order handed down in proceedings for the arrest of a ship, may be served on the master of said ship or, if an inland waterway vessel is involved, on the ship's skipper.

#### **Chapter 9 (repealed)**

#### **Chapter 11 (repealed)**

#### **Annex (repealed)**